**DEPARTMENT OF PLANNING**
**KA'ĀINA HULL,** DIRECTOR
**JODI A. HIGUCHI SAYEGUSA,** DEPUTY DIRECTOR

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

November 9, 2025

Agency Comments received by the Planning Department as of November 9, 2025, 9:00 am for the November 10, 2025, Planning Commission meeting regarding the following items:

F.4.a. County Zoning Amendment (ZA-2026-2) A petition for a bill to amend Ordinance No. PM-2001-356 as amended in part by Ordinance No. PM-2006-385 to rezone approximately 171.72 acres of real property situated at Kapalawai, Makaweli, Island of Kaua'i, State of Hawai'i, identified by Kaua'i Tax Map Key (4) 1-7-005:001 to the designations that existed prior to Ordinance No. PM-2001-356, as amended = **COUNTY OF KAUAI, PLANNING DEPARTMENT.**

H.1. Petition to Revoke Special Management Area Use Permit SMA(U)-2002- 6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kaua'i Tax Map Key (4) 1-7-005: 001, **Kapalawai,** Makaweli, Island of Kaua'i, State of Hawai'i.

OCT 22 '25 PM1:46
PLANNING DEPT

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

FROM: Kaaina S. Hull, Director  Planner: Jodi Higuchi Sayegusa  10/2/2025

SUBJECT: Zoning Amendment ZA-2026-2
A petition for a bill to amend Ordinance No. PM-2001-356 as amended in part by Ordinance No. PM-2006-385 to rezone approximately 171.72 acres of real property situated at Kapalawai, Makaweli, Island of Kaua'i, State of Hawai'i, identified by Kaua'i Tax Map Key (4) 1-7-005:001 to the designations that existed prior to Ordinance No. PM-2001-356, as amended.

Applicant: County of Kauai, Planning Department

TO:

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

FOR YOUR COMMENTS (pertaining to your department)

10.20.2025

CTA HAS NO FURTHER COMMENT ON THIS PROJECT. MAHALO!

RECEIVED
OCT - 7 2025
County of Kauai
Transportation Agency

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 11/10/2025 at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Kauai, at 9:00 am or soon thereafter. If we do not receive your agency comments within one (1) month from the date of this request, we will assume that there are no objections to this permit request. Mahalo!

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

OCT 20 '25 PM3:06
PLANNING DEPT

FROM: Kaaina S. Hull, Director

Planner: Jodi Higuchi Sayegusa

10/2/2025

SUBJECT: Zoning Amendment ZA-2026-2
A petition for a bill to amend Ordinance No. PM-2001-356 as amended in part by Ordinance No. PM-2006-385 to rezone approximately 171.72 acres of real property situated at Kapalawai, Makaweli, Island of Kaua'i, State of Hawai'i, identified by Kaua'i Tax Map Key (4) 1-7-005:001 to the designations that existed prior to Ordinance No. PM-2001-356, as amended.

Applicant: County of Kauai, Planning Department

TO:

- ☑ State Department of Transportation - STP
- ☑ State DOT - Highways, Kauai (info only)
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- ☐ State DLNR - Commission on Water Resource Management
- ☐ Office of Hawaiian Affairs
- ☑ County DPW - Engineering
- ☐ County DPW - Wastewater
- ☐ County DPW - Building
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- ☐ County Economic Development
- ☑ County Water Department
- ☐ County Civil Defense
- ☑ County Transportation Agency
- ☐ KHPRC
- ☐ U.S. Postal Department
- ☑ UH Sea Grant
- ☐ Other:

FOR YOUR COMMENTS (pertaining to your department)

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 11/10/2025 at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Kauai, at 9:00 am or soon thereafter. If we do not receive your agency comments within one (1) month from the date of this request, we will assume that there are no objections to this permit request. Mahalo!

JOSH GREEN M.D.
GOVERNOR OF HAWAII

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

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

DATE: Oct 16, 2025

TO: To whom it may concern

FROM: Ellis Jones
District Environmental Health Program Chief

SUBJECT: RESPONSE_COK Planning Dept_ZA-2026-2

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

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

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

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

**Clean Air Branch**

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

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

**Clean Water Branch**

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

**Hazard Evaluation & Emergency Response Office**

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

**Indoor and Radiological Health Branch**

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

**Safe Drinking Water Branch**

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

**Solid & Hazardous Waste Branch**

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

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

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

**Wastewater Branch**

Wastewater Branch has no objections to the proposed project. The type and number of IWS (individual wastewater systems) will be determined during design review process. By Revised Statue 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 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.

*Ellis Jones*

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

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

EDWIN H. SNIFFEN
DIRECTOR
KA LUNA HO'OKELE

Deputy Directors
Nā Hope Luna Ho'okele
DREANALEE K. KALILI
TAMMY L. LEE
CURT T. OTAGURO
ROBIN K. SHISHIDO

STATE OF HAWAI'I | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF TRANSPORTATION | KA 'OIHANA ALAKAU
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO

STP 00904.25
STP 8.3988

October 22, 2025

**VIA EMAIL:** planningdepartment@kauai.gov

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

Dear Mr. Hull:

Subject: Zoning Amendment ZA-2026-2
Kauai County Ordinance No. PM-2006-385
Makaweli, Kauai, Hawaii
Tax Map Key: (4) 1-7-005: 001

Thank you for your transmittal, dated October 2, 2025, requesting the Hawaii Department of Transportation's (HDOT) review and comments on the subject zoning amendment. The HDOT understands that the County of Kauai, Planning Department, is proposing to rezone approximately 171.72 acres of real property located in Makaweli, Kauai, from Resort District to Agriculture District.

Considering the rezoning, the HDOT does not anticipate any significant adverse impacts; therefore, we have no comments to provide.

Please submit any subsequent land use entitlement-related requests for review or correspondence to the HDOT Land Use Intake email address at DOT.LandUse@hawaii.gov.

If there are any questions, please contact Mr. Blayne Nikaido, Planner, Land Use Section of the HDOT Statewide Transportation Planning Office at (808) 831-7979 or via email at blayne.h.nikaido@hawaii.gov.

Sincerely,

EDWIN H. SNIFFEN
Director of Transportation

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

FROM: Kaaina S. Hull, Director  Planner: Jodi Higuchi Sayegusa  10/2/2025

SUBJECT: Zoning Amendment ZA-2026-2
A petition for a bill to amend Ordinance No. PM-2001-356 as amended in part by Ordinance No. PM-2006-385 to rezone approximately 171.72 acres of real property situated at Kapalawai, Makaweli, Island of Kaua'i, State of Hawai'i, identified by Kaua'i Tax Map Key (4) 1-7-005:001 to the designations that existed prior to Ordinance No. PM-2001-356, as amended.

Applicant: County of Kauai, Planning Department

TO:

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- ☑ State DOT - Highways, Kauai (info only)
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- ☑ County Transportation Agency
- ☐ KHPRC
- ☐ U.S. Postal Department
- ☑ UH Sea Grant
- ☐ Other:

FOR YOUR COMMENTS (pertaining to your department)

Please see attached memo.

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 11/10/2025 at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Kauai, at 9:00 am or soon thereafter. If we do not receive your agency comments within one (1) month from the date of this request, we will assume that there are no objections to this permit request. Mahalo!

University of Hawai'i Sea Grant College Program
2525 Correa Road, HIG 239 • Honolulu, Hawai'i 96822 • Phone: (808) 956-7031 • www.hawaiiseagrant.org
School of Ocean and Earth Science and Technology

# MEMO

Date: October 31, 2025

To: Jodi Higuchi Sayegusa, County of Kaua'i Deputy Planning Director

From: Ruby Pap, Kaua'i Coastal Land Use Extension Specialist

Subject: ZA 2026 – 2 (Kapalawai, Makaweli) comments

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Mahalo for the opportunity to comment on the proposed zoning change at Kapalawai, Makaweli, Kona. For this application, I consulted with the UH Sea Grant Kaua'i Kona Moku Coordinator, Leanora Kaiaokamalie, who has some familiarity with the property as well as overall issues in the Kona Moku. The proposal would downzone the property from resort uses to open uses and agriculture. My understanding is this zoning change back to its original designation is required as per prior County Council conditions on the property – namely that if substantial construction on the resort is not undertaken in a particular timeframe, it must be rezoned back to its original agriculture and open designation.

The action of downzoning to less intensive activities emphasizes preservation and environmental sensitivity. However, future land use and development activities, if not carefully managed, could still affect shoreline ecosystems, cultural sites, and natural landscapes through increased runoff, erosion, and disturbance of sensitive habitats. In addition, coastal erosion and sea level rise hazard impacts are an issue along the shoreline. Ongoing archaeological monitoring, adherence to environmental best management practices, and generous shoreline setbacks help minimize these risks.

Of note, the conditions established under the 2001 Land Use Commission decision to change the state zoning from agriculture to urban provide a framework for protecting cultural and ecological resources associated with Kapalawai Fishpond. Integrating these practices into future development and long-term management efforts can help ensure the fishpond's ecological function and cultural integrity are sustained over time. Options to strengthen this include: (1) incorporating community-based stewardship or co-management opportunities, (2) aligning monitoring and restoration practices with traditional resource management principles, and (3) maintaining transparent reporting to support adaptive management as conditions change.

Understanding that the previous conditions described above would no longer stand, we would suggest that similar measures be considered for any future development proposals.

*The University of Hawai'i Sea Grant College Program supports an innovative program of research, education, and extension services directed to the improved understanding and stewardship of coastal and marine resources of the state, region, and nation.*
*Science serving Hawai'i and the Pacific since 1968.*

An Equal Opportunity Institution

**DEPARTMENT OF PLANNING**
**KA'ĀINA HULL,** DIRECTOR
**JODI A. HIGUCHI SAYEGUSA,** DEPUTY DIRECTOR

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

November 9, 2025

Public testimony received by the Planning Department as of November 9, 2025, 9:00 am for the November 10, 2025, Planning Commission meeting regarding the following items:

F.4.a. County Zoning Amendment (ZA-2026-2) A petition for a bill to amend Ordinance No. PM-2001-356 as amended in part by Ordinance No. PM-2006-385 to rezone approximately 171.72 acres of real property situated at Kapalawai, Makaweli, Island of Kaua'i, State of Hawai'i, identified by Kaua'i Tax Map Key (4) 1-7-005:001 to the designations that existed prior to Ordinance No. PM-2001-356, as amended = **COUNTY OF KAUAI, PLANNING DEPARTMENT.**

H.1. Petition to Revoke Special Management Area Use Permit SMA(U)-2002- 6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kaua'i Tax Map Key (4) 1-7-005: 001, **Kapalawai,** Makaweli, Island of Kaua'i, State of Hawai'i.

Ellen Ching
P.O. Box 3241
Lihue, Hawaii 96766

October 6, 2025

Honorable Rose Ramos-Benzel and Board Members
Board of Ethics
County of Kauai
4444 Rice Street, Suite 300
Lihue, Hawaii 96766

Re: Notice of Conflict of Interest and Recusal Relating to Kapalawai

Dear Chair Ramos-Benzel and Board Members:

Pursuant to Section 20.04B of the Kauai County Charter, I hereby provide written disclosure on the record of a possible conflict of interest relating to the Kapalawai project site, on the

**Petition for Zoning Amendment** (AMEND ORDINANCE NO. PM-2001-356 AS AMENDED IN PART BY ORDINANCE NO. PM-2206-385 FOR REAL PROPERTY SITUATED AT KAPALAWAI, MAKAWELI, ISLAND OF KAUA'I, STATE OF HAWAI'I, KAUA'I TAX MAP KEY (4) 1-7-005: 001, KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAI'I INC., A HAWAI'I CORPORATION, ROBINSON FAMILY PARTNERS, A HAWAI'I GENERAL PARTNERSHIP, BRUCE B. ROBINSON, ALICE EST ROBINSON) and, the

**Petition for Revocation** (FOR THE REVOCATION OF SPECIAL MANAGEMENT AREA USE PERMIT SMA (U)-2002-6, PROJECT DEVELOPMENT USE PERMIT PDU-2002-15, AND CLASS IV ZONING PERMIT Z-IV-2002-20 AND REPORT PERTAINING TO KAUA'I TAX MAP KEY (4) 1-77-005: 001, KAPALAWAI, MAKAWELI, ISLAND OF KAUA'I, STATE OF HAWAI'I, KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAI'I, INC., A HAWAI'I CORPORATION, ROBINSON FAMILY PARTNERS, A HAWAI'I GENERAL PARTNERSHIP, BRUCE B. ROBINSON, ALICE EST ROBINSON).

My husband is an attorney with the law firm Belles Graham LLP who represents the Robinson family and is currently working on the Kapalawai project. It is foreseeable that the Kapalawai project will be on a future Planning Commission agenda.

Pursuant to the Kaua'i County Charter:

> The administrator shall assist in providing administrative and operational support to the various county boards and commissions. Such support shall include, but not be limited to: assisting In the recruitment, orientation, education, and training of board or commission members regarding their powers, duties, functions, and responsibilities under the charter, especially as such powers, duties, functions, and responsibilities may relate to the particular board or commission to which they have been appointed; helping to educate such members about applicable state and county ethics laws and the State Sunshine Law; assisting the office of the mayor to fill any vacancies on any board or commission; being a resource to assist the various county boards or commissions in gathering such information, documents, and data as such boards or commissions may deem necessary to perform its functions; serving as a communications liaison between boards and commissions and the various county departments, offices, and agencies that such boards and commissions may interact with, to help ensure that various boards' and commissions' information needs are addressed in timely fashion.

Section 7.06.B, Kauai County Charter, I have attached a copy of which is hereto and made a part thereof by reference.

As the Administrator of the Office of Boards and Commissions, the responsibilities of the Office are limited to providing logistical support and acting as a liaison between the County Administration and the various Boards and Commission of the County of Kauai. Under the Charter, the language does not prescribe participation in deliberations by County Boards and Commissions. The Office is required to provide information and data. However, this duty must stop at influencing the decision making of such Boards and Commissions.

Specifically for the Planning Commission, as the Administrator, I am responsible for recruiting and assisting nominees for the Planning Commission through the confirmation process. Once confirmed, I am responsible for their training and orientation. Typically, I virtually monitor the Planning Commission meetings as a resource to assist with any issues related to the live streaming, meeting space, or chairs/equipment etc. A member of the Office of Boards and Commissions is responsible for the Planning Commission and the Planning Commission's Subdivision Committee's minutes.

Unlike other Boards and Commissions, it is the Planning Department's staff that drafts the agendas, authors reports and serves as the primary support clerk for the Planning Commission and the Subdivision Committee.

Lastly, a member of the Office of Boards and Commissions is responsible for Contested Cases. Should this matter be referred to Contested Cases, this staff member would make the referral to the Hearings Office and coordinate with him on any necessary arrangements related to the conference room reservations and any conference room preparations.

To avoid the appearance of conflict, **I will recuse myself** from the aforementioned items and will provide this notice of recusal to the Office of the Mayor, the Office of the County Attorney, the Planning Department and the Office of Boards and Commission and my **request to avoid any and all communication regarding the Kapalawai Project.**

Should you have any questions, please feel free to contact me.

Sincerely,

Ellen Ching

Cc:

Derek S.K. Kawakami, Mayor
Reiko Matsuyama, Managing Director
The Office of the Mayor
Matt Bracken, County Attorney
Tyler Saito, First Deputy County Attorney
Laura Bazilai, Deputy County Attorney for the Planning Commission
The Office of the County Attorney
Kaaina Hull, Planning Director
Jodi Higuchi Sayegusa, Deputy Planning Director
Michael Laureta, Planner
The Planning Department
Anelalani Davis, Administrative Specialist
Celine De Leon, Commission Support Clerk
Kodie Kaina, Commission Support Clerk
Mercedes Omo, Commission Support Clerk
Lisa Oyama, Commission Support Clerk for the Planning Commission & Subdivision Committtee
The Office of the Boards and Commissions

**Section 7.06. Boards and Commissions Administrator.**

A. There shall be a boards and commissions administrator and any necessary staff. The administrator shall have such training, education, or experience as shall qualify the administrator to perform the duties described in this section. The administrator shall be appointed and may be removed by the mayor.

B. The administrator shall assist in providing administrative and operational support to the various county boards and commissions. Such support shall include, but not be limited to: assisting in the recruitment, orientation, education, and training of board or commission members regarding their powers, duties, functions, and responsibilities under the charter, especially as such powers, duties, functions, and responsibilities may relate to the particular board or commission to which they have been appointed; helping to educate such members about applicable state and county ethics laws and the State Sunshine Law; assisting the office of the mayor to fill any vacancies on any board or commission; being a resource to assist the various county boards or commissions in gathering such information, documents, and data as such boards or commissions may deem necessary to perform its functions; serving as a communications liaison between boards and commissions and the various county departments, offices, and agencies that such boards and commissions may interact with, to help ensure that various boards' and commissions' information needs are addressed in timely fashion.

C. The mayor and council shall provide an annual appropriation sufficient to provide the administrator with adequate personnel and administrative, operational, and clerical support to carry out the administrator's functions. (Amended 2006)

## Sara Agoot

**From:** Soren Seaver <sorenseaver@gmail.com>
**Sent:** Thursday, October 23, 2025 10:00 AM
**To:** Planning Department
**Subject:** County Zoning Amendment (ZA-2026-2)

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

Dear Planning Department,

Re : Petition for a bill to amend Ordinance No. PM-2001-356

I support amending Ordinance No. PM-2001-356 to rezone real property situated at Kapalawai, Makaweli, Kauai identified as Tax Map Key (4) 1-7-005:001 to the designation that existed prior to Ordinance No. PM-2001-356.

I have lived in Hawaii for 52 years, and a private resident of Kauai for over 40 years. I am a surfer, sailor, and waterman that believes the area of Kapalawai should remain in Open and Agricultural zoning as it was before.

Sincerely,

Soren Seaver
2874 Milo Hae Loop
Kōloa, Hi. 96756
cell : 808-386-0075

**Shanlee Jimenez**

---

**From:** Adam Lang <spindleart@gmail.com>
**Sent:** Friday, October 31, 2025 4:44 PM
**To:** Planning Department
**Subject:** Pakala Resort Plan

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

To whom it may concern,

I believe that enabling a developer to build a resort at Pakala would negatively impact locals who use the beach to surf, fish, relax, and gather. I think a resort, at sea level, with rising oceans, is a terrible idea. The likelihood that waste, both material and human, will make it into the ocean is high. I cannot for the life of me see why we want to keep developing Kauai. We are already strapped for housing, job roles left unfilled due to a lack of affordable housing, and a general feeling that there is already too much traffic on our roads. Adding a resort here will only compound many of the issues people living here have been voicing for a very long time. Please listen to the people who pay taxes here. We do not want more development. Kaua'i's beauty is predicated on large expanses of breathtaking views and abundant nature/natural resources. Putting developments on these views only cheapens our experience and taxes our ecosystems. I believe preservation is more important than development. Keeping Hawaiians and generational locals housed and clothed, and fed should guide the decisions we make as to what gets built, and for whom. A resort is not for the people who live and work here; it's for visitors. Lastly, the beach at Pakala is murky with a dangerously sharp reef. I cannot imagine it being the kind of place people visit and rejoice in its beauty. Their feet will get cut on the reef and get infected by the runoff and stormwater present at Pakala from the nearby stream.

I hope you take my testimony into consideration and put this land into protection rather than give a permit to develop it for a resort.

Mahalo,

Adam Lang

**Shanlee Jimenez**

| | |
|---|---|
| **From:** | Alice Robinson-Simikic <ajrsimikic@gmail.com> |
| **Sent:** | Sunday, November 2, 2025 7:35 PM |
| **To:** | Planning Department |
| **Cc:** | Marjorie Louise Robinson-Beachill; Bharbara Sinclair Foxcroft; Pamela Lee Robinson-McDowell; Alan RR; pakala@aol.com |
| **Subject:** | Zoning Amendment ZA-2026-2 |
| **Attachments:** | AJRS' Letter to Planning Commission.pdf |

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Please refer to the attached letter in regards to the rezoning of Kapalawai, Makaweli from Resort (RR-10) back to Agriculture (A) and Open (O).

Mahalo,

Alice Jean Robinson-Simikic
Pamela Lee Robinson McDowell
Bharbara Sinclair-Foxcroft
Marjorie Louise Beachill

To: Kaua'i County Planning Commission
From: Alice Jean Robinson-Simikic
Pamela Lee Robinson McDowell
Bharbara Sinclair-Foxcroft
Marjorie Louise Beachill
Date: November 3, 2025
Subject: Zoning Amendment ZA-2026-2
Tax Map Key: (4) 1-7-005:001
Kapalawai, Makaweli, Kaua'i

Aloha Chair and Commissioners,

We are writing in **opposition** to the proposed zoning amendment to Ordinance No. PM-2001-356 that seeks to rezone approximately **171.72 acres at Kapalawai, Makaweli** from **Resort (RR-10)** back to **Agriculture (A)** and **Open (O)**. Noted below are some of our reasons:

**1. Resort zoning will help diversify the local economy.**
The diversification relates particularly for areas experiencing challenges in the agricultural sector, which occurred for Gay & Robinson due to economic factors and increased worldwide competition with the growing of sugar cane and seed corn.

**2. A resort will generate more tax revenue for Kauai than farmland.**
This higher revenue can benefit the island by funding local public services, infrastructure, and schools.

**3. Resort developments will offer a wider variety of employment opportunities than agricultural work, which is often seasonal.**

**4. Relying on the agricultural sector alone leaves everyone in the community vulnerable to market fluctuations.**
It can cause populations to decline and younger people to seek employment opportunities elsewhere.

**5. A successful resort will benefit local residents by providing high-quality amenities along with additional recreational opportunities.**

## 6. Recommendation

For these reasons, we respectfully urge the Planning Commission to deny the proposed amendment to Ordinance No. PM-2001-356 and retain the Resort (RR-10) zoning designation for Kapalawai, Makaweli. Maintaining the existing zoning will preserve the family's ability to generate economic activity that directly supports workforce housing, agricultural initiatives, and infrastructure improvements that benefit West Kaua'i.

Mahalo for your time and consideration.

Respectfully submitted,

Alice Jean Robinson-Simikic
Robinson Family Partner and Gay & Robinson Stockholder
ajrsimikic@gmail.com

Pamela Lee Robinson McDowell
Robinson Family Partner and Gay & Robinson Stockholder
pamrmcdowell@gmail.com

Bharbara Sinclair-Foxcroft
Robinson Family Partner and Gay & Robinson Stockholder
bob.2bfoxcroft@gmail.com

Marjorie Louise Beachill
Robinson Family Partner and Gay & Robinson Stockholder
mbeachill@btinternet.com

**Shanlee Jimenez**

---

**From:** Donald Robinson <06dr06@gmail.com>
**Sent:** Wednesday, November 5, 2025 7:43 AM
**To:** Planning Department
**Subject:** D. Robinson Planning Commission Letter
**Attachments:** D. Robinson Planning Commission Letter.docx

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

RFP Kapalawai Resort

**To: Kaua'i County Planning Commission**

**From: Donald Robinson**

**Date: October 31, 2025**

**Subject: Zoning Amendment ZA-2026-2**

**Tax Map Key: (4) 1-7-005:001**

**Kapalawai, Makaweli, Kaua'i**

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**Aloha Chair and Members of the Commission,**

My name is **Donald Robinson**, the youngest son of the late **Warren Robinson**. I am submitting this testimony to express my **strong opposition** to the proposed downzoning of our family's property on the West Side of Kaua'i from **Resort** to **Agriculture**.

In the late 1970s and early 1980s, I worked in the field office with **Tsuto Kojiri**, an incredibly smart and funny man who knew every detail of the sugar plantation. During that time, Tsuto and I often talked about the future of the family and the West Side. We both knew sugar was declining, and that our family needed to diversify.

We agreed that change was necessary — that it was time to invite new ideas and outside perspectives. Around that same period, my father, **Warren Robinson**, began exploring new opportunities for the land, including the idea of a **hotel**. He understood that the plantation era was ending and saw the potential for a resort to sustain both our family and the broader community.

My father worked tirelessly, following every process and meeting every requirement to advance that vision. He believed that a resort could bring life back to the West Side after sugar — providing jobs, stability, and opportunities for local families.

Then came 2008 and the economic collapse. The plans stalled. I will never forget the phone call I received from my father around that time. He told me, "Donald, the hotel plan is dead." Then he said words I will never forget: "I feel like I've failed this family." I told him he hadn't failed us — that something good would still come from all his efforts.

That is why I am here today.

To **downzone this property** from Resort to Agriculture would erase decades of vision, planning, and investment — not only from my father but from generations who worked toward a sustainable future for the West Side. Resort zoning remains the best and highest

use for this land. It allows for carefully planned development that can respect the land and culture while providing meaningful economic benefits.

If given the chance, a resort development here could finally fulfill my father's dream — creating jobs, generating tax revenue for community goals, and drawing responsible investment that aligns with the **West Kaua'i Community Plan**. A world-class hotel, such as one by One&Only, could be the catalyst for revitalizing the West Side's economy in a way that honors its heritage and people.

Downzoning now would close the door on that opportunity and undo years of responsible planning.

For these reasons, I respectfully urge you to **oppose the proposed downzoning** and maintain the **Resort designation** that reflects the original vision for this property and for the future of the West Side.

Mahalo for your time and consideration.

**Sincerely,**
**Donald Robinson**
06dr06@gmail.com

NOV 5 '25 AM8:19
PLANNING DEPT


# GAY & ROBINSON, INC.

P.O. BOX 156
KAUMAKANI, HI 96747
PHONE (808) 335-3133
FAX (808) 335-6424


**To:** Kaua'i County Planning Commission
**From:** Gay & Robinson, Inc.
**Date:** November 4, 2025
**Subject:** Opposition to Proposed Zoning Amendment ZA-2026-2 (Kapalawai, Makaweli, Kaua'i)

Aloha Chair and Commissioners,

I am writing in **opposition** to the proposed zoning amendment (ZA-2026-2) that seeks to rezone approximately **171.72 acres at Kapalawai, Makaweli** from **Resort (RR-10)** back to **Agriculture (A)** and **Open (O)**.

The existing Resort zoning supports the potential for responsible, diversified, place-based economic growth on the West Side. For generations, families from this area have faced limited opportunities and long commutes to work. Maintaining Resort zoning would help create Westside jobs and investment while keeping benefits within our community.

I respectfully urge the Planning Commission to deny the proposed amendment (ZA-2026-2) and retain the Resort (RR-10) zoning designation for Kapalawai, Makaweli.

Respectfully submitted,

Brian Yamase, President
Gay & Robinson, Inc.

**Shantee Jimenez**

**From:** Shannon Nesbitt <surfergirlshannon@aol.com>
**Sent:** Wednesday, November 5, 2025 10:00 AM
**To:** Planning Department
**Subject:** Opposition to Zoning Amendment ZA-2026-2

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**Shannon Nesbitt**
4701 Kawaihau Road Apt. #N201, Kapaa, HI 96746
Kaua'i, Hawai'i

November 5, 2025

**To:**
County of Kaua'i Planning Department
4444 Rice Street, Suite A473
Līhu'e, HI 96766

**Subject:** Opposition to Zoning Amendment ZA-2026-2

Dear Planning Department Members,

I am writing to express my strong opposition to Zoning Amendment ZA-2026-2, which proposes to rezone approximately 171.72 acres of land in Kapalawai, Makaweli, from agricultural to resort use.

This area has historically served an important agricultural role, and changing its designation threatens not only the integrity of our island's rural character but also our long-term sustainability. Agricultural land is one of Kaua'i's most valuable resources — once it is converted to resort or commercial use, it is effectively lost forever.

Additionally, the environmental impacts of further resort development are significant. Increased runoff, strain on freshwater resources, and the potential loss of native habitats are all legitimate concerns. Beyond environmental degradation, additional resort traffic will intensify congestion on already burdened roadways, particularly in West Kaua'i communities that are not designed to handle high tourist volumes.

I urge the County to preserve this land's agricultural zoning and prioritize responsible land use planning that protects Kaua'i's natural and cultural resources for future generations.

Mahalo for your time and consideration.

Sincerely,

**Shanlee Jimenez**

**From:** Chris Nesbitt <mauinezy@aol.com>
**Sent:** Wednesday, November 5, 2025 10:11 AM
**To:** Planning Department
**Subject:** Surf resort

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

**To:**
County of Kaua'i Planning Department
4444 Rice Street, Suite A473
Līhu'e, HI 96766

**Subject:** Opposition to Zoning Amendment ZA-2026-2

Dear Planning Department Members,

I am writing to express my strong opposition to Zoning Amendment ZA-2026-2, which proposes to rezone approximately 171.72 acres of land in Kapalawai, Makaweli, from agricultural to resort use.

This area has historically served an important agricultural role, and changing its designation threatens not only the integrity of our island's rural character but also our long-term sustainability. Agricultural land is one of Kaua'i's most valuable resources — once it is converted to resort or commercial use, it is effectively lost forever.

Additionally, the environmental impacts of further resort development are significant. Increased runoff, strain on freshwater resources, and the potential loss of native habitats are all legitimate concerns. Beyond environmental degradation, additional resort traffic will intensify congestion on already burdened roadways, particularly in West Kaua'i communities that are not designed to handle high tourist volumes.

I urge the County to preserve this land's agricultural zoning and prioritize responsible land use planning that protects Kaua'i's natural and cultural resources for future generations.

Mahalo for your time and consideration.

Sincerely,

Chris Nesbitt

3945 Mapu Street
Lihue HI
96766

**Shanlee Jimenez**

| | |
|---|---|
| **From:** | Shannon Nesbitt <surfergirlshannon@aol.com> |
| **Sent:** | Wednesday, November 5, 2025 10:40 AM |
| **To:** | Planning Department |
| **Subject:** | REVISED TESTIMONY: Support for Zoning Amendment to Rezone from Resort to Agricultural |

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

Dear Members of the Kaua'i County Council and Planning Department,

I am writing to express my support for the proposed zoning amendment (ZA-2026-2) to rezone the property at Kapalawai, Makaweli, from Resort zoning back to Agricultural zoning.

I believe this change is in the best interest of our island and community. Returning the land to agricultural use will help preserve Kaua'i's rural character, protect important environmental resources, and prevent additional strain on our already burdened infrastructure and traffic systems.

Additionally, the environmental impacts of further resort development are significant. Increased runoff, strain on freshwater resources, and the potential loss of native habitats are all legitimate concerns.

Resort development in this area would increase traffic congestion, noise, and environmental stress, especially on our limited roadways and fragile ecosystems. By maintaining agricultural zoning, we support sustainability, food security, and responsible land stewardship for future generations.

Thank you for your consideration and for your continued work to preserve the beauty and balance of Kaua'i.

Sincerely,
Shannon Nesbitt
Concerned Kauai Resident
Kapaa, HI

**Shanlee Jimenez**

---

**From:** Morgan Lester <phunk007@gmail.com>
**Sent:** Wednesday, November 5, 2025 11:15 AM
**To:** Planning Department
**Subject:** NO surf resort at Pakala

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Aloha,

My name is Morgan Lester and I am an artist on the west side in Waimea.

I go to, and surf Pakala every single day. I also walk my dogs along the beach there every single day without having to look at anything but the coastline up past incinerators/sinclairs etc.

It is one of the last great remaining places on this island that has not been ruined by crowds, tourists and the likes. It is also my favorite place on this planet and I am not even joking. A resort will just ruin everything that makes it so special.

Even a paved parking lot would ruin it in many ways.

Please, I am begging you to not pass this and keep this place as special as it is.

I cannot begin to tell you how many people are deeply upset and praying this does not happen.

Mahalo Nui,
Morgan Lester

**Shanlee Jimenez**

**From:** Dawn Madeiros <dawnbdc@aol.com>
**Sent:** Wednesday, November 5, 2025 12:24 PM
**To:** Planning Department
**Subject:** Pakala beach proposed resort

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

We just wanted to voice our opinion against having a resort in the Pakala area. It is one of the few untainted beaches on the island This area has homes for generations I have been blessed enough to swim at the beach with our families permission Please reconsider putting a large resort in this area. So many hardworking local Hawaiians feel it's still protected and and undeveloped.

Respectfully and full of Aloha,

Kawika and Lillian Dawn Madeiros
402A Pua Rd
Kapaa, HI 96746
370-929-7593

Sent from the all new AOL app for iOS

NOV 5 '25 PM 12:35
PLANNING DEPT

County of Kauai Planning Department
Lihue, Hawaii 96766

November 1,2025

Subject: Ordinance No. PM-2006-385 Rezone

As there has been no resort development in the last twenty-five years, the real property at Kapalawai, Makaweli should be rezoned to agriculture. Such a huge development of 171.72 acres is not needed for the rural westside. The current road and other infrastructure will not support such a huge development at this time. Also housing for workers and management is also a concern.

A compromise would be to keep the area west of A'akukui Stream in resort and allow a smaller development around the current Sinclair/Robinson residential area. The area between A'akukui Stream and Mahaikona Stream should definitely revert back to agriculture and remain as is. This would keep majority of the sand beach fronting Ho'ananu Bay undeveloped.

Since the acreage between A'akukui and Mahaikona Streams was taken out of pasture, it has experienced rapid tree growth due to the high freshwater table. It doesn't dry out like surrounding west side areas. This has become a sanctuary for bird and other wildlife. A pair of Hawaiian moor hens have taken residence in Mahaikona. Another reason for keeping the area wild is it is in flood zone subject to both tsunami and flooding from inland sources. Keep the view from the mouth of Mahaikona Stream west to Pu'u point.

Sincerely,
Teddy O. Rentrop
PO Box 555
Hanapepe, Hi 96716

Teddy O. Rentrop

**Shanlee Jimenez**

**From:** Andrianna Mendivil <andrianna4@icloud.com>
**Sent:** Wednesday, November 5, 2025 1:03 PM
**To:** Planning Department
**Subject:** County Zoning Amendment ZA-2026-2 Kauai Surf Resort

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

To whom it may concern,

I support the amendment to change the zoning of the Pakala/Makaweli area back to its original agricultural zoning.
This island is overwhelmed with resorts, condominiums, and timeshares catering to tourism. A resort in this area would not benefit the local westside economy, but would become a burden by crowding roads, increasing pollution into our ocean, and taking away a place with great cultural meaning.
I vote **no** to any commercial property and/or development in this area. Kaua'i does not need another resort catered to tourism. Kaua'i needs affordable housing for local people that are the backbone of all economic success on this island.

Sincerely,
Andrianna Mendiville
Sent from my iPhone

**Shanlee Jimenez**

**From:** Willow Volkert <willowvolkert@gmail.com>
**Sent:** Wednesday, November 5, 2025 1:36 PM
**To:** Planning Department
**Subject:** County Zoning Amendment ZA-2026-2

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

Hello,

My name is Willow Volkert and I am providing written testimony in opposition to County Zoning Amendment ZA-2026-2 to rezone acreage in Kapalawai Makeweli.

As a resident of the west side of Kaua'i, it is incredibly unjust to the families living in Pakala Village to build a resort next to their homes that they are already on the brink of losing. This ecosystem additionally cannot handle more pollution than what is already being poured into Kapalawai from Corteva, and it would be a tragedy to turn the Pakala Surf Break, a haven for locals and one of the last undisturbed breaks on the island, to be commercialized for tourists who already have many other places to go.

As the Education Programs Coordinator of Hui Maka'ainana O Makana, i can also say that rezoning this 'āina would have detrimental effects of the cultural, social, and environmental learning & wellbeing of west side keiki, who rely on Pakala beach to connect with family, practice cultural traditions, learn ocean skills & awareness, and develop a relationship with 'āina. Given my perspectives working in Hā'ena, one of the largest tourist hotspots on the island, to turn this beach into another tourist hotspot further distances kama'aina to 'āina, cultural traditions, and their families, while destroying the environment and shuttering away local residents from enjoying the place. This rezoning application does not realize the long lasting, domino effect consequences that it would have. Do not do this.

Me ke aloha,
Willow Volkert

**Shanlee Jimenez**

**From:** clarisse kauwe <clarisse.kauwe@gmail.com>
**Sent:** Wednesday, November 5, 2025 2:50 PM
**To:** Planning Department
**Subject:** support revoking permits
**Attachments:** pakala support (2).pdf

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

Clarisse Kauwe
2481 Paniolo Dr
Kalaheo HI, 96741

Date of Hearing: November 10, 2025
County of Kauai, Planning Commission

RE: Petition For Zoning Amendment ZA-2026-2 to Rezone Tax Map Key (4) 1-7-005:001 from the Resort Zone to Agricultural Zone AND Petition to Revoke Special Management Area Use Permit SMA(U)-2002- 6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kauai Tax Map Key (4) 1-7-005: 001

I support rezoning real property situated at Kapalawai, Makaweli, Kauai identified as Tax Map Key (4) 1-7-005:001 from the resort district to the agricultural district, which was the designation that existed prior to Ordinance No. PM-2001-356, and revoking Special Management Area Use Permit SMA(U)-2002- 6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kauai Tax Map Key (4) 1-7-005: 001.

As a born and raised resident of Kauai, my dad took me to Pakala almost every day of every summer where fond core memories were created. As a mom now, I take my kids to Pakala quite often as well. It would be so disheartening to see Pakala turn into a Poipu or Hanalei, where it has been inundated with tourists; to the point where us residents no longer go to those beaches. Pakala is one of the few places where our small community of local surfers can enjoy each other's company and reminisce about the good 'ol days. The resort would create additional tourists who may try to learn to surf and/or overcrowd Pakala. We see it now with the current Pakala AirBnB's where groups of people come to stay at Pakala and surf the world class wave.

I am also against developers exploiting Kekupua fishpond to make money for this resort and G&R. I am wondering what other cultural significance this area contains.

I have heard that Steph Iona and Josh Uyehara spoke at Kekaha Elementary School to gain support of this resort. I do not think they represent us local West Side residents as a whole. I do know that there were people there who spoke out against the resort.

G&R already own thousands of acres of land, I'm sure they could figure out another means to make money. They are a private land owner and yes they can do what they want with their land, but I do think it would be unfair of them to build a resort without properly informing the West Side residents. The majority of my friends who are West Side residents do not know about this resort that they are trying to build. Having these "meetings" on a work day or on a Wednesday evening is not what I consider informing the public. To me informing the public would be informing the Pakala surfers, beach goers, standing outside Big Save and passing out info, or even going door to door to speak to residents. We don't need more tourists, we don't need more "brown people jobs" such as housekeeping, landscaping, etc. As a counselor at Waimea High School we want to empower students to go to college and earn higher paying jobs.

In conclusion, before any big decisions are made, I do ask that the West Side community is well informed. And yes, I did capitalize the West Side!

Sincerely,
Clarisse Kauwe

**Shanlee Jimenez**

---

**From:** Shannan Smith <shannan.smith512@gmail.com>
**Sent:** Wednesday, November 5, 2025 3:37 PM
**To:** Planning Department
**Subject:** Say NO to Surf Resort at Pakala!

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

Say NO to Surf Resort at Pakala.
I'm writing to let you know that I wholeheartedly oppose the building of this surf resort. Stop being greedy. My name is Shannan Smith. I am not representing any organization; I live in Kalaheo.

Do you ever think about the island as a place of nature and a place to be outside and relax without the smell of sunscreen?! There are plenty of resorts and you ok'd it to cram one more at Coco Palms. Stop looking at Kauai as income and claiming to love the island and care. Put your efforts toward making the roads better or picking up litter. Something useful. Not creating more reasons for Turo's and longer lines to get out of Lihue when work is pau.

Thank you,
Shannan Smith
808.647.9822

**Shanlee Jimenez**

---

**From:** Jayme Knapp <hanapepejayme@icloud.com>
**Sent:** Wednesday, November 5, 2025 6:01 PM
**To:** Planning Department
**Subject:** Support for Petition for Zoning Amendment ZA-2026-2 and Revocation of Permits (TMK: (4) 1-7-005:001, Kapalawai, Makaweli, Kaua'i)

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

Dear Members of the Kaua'i Planning Commission,

I am writing in support of the petition to rezone the property located at Kapalawai, Makaweli, Kaua'i — identified as Tax Map Key (4) 1-7-005:001 — from the Resort District back to the Agricultural District, its original designation prior to Ordinance No. PM-2001-356.

I also support the revocation of the following permits associated with this property:

- Special Management Area Use Permit SMA(U)-2002-6
- Project Development Use Permit PDU-2002-15
- Class IV Zoning Permit Z-IV-2002-20

Circumstances have changed significantly since these permits were issued. Kaua'i, particularly the west side, does not need additional resort development. Expanding tourism in this area would further strain local resources and create negative social, cultural, and environmental impacts, especially in the historically and culturally significant area of Kapalawai.

Restoring this property to its Open and Agricultural zoning districts will help preserve the rural character and environmental integrity of Kaua'i's west side.

Thank you for considering my testimony and for your commitment to protecting Kaua'i's land and community.

**Shanlee Jimenez**

**From:** Peter Venardos <pnvenardos@gmail.com>
**Sent:** Wednesday, November 5, 2025 6:37 PM
**To:** Planning Department
**Subject:** County Zoning Amendment ZA-2026-2

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

To Whom It May Concern,

My name is Peter Venardos.Professionally, I am a teacher at Waimea Canyon Middle School. Personally, I am a father, husband, surfer (I met my wife surfing at Pakala), and concerned citizen. I am desperately opposed to rezoning for County Zoning Amendment (ZA-2026-2) which would rezone 171.72 acres of real property situated at Kapalawai, Makaweli, on Kauai.

My concerns are as follows:
Environmental: As our fragile island is already at a tipping point with it's inability to sustain itself, adding a high end resort development would just further damage an already hurt ecosystem. This includes not only the direct land to be developed, but the surrounding waterways, reefs, and neighboring lands. The ecosystem services of these affected lands, reefs, and waterways should be quantified and accounted for by mitigating or offsetting such damages.
Financial: Although in a short term view, a high end resort may bring in some money, it is not thought out far enough. Again, the ecosystem services provided by the area affected are far greater in the longer view (100 year+). I see similar high end resorts (Kukuiula for example) struggling to be financially sustainable. They are constantly raising membership fees (sometimes doubling the annual dues), and lowering the quality of services provided.
Cultural: The immediate residents of Makaweli and Pakala camp would not only lose privacy but their livelihood. Subsistence fishing and cultural heritage would be negatively affected, if not lost completely.
Jobs: A strong argument in favor of the proposed development is that it would bring in jobs, that the west side needs more access. As a teacher in the DOE I know first hand how shorthanded we are. My wife is an RN at KVMH, and they are also constantly short handed. Both of these are not only state jobs (excellent benefits, pay, etc), but are jobs that serve the community. These are jobs available now. Not only does a job catering to customers at a high end resort disregard the community, it actively goes against the preservation and well-being of the community the future employees live in.

Please, reconsider this rezoning the negative implications that would ripple out for generations.

Sincerely,
Peter Venardos
(424)247-3060

**Shanlee Jimenez**

**From:** Peter Venardos <pnvenardos@gmail.com>
**Sent:** Wednesday, November 5, 2025 7:06 PM
**To:** Planning Department
**Subject:** Re: County Zoning Amendment ZA-2026-2

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

After sifting through the information and details regarding the rezoning, my understanding is that the rezoning is to change the proposed land from it's current resort designation back to agricultural zoning. I am in favor of that, I am not in favor of development. My previous argument points still apply. Thank you

Peter Venardos

On Wed, Nov 5, 2025 at 9:36 PM Peter Venardos <pnvenardos@gmail.com> wrote:
To Whom It May Concern,

My name is Peter Venardos.Professionally, I am a teacher at Waimea Canyon Middle School. Personally, I am a father, husband, surfer (I met my wife surfing at Pakala), and concerned citizen. I am desperately opposed to rezoning for County Zoning Amendment (ZA-2026-2) which would rezone 171.72 acres of real property situated at Kapalawai, Makaweli, on Kauai.

My concerns are as follows:
Environmental: As our fragile island is already at a tipping point with it's inability to sustain itself, adding a high end resort development would just further damage an already hurt ecosystem. This includes not only the direct land to be developed, but the surrounding waterways, reefs, and neighboring lands. The ecosystem services of these affected lands, reefs, and waterways should be quantified and accounted for by mitigating or offsetting such damages.
Financial: Although in a short term view, a high end resort may bring in some money, it is not thought out far enough. Again, the ecosystem services provided by the area affected are far greater in the longer view (100 year+). I see similar high end resorts (Kukuiula for example) struggling to be financially sustainable. They are constantly raising membership fees (sometimes doubling the annual dues), and lowering the quality of services provided.
Cultural: The immediate residents of Makaweli and Pakala camp would not only lose privacy but their livelihood. Subsistence fishing and cultural heritage would be negatively affected, if not lost completely.
Jobs: A strong argument in favor of the proposed development is that it would bring in jobs, that the west side needs more access. As a teacher in the DOE I know first hand how shorthanded we are. My wife is an RN at KVMH, and they are also constantly short handed. Both of these are not only state jobs (excellent benefits, pay, etc), but are jobs that serve the community. These are jobs available now. Not only does a job catering to customers at a high end resort disregard the community, it actively goes against the preservation and well-being of the community the future employees live in.

Please, reconsider this rezoning the negative implications that would ripple out for generations.

Sincerely,
Peter Venardos
(424)247-3060

**Shanlee Jimenez**

---

**From:** Jenelle Timmons <jenellemarietimmons@gmail.com>
**Sent:** Wednesday, November 5, 2025 7:43 PM
**To:** Planning Department
**Subject:** Save Pakala Please

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

To Whom it May Concern,

My Name is Jenelle Timmons and I have worked as a Nurse on Kauai since 2006. I am writing in regard to developing Pakala beach into a high end resort. My concerns for development are as follows:

I am concerned about the environmental impact. The reef degradation is already impacted, adding more grey water, landscape chemicals and sunscreen will make the deterioration worse. More people, more trash. More people have more of an impact.

Pakala is already a sensitive local's spot. Depending on who is surfing it can be a bit territorial and hostile. One has to practice cultural sensitivity when being there and tread lightly. Unaware tourists may not get the warm welcome they are paying for. Having a public parking will attract a similar environment as Shipwrecks parking lot culture, PKs parking lot posse, Pinetrees parking lot intimidation. Doubt these elite higher socioeconomic humans at their posh resort are going to integrate well with us who struggle to make ends meet.

Trading local culture where Hawaiian people throw net and surf for maybe revenue seems to be a big risk. If the goal is a Kukui'ula like resort, good luck. Staying out of the red with that overhead would need consistent volume. A brown water resort with kiawe thorns might not be the sport for these high end visitors.

Pakala is a world class surf spot. I can't imagine many of us surfers supporting this.

Jenelle Timmons
808-635-0066

**Shanlee Jimenez**

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**From:** Amy Guyton <amyguyton19@gmail.com>
**Sent:** Wednesday, November 5, 2025 9:46 PM
**To:** Planning Department
**Subject:** Upcoming Agenda Item

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

To the Members of the Kauai Commission,

My name is Amy Guyton and I am Kauai resident who loves and frequently spends time at Pakalas.

I am writing to respectfully urge you to vote no on the proposed surf resort at Pakalas under the upcoming zoning county amendment ZA-2026-2. While I understand the need for growth and progress, this particular development raises serious concerns for our community.

The proposed project would significantly impact residents by bringing commercial changes to a preserved residential area that is valued and special to the people that spend time there every day. The tourism generate could never outweigh the value lost for those that treasure pakalas as recreational gem and quiet place to surf and reflect on the beauty of the peaceful nature of Kauai. It has been a place I have recovered and processed after working many long nights at the hospital. It was also the place of my rehab, strengthening and healing after the birth of both my children. These impacts would significantly reduce the quality of life for current residents and alter the unique character that makes Pakalas special.

I urge the Commission to consider the long-term consequences of approving this project and to stand with residents who value thoughtful, balanced development.

Please vote no on the proposed rezoning of this property

Thank you for your time and consideration.

Sincerely,

Amy Guyton

757-784-5993

**Shanlee Jimenez**

**From:** Katie Phillips <katherinemichelephillips@gmail.com>
**Sent:** Thursday, November 6, 2025 7:27 AM
**To:** Planning Department
**Subject:** I Support Bill to Stop Kapalawai Resort Development

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

Aloha,

My name is Katherine Phillips, and I am writing to express my strong support for the County of Kaua'i's effort to revert the Kapalawai/Pakala parcel's resort zoning designation back to its agricultural origins and prevent development of the proposed 250-unit resort.

This stretch of West Kaua'i carries profound cultural, ecological, and community value. Allowing a large-scale resort to be built would bring irreversible harm to the rural character of the region, increase strain on limited resources, and disrupt long-standing cultural practices connected to this coastline.

Although permits were issued over 20 years ago, Kaua'i has changed significantly since that time. We now better understand the environmental vulnerability of coastal zones, the importance of honoring agricultural history, and the long-term consequences of resort development on Native communities, traffic, housing, and local ecosystems.

Reverting the zoning is a necessary step in protecting:

- Local access to coastal resources
- Native cultural and ecological stewardship
- Agricultural land and food systems
- The unique character of the west shore of Kaua'i

Adding more resort units will not benefit the local community. Instead, it would increase pressure on infrastructure, drive housing costs higher, and accelerate displacement. These negative outcomes are inconsistent with Kaua'i's General Plan and community priorities.

I urge the County to uphold the best interest of residents and the 'āina by preserving this area as agricultural land and preventing resort development.

Mahalo for your consideration and for your continued commitment to protecting Kaua'i's cultural and environmental integrity.

Sincerely,

Katherine Phillips

Resident

**Shanlee Jimenez**

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**From:** Alexandra Varner <aevarner@gmail.com>
**Sent:** Thursday, November 6, 2025 7:48 AM
**To:** Planning Department
**Subject:** Important request

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

Aloha,
My name is Alexandra Varner, and I am writing to express my strong support for the County of Kaua'i's effort to revert the Kapalawai/Pakala parcel's resort zoning designation back to its agricultural origins and prevent development of the proposed 250-unit resort.
This stretch of West Kaua'i carries profound cultural, ecological, and community value. Allowing a large-scale resort to be built would bring irreversible harm to the rural character of the region, increase strain on limited resources, and disrupt long-standing cultural practices connected to this coastline.
Although permits were issued over 20 years ago, Kaua'i has changed significantly since that time. We now better understand the environmental vulnerability of coastal zones, the importance of honoring agricultural history, and the long-term consequences of resort development on Native communities, traffic, housing, and local ecosystems.
Reverting the zoning is a necessary step in protecting:
- Local access to coastal resources
- Native cultural and ecological stewardship
- Agricultural land and food systems
- The unique character of the west shore of Kaua'i

Adding more resort units will not benefit the local community. Instead, it would increase pressure on infrastructure, drive housing costs higher, and accelerate displacement. These negative outcomes are inconsistent with Kaua'i's General Plan and community priorities.
I urge the County to uphold the best interest of residents and the 'āina by preserving this area as agricultural land and preventing resort development.
Mahalo for your consideration and for your continued commitment to protecting Kaua'i's cultural and environmental integrity.

Sincerely,
Alexandra Varner
Resident

Sent from my iPhone

**Shanlee Jimenez**

| | |
|---|---|
| **From:** | Brooke Dela Cruz <leiawa68@yahoo.com> |
| **Sent:** | Thursday, November 6, 2025 8:12 AM |
| **To:** | Planning Department |
| **Subject:** | SUPPORT REZONE |

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BROOKE DELA CRUZ

3289 Kilikina Place
Lihue, HI 96766

Date of Hearing: November 10, 2025
County of Kauai, Planning Commission

RE: Petition For Zoning Amendment ZA-2026-2 to Rezone Tax Map Key (4) 1-7-005:001 from the Resort Zone to Agricultural Zone AND Petition to Revoke Special Management Area Use Permit SMA(U)-2002- 6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kauai Tax Map Key (4) 1-7-005: 001

I support rezoning real property situated at Kapalawai, Makaweli, Kauai identified as Tax Map Key (4) 1-7-005:001 from the resort district to the agricultural district, which was the designation that existed prior to Ordinance No. PM-2001-356, and revoking Special Management Area Use Permit SMA(U)-2002- 6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kauai Tax Map Key (4) 1-7-005: 001.

Circumstances have changed since the permits were issued. Kauai, and especially the westside of Kauai, do not need another resort development. Additional tourism creates negative social, cultural, and environmental impacts especially to the area of Kapalawai and Kauai's westside. The area of Kapalawai should be restored to the Open and Agricultural zoning districts, as it was before.

Thank you,
Brooke Dela Cruz

**Shanlee Jimenez**

| | |
|---|---|
| **From:** | Rain Owen <rainowen@icloud.com> |
| **Sent:** | Thursday, November 6, 2025 8:33 AM |
| **To:** | Planning Department |
| **Subject:** | Pakala Bill Testimony |

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Rain Owen
Waimea, HI

RE: Petition For Zoning Amendment ZA-2026-2 to Rezone Tax Map Key (4) 1-7-005:001 from the Resort Zone to Agricultural Zone AND Petition to Revoke Special Management Area Use Permit SMA(U)-2002- 6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kauai Tax Map Key (4) 1-7-005: 001

I support rezoning real property situated at Kapalawai, Makaweli, Kauai identified as Tax Map Key (4) 1-7-005:001 from the resort district to the agricultural district, which was the designation that existed prior to Ordinance No. PM-2001-356, and revoking Special Management Area Use Permit SMA(U)-2002- 6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kauai Tax Map Key (4) 1-7-005: 001.

Circumstances have changed since the permits were issued. Kauai, and especially the westside of Kauai, do not need another resort development. Additional tourism creates negative social, cultural, and environmental impacts especially to the area of Kapalawai and Kauai's westside. The area of Kapalawai should be restored to the Open and Agricultural zoning districts, as it was before.

Sincerely,
Rain

**~~Shanlee~~ Jimenez**

**From:** Michelle Loglia-schmidt <islandreflectionsphotography@yahoo.com>
**Sent:** Thursday, November 6, 2025 9:07 AM
**To:** Planning Department
**Subject:** Waimea, Kaua'i. Approximately 171.72 acres of real property situated at Kapalawai, Makaweli, Island of Kaua'i, State of Hawai'i, identified by Kaua'i Tax Map Key (4) 1-7-005:001

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Aloha,

My name is Michelle Loglia Schmidt, and I am a resident of Waimea Valley. I am writing to express my **opposition to the proposed resort development** on Kaua'i's west shores of Pakala.

I do not believe there will be sufficient demand for additional tourism accommodations, nor do I see how such a development would benefit our community. We already have the beautiful Waimea Plantation Cottages, which continue to struggle to reach full capacity throughout the year.

While I understand that the Robinson family may be seeking new ways to generate revenue, I am not convinced that building another resort is the right path forward. I have visited the mansion and can appreciate their vision for revitalization—it truly is a special place deserving of restoration. However, rather than a resort, I believe it could be transformed into a museum or cultural center for residents and visitors alike, celebrating the history and heritage of our island.

Additionally, I encourage the Robinson family to consider long term agricultural leases that would allow local families to establish micro farms. My daughter is the Waimea High School Agriculture teacher, and she often shares how her students are passionate about pursuing careers in agriculture and conservation. Unfortunately, there are very few opportunities available for them, especially with recent federal funding cuts.

Providing affordable access to farmland could strengthen our food sustainability and create meaningful local employment. Roadside produce stands could attract visitors traveling up the canyon while supporting west side farmers. There's also a beautiful brand new abandoned seed company building on Robinson land that could be turned into a thriving community farm co-op, further enhancing economic and cultural resilience.

There are so many creative and sustainable options to support both the community and the Robinson estate—options that preserve the integrity of Pakala Bay and honor its natural beauty. Building another resort in front of a brown-water beach, when a similar property nearby already operates below capacity, does not seem like a wise or beneficial investment for anyone.

For these reasons, I respectfully oppose the resort proposal and urge consideration of more community-centered, sustainable alternatives.

With warm aloha,

**Shanlee Jimenez**

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**From:** S462-Noah De La Pena <s462-noah.de_la_pena@k12.hi.us>
**Sent:** Thursday, November 6, 2025 9:33 AM
**To:** Planning Department
**Subject:** Monday Agenda Items F4 & H1 (Rezoning Kapalawai)

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Aloha Kauai Planning Department,

My name is Noah de la Pena. I am a junior at Waimea High School and would like to submit testimony on items F4 and H1 on the Planning Commission Agenda for Monday, November 10, regarding rezoning land at Kapalawai, Makaweli.

I feel like the proposed resort could be a good idea. There are both pros and cons in building the resort, but that's how it is for a lot of big projects on Kauai. In my opinion, the pros outweigh the cons. Some cons would be more tourists along the west Kauai coastline and the overcrowding of Pakala Beach. Another con would be the loss of that agricultural zone because of the permits that changed it to be able to build a resort. The pros would be more job opportunities for people living on the west side. More tourism, which would mean more people visiting small local businesses on the west side. There would be the introduction of new diversity with all the people visiting. I think it would bring a positive change to the community. From my perspective, I believe that the Robinson family should still have the chance to build this resort and that you should keep that zoning the way it is.

Mahalo,
Noah de la Pena

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**Shanlee Jimenez**

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**From:** S462-Anonui Emery <s462-anonui.emery@k12.hi.us>
**Sent:** Thursday, November 6, 2025 9:38 AM
**To:** Planning Department
**Subject:** Monday Agenda Items F4 & H1 (Rezoning Kapalawai)

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Aloha Kauai Planning Department,

My name is 'Anonui Emery. I am a junior at Waimea High School and would like to submit testimony on items F4 and H1 on the Planning Commission Agenda for Monday, November 10, regarding rezoning land at Kapalawai, Makaweli.

I'm a local from the west side and I feel that putting a resort in pakalas would be great for the community. I can see how you would want to change the zoning back to agricultural because of the 20 years they've been saying they were going to build it, but I think that you should give them a notice that you will switch the zoning if they don't start the building process in a disclosed amount of time. I have a list of pros and cons about this situation, some pros are that it would provide jobs for future generations because I don't see myself or my classmates working in agricultural fields; so the resort will provide job opportunities for residents living on the west side. Another pro is that it would bring more business to local businesses. Yes it would bring more tourists to the west side, but this gives locally owned businesses the opportunity to thrive with the amount of people that would be on the west side. Some cons would be the influx of tourists on the west side, this could cause traffic, more people walking along the streets making it more dangerous for drivers, and for west side beaches to be more crowded. These are all things that would affect the west side community, but with restrictions and teaching the tourists to care for our land I think it will solve these potential problems. Thank you for taking the time to read my email, and I hope that my words will be taken into consideration.

Mahalo,
'Anonui Emery

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## Shanlee Jimenez

**From:** S462-Bryden Perez Aguilar <s462-bryden.perez_aguilar@k12.hi.us>
**Sent:** Thursday, November 6, 2025 9:40 AM
**To:** Planning Department
**Subject:** Monday Agenda Items F4 & H1 (Rezoning Kapalawai)

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Aloha Kauai Planning Department,

My name is Bryden Perez Aguiar. I am a Senior at Waimea High School and would like to submit testimony on items F4 and H1 on the Planning Commission Agenda for Monday, November 10, regarding rezoning land at Kapalawai, Makaweli.

I believe that we should give the chance to the Robinsons to make it into a resort like they have planned. I will say, there are definitely pros and cons for the Westside community for the project, but we haven't seen anything done yet, so maybe it will have an impact on the Westside community. But I would like to debrief the pros and cons for this project. For pros, it will give future generations job opportunities for people who want to live here. Some people in the future might not want to work in agriculture and tourism jobs are becoming more of a higher demand. It will also help people be more aware of historical artifacts and knowledge in Hawaii. As said in what the Robinsons want for the Kapalawai site, they promised that it would have historical artifacts dating back to the Hawaiian Monarchy, making people be more aware and learn the facts of Hawaii. For cons, it will definitely cause people who live in the Kaumakani and Pakala area to leave their original homes and it will cause them to get stripped away of where they live. It is also competing with the Waimea Plantation Cottages as there will now be two resorts on the Westside. Unless maybe there is a way to correlate the two together, I see them as competing resorts, which can cause conflicts altogether. With whatever decision you all do, I know that it will be for the better for the Westside community.

Mahalo,
Bryden Perez Aguilar

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**Shanlee Jimenez**

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**From:** S462-Keelan Mainaaupo <s462-keelan.mainaaupo@k12.hi.us>
**Sent:** Thursday, November 6, 2025 9:42 AM
**To:** Planning Department
**Subject:** Monday Agenda Items F4 & H1 (Rezoning Kapalawai)

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Aloha Kauai Planning Department,

My name is Keelan Mainaaupo. I am a junior at Waimea High School and would like to submit testimony on items F4 and H1 on the Planning Commission Agenda for Monday, November 10, regarding rezoning land at Kapalawai, Makaweli.

I believe that the land should be changed back to Agricultural for a few reasons. One of the reasons as to why I believe it should be changed back to Agricultural is the overcrowding of the secluded area. If this project were to be continued the once secluded area may become a tourist attraction in an overpopulated area. Another reason I believe that it should be changed back to Agricultural is because it might bother the locals or people that live around the area, this project will gain the traction of a bunch of tourists and may cause chaos due to the overpopulation. The overall idea has both pros and cons, but in my general opinion I believe that the cons overhaul the pros.

Mahalo,
Keelan Mainaaupo

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**Shanlee Jimenez**

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**From:** Heather Barth <heatherjason@hawaii.rr.com>
**Sent:** Thursday, November 6, 2025 10:02 AM
**To:** Planning Department
**Subject:** Testimony Regarding Proposed Amendment to Ordinance No. PM-2001-356
**Attachments:** Kapalawai1Heather Barth.pdf

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Please see my attached letter:

Testimony Regarding Proposed Amendment to Ordinance No. PM-2001-356
Kapālawai, Makaweli – Retain RR-10 Zoning

Regards,

Heather

Heather Barth
4-934 Kuhio Hwy.
Kapaa, Hawaii 96746

November 6, 2025

Planning Commission
County of Kauai

**Testimony Regarding Proposed Amendment to Ordinance No. PM-2001-356**
**Kapālawai, Makaweli – Retain RR-10 Zoning**

To: Chair and Members of the Planning Commission,

I respectfully urge you to **deny the proposed amendment to Ordinance No. PM-2001-356** and to **retain the existing Resort (RR-10) zoning designation** for Kapālawai in Makaweli.

This land has deep roots in the community and in the generations of families who have lived and worked here. Keeping the current zoning in place will allow the land owner to continue developing opportunities that strengthen West Kaua'i — by creating jobs. These efforts are not about large-scale development; they're about building a sustainable future where residents can live, work, and thrive right here at home.

Changing the zoning would limit the ability to carry out these important initiatives and could hinder progress toward community-driven economic growth. Maintaining the RR-10 zoning helps preserve the balance between responsible land stewardship and economic opportunity — a balance that honors the past while investing in the next generation.

On behalf of the broader community that calls West Kaua'i home, I ask you to please keep the existing zoning in place so we can continue contributing in meaningful ways to the vitality and resilience of the island.

Regards,
Heather Barth

**Shanlee Jimenez**

---

**From:** Colby Barth <crb@hawaii.rr.com>
**Sent:** Thursday, November 6, 2025 10:03 AM
**To:** Planning Department
**Subject:** Testimony Regarding Proposed Amendment to Ordinance No. PM-2001-356
**Attachments:** KapalawaiColby Barth.pdf

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Please see my attached letter:

Testimony Regarding Proposed Amendment to Ordinance No. PM-2001-356
Kapālawai, Makaweli – Retain RR-10 Zoning

Thank you,

Colby

Colby Barth
4-934 Kuhio Hwy.
Kapaa, Hawaii 96746

Planning Commission
County of Kauai

November 6, 2025

**Testimony Regarding Proposed Amendment to Ordinance No. PM-2001-356**
**Kapālawai, Makaweli – Retain RR-10 Zoning**

Chair and Members of the Planning Commission,

I respectfully urge you to **deny the proposed amendment to Ordinance No. PM-2001-356** and to **retain the existing Resort (RR-10) zoning designation** for Kapālawai in Makaweli.

Maintaining the current zoning allows continued economic initiatives that directly benefit the broader community, including workforce housing, agricultural projects, and infrastructure improvements. These activities help sustain local employment, provide opportunities for residents to remain in the area, and preserve the land's historical and cultural character.

Changing the zoning will restrict the ability to carry out these initiatives and undermine efforts to support long-term, community-focused growth. Keeping the RR-10 designation ensures that the land can continue to generate positive impacts while respecting its history and supporting the well-being of West Kaua'i.

Regards,
Colby Barth

**Shanlee Jimenez**

---

**From:** Kauai Cycle <kauaicycle@hawaii.rr.com>
**Sent:** Thursday, November 6, 2025 10:07 AM
**To:** Planning Department
**Subject:** Testimony Regarding Proposed Amendment to Ordinance No. PM-2001-356
**Attachments:** KapalawaiJason Barth.pdf

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Please see my attached letter:

Testimony Regarding Proposed Amendment to Ordinance No. PM-2001-356
Kapālawai, Makaweli – Retain RR-10 Zoning

Thank you,

Jason

Jason Barth
4-934 Kuhio Hwy.
Kapaa, Hawaii 96746

Planning Commission
County of Kauai

November 6, 2025

**Testimony Regarding Proposed Amendment to Ordinance No. PM-2001-356**
**Kapālawai, Makaweli – Retain RR-10 Zoning**

Chair and Members of the Planning Commission,

I am writing to **strongly urge the Commission to deny the proposed amendment to Ordinance No. PM-2001-356** and to **retain the current Resort (RR-10) zoning** for Kapālawai in Makaweli.

This area has long been part of the social and economic fabric of West Kaua'i. For generations, the land has been used for agriculture, small-scale development, and community-supporting activities. These uses have helped sustain the local economy, provided employment, and preserved open spaces that are vital to the character and identity of the region.

Keeping the current RR-10 zoning ensures that future development continues to **benefit the community in meaningful ways**, including supporting workforce housing, agricultural projects, and infrastructure improvements that strengthen West Kaua'i. Changing the zoning now could limit these opportunities, disrupting ongoing efforts to balance economic growth with community needs and responsible land stewardship.

The historical use and community value of Kapālawai make it clear that maintaining RR-10 zoning is the best path forward. It allows the land to continue contributing to the well-being of West Kaua'i, while respecting its history and supporting sustainable, locally beneficial development.

Thank you for your careful consideration and dedication to the community.

Jason Barth

**Shanlee Jimenez**

**From:** S462-Kyanna Sugimura <s462-kyanna.sugimura@k12.hi.us>
**Sent:** Thursday, November 6, 2025 12:32 PM
**To:** Planning Department
**Subject:** testimony

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testimony for the planning department

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**Shanlee Jimenez**

**From:** Erika Souza <eerikasoouzzaa@gmail.com>
**Sent:** Thursday, November 6, 2025 12:38 PM
**To:** Planning Department
**Subject:** Monday Agenda Items F4 & H1 (Rezoning Kapalawai)

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Aloha Kauai Planning Department,

My name is Erika Souza. I am a Senior at Waimea High School and would like to submit testimony on items F4 and H1 on the Planning Commission Agenda for Monday, November 10, regarding rezoning land at Kapalawai, Makaweli.

I believe the land should be changed back to agricultural zoning instead of being developed into a resort. Returning the land to agricultural use supports the environment and preserves the westside community. Pakala is a tight-knit community where everyone knows each other, and bringing tourists would ruin the close connection we have. There is already one place for visitors to stay here, so having two resorts is unnecessary. Adding another resort could bring negative changes like more traffic, increased pollution, and disrupt the peacefulness of Pakala. From the other side of the argument, I agree that this resort will bring more jobs, business, and modernize the westside, but is that really what Pakala is supposed to be? From my perspective, the cons of the resort, like loss of privacy and more crowdedness, outweigh the benefits.

Mahalo,
Erika Souza

**Shanlee Jimenez**

**From:** S462-Ethan Freitas <s462-ethan.freitas@k12.hi.us>
**Sent:** Thursday, November 6, 2025 12:47 PM
**To:** Planning Department
**Subject:** Monday Agenda Items F4 & H1 (Rezoning Kapalawai)

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Aloha Kauai Planning Department,

My name is Ethan Freitas. I am a junior at Waimea High School and would like to submit testimony on items F4 and H1 on the Planning Commission Agenda for Monday, November 10, regarding rezoning land at Kapalawai, Makaweli.

I think that the plan to build the resort will see a positive impact on the westside of Kauai. Although, if they are thinking to really pull this off, they should take some thought to some important factors. The first one will be about traffic. Traffic plays a key part in moving everyone from point A to point B. I think that this resort will cause some overcrowding and heavy traffic. This problem can be solved by enhancing roadways from making it one way to a double road way. This will help move people around from both directions and people coming into and out of the resort. The second one will be about peace and disturbance. People at pakalas might see a negative impact from the resort. This can be solved by building barriers between the camp and the resort. This will help keep the peace between residents and visitors. This can have a great impact for people on the westside because it can create more job opportunities, locals have more to do, and possibly bring in more revenue for the county. Kauai has a lot of agricultural land across the island. I think that there is enough land to farm and harvest crops. Adding something like a hotel on the westside will see some more action and gain more popularity.

Mahalo,
Ethan Freitas

This is a student email account managed by Hawaii Department Of Education School District. The contents of this email are governed by the laws of the state and the board policies of the school district.

**Shanlee Jimenez**

**From:** S462-Raely Agor <s462-raely.agor@k12.hi.us>
**Sent:** Thursday, November 6, 2025 12:50 PM
**To:** Planning Department
**Subject:** Monday Agenda Items F4 & H1 (Rezoning Kapalawai)

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

Aloha Kauai Planning Department,

My name is Raely Agor. I am a junior at Waimea High School and would like to submit testimony on items F4 and H1 on the Planning Commission Agenda for Monday, November 10, regarding rezoning land at Kapalawai, Makaweli.

Changing the zoning back to agricultural is a good idea. It should be changed back to agricultural land. Though there are many pros, there are more cons. The cons being overcrowding in pakala and the beach, possible litter, traffic, it takes up open land on Kauai, and it makes us lose agriculture.

Mahalo,
Raely Agor

This is a student email account managed by Hawaii Department Of Education School District. The contents of this email are governed by the laws of the state and the board policies of the school district.

**Shanlee Jimenez**

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**From:** randall francisco <franciscorandall@yahoo.com>
**Sent:** Thursday, November 6, 2025 1:00 PM
**To:** Planning Department
**Subject:** County Zoning Management (ZA-2026-2)
**Attachments:** SKM_C22725110614040.pdf; SKM_C22725110614041.pdf

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Testimony by Randall Francisco for Kauai Planning Commission Meeting of Monday November 10 2025.

November 5, 2025

Kauai Planning Commission
Lihue Civic Center, Moikeha Building
Meeting Room 2A-2B
4444 Rice Street, Lihue, Kauai Hi 96766

Chair Francis Degracia and Members Kauai Planning Commission
**Re:** County Zoning Management (ZA-2026-2)

Dear Chair, Degracia and Members:

Aloha! My name is Randall Francisco, Hanapepe, Kauai. I am writing in strong opposition to this amendment to rezone from resort to previous designation. I submit this letter to reaffirm the testimony previously submitted by Ms. Nancy Somers Shaw, dated October 8, 2025 as to her "Opposition to Proposed Zoning Amendment ZA-2026-2 (Kapalawai, Makaweli, Kauai)" as attached in the current Kauai Planning Commission November 10 2025 Board of Directors Packet. As stated, Ms. Somers Shaw is a Robinson Family Partner and Gay & Robinson Board Member. Furthermore, to "retain the Resort (RR-10) zoning designation for Kapalwai, Makaweli".

In summary and reaffirmation of Ms. Somers Shaw Testimony:

1. Resort Zoning Enables Economic Opportunity and Local Investment
2. Reverting to Agriculture Zoning Would Remove a Vital Financial Resource
3. Resort Zoning Can Support a Balanced, Sustainable Vision
4. The Original Ordinance Reflected Long-Term Planning Commitments

As a Hanapepe resident who was born and raised in West Kauai, and, since returning to Kauai from a career in higher education two decades ago, I have witnessed the gradual rural re-invention and restoration of the westside that included the communities from Kalaheo to Eleele-Port Allen-Hanapepe, Kaumakani-Makaweli and, Waimea. And, hopefully, someday, Kekaha's evolution along its "business main street". The historic towns of Hanapepe and Waimea anchor these rural communities in-between and the growth of housing from Eleele, Port Allen, Hanapepe and soon-to-be Waimea 400 (acres) which connects Waimea and Kekaha that will continue to provide much needed housing options for residents within the area and, also, from outside. Housing Transformation is one component of the key economic engines and "legs" essential. The other is of course, both economic and workforce development that will allow "westsiders" to continue to maintain our rural lifestyle and, with an evolving yet, respectful and sustainable lifestyle and economy. This plan will not only provide job and career opportunities for Kauai residents but, also go much further including opportunities that are closer to where residents can commute in order to conduct economic and workforce opportunities.

In addition to the sustainable aspect of this project ---- what is also critical is the long-term view of the Robinson family in continuing to be good stewards of their lands and continuation of their support of the Hawaiian people who both live, work and contribute as residents and members of Kauai. This important component of keeping the RR-10 zoning classification is essential to the family's ability to

insure the long-term kuleana, sustainability and viability since the time of the Hawaiian kingdom and monarchy. I know the family and their commitment and dedication to the Hawaiian people as well as the people of Kauai. The retention of the RR-10 Resort Zoning Designation will enable the family to continue their trusted legacy in honoring their stewardship and, planning for the future generations through the completion of the resort project that will blend in extremely well with the landscape and rural nature of the area.

Respectfully and with Aloha,

Randall Francisco
Former President, West Kauai Business & Professional Association and
Vice President, Hanapepe Economic Alliance

**Shanlee Jimenez**

**From:** kiersten zalia <kierstenzalia01@gmail.com>
**Sent:** Thursday, November 6, 2025 1:05 PM
**To:** Planning Department
**Subject:** Testimony Against Building in Pakala/Pakalawai

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

I Kiersten Rodrigues-Parraga, Testify against any building, development, or tampering of this area.
November 6, 2025 12:25PM

Testimony "In my own Words" 🤙 below:

1. Nothing Hawaiian about Hawaii Nowadays. We lost to capitalism. For too long we remain taken over by developers wasting precious Water & Energy resources. Settling on Historical landmarks and
They let it become capitalized, overcrowded and overpriced tourist traps.
it's sickening... when are the people going to be put first? Everywhere we go on Kaua'i "Tourists"... But, not even just Kaua'i it's all of HAWAI'I.
They build them all the best newest things, they gotta have the beach front view right? Right on our beaches...got all the fancy boujee overpriced restaurants, shops and hotels... and if you even want to try to go into there "shops" and your not YT... with the wannabe local blonde working the front counter, you are probably going to get racially profiled! and they'll probably ask you if you want them "to hold that?" in all 30ft of the store... but, yet their "making this place seem like paradise!?" are you guys not tired of it? Feeling like in outsider in your own home sometimes...
We build them all the nice shit while our people just wallow in all the of our overpriced crappy old shit and what? We can't even afford to save to have nice things, we're over here living paycheck to paycheck!? But, oh yea just Be grateful? It's sickening to see resources that could otherwise be beneficial to our people. But, instead nobody ever thinks beyond. As, times become harder for residents to afford basic necessities in this economy and people are being priced out of paradise some simple logical things to keep in mind is "Why would we need that?" Actually, ask the community if this would be beneficial?!
"Why would we want to continue to give into a system of greed?" The change has to be bigger than that.

2. Hotels for the Future Generation? But, No Homes for the Keikis?
Hotel for what? Another place locals will probably never be able to afford to stay?
Make it make sense.
It's like we're going Fuck-ass Backwards in this economy...
This land should've never been the Robinsons land... To begin with.
They are just like the rest of America.
Same mentality.
They already own Niihau, which that makes no sense at all because, of course they're the only ones that would have money at that time in history!
Our people never get a chance, do we?

So let me ask you? Do we keep feeding into their system or do we pull back and feed into a System that can feed us? Nourish us? With healthy options?... Because, all we've been ingesting for the past YEARS is Lies, Greed, and Corruption.
People in Hawai'i go against their own morality, for what? There's no need for that.
History has proven a long time ago that theory doesn't work.
Don't you guys want to feel alive? Aren't you tired of living this way? This is deeper than the Grain.
We need to stand up to what is right and Just for the people of these Islands! Enough is Enough.

3. I stand with the West side of Kaua'i.
We are NOT in favor of this development plan.
I believe, there are far better options in other parts of the island. Better beaches, weather etc Other places, Other countries.
Leave our West side alone, Developers ruin God's natural beauty with everything they touch. Sad enough to see Kukui'ula and poipu overran by development. It's getting worse day by day and let me tell you a "hotel resort" would indeed not make it better for a lot of us.

Please have some consideration for the people and some Respect for this sacred land in the name is Jesus.

**Shanlee Jimenez**

---

**From:** Bonnie Lofstedt <kauaibonnie@gmail.com>
**Sent:** Thursday, November 6, 2025 1:44 PM
**To:** Planning Department
**Cc:** bonnie@islandhelicopters.com
**Subject:** Fwd: Testimony Opposing ZA-2026-2
**Attachments:** Testimony Opposing ZA-2026-2.pdf

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

Dear Planning Department,

I attempted to submit my written testimony for ZA-2026-2 a few minutes ago using the email address listed on the hearing notice, but the message bounced back as "blocked." I am resending the testimony from this alternate email address, but I wanted to note the issue because it is very concerning that a public-facing government address intended for community participation would be inaccessible.

Timely communication is essential for public hearings, and residents should be able to rely on the County's posted contact information when submitting testimony. Please confirm that this message and the attached testimony have been received and included in the record for the upcoming hearing.

Thank you,
Bonnie Lofstedt

---------- Forwarded message ---------
From: **Bonnie Lofstedt** <bonnie@islandhelicopters.com>
Date: Thu, Nov 6, 2025 at 3:28 PM
Subject: Testimony Opposing ZA-2026-2
To: <planningdepartment@kauai.gov>

Aloha Planning Department,

Please accept the attached letter opposing Zoning Amendment ZA-2026-2 (TMK (4) 1-7-005:001). Kindly include it in the official record for the upcoming public hearing and distribute to the Planning Commission (and County Council when transmitted).

Mahalo for your assistance,

**Bonnie & Curt Lofstedt, Owners**
**Island Helicopters Kauai, Inc.**

Attachment: Testimony Opposing ZA-2026-2

ISLAND HELICOPTERS Kauai

November 6, 2025

County of Kaua'i Planning Department
4444 Rice Street, Ste. A473
Lihu'e, Hawaii 96766

Subject: Opposition to County Zoning Amendment ZA-2026-2 – TMK (4) 1-7-005:001

Aloha Planning Commission and County Council Members:

We are writing to respectfully express our opposition to the proposed zoning amendment ZA-2026-2, which seeks to downzone property in Kapalawai, Makaweli from Resort back to Agriculture and Open —the designations that existed prior to Ordinance PM-2001-356 and PM-2006-385.

As business owners on Kaua'i for 45 years (and local residents for 50+ years), we understand firsthand how regulatory decisions shape the island's economic landscape. We have had a front-row seat to the economic challenges and regulatory burdens that shape this island. Nowhere is this more evident than on the West Side, which has faced decades of underinvestment and limited employment opportunities after the closure of plantation operations. The West Side continues to have some of the lowest incomes and, as noted in the County of Kauai's General Plan, West Kaua'i has the lowest job density per resident of all island regions. Many working families on the West Side must commute long distances to the East and South shores to earn a living, which increases transportation costs, reduces take-home pay, and contributes to heavier congestion on the highway.

This is not an abstract concern. Five of our employees live on the West Side and must make this commute daily. The cost of fuel, extended travel time, and road congestion directly reduces their take-home pay and quality of life. **Actions that limit potential job creation in their own communities only perpetuate these inequities.** The West Side has long needed *local* job creation so that residents do not have to spend hours each day driving across the island to support their families.

We are deeply concerned that reversing this zoning will undermine future opportunities not only for property owners, but for the West Side community, which already struggles with limited employment options. Downzoning this land removes the possibility of thoughtful, well-planned development that could provide meaningful employment, improve economic stability, and reduce the long-standing imbalance in opportunities on Kaua'i. Eliminating potential job sources is counterproductive and, frankly, harmful to the community that needs them most.

www.IslandHelicopters.com
**Phone:** 808-245-8588 **Fax:** 808-245-6258
**Mailing:** P.O. Box 831, Lihue, Hawaii 96766 • **Heliport:** 3788 Ahukini Road, Lihue, Hawaii 96766

We have personally known the Robinson Family for more than four decades and have witnessed their role as conscientious stewards of Kaua'i. Their decisions about land use have consistently reflected a respect for the island, its people, and its cultural resources. The notion that this land should be stripped of previously approved zoning—zoning that allows for a broader range of community-benefiting uses—undermines both responsible land stewardship and the possibility of future West Side revitalization.

For these reasons, we respectfully request that you deny the proposed zoning amendment ZA-2026-2 and retain the current RR-10 designation. Preserving the existing zoning is a forward-looking choice that maintains flexibility for future planning, supports economic resilience, community stability, and ensures that the West Side is not permanently shut out of opportunities that other districts have benefitted from for decades.

Thank you for your consideration and for your continued service to our community.

Sincerely,

Bonnie & Curt Lofstedt
Owners
Island Helicopters Kauai, Inc.

www.IslandHelicopters.com
**Phone:** 808-245-8588 **Fax:** 808-245-6258
**Mailing:** P.O. Box 831, Lihue, Hawaii 96766 • **Heliport:** 3788 Ahukini Road, Lihue, Hawaii 96766

**Shanlee Jimenez**

| | |
|---|---|
| **From:** | Pakala <pakala@aol.com> |
| **Sent:** | Thursday, November 6, 2025 2:39 PM |
| **To:** | Planning Department |
| **Subject:** | Kapalawai Shoreline Application KA-196, Parcel 1-5-007:001 |
| **Attachments:** | RFP Testimony to Planning Commission 11-4-25.pdf; AJRS' Letter to Planning Commission.pdf |

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

Aloha,
Please accept the attached letters of testimony for the November 10, 2025 Hearing on the issue regarding the petition to down zone our family property at Kapalawai.
Mahalo,
Philip Keat, Vice Chair
Robinson Family Partners

November 4, 2025

Kauai Planning Commission
4444 Rice Street, Suite A473
Lihue, Kauai, Hawaii 96766
planningdepartment@kauai.gov

Re: Zoning Amendment ZA-2026-2
Tax Map Key: (4) 1-7-005:001
Kapalawai, Makaweli, Kaua'i

Aloha ladies and gentlemen:

My name is Philip Sinclair Keat. I am a member of the Robinson family and Vice Chair of Robinson Family Partners.

I am of the understanding that the Planning Department wishes to revoke our resort zoning for the reason that we have taken too long to bring the resort about. I believe that it's important that the Committee knows that we have been working diligently and consistently to accomplish this daunting project since 1998. May I offer you a brief history of our attempts to bring this about?

As some of you may know, our family, which includes our two ranching and farming entities: Gay & Robinson which manages the land that is owned by Robinson Family Partners. We purchased our lands at Makaweli from Victoria Kamamalu in 1864 for ranching and farming. Sugar cane became our primary crop. We stayed in sugar cane and cattle long after other plantations such down and were the last operating sugar plantation on Kauai. Our last harvest was in 2009. To this day we still provide over 300 affordably-priced homes for our employees, our retirees and other workers in the agricultural sector.

When other landowners were building hotels we remained in agriculture. Our mission remains agriculture. It wasn't until mid-1980s when the costs of growing sugar exceeded the prices fixed by Farm Act. My cousin Warren Robinson, our family's patriarch, correctly realized that in order to preserve our rural agricultural roots and to preserve our employees' jobs and housing, we needed to develop a supplemental

income source. We first attempted to convert our sugar cane operation into a sustainable energy farm by using the cane to make ethanol and burning the chaff to create electricity. We spent years trying to bring this about, but without sufficient financing, we were unable to do so.

Warren Robinson realized that our old family home at Kapalawai might make a perfect centerpiece for a small-scale resort destination. With this in mind, between 1998 and 2019, we sought development partners. However, during those years the economy was such that no new hotels were being built. We had interest from several major hotel chains who all said, "If you build it, we'll operate it." During those years from 1998 to 2019 we worked one at a time with three smaller developers who shared our vision and worked to obtain the current resort zoning and entitlements we now have. They were Destination Villages Kaual, Steven Oldfield and Hawaiian Development Corp (HDC). Our 6-year development agreement with HDC did not expire until 2019. Ultimately, these developers were unsuccessful in obtaining the necessary equity funding to build out the project. Further, Cousin Warren passed away in 2011. Rather than let all this effort expire, we kept looking for the right partner.

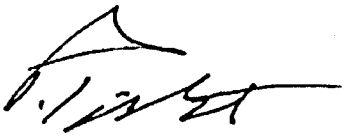
In 2019, we were approached by Hyatt that was interested in building out their wellness subsidiary resort called Miraval. But as we all know, that was the year that Covid-19 hit and Hyatt had to back out. Subsequently we had interest from two other resort firms: Collective Retreats and then Six Senses (both smaller resort firms). We spent months negotiating with these companies, but they didn't have the same vision of a historic plantation-style resort we've always held. Negotiations and planning like this take time and doesn't proceed quickly. But during these years we regularly submitted annual progress reports to the State Land Use Commission copies of which were cc'd to the Kauai Planning Department, the Kauai County Attorney, the State Office of Planning and Sustainable Development, the State Deputy Attorney General.

It wasn't until 2021 that we found the perfect partner, One&Only Resorts (owned by Kerzner International). Kerzner owns a diverse portfolio of luxury hospitality brands including Atlantis, One&Only, SIRO, and Rare Finds. Our good fortune is that Kerzner shares our vision of historic preservation and in fact has chosen to reduce the previously approved footprint from 190 resort units to 135. But the best news was that One&Only with its more than 14 resort destinations throughout the world has its own financing and is more than able to bring Kapalawai resort into fruition.

Since then, One&Only has spent over $6 million dollars over 4 years to bring the required entitlements up to date and has worked closely with the Planning Department to meet current standards and requirements. But last year for some reason, even though the Westside community is in favor of the project, as witnessed by the Westside Community Plan, the Planning Department decided to petition for the revocation of the zoning we have relied upon, and paid resort taxes on, for years.

We respectfully request that the Planning Commission not recommend the Planning Department's petition to downzone our historic family home at Kapalawai. We hope that a reasonable decision will grant us additional time to finish the entitlement updates and to begin construction of this worthy project.

Thank you for your time and attention.



Philip Sinclair Keat
Vice Chair
Robinson Family Partners

To: Kaua'i County Planning Commission
From: Alice Jean Robinson-Simikic
Pamela Lee Robinson McDowell
Bharbara Sinclair-Foxcroft
Marjorie Louise Beachill
Date: November 3, 2025
Subject: Zoning Amendment ZA-2026-2
Tax Map Key: (4) 1-7-005:001
Kapalawai, Makaweli, Kaua'i

Aloha Chair and Commissioners,

We are writing in **opposition** to the proposed zoning amendment to Ordinance No. PM-2001-356 that seeks to rezone approximately **171.72 acres at Kapalawai, Makaweli** from **Resort (RR-10)** back to **Agriculture (A)** and **Open (O)**. Noted below are some of our reasons:

**1. Resort zoning will help diversify the local economy.**
The diversification relates particularly for areas experiencing challenges in the agricultural sector, which occurred for Gay & Robinson due to economic factors and increased worldwide competition with the growing of sugar cane and seed corn.

**2. A resort will generate more tax revenue for Kauai than farmland.**
This higher revenue can benefit the island by funding local public services, infrastructure, and schools.

**3. Resort developments will offer a wider variety of employment opportunities than agricultural work, which is often seasonal.**

**4. Relying on the agricultural sector alone leaves everyone in the community vulnerable to market fluctuations.**
It can cause populations to decline and younger people to seek employment opportunities elsewhere.

**5. A successful resort will benefit local residents by providing high-quality amenities along with additional recreational opportunities.**

## 6. Recommendation

For these reasons, we respectfully urge the Planning Commission to deny the proposed amendment to Ordinance No. PM-2001-356 and retain the Resort (RR-10) zoning designation for Kapalawai, Makaweli. Maintaining the existing zoning will preserve the family's ability to generate economic activity that directly supports workforce housing, agricultural initiatives, and infrastructure improvements that benefit West Kaua'i.

Mahalo for your time and consideration.

Respectfully submitted,

Alice Jean Robinson-Simikic
Robinson Family Partner and Gay & Robinson Stockholder
ajrsimikic@gmail.com

Pamela Lee Robinson McDowell
Robinson Family Partner and Gay & Robinson Stockholder
pamrmcdowell@gmail.com

Bharbara Sinclair-Foxcroft
Robinson Family Partner and Gay & Robinson Stockholder
bob.2bfoxcroft@gmail.com

Marjorie Louise Beachill
Robinson Family Partner and Gay & Robinson Stockholder
mbeachill@btinternet.com

**Shanlee Jimenez**

---

**From:** Logan Young <younglogan20@gmail.com>
**Sent:** Thursday, November 6, 2025 2:51 PM
**To:** Planning Department
**Subject:** Pakela/Pakalawai Development

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

Please don't develop the land

**Shanlee Jimenez**

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**From:** Melissa Henry <mshenry@hawaii.edu>
**Sent:** Thursday, November 6, 2025 3:13 PM
**To:** Planning Department
**Subject:** Fwd: County of Kauai, Planning Commission

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

Melissa Henry
Koloa

Date of Hearing: November 10, 2025
County of Kauai, Planning Commission

RE: Petition For Zoning Amendment ZA-2026-2 to Rezone Tax Map Key (4) 1-7-005:001 from the Resort Zone to Agricultural Zone AND Petition to Revoke Special Management Area Use Permit SMA(U)-2002- 6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kauai Tax Map Key (4) 1-7-005: 001

I support rezoning real property situated at Kapalawai, Makaweli, Kauai, identified as Tax Map Key (4) 1-7-005:001 from the resort district to the agricultural district, which was the designation that existed prior to Ordinance No. PM-2001-356, and revoking Special Management Area Use Permit SMA(U)-2002- 6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kauai Tax Map Key (4) 1-7-005: 001.

Circumstances have changed since the permits were issued. Kauai, especially the west side, does not need another resort development. Additional tourism creates negative social, cultural, and environmental impacts, especially in the Kapalawai and Kauai's westside areas. The area of Kapalawai should be restored to the Open and Agricultural zoning districts as they were before.

Sincerely,

Melissa Henry
melis.henry@gmail.com

**Shanlee Jimenez**

| | |
|---|---|
| **From:** | Nikki <nikkileekirsch@gmail.com> |
| **Sent:** | Thursday, November 6, 2025 3:27 PM |
| **To:** | Planning Department |
| **Subject:** | Testimony in Support of County of Kauai |

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Nikki Kirsch
Waimea, Hawaii 96796

Date of Hearing: November 10, 2025
County of Kauai, Planning Commission

RE: Petition for Zoning Amendment ZA-2026 to Rezone Tax Map Key (4) 1-7-005:001 from the Resort Zone to Agricultural Zone AND Petition to Revoke Special Management Area Use Permit SMA(U)-2002-6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kauai Tax Map Key (4) 1-7-005: 001

I support rezoning real property situated at Kapalawai, Makaweli, Kauai identified as Tax Map Key (4) 1-7-005:001 from the resort district to the agricultural district, which was the designation that existed prior to Ordinance No. PM-2001-356, and revoking Special Management Area Use Permit SMA(U)-2002-6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kauai Tax Map Key (4) 1-7-005: 001.

Circumstances have changed since the permits were issued. Kauai, and especially the west side of Kauai, do not need another resort development. Additional tourism creates negative social, cultural, and environmental impacts especially to the area of Kapalawai and Kauai's west side.

My ultimate wish would be for the county and state to stop forcing the west side of Kauai's hand (including The Robinson family's) when it comes to decisions that would impact our community for the worst. From the decision of Kauai's landfill location to the decision to allow companies known to use harmful chemicals to conduct business here and ultimately leave this community to deal with its repercussions. We do not need more tourists or more pollution. We need a viable way to clean up and solve what has already been done to this part of the island.

Sincerely,

Nikki Kirsch
(West Side Resident)

**Shanlee Jimenez**

---

**From:** R Kahoohalahala <k.mehana@gmail.com>
**Sent:** Thursday, November 6, 2025 3:40 PM
**To:** Planning Department
**Subject:** Kapalawai

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

Date of Hearing: November 10, 2025
County of Kauai, Planning Commission

RE: Petition For Zoning Amendment ZA-2026-2 to Rezone Tax Map Key (4) 1-7-005:001 from the Resort Zone to Agricultural Zone AND Petition to Revoke Special Management Area Use Permit SMA(U)-2002- 6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kauai Tax Map Key (4) 1-7-005: 001
I support rezoning real property situated at Kapalawai, Makaweli, Kauai identified as Tax Map Key (4) 1-7-005:001 from the resort district to the agricultural district, which was the designation that existed prior to Ordinance No. PM-2001-356, and revoking Special Management Area Use Permit SMA(U)-2002-6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kauai Tax Map Key (4) 1-7-005: 001.
Circumstances have changed since the permits were issued. Kauai, and especially the westside of Kauai, do not need another resort development. Additional tourism creates negative social, cultural, and environmental impacts especially to the area of Kapalawai and Kauai's westside. The area of Kapalawai should be restored to the Open and Agricultural zoning districts, as it was before.

Sincerely,

Roselani Kaho'ohalahala
Anahola

**~~Shanlee~~ Jimenez**

---

**From:** Kaya Camara <kaya.camara3@gmail.com>
**Sent:** Thursday, November 6, 2025 4:59 PM
**To:** Planning Department
**Subject:** Petition For Zoning Amendment ZA-2026-2

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

[Kaya Camara]
[3221 Umi St. Lihue, HI 96766]

Date of Hearing: November 10, 2025
County of Kauai, Planning Commission

RE: to Rezone Tax Map Key (4) 1-7-005:001 from the Resort Zone to Agricultural Zone AND Petition to Revoke Special Management Area Use Permit SMA(U)-2002- 6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kauai Tax Map Key (4) 1-7-005: 001

I support rezoning real property situated at Kapalawai, Makaweli, Kauai identified as Tax Map
Key (4) 1-7-005:001 from the resort district to the agricultural district, which was the designation that existed prior to Ordinance No. PM-2001-356, and revoking Special Management Area Use Permit SMA(U)-2002-6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kauai Tax Map Key (4) 1-7-005: 001.

Circumstances have changed since the permits were issued. Kauai, and especially the westside of Kauai, do not need another resort development. Additional tourism creates negative social, cultural, and environmental impacts especially to the area of Kapalawai and Kauai's westside. The area of Kapalawai should be restored to the Open and Agricultural zoning districts, as it was before.

Sincerely,
Kaya Camara

Kaya Camara

**Shanlee Jimenez**

**From:** Bridget Zuidgeest <bzuidgeest@email.davenport.edu>
**Sent:** Thursday, November 6, 2025 5:07 PM
**To:** Planning Department
**Subject:** Zoning ZA-2026-2

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

Aloha my name is Bridget and I am writing in on bahalf of the bill to zone and build a resort on the west side of Kauai, Kapalawai and Makaweli. I say no to this! Absolutely no benefit for the community will be gained this is clearly all for rich people to make more money than they need exploiting Kauai. There are already plenty of places to stay on this island for visitors and frankly there isn't enough water on the south or west side for farmers already let alone proper water sanitization set in place to even support anything being built over there. Do not cover the magic of Kauai with more Babylon buildings this is out of control and an absolute disgrace to the land and people of hawaii. Please consider all that would be hurt in process. Consider helping the community. The happier the community the more aloha can be shared. Do your part and think about the aina and her people. Do not build.
Mahalo for your time.
Aloha
Sent from my iPhone

**~~Shanlee~~ Jimenez**

---

**From:** Gabrielle Phillips <gephillips94@gmail.com>
**Sent:** Thursday, November 6, 2025 5:48 PM
**To:** Planning Department
**Subject:** Support reverting outdated resort entitlements at Pakala/Pakalawai

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

Dear Council Members,

I'm writing in support of the proposal to revert the Pakala/Pakalawai property back to agricultural zoning.

The development entitlements for this site were granted more than twenty years ago under conditions and assumptions that no longer reflect the needs, infrastructure, or values of West Kaua'i today. These outdated permits should not be used to justify large-scale resort construction in 2025, especially given current challenges related to water use, coastal resilience, and housing affordability.

Allowing such old approvals to remain active undermines the integrity of Kaua'i's planning process and the purpose of periodic community plan updates. Reverting the zoning restores proper public oversight and ensures that any future development aligns with modern environmental standards and the current General Plan.

We all love this land and community deeply. These decisions will protect it for generations to come. Please support this bill to retire old entitlements and preserve the agricultural and cultural landscape of West Kaua'i.

Thank you for considering my message.

Best,
Gabrielle Phillips
Resident of Kaua'i

Sent from my iPhone

**Shanlee Jimenez**

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**From:** Erin Noel <eahnoel@gmail.com>
**Sent:** Thursday, November 6, 2025 7:25 PM
**To:** Planning Department
**Subject:** County Zoning Amendment (ZA-2026-2)

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

Aloha,
I am saying NO to a surf resort at Pakala. This would have an extremely negative impact on the perpetuation of Hawaiian culture and traditional practices on sacred lands; local families would be impacted tremendously. It is simply not pono.
Erin Noel

**Shanlee Jimenez**

**From:** Jennifer Cole-Conner <kauai_girl_jen@yahoo.com>
**Sent:** Thursday, November 6, 2025 8:09 PM
**To:** Planning Department
**Subject:** Opposition to Surf Resort at Pakala (ZA-2026-2)

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

Aloha Chair and Members of the Kaua'i Planning Commission,

I am writing in strong opposition to the proposed Surf Resort at Pakala under Zoning Amendment ZA-2026-2.

The proposed project at Kapalawai revives decades-old resort entitlements that no longer align with Kaua'i's current needs or priorities. The island's community, economy, and environment have changed dramatically since those approvals were granted.

This resort does not belong here. Resort development should remain within the designated Visitor Destination Areas (VDAs) — Po'ipū and Princeville — which were established specifically to concentrate tourism where infrastructure, workforce, and land use support it. Kapalawai lies far outside these zones and is one of the few remaining undeveloped coastal areas on Kaua'i's west side.

Environmental and Cultural Impact:

Kapalawai is a place of deep cultural, historical, and natural importance. Turning this coastline into a surf resort and large-scale visitor complex would permanently alter its character, displace native habitat, and undermine the rural beauty that defines West Kaua'i.

Workforce and Economic Concerns:

There are not enough hospitality workers to staff the resorts we already have. Expanding tourism in new areas will worsen this imbalance. The County should instead prioritize diversified, sustainable jobs for future generations — in agriculture, education, health care, technology, and environmental restoration — not just more hospitality positions.

Infrastructure Limitations:

Roads, utilities, and emergency services in the Makaweli and Pakala area are not designed for resort-level traffic or density. The burden of this development would fall directly on local residents and already-limited public resources.

For these reasons, I urge the Planning Commission to deny ZA-2026-2 and uphold the integrity of Kaua'i's existing Visitor Destination Areas, General Plan, and the values that keep our island sustainable and livable.

Mahalo for your time and commitment to protecting Kaua'i's future.

Sincerely,

Jennifer Acoba

Po box 1226 Kalaheo.HI 96741

**Shanlee Jimenez**

**From:** Lisa Yamagata <lnishizuka@gmail.com>
**Sent:** Thursday, November 6, 2025 8:16 PM
**To:** Planning Department
**Subject:** Written Testimony for 11/10 Meeting

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

To Whom it May Concern:

I am submitting written testimony for the November 10th Planning Commission meeting, in regards to agenda items F4 and H1. These items both relate to the possible development of a resort in the Kapalawai / Pakala area. I am submitting testimony in support of the 2 agenda items: to revert the zoning from resort to agriculture, and to revoke the Special Management Area Use permit.

Our island already has many resorts, and the "westside" is one of the few remaining places left on the island that us locals can actually still feel like we're home in Hawaii. It's more than simply "keep the country country". It's about retaining the sense of place and belonging that my generation grew up in, that past generations helped to cultivate, and future generations hope to continue. Westside remains mostly untouched, as compared to the north, east and south sides. There are already so many resorts on this island...too many. Why do we need yet another one? Even worse, a resort built in an area that is highly regarded by so many locals and carries with it a significant sense of place for many of us. Building a resort in Pakala would be taking a precious, unique, and beloved area and converting it to just another resort that could've existed anywhere. What will this teach our kids? That money and tourists are more important than preserving and perpetuating our cherished traditions and lifestyle?

Sincerely,
Lisa Yamagata
Kalaheo resident

**Shanlee Jimenez**

**From:** Jennifer Cole-Conner <kauai_girl_jen@yahoo.com>
**Sent:** Thursday, November 6, 2025 9:49 PM
**To:** Planning Department
**Subject:** Testimony in Support of Zoning Amendment ZA-2026-2 — Restore Kapalawai to Agricultural and Open Use

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

# Testimony in Support of Zoning Amendment ZA-2026-2 — Restore Kapalawai to Agricultural and Open Use

Aloha Chair and Members of the Kaua'i Planning Commission,

I am writing in support of Zoning Amendment ZA-2026-2, which will restore the Kapalawai lands in Makaweli back to their Agricultural (A) and Open (O) zoning designations, removing the outdated Resort zoning. Please update the record to reflect my testimony in support of this rezoning.

This action is consistent with Kaua'i's current priorities, planning policies, and community values. The Resort zoning from decades ago no longer reflects the realities of our island's environment, economy, or infrastructure. Returning this land to Agricultural and Open use will help preserve the rural integrity of West Kaua'i, protect cultural and natural resources, and ensure responsible, sustainable land management for future generations.

Kapalawai is a place of deep cultural and environmental importance. Reinstating Agricultural and Open zoning safeguards this coastline from large-scale visitor development, allowing it to remain as a living landscape — supporting farming, local stewardship, and open space that benefits both residents and the island's long-term resilience.

For these reasons, I respectfully urge the Planning Commission to approve Zoning Amendment ZA-2026-2 and return Kapalawai to Agricultural and Open zoning.

Mahalo for your time, dedication, and commitment to protecting Kaua'i's future.

Jennifer Acoba
Po.box 1226!
Kalaheo HI 96741

---

**From:** Jennifer Cole-Conner <kauai_girl_jen@yahoo.com>
**Sent:** Thursday, November 6, 2025 8:09 PM
**To:** planningdepartment@kauai.gov <planningdepartment@kauai.gov>
**Subject:** Opposition to Surf Resort at Pakala (ZA-2026-2)

Aloha Chair and Members of the Kaua'i Planning Commission,

I am writing in strong opposition to the proposed Surf Resort at Pakala under Zoning Amendment ZA-2026-2.

The proposed project at Kapalawai revives decades-old resort entitlements that no longer align with Kaua'i's current needs or priorities. The island's community, economy, and environment have changed dramatically since those approvals were granted.

This resort does not belong here. Resort development should remain within the designated Visitor Destination Areas (VDAs) — Po'ipū and Princeville — which were established specifically to concentrate tourism where infrastructure, workforce, and land use support it. Kapalawai lies far outside these zones and is one of the few remaining undeveloped coastal areas on Kaua'i's west side.

Environmental and Cultural Impact:

Kapalawai is a place of deep cultural, historical, and natural importance. Turning this coastline into a surf resort and large-scale visitor complex would permanently alter its character, displace native habitat, and undermine the rural beauty that defines West Kaua'i.

Workforce and Economic Concerns:

There are not enough hospitality workers to staff the resorts we already have. Expanding tourism in new areas will worsen this imbalance. The County should instead prioritize diversified, sustainable jobs for future generations — in agriculture, education, health care, technology, and environmental restoration — not just more hospitality positions.

Infrastructure Limitations:

Roads, utilities, and emergency services in the Makaweli and Pakala area are not designed for resort-level traffic or density. The burden of this development would fall directly on local residents and already-limited public resources.

For these reasons, I urge the Planning Commission to deny ZA-2026-2 and uphold the integrity of Kaua'i's existing Visitor Destination Areas, General Plan, and the values that keep our island sustainable and livable.

Mahalo for your time and commitment to protecting Kaua'i's future.

Sincerely,

Jennifer Acoba

Po box 1226 Kalaheo.HI 96741

**Shanlee Jimenez**

**From:** Casey Tangalin <casey.tangalin@live.com>
**Sent:** Thursday, November 6, 2025 11:04 PM
**To:** Planning Department
**Subject:** My Suggestion About Changes to Pakalas

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

To The Governing Authorities From the County of Kaua'i:

Aloha, my name is Casey Tangalin also known as Manong Slayda. As far as the organization I represent, I'm going to stand by God not as an organization but by judging whether what you do is right by God.

Fine want to take the opportunity to put a resort, consider to give more to the community than what you take like giving access to all beaches with parking for everyone. Like at princeville. Beach at hideaways. Minimal local parking. Kipu Kai absolutely no driving access. Gotta buy a boat just so I could go surf the spot. Same with Palamas Beach. Understand a lot of people are not going to like having a resort there especially the ones who don't know this is even happening but if you give access to more beaches for local people and let everyone know about it, the chances are local people may actually accept it.

This is where cops comes into play. Making sure people pickup their trash. People are going to get greedy over one new surf break because I was once like this. There are going to be fights where beaches aren't so public. Thinking they own the beach. All this is just my opinion with the idea of keeping the beach open without one person ruining it for everybody.

So much of this land has been prostituted with the idea that we need tourism to survive without the thought on how locals want to survive. I'd rather be homeless on some beach but I understand not everyone can do this because all da trash people make, and the ridiculous camp setups and I seen places closed off because of it. Cops need to do their job by finding a solution without taking something we used to have over one or more homeless people ruining it for everybody. Make it so anybody can camp.

Does my word really make a difference? Was there even a say involving everyone in all the resorts in all of Kauai. If not do you think people should have a say now?

The reason I target all these surf spots is because you target to put a resort near to one very special surf spot to the westside. A wave that is commonly surfed by everybody that lives near there and the only one that certain people want to surf.

If you have any power at all, how about unlock all coastlines and beaches with parking so everyone can go. If not then I'd rather wait for the kingdom of God where no one has a say because if you build that resort it will be perishable because nothing on this Earth last forever but God's kingdom will last forever. Praise be to Him that last forever, Yahweh!

Sent from my iPhone

**Shanlee Jimenez**

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**From:** T T <doodlelover24@gmail.com>
**Sent:** Thursday, November 6, 2025 11:21 PM
**To:** Planning Department
**Subject:** Subject matter: Robinson property and development

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

Name: Tia Yamagata

Subject matter: Robinson property and development

Date: November 6, 2025

Dear County of Kauai Planning Department,

I have moved from Pennsylvania to Kauai in 2006. In the 19 years that I've been living here, I've seen countless changes to this beautiful island. I can only imagine how many changes locals have sadly witnessed. There have been some positive changes and quite a few negative changes. These negative changes have severely impacted the residents.These such negative changes include heavy traffic patterns daily, disgruntled, drivers, ongoing roadwork, traffic delays, long shopping lines, insufficient parking, crowded beaches, limited job opportunities, job shortages, increased crime rates, amplified drug use, scarce entertainment venues, lacking medical personnel and procedures, additional homelessness as well as costly and limited housing/rental properties. The above mentioned list of negative changes is certainly not comprehensive. Given the opportunity provided currently, I would be hesitant to relocate here.

With that said, the Robinson family should not be provided the chance to develop a sizable, luxury resort designed specifically for tourists. It is my belief that the island of Kauai has been developed in excess. The island of Kauai already has 22 resorts!! Is it really necessary to add another? I believe that the island of Kauai has been developed in excess. Since the developers do not live here they will not suffer the consequences of what their resort can potentially bring. They selfishly care only about their financial gains. It is obvious that Kauai is at risk for being overdeveloped resembling the island of Maui. For the sake of Kauai and the people who live here (especially the West side), please oppose the developers and the Robinson family.

Thank you in advance for your prompt attention and immediate consideration to help Kauai residents.

**Shanlee Jimenez**

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**From:** rsw.weir@gmail.com
**Sent:** Friday, November 7, 2025 8:06 AM
**To:** Planning Department
**Subject:** RE: Zoning Amendment ZA-2026-2 (TMK: (4) 1-7-005:001
**Attachments:** RFP_Kapalawai.pdf

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

Planning Dept:

See attached re: ZA-2026-2

RS Weir

RS Weir
6332 Makana Road
Kapaa, Hawaii 96746
2025.11.05

Planning Commission
County of Kauai

Re: **Objection to Proposed Zoning Revocation — Protection of Vested Rights & Due Process TMK: (4) 1-7-005: 001 Kapalawai, Makaweli, Kauai, Hawaii**

To: Members, County of Kauai Planning Commission,

I am writing to formally object to the proposed revocation of the established zoning designation for Robinson Family Partners/Bruce Robinson property located at **Kapalawai, Makaweli, Kauai**

Apparently, this proposed action appears to be based in large part on an informal, handwritten notation—essentially a "scribbled post-it note"—authored by Ian Hirokawa after an alleged conversation with Scott Ezer. The note was found in an internal file rather than any formal, duly adopted planning record, ordinance, or public process. Such a basis for government action raises serious concerns regarding transparency, procedural fairness, and basic constitutional protections. Is it the County's position that a post-it note now constitutes a legitimate legal document?

## Violation of Due Process & Vested Rights

The United States Constitution prohibits government entities from depriving individuals of property rights without due process of law. The proposed revocation of the zoning—especially without any credible official record supporting such a change—constitutes an arbitrary and capricious action. Courts consistently recognize that zoning classifications and related entitlements cannot be withdrawn on speculative, undocumented, or informal internal notes.

Additionally, property owners are entitled to rely on the published and legally adopted zoning status of their land. This doctrine of **vested rights** and **reasonable reliance** protects landowners from precisely this type of uncertain and retroactive administrative action.

## Unconstitutional Taking

Revoking zoning without lawful basis or legitimate public purpose constitutes a regulatory taking under both the Fifth Amendment of the U.S. Constitution. A government action that substantially diminishes property value or restricts lawful use—without due process or just compensation—is unconstitutional.

Therefore, I request that the Commission:

1. **Withdraw** any action to revoke or amend the zoning designation absent proper legal basis and documented legislative authority, and
2. Provide the complete administrative record and documentation supporting this proposal, including the origin and intent of the informal notation cited.

Should the Commission proceed on this basis to revoke the zoning, I will urge RFP to protect its constitutional and property rights through all available legal and administrative channels.

Thank you,



RS Weir

**Shanlee Jimenez**

---

**From:** Blanche Yoshida (via Google Docs) <bbyoshida@gmail.com>
**Sent:** Friday, November 7, 2025 8:36 AM
**To:** Planning Department
**Cc:** Reikomatsuyama5@gmail.com
**Subject:** Pakala Development
**Attachments:** Pakala Development.pdf

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

# Blanche Yoshida attached a document

Blanche Yoshida (bbyoshida@gmail.com) has attached the following document:
Learn more

Please forward this to Kaaina and Jodi.
Thanks!

Pakala Development

Use is subject to the Google Privacy Policy.

Does this item look suspicious? Report

Google LLC, 1600 Amphitheatre Parkway, Mountain View, CA 94043, USA
You have received this email because bbyoshida@gmail.com shared a document with you from Google Docs. Delete visitor session

Google Workspace

To: Kauai Planning Department
From: Blanche Yoshida
Date: 11/07/2025

Attention: Pakala Development

My name is Blanche Yoshida, a long-time resident of Kauai, retired teacher, recreational surfer, and a concerned community member. I am submitting testimony against any commercial real estate development near Pakala.

Pakala is the only "local" surf break left on our island. It is a place, like in the sitcom "Cheers", a place 'where everyone knows your name'. For many of us, Pakala is a gathering place for our surf family. A place where we greet one another by name, cheer each other on, and the only place I know where surf etiquette still exists.

This remote, private area was what the Robinson Family believed in and did their best to uphold. I know this first-hand. Over 55 years ago, our family came to Kauai from Oahu on a surf trip. My dad hauled his camera equipment and we carried our surfboards from the Waimea River Mouth (a trek over 2 miles each way), careful to stay below the high water mark, as that was the route for getting to Pakala. My dad got pulled in by the Robinson family and was grilled about his camera. Who he was filming, the purpose, who was going to see it, etc. In the end, he was permitted to film but was forbidden to say where the movies were taken. The Robinson family made it clear that they did not want publicity, and did not want others to know about the area. This development idea is in stark contrast to their wishes for the area in the past. Instead, it's the community who wants to keep Pakala the remote, secluded area it has always been.

Other concerns are the notorious brown ocean water, which attracts sharks, and the abundance of Kiawe trees that often penetrate through slippers. This is not a good place for swimming or beach outings. In fact, one of the breaks is called "Tigers", for a reason. Lots of tiger sharks have been seen there. If the surfers and fishermen that use the area for recreation were asked, I venture to say that close to 100% would say "yes" to seeing sharks in the area, many within close proximity. Many of us wear shark bands for protection, although we don't rely on them. If someone spots a shark, word spreads quickly and most of us clear the water despite having on the shark band.

Thus, for these reasons, it is my sincere hope that Pakala remains a place for surfers & fishermen to enjoy without attracting more tourists.

1. Maintain the secluded, rural area that the Robinson Family valued from the beginning.
2. The brown sharky waters and the dangerous Kiawe thorns make the area a hazard zone for the unknowing and often irresponsible tourists.

Thank you for your consideration.

**Shanlee Jimenez**

**From:** S462-Alexis Almeida <s462-alexis.almeida@k12.hi.us>
**Sent:** Friday, November 7, 2025 9:23 AM
**To:** Planning Department
**Subject:** Monday Agenda Items F4 & H1 (Rezoning Kapalawai)

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

My name is Alexis Almeida. I am a junior at Waimea High School. I would like to submit testimony on items F4 and H1 on the Planning Commission Agenda for Monday, November 10, regarding rezoning land at Kapalawai, Makaweli.

This resort could be a good thing for people who need jobs and need to make money to support their families, but at the same time, this could be really bad. I mean, there is already a lot of building going on all over this island, and we do have so much tourism already, and with tourism combined with a lot of buildings all over Kauai, we will make this island look like the mainland. I mean, don't we have another building? Now imagine someone comes to your home and takes up all the yard and bbales just more resorts for stanjes to stay because you can't afford it. After all, if that happened to me, I would be pretty sad. I mean, we'll live in Hawaiii, isn't it supposed to be a lot of land, a grass like a big yard? Now ik that this land was bought a while ago, but at least us it right like start growing thing so the fruits and vegetables can at least be a little cheaper for the locals, , and if you are not going to listen to me, then it'ss k,, but if you're still gonnabuildd something, at least build something for the locals so we have at least one place in our hometown to go without a lot of tourism. That is not all, if you guys decided to build that resort,t have a lot of construction imagery, all the older uncols and aunties living there trying to get some rest, you guys are also going to have to build roads, so that town is not going to bepeacefull as now because there will be a bunch of tourists driving by, and tourists don't drive slowly, and it'sa neighborhood that cacan cause lot of accidents that will not end well. The reason why I am so against agents is that I really feel like we have enough buildings on the island, and I really don't feel like we need more. I mean, we will be many, but is life really all about money? I don't think it i. I think life is about love and never taking anything for granted because if we do, we never know what will happen.

Mahalo,
Alexis Almeida

This is a student email account managed by Hawaii Department Of Education School District. The contents of this email are governed by the laws of the state and the board policies of the school district.

**Shanlee Jimenez**

**From:** Stephanie Iona <s.iona@icloud.com>
**Sent:** Friday, November 7, 2025 9:53 AM
**To:** Planning Department
**Subject:** Fwd: Stephanie Iona shared "Kapalawai Document for PC" with you

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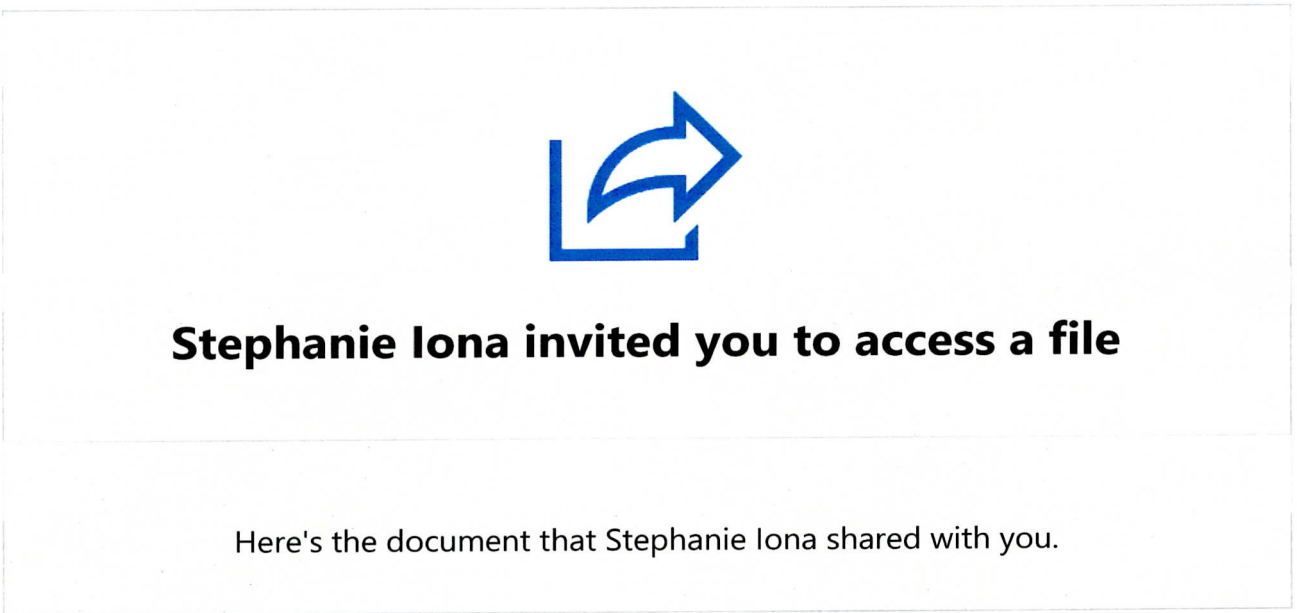
Respectfully submitting as testimony for November 10th, 2025 in opposition of the “re zoning” of Kapalawai Resort.

Thank you!

Stephanie Iona

Begin forwarded message:

**From:** Stephanie Iona <sni.iona@outlook.com>
**Date:** November 7, 2025 at 9:18:25 AM HST
**To:** s.iona@icloud.com
**Subject: Stephanie Iona shared "Kapalawai Document for PC" with you**
**Reply-To:** Stephanie Iona <sni.iona@outlook.com>





Kapalawai Document for PC



This link will work for anyone.

Open

Microsoft

Privacy Statement

Friday, November 7,2025

Kauai Planning Commission

Lihue Civic Center

Meeting Room 2A-2B

4444 Rice Street

Lihue, Kauai Hawaii 96766

Chair Francis Degracia and Members of the Planning Commission,

I am respectfully submitting my testimony in **opposition** to the amendment to rezone the Kapalawai Development to a previous designation. I will have the legal team provide all the steps necessary for you to easily determine the reasons this is basically "not right". As for me, a native Hawaiian senior, myself and family support the Robinson's 100% and believe they deserve to receive all the respect and Aloha to improve their lands in order to sustain the families, the agricultural farming, and lifestyle that is their legacy.

As a resident of Waimea, the former General Manager of the Waimea Plantation Cottages, and now a consultant for several Agriculture companies for over 8 years that includes Kekaha Agriculture Association and Kauai Shrimp, I know too well the need for the resort of Kapalawai to be a strong economic catalyst for the Robinson Partners future sustainability.

The family and its operation have been challenged over the years with the loss of their Sugar operations, a national organization of Dow Agrisciences departure, and has struggled to maintain their workforce villages, and operational upgrades of their lands, due to the loss of previous developers who attempted to build this resort concept for over 20 years.

For over 20 years this area has been designated "resort" and there are many of us in this community who stood at the side of the family as they were working through the proposed development operators. For me, I supported Derek Trethewey who unfortunately passed away during the process.

Then the One and Only resort company came into play and has been diligently working to manage the process to get the project built. They did their research with many people on

island, heard the preferences and wants of the community, and made decisions to incorporate the changes.

As a result, they chose to downsize the units of previous developers from 250 units to 134, maintain and cherish the historical and cultural values of our community, and more importantly, will utilize their own resources to create this world class resort. This organization in their portfolio will only build 35 hotels world wide, and has worked diligently to comply with all requests of the County of Kauai for 3 years to create a resort that will accommodate the needs of our westside community.

The resort property will provide workforce housing, support a safe and comfortable access for residents to enjoy the ocean that includes secure parking, restrooms, outside shower, and a picnic area. They are committed to engage in "making a difference" in good paying jobs and benefits for their workforce, build workforce housing, and restore all the historical areas of the property that include the ponds, the buildings, and gardens. The family is satisfied completely that the One and Only Resort chain will respect their lands, and as they so proudly share in their marketing messages..."they will touch the ground lightly, and surround the property with trees and gardens, and units that will not "intrude" on the physical landscape." The units will be kept tucked away amongst the scenery leaving a beautiful view of the trees and gardens from the road and the ocean.

As a hotel executive for over 40 years, I can share that the westside needs this infusion of hotel accommodations that will offer training for our youth in the hotel industry, and have confirmed they will be good partners to the growth of the westside.

The Robinson's, a Kama'aina family, and their many supporters of the westside, are asking to allow this zoning to remain in "resort status" as stated in the County Plan and the Waimea 400 vision for our area.

It's their 'sense of place' to create a thriving westside of Kauai for generations into the future that will have agriculture and tourism as a lifestyle to support their families, and live in the place they call "home".

Mahalo,

Stephanie Iona

9857Ape Road

Waimea Hawaii 96796

**Shanlee Jimenez**

**From:** Jordynn Haumea-Thronas <jordynnhaumeathronas@yahoo.com>
**Sent:** Friday, November 7, 2025 9:56 AM
**To:** Planning Department
**Subject:** Agenda Item 4a: Testimony in Support of Returning Pakala/Kapalawai to Agricultural Zoning

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Aloha mai kākou,

My name is Kamāli'i Haumea-Thronas and I'm from Wailua, Puna, Kaua'i. I'm writing in strong support for the petition for a bill to amend Ordinance No. PM-2001-356, as amended in part by Ordinance No. PM-2006-385, to rezone approximately 171.72 acres at Kapalawai, Makaweli, back to its agricultural designation.

This 'āina holds history, stories, and the spirit of our kūpuna. It was never meant to be paved over or turned into another resort. I support the plan to remove the resort zoning and return this land to agriculture, to let it breathe again, and to feed our people.

The project's resort plans have sat idle for too long, while our community continues to face challenges with food security, housing, and preserving our way of life. As someone who grew up on Kaua'i, I've seen how special this area is, quiet and rich in history. A resort would change the landscape and way of life we've worked so hard to protect. We don't need more luxury developments that benefits outsiders; we need land that feeds our people, sustains our resources, and keeps Kaua'i's heart intact.

Mahalo for considering this testimony and for standing with our community in keeping west Kaua'i rural, rooted, and thriving.

Me ke aloha,
Kamāli'i Haumea-Thronas

**Shanlee Jimenez**

---

**From:** Lisa Weir <weir.lisa11@gmail.com>
**Sent:** Friday, November 7, 2025 10:09 AM
**To:** Planning Department
**Subject:** RE: Zoning Amendment-Ordinance No. PM-2001-356
**Attachments:** RFP-Kapalawai.pdf

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Planning Department:

Please see attached.

Lisa Weir

Lisa Weir
256 Molo St.
Kapaa, HI 96746

November 7, 2025

**Subject:** Request to **Deny** Proposed Amendment to Ordinance No. PM-2001-356 and **Retain** RR-10 Zoning for Kapālawai

To the Chair and Commissioners:

I am writing to formally request that the Planning Commission reject the proposed amendment to Ordinance No. PM-2001-356. I strongly advocate for the preservation of the current **Resort (RR-10) zoning designation** applicable to the Kapālawai area in Makaweli.

## Core Justifications for Retaining RR-10 Zoning

The existing Resort zoning supports the potential for **responsible, diversified, area-specific economic growth** on the West Side. For years, families from this area have faced limited opportunities and long commutes to work.

Maintaining the RR-10 zoning would help:

- **Create Local Jobs and Investment:** These efforts are essential for stimulating growth right where residents live.
- **Strengthen West Kaua'i:** This classification allows the landowner to continue developing opportunities that build a sustainable future where residents live and work.

## Conclusion: Upholding Community-Driven Progress

Any change to the current zoning would severely restrict the capacity to implement these vital, community-driven economic initiatives, **which are not about large-scale development but about focused, sustainable growth.**

The RR-10 zoning strikes the necessary equilibrium between responsible stewardship of the land—honoring its history and cultural significance—and generating crucial economic opportunities for the future.

The **Robinson family** has a demonstrable and long-standing history of **responsible stewardship** of the land it owns. We have historically provided essential **workforce housing** for plantation employees/retirees and been a consistent source of **local employment** over the years. Crucially, our family has chosen not to liquidate assets by selling to the highest bidder, thereby preventing potentially large-scale, **inappropriate development** on the west side.

This planned development is **not** a departure from our commitment. Rather, it is an essential component that will enable us to **continue and expand** our critical support for the West Side community. The revenue generated will directly support our ability to provide:

- **Ongoing Housing Initiatives**
- **Necessary Infrastructure Improvements**
- **Sustained Agricultural Ventures**
- **Broader Community Support**

I respectfully urge the Commission to weigh these vital considerations. Maintaining the existing **RR-10 zoning** is the most responsible path forward to ensure the Robinson family can continue its legacy of community and environmental stewardship."

Thank you,
Lisa Weir
Board Member, Gay & Robinson

**Shanlee Jimenez**

| | |
|---|---|
| **From:** | rhoda libre <kauaiwestsidewatershedcouncil@gmail.com> |
| **Sent:** | Friday, November 7, 2025 10:40 AM |
| **To:** | Planning Department; kauaiwestsidewatershedcouncil@gmail.com; rlibre2020 @gmail.com |
| **Subject:** | Re:Kapalawai development Voting-NO |

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Aloha,

Please record our response;

Our lineal descendants of kaumakani n the westside respond No to the proposed development of kapalawai.
I was on the original committee along with Cheryl Obatake , Olga Holi n Judy Naumu n Jo manini that gave cultural assessment of these areas.... It was no then and still no now. Where are the historical sites after they leveled the area??? Who is the cultural assessor n was there a cultural assessor while grading was done to level the area???? What is the conservation permit number n who issued it? We'd like copies please of whole proposal.

We say no to the whole procedure as well as their application n proposal process.

Thank you,
Rhoda Libre
Chair n Administrator

Kaua'i westside watershed council
Hanakaumaka puuhonua
Lineal descendant of Makaweli Ahupuaa 64 years
My family been on the westside for over 200 years!!

## Shanlee Jimenez

**From:** Kauakea Mata <kauakea@hawaii.edu>
**Sent:** Friday, November 7, 2025 11:36 AM
**To:** Planning Department
**Subject:** Public testimony
**Attachments:** Copy of Support Revoking Permits.pdf

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Sent from my iPhone

Kauakea Mata
Waimea, HI 96796

Date of Hearing: November 10, 2025
County of Kauai, Planning Commission

RE: Petition For Zoning Amendment ZA-2026-2 to Rezone Tax Map Key (4) 1-7-005:001 from the Resort Zone to Agricultural Zone AND Petition to Revoke Special Management Area Use Permit SMA(U)-2002- 6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kauai Tax Map Key (4) 1-7-005: 001

I support rezoning real property situated at Kapalawai, Makaweli, Kauai identified as Tax Map Key (4) 1-7-005:001 from the resort district to the agricultural district, which was the designation that existed prior to Ordinance No. PM-2001-356, and revoking Special Management Area Use Permit SMA(U)-2002- 6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kauai Tax Map Key (4) 1-7-005: 001.

Circumstances have changed since the permits were issued. Kauai, and especially the westside of Kauai, do not need another resort development. Additional tourism creates negative social, cultural, and environmental impacts especially to the area of Kapalawai and Kauai's westside. The area of Kapalawai should be restored to the Open and Agricultural zoning districts, as it was before.

Sincerely,
Kauakea Mata

**Shanlee Jimenez**

**From:** Lisa Ledesma <lledesma@cmghomeloans.com>
**Sent:** Friday, November 7, 2025 11:26 AM
**To:** Planning Department
**Subject:** In Support of County Of Kauai

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I am in favor of the County of Kauai of reverting back to agricultural origins. We do not need a resort on the west side of Kauai. We have plantation homes and surf spots for the locals that is not overpowering with tourist. 20 years ago, the Robinson had this permit which should never had happen. Now they want to destroy the west side with a resort for more traffic and trash. Leave Kauai like Kauai. We do not need a resort west of Pakala's. It should always be agriculture.

MAHALO

Let me help you with your home mortgage..

Warmest Aloha,

**Lisa Ledesma**
Loan Officer

**lledesma@cmghomeloans.com**
**(808) 634-2628**
**4365 Kukui Grove St, Suite 101, Lihue, HI 96766**

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**Shanlee Jimenez**

---

**From:** ahna Rose <ahnaliakoufis@gmail.com>
**Sent:** Friday, November 7, 2025 11:59 AM
**To:** Planning Department
**Subject:** Petition for rezoning property at Kapalawai, Makaweli, Kauai

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Ahnalia Koufis
Kilauea.
Date of Hearing: November 10, 2025
County of Kauai, Planning Commission

RE: Petition For Zoning Amendment ZA-2026-2 to Rezone Tax Map Key (4) 1-7-005:001 from the Resort Zone to Agricultural Zone AND Petition to Revoke Special Management Area Use Permit SMA(U)-2002- 6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kauai Tax Map Key (4) 1-7-005: 001

I support rezoning real property situated at Kapalawai, Makaweli, Kauai identified as Tax Mar Key (4) 1-7-005:001 from the resort district to the agricultural district, which was the designati that existed prior to Ordinance No. PM-2001-356, and revoking Special Management Area U Permit SMA(U)-2002- 6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kauai Tax Map Key (4) 1-7-005: 001.

Circumstances have changed since the permits were issued. Kauai, and especially the wests of Kauai, do not need another resort development. Additional tourism creates negative social cultural, and environmental impacts especially to the area of Kapalawai and Kauai's westside. The area of Kapalawai should be restored to the Open and Agricultural zoning districts, as it was before.

Sincerely,
Ahnalia Koufis

**Shanlee Jimenez**

**Subject:** FW: Planning Commission Meeting 11/10/2025; Objections Re: Agenda Items H.1, M.2, and M.4

**Attachments:** RFPs Objections to Petition to Revoke SMA Permit.pdf; RFPs Objections to Petition for Zoning Amendment.pdf

**From:** David H. Abitbol <dha@hawaiilawyer.com>
**Sent:** Friday, November 7, 2025 12:06 PM
**To:** Planning Department <planningdepartment@kauai.gov>
**Cc:** Gregory W. Kugle <gwk@hawaiilawyer.com>; Clint K. Hamada <ckh@hawaiilawyer.com>; Arushini Sinnaduray <arushini@hawaiilawyer.com>; Tiffany Lawas <tiffanyl@hawaiilawyer.com>
**Subject:** Planning Commission Meeting 11/10/2025; Objections Re: Agenda Items H.1, M.2, and M.4

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Aloha Planning Department,

On behalf of Robinson Family Partners, please see the attached objections to: (1) the Planning Department's *Petition for the Revocation of Special Management Area Use Permit SMA(U)-2002-6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20*; and, (2) the Planning Department's *Petition for Zoning Amendment*. The objections relate to the Planning Commission's November 10, 2025 meeting regarding the Kapalawai development in Agenda items H.1, M.2, and M.4.

Thank you,

**David H. Abitbol** | **Attorney**

Office: (808) 531-8031
Fax: (808) 533-2242
Mail: dha@hawaiilawyer.com
Web: www.hawaiilawyer.com
Addr: 1003 Bishop St, Ste 1600
Honolulu, HI 96813

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Of Counsel:
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Facsimile: (808) 533-2242

Attorneys for Respondent
ROBINSON FAMILY PARTNERS, a Hawai'i General Partnership

BEFORE THE PLANNING COMMISSION

OF THE COUNTY OF KAUA'I

| | |
|---|---|
| In the Matter of the Petition of:<br><br>AMEND ORDINANCE NO. PM-2001-356 AS AMENDED IN PART BY ORDINANCE NO. PM-2006-385 FOR REAL PROPERTY SITUATED AT KAPALAWAI, MAKAWELI, ISLAND OF KAUA'I, KAUA'I TAX MAP KEY (4) 1-7-005: 001, KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAI'I INC., A HAWAI'I CORPORATION, ROBINSON FAMILY PARTNERS, A HAWAI'I GENERAL PARTNERSHIP, BRUCE B. ROBINSON, ALICE EST ROBINSON. | DOCKET NO. _____<br><br>ROBINSON FAMILY PARTNERS, A HAWAII GENERAL PARTNERSHIP'S OBJECTIONS TO THE PLANNING DEPARTMENT OF KAUA'I'S PETITION FOR ZONING AMENDMENT |

**ROBINSON FAMILY PARTNERS, A HAWAII GENERAL PARTNERSHIP'S OBJECTIONS TO THE PLANNING DEPARTMENT OF KAUA'I'S PETITION FOR ZONING AMENDMENT**

ROBINSON FAMILY PARTNERS, A HAWAI'I GENERAL PARTNERSHIP ("***Robinson Family Partners***" or "***Owners***"), by and through its undersigned attorneys, DAMON KEY LEONG KUPCHAK HASTERT, hereby submit the following objections to the Planning Department, County of Kaua'i's (the "***Planning Department***") Petition for Zoning Amendment to rezone approximately 171.72 acres, identified in Ordinance PM-2001-356 and further identified by Kaua'i Tax Map Key ("***TMK***") No. (4) 1-7-005: 001 (the "***Property***") to the designations that existed prior to ordinance PM-2001-356, as amended (the "***Petition***").

## I. INTRODUCTION

The Planning Department's Petition to downzone the Property appears to be an unprecedented and procedurally premature action unsupported by the applicable provisions in this Planning Commission's Rules, the Kaua'i County Code ("***KCC***"), or the Hawai'i Revised Statutes ("***HRS***"). Under KCC § 8-3.4, a zoning amendment may be permitted when "public necessity and convenience and the general welfare require an amendment." The Petition does not meet that bar. It offers no cogent showing that the public necessity or general welfare is better served by stripping long-standing resort entitlements from the Property and reverting to the pre-PM-2001-356 designations.

Nor does the Petition demonstrate consistency with the County's adopted planning framework. The County's General Plan and related implementing policies must guide zoning decisions. Yet here, the Petition substitutes generalized preferences about land use for a required, policy-anchored consistency analysis. In doing so, it ignores reliance and investment-backed expectations associated with decades of planning and entitlements for this Property and fails to

explain why less-restrictive tools—such as phasing, performance conditions, or tailored overlays—would be inadequate to address any stated concerns.

Process also matters. The applicable Planning Commission Rules first require an order to show cause for a reversionary zoning amendment. Proceeding as requested by the Planning Department is therefore procedurally premature.

Finally, the Petition would constitute an impermissible spot zoning of the Property. The Petition singles out the Property for downzoning in a way that is inconsistent with the General Plan. By targeting the Property for disparate treatment, without demonstrating a rationale in the General Plan, the Petition departs from the General Plan's uniformity and invites arbitrary and capricious decision making.

For these reasons, Robinson Family Partners respectfully request that the Planning Commission deny the Petition. At minimum, the Planning Commission should defer the action pending the resolution of a contested case hearing to adjudicate the rights of the Owners and any other parties in interest to the Petition.

## II. BRIEF BACKGROUND

As Hawaii's sugar industry became economically unviable, the Robinson family sought other means to sustain their businesses and the employment opportunities they provided for the residents of Kauai. The family envisioned a low profile, low impact resort that would restore the family residence, "Kapalawai", and provide much needed employment opportunities and economic stimulation to Kauai's west side.

The 153.696-acre project site (the "***Project Site***" or "***Kapalawai***") is one of the former homesteads of the Robinson Family. The Property is presently under ownership of several entities, including Robinson Family Partners. The residence at Kapalawai was occupied

continuously from its construction (c. 1897) until around 1988. Since then, the house has been vacant, but an auxiliary building adjacent to the residence has been used as an office for Robinson Family Partners. The remainder of the Property has historically been used as pasturage for livestock. The Property also features an inland fishpond, adjacent to the Mahaikona Stream in the center of the Property.

**A. Proposed Development and Zoning History**

In 2000, with the Owners full support, Destination Villages Kauai, LLC petitioned the State Land Use Commission ("***LUC***") to reclassify 153.696 acres in Makaweli from the Agricultural District to the Urban District to develop 250 resort units and accessory uses (the "***Project***"). LUC Docket No A00-731. The Planning Department recommended approval of the LUC petition. *Id.* at FOF 3. At the same time, the County of Kaua'i amended its general plan on October 9, 2000, redesignating the Property from Agriculture and Open to Resort for the development of the Project. Ord. No. PM-2000-353, Bill No. 1953 (2000).

The Project would include the development of a low-intensity and low-density resort, and was intended to restore the physical attributes of the entire Property to former conditions, thereby preserving a significant chapter of the history of Hawai'i and Kaua'i. These restoration efforts included improvements to the residence, the fishpond, and the grounds in general. In addition, the Project would serve as an economic stimulus for the West Kaua'i community in the form of employment opportunities and business spending by the guests at the resort.

Once the approvals related to the State Land Use District Boundary Amendment and General Plan were obtained, major portions of the Property (approximately 127.93 acres) were zoned RR-1. Ord. No. PM-2001-356, Bill No. 2004. The remainder of the Property was zoned Open (approximately 25.77 acres). The West Kaua'i Community Plan (approved by the Kaua'i

County Council) recognized the Property's resort designation, consistent with its prior State LUC and Kaua'i General Plan designations, and noted that the Project "can also increase tourism in this area and generate jobs for the Westside." West Kaua'i Community Plan (2020), p. 106. Significantly, both the Kaua'i General Plan and Community Plan continue to designate the Project on the Property.

With the legislative framework in place, the Planning Commission approved three zoning and development permits related to the Project on May 28, 2002: (1) a Special Management Area ("***SMA***") Use Permit; (2) the Project Development Use Permit; and (3) a Class IV Zoning Permit. These three permits represent the County of Kaua'i's final discretionary permits for the Project.

**B. Development Efforts Pursuant to County's Final Discretionary Permitting**

Following final approval of the discretionary permits, the Project proceeded and progressed in good faith with the developers accomplishing studies and milestones at considerable expense in compliance with the entitlements. The Project's progress continued for approximately five years until the Project experienced a temporary delay prompted by economic downturn. As a result, in 2007, the administration of the Project returned to the Owners, including Robinson Family Partners and Bruce Robinson.

On July 1, 2013, the landowners entered into a letter of intent with a prospective developer to lease and develop the Project. The prospective developer had been actively conducting extensive due diligence, including the preparation of a site plan with an emphasis on protecting the natural landscapes, architectural design, landscaping design, and civil engineering, and incurred extensive pre-construction expenses in excess of one million dollars, including expenses relating to landscape design, architecture, survey work, engineering, legal fees, and administrative expenses.

Unfortunately, that prospective developer passed away in 2015. The letter agreement with the developer's company expired in 2019.

In 1998, Bruce Robinson leased his interest in the land to the Robinson Family Partners. Robinson Family Partners worked for years to find a developer and operator for the project. In 2022, Robinson Family Partner entered into a development agreement with Kerzner International Management Services Hawaii, Inc. ("***Kerzner***"), which has since invested millions of dollars in the Project in reliance of the final discretionary permits issued by the County.

### C. The Petitions

Recently, the Planning Department filed the Petition with the goal of downzoning the Property/Project Site from Resort to Agriculture—*i.e.*, reverting the Property to the pre-Ordinance PM-2001-356 designations. The Planning Department concurrently submitted a related *Petition for the Revocation of Special Management Area Use Permit SMA(U)-2002-6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 and Report* (the "***Permit Petition***"). Together with this Petition, the Planning Department asks the Planning Commission to summarily revoke long-standing vested development rights for the Project. A hearing on the Petition and the Permit Petition is currently scheduled for November 10, 2025, before the Planning Commission.

## III. OBJECTIONS

### A. Granting the Petition is Premature Due to the Lack of an Order to Show Cause.

As a preliminary matter, due process requires the Planning Commission to first enter and serve an order to show cause on the permit holders prior to granting any petition to revoke a permit. Rule 1-12-5 of the Rules of Practice and Procedure of the Kaua'i County Planning Commission ("***Planning Commission Rules***") states, in relevant part, "[I]f the Commission finds that there is

reasonable cause to believe that there currently is a failure to perform according to the conditions imposed, the Commission shall issue and serve upon the party bound by the conditions an Order to Show Cause why the permit should not be revoked or modified." Plan. Comm'n R. § 1-12-5; *see also* Petition at 2 ("[T]he Planning Commission must issue and serve upon the Owners an Order to Show Cause why the permit should not be revoked or modified."). This requirement applies to "all zoning permits, variances, use permits, subdivision approvals, special management area permits ... district boundary amendments, general plan amendments, **zoning amendments** and any other permit or approval within the jurisdiction of the Commission. For the purposes of this chapter "permit" means any permit, amendment or other approval mentioned above." *Id.* § 1-12-1 (emphasis added). Thereafter, the Planning Commission must conduct an agency hearing on the order to show cause in accordance with the procedures and requirements of Chapter 6 of the Planning Commission Rules. *Id.* § 1-12-7. The order to show cause must be served upon the permit holders at least thirty (30) days prior to the hearing. *Id.* § 1-12-6(a).

As of this Objection, Owners have not been served with an order to show cause.[1] According to the Planning Commission's agenda, the Planning Commission is set to discuss the Petition on November 10, 2025, in both general and executive sessions. Due to the lack of an order to show cause and hearing thereon, the Planning Commission cannot grant the Petition at the November 10 hearing. Owners respectfully remind the Planning Commission that pursuant to HRS § 92-5, the Commission's executive session must be limited to "consult[ation] with the [Commission's] attorney on questions and issues *pertaining to the [Commission's] powers, duties,*

---

1 This Objection does not constitute a waiver of Owners' due process rights, their right to an order to show cause, and their right to be heard via hearing. Owners reserve all rights to supplement this Objection and/or present further argument in the event that an order to show cause is duly served.

*privileges, immunities, and liabilities*[,]" and not the merits of the Petition. Haw. Rev. Stat. § 92-5(a) (emphasis added). To the extent deliberations are held in general session regarding whether or not to issue an order to show cause, the Planning Commission should decline to do so for the reasons set forth below.

**B. Owners Have Complied with All Conditions and Have Not Abandoned the Shoreline Certification.**

Like the Permit Petition, the crux of the Planning Department's arguments for the zoning amendment revolves around Bruce Pleas' pending appeal of Owners' shoreline certification application. The Planning Department presents two alternative arguments related to Condition 3(t) of Ordinance No. PM-2006-385[2] — both of which fail.

First, the Planning Department posits that Owner "abandoned" its shoreline certification either in 2007, via the lack of progress for Mr. Pleas' shoreline appeal, or 2011, via an alleged telephone call between Scott Ezer and the Department of Land and Natural Resources ("***DLNR***"). Petition ¶¶ 70–79. The former fails because Hawai'i courts have long held that inaction does not amount to abandonment of a property right, and the latter fails because Ezer did not make the alleged representations to DLNR, Ezer lacked the authority to make such representations on behalf of Owners, and Owners' actions shortly after the supposed phone call contradict abandonment.

---

2 Condition 3(t) of Ordinance No. PM-2006-385, which amended said condition of Ordinance No. PM-2001-356, reads, in full:

> (t) Substantial construction of the hotel, defined as completion of at least fifty percent (50%) of building foundations, shall be completed within eighteen (18) months from the date that the appeal of the project's shoreline certification currently pending before the Chair of the Board of Land and Natural Resources, has been resolved. If substantial construction is not completed within this time, the Planning Commission shall initiate proceedings to rezone the property to the designation existing prior the date of this ordinance.

Ordinance No. PM-2006-385, Bill No. 2201, Permit Petition at Exhibit 12.

Second, the Planning Department claims that HAR § 13-222-11, which sets the lifespan of a certified shoreline to twelve months, constitutes a "resolution" of Mr. Pleas' appeal by inherent operation. Petition ¶ 82. Notwithstanding that the shoreline has not yet been certified, the County Council clearly explained what it meant by "resolution of the appeal" during its public hearing on November 21, 2006, requiring an affirmative decision from the attorney general's office and DLNR. There is no question that Condition 3(t), as amended, controls the project's substantial completion deadline, and neither abandonment nor HAR § 13-222-11 have triggered the post-shoreline certification appeal deadline. Owners cannot control a third-party's appeal, let alone the Board of Land and Natural Resources.

*i.* *Owners Did Not Abandon the Shoreline Certification in 2007 nor 2011, Because Waiting for the Appeal to be Resolved Cannot Constitute Abandonment of a Property Right*

According to the Petition, the Planning Department argues that Owners first abandoned the shoreline appeal as early as October 12, 2007, which is less than a year and a half after the appeal started and less than two years after Owners filed the application by virtue of their LUC status report of the same date. Specifically, the Planning Department asserts that Owners' 2007 LUC status report of the same date abandoned the appeal by stating that "the applicant waited for a ruling on the appeal of the shoreline certification and to date, we have not been informed as yet on the outcome of the appeal." Petition ¶ 71. The 2007 LUC status report also stated that "[i]n 2007, the applicant, Kapalawai Resort LLC, could not secure financing commitment for the project and the landowner sought a new developer." *Id.* In sum, the Planning Department argues that Owners abandoned the shoreline certification through inaction and failing to seek progress on the certified shoreline appeal.

Contrary to the Planning Department's assertions, the onus is not on Owners to repeatedly request status updates from BLNR on Mr. Pleas' appeal until a decision is rendered by the chair. Moreover, the Hawaii Supreme Court has repeatedly held that abandonment, similar to waivers, requires voluntarily, overt action clearly reflecting an intent to relinquish said right. *Fleming v. Napili Kai, Ltd.*, 50 Haw. 66, 69, 430 P.2d 316, 318 (1967) (confirming that "[t]he burden of proving abandonment is upon the party alleging it and must be established by clear and unequivocal evidence of decisive and conclusive acts"); *Motonaga v. Ishimaru*, 38 Haw. 158, 165 (1948) (holding that "inaction is the antithesis of the intelligent action and overt acts which underlie surrender and abandonment"); *Langley & Michaels Co. v. Oka*, 28 Haw. 519, 524 (1925) ("Mere passivity or inaction, however, does not constitute a waiver"). Simply reporting that the shoreline appeal had not yet been resolved falls well short of clear and unequivocal evidence that Owners intended to abandon their shoreline application and/or submit to Mr. Pleas' appeal. The Planning Department's argument is further undermined by that same report when Owners explained, "We had hoped that the State would have resolved the issue of the shoreline certification appeal first before we submitted the Annual Status Report for review, however we were concerned that the delay in reaching a decision could jeopardize[] [the] project's future." 2007 LUC Status Report at 3. The report then stated that Owners "sought a new developer." 2007 LUC Status Report at 3. In other words, Owners fully continued to expect and hope that the appeal would be resolved as of the report, and they were conducting themselves in accordance with that expectation by furthering the project. Nothing in the 2007 LUC status report, whether cherry-picked or in totality, can be construed as abandonment of the shoreline certification.[3] The Planning Department

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[3] As noted by the Planning Department, there is no procedural mechanism by which Owners could have forced the BLNR to expedite Mr. Pleas' appeal. *See* Petition at 27, n.2 (citing the shoreline certification appeals procedures in HAR § 13-222-26). The BLNR is only required to

conveniently ignores that less than a year before the 2007 report, Owners' representatives testified before the Kaua'i County Council to secure an extension of the substantial completion date in relation to the shoreline appeal.

In addition to 2007, the Planning Department contends that a 2011 telephone call between Ian Hirokawa of DLNR and Scott Ezer effectively abandoned the shoreline certification. In support of this position, the Planning Department relies on a hand-written note allegedly written by Mr. Hirokawa on October 3, 2011, documenting a statement from Mr. Ezer claiming that "landowner desires no further action in regard to appeal." Permit Petition at Exhibit 21. This argument fails for several reasons.

First, the shoreline certification application designated Dennis Esaki Surveying and Mapping as the authorized agent to act on the Owners' behalf. BLNR has no such authorization for Mr. Ezer to act on the Owners' behalf. Neither the Planning Department nor BLNR has produced a written authorization from Owners designating Mr. Ezer as their authorized agent for purposes of the shoreline certification.

Second, Mr. Ezer will testify that he has no recollection of such a conversation with Mr. Hirokawa. He will testify that he has no confirming notes or memorandum of contact with Mr. Hirokawa. He will testify that, to his knowledge (and to Owners' knowledge), neither the BLNR nor Mr. Hirokawa ever issued any written confirmation that the shoreline certification was being withdrawn.

Third, the Owners' 2011 LUC status report, dated December 30, 2011 – two months after Mr. Hirokawa's note – directly contradicts any notion that Owners intended to abandon the

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opine within 60 days of receipt of briefs. The threshold issue of standing was never adjudicated, and a briefing schedule was never set. As such,

shoreline certification. In no uncertain terms, the report states, "The landowners will fully continue with their efforts to develop the property consistent with existing entitlements." Permit Petition at Exhibit 12.

Finally, neither BLNR nor any other agency has once contacted Owners regarding a potential abandonment of their shoreline certification prior to the Planning Department's current efforts to revoke the SMA permit, and BLNR certainly has never issued an order or decision reflecting that it considers Owners' application as abandoned. The Planning Department cannot, on the one hand, chastise Owners for being unable to force BLNR to issue a decision, while, on the hand, rely on a newly discovered and vaguely worded hand-written note. For these reasons, Owners did not abandon their shoreline certification in 2011, regardless of Mr. Hirokawa's note.

*ii.* *The Kaua'i County Council Explicitly Defined the Meaning of "Resolved" for Purposes of Ordinance No. PM-2006-385.*

Aside from its abandonment arguments, the Planning Department alternatively attempts to construe HAR § 13-222-11 as inherently resolving all shoreline certification applications no later than one year plus sixty days plus any briefing extensions from the day of public notice.[4] Petition ¶¶ 60–63. Again, the Planning Department's argument fails because standing was never adjudicated by the BLNR, the certification process is stayed during an appeal, and the County Council explicitly defined what constitutes a resolution of Mr. Pleas' appeal.

First, Paragraph 60 of the Petition states that, had Mr. Pleas been determined to lack standing, the shoreline certification would have been valid only up to May 8, 2007. Oppositely, if Mr. Pleas was determined to have standing, the BLNR would have 60 days at most to deny the appeal and certify the shoreline, creating a maximum validity date of July 9, 2007, notwithstanding

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4 HAR § 13-222-11(a) states, in relevant part, "Certification of the shoreline shall be valid for a period no longer than twelve months from the date of certification."

briefing. Neither of these scenarios address the current situations — when the BLNR makes no determination on standing. Accordingly, the logic in paragraphs 60 and 61 fail to apply.

Second, the Planning Department appears to erroneously conclude that the start date for certification automatically stems back to the original application, the state land surveyor's inspection, or public notice of the certification, without explanation. Petition ¶ 62. However, certification is its own process that occurs *after* those events. Moreover, the certification process is stayed by any appeal. HAR § 13-222-10(g) states, "If an appeal is filed under section 13-222-26, the certification process shall be stayed until the administrative appeal is resolved by the board or chairperson." Accordingly, Owners' certification has been and continues to be stayed by Mr. Pleas' appeal, and the Planning Department's assertion that "any application or proposed shoreline certification would be obsolete beyond twelve (12) months from the date of application or proposal" is incorrect. Petition ¶ 62.

Third, and most importantly, the Kaua'i County Council specifically explained what it understood to qualify as "resolution" of Mr. Pleas' appeal. At the December 13, 2006 public hearing on Ordinance No. PM-2006-385, which amended Condition 3(t), the Honorable Shaylene Iseri-Carvalho clarified:

> The proposed amendment seeks to define a substantial construction as being completion of at least 50% of building foundation. It also seeks to have some clarity as to when the time period will run for the substantial construction to take place, and that period has been set at 18 months from the date that the appeal that is currently pending before the Board of Land and Natural Resources. Until that appeal has been ***resolved***, so basically ***it tolls the time period until we get a decision from the AG's (Attorney General's) office to the BLNR (Board of Land and National Resources), and from the BLNR to issue a decision on the standing issue as well as certifying the shoreline and then from there 18 months to do substantial construction, which means completion of at least 50% of the building foundations.***

Permit Petition, Exhibit 11 at 89–90 (emphases added). The County Council intended resolution to mean a decision from the AG's office to the BLNR and a decision from BLNR on standing and certification. It is only then that the 18 month deadline for substantial construction begins. As illustrated by the public hearing minutes, there is no evidence that the County Council interpreted HAR § 13-222-11, or any other regulation, as inherently "resolving" the appeal.

There is no question that neither the AG's office nor the BLNR have taken the aforementioned actions regarding the appeal. Therefore, the appeal has not been "resolved" within the meaning of Condition 3(t), and the 18-month deadline for substantial construction has not begun. Owners cannot be found to be in breach of Condition 3(t) of Ordinance No. PM-2006-385.

Alternatively, the Planning Department also argues that May 28, 2008, the SMA extended date as amended by the Planning Commission, takes precedence over Condition 3(t) of Ordinance No. PM-2006-385. Permit Petition at Exhibit 9. On July 12, 2006, the Planning Commission amended and approved the time extension for Owners' SMA permit to read, "In the event the County Council amends the substantial construction deadline in PM-2001-356, the subject SMA extension date shall be extended to May 28, 2008, or the date established by Ordinance, whichever shall first occur." Shortly thereafter, Ordinance No. PM-2006-385, containing the amended Condition 3(t), was passed on December 13, 2006. Condition 3(t) cannot be interpreted as subordinate to the May 28, 2008 date because doing so would yield an absurd result and render the County Council's amended extension meaningless.

In interpreting an ordinance, Hawaii courts apply the same rules of construction as those applied to statutes. *W. Maui Resort Partners LP v. Cty. of Maui*, 154 Haw. 121, 131, 547 P.3d 454, 464 (2024) ("When interpreting a municipal ordinance, we apply the same rules of construction that we apply to statutes."). "It is a cardinal rule of statutory construction that courts

are bound to give effect to all parts of a statute, and that no clause, sentence, or word shall be construed as superfluous, void or insignificant if a construction can be legitimately found which will give force to and preserve all words of the statute." *State v. Ortiz*, 74 Haw. 343, 351-52, 845 P.2d 547, 551-52 (1993). Similarly, "[e]very construction which leads to an absurdity shall be rejected." Haw. Rev. Stat. § 1-15.

At the time the Ordinance was passed, December 14, 2006, it was already impossible for 18 months after resolution of the appeal to occur before May 28, 2008, even if the appeal was miraculously decided that same day. In other words, if the BLNR issued a decision on Mr. Pleas' appeal on December 14, 2006, eighteen months following that decision would have been June 14, 2008. Considering that the Ordinance was passed *after* the Planning Commission had already enumerated the May 28, 2008 date, it would have been meaningless for the County Council to extend the deadline through the Ordinance since May 28, 2008 would still control Owners' development rights. As such, the County Council must have intended Condition 3(t) to Ordinance No. PM-2006-385 to extend beyond the May 28, 2008 date previously set by the Planning Commission. Had the County Council intended otherwise, it simply could have left the Planning Commission's extension untouched.

In sum, none of the Planning Department's proffered dates (2007, 2008, or 2011) act as triggers for lapsing Owners' SMA permit and accompanying development rights. Owners never abandoned their shoreline certification, which remains on appeal and unresolved, and continue to pursue development of the project.

### C. The Zoning Amendment Would Result in a Taking of Owners' Vested Development Rights.

The Petition attempts to characterize Condition 21 of the LUC's Decision and Order as a complete and unequivocal waiver of Owners' vested rights. *See* Petition ¶ 98. This is simply not

the case. First, the LUC Order and Decision, entered April 6, 2001, predates the County's subsequent rezoning of the Property and SMA permit approval. To the extent that Owners' development rights did not vest on the date of the LUC's Order and Decision (March 8, 2001), said rights absolutely vested no later than May 28, 2002, the date the SMA, PDU, and Class IV Zoning permits were approved.

Second, Condition 21, and the LUC's Decision and Order altogether, only applies to the State's reclassification of the Property from Agriculture to Urban. Condition 21 expressly states that "Petitioner waives any claims for liability against the State arising from any reversion of the Petition Area." Moreover, Owners' right to develop the Property vested once "Petitioner has substantially complied with the representations it made to the [Land Use] Commission." LUC Order at 105–06, Conditions ¶ 21. In other words, substantial compliance with representations made to the LUC vested Owners' rights. Condition 22 tellingly goes on to explain that "Petitioner shall develop the Petition Area in substantial compliance with the representations made by the Petitioner to the Commission, including but not limited to the representation that the Project shall be limited to a 250 visitor unit density with existing and accessory uses, as proposed in its Petition." LUC Order at 106, Conditions ¶ 22. Owners' maximum 250 visitor unit density has not changed. Accordingly, Condition 21, which predates the County's zoning and permit approvals, only applies to the State, and, in any case, has been and continues to be satisfied. Any limited waiver of vested rights by Owners against the State has been satisfied and has no bearing on the Planning Department's instant proposal to revoke Owners' SMA permit and to downzone the Property.

Any action to divest Owners of their rights to develop, whether through revocation of the SMA permit or through downzoning, would amount to a taking, for which Owners would be entitled just compensation. Under Hawaii law, a developer's rights vest upon the government's

final discretionary approval and the developer changes its position in reliance of said approval through substantial expenditure of funds. *Life of the Land v. City Council of Honolulu*, 61 Haw. 390, 453, 606 P.2d 866, 902 (1980). Moreover, it has been established that the approval of an SMA permit constitutes a final discretionary approval. *Cty. of Kaua'i v. Pac. Standard Life Ins. Co.*, 65 Haw. 318, 330, 653 P.2d 766, 775 (1982) ("In this case it is undisputed that the last discretionary permit action by the County was the April 9, 1980 vote of the planning commission authorizing a Special Management Area (SMA) use permit for the Nukolii development.").

Here, Owners have taken several arduous steps over the course of decades and several economic downturns to entice and retain developers. Owners' current developer, Kerzner International, has expended significant funds relating to regulatory review and planning for the project. Downzoning the Property at this stage would be both inequitable and contradictory to Owners' vested development rights.

**D. The Petition Does Not Establish Inconsistency with the General Plan.**

The Petition incorrectly alleges that the Property's current Resort zoning is not consistent with the Kaua'i General Plan, implying that this inconsistency justifies the downzoning. This claim is factually and legally erroneous. Both Hawai'i law and Kaua'i County's own regulations prioritize General Plan consistency in any zoning decision. Pursuant to HRS § 46-4, county zoning must be in general conformance with the county's General Plan. Kaua'i County's Charter and ordinances likewise require that zoning be based on and implement the General Plan. This has been settled law in Hawaii since 1989. *Kaiser Hawaii Kai Dev. Co. v. Honolulu*, 70 Haw. 480, 483, 777 P.2d 244, 246 (1989) ("The language of the Zoning Enabling Act clearly indicates the legislature's emphasis on comprehensive planning for reasoned and orderly land use development. This emphasis on planning was reiterated in the statement of policy adopted as part of the

legislation enacting the Zoning Enabling Act."). In Hawaii, zoning must follow the comprehensive plan. The Petition reverses this, violating the Zoning Enabling Act.

Here, the Project is explicitly recognized as part of the General Plan and the West Kaua'i Community Plan, and the Planning Department has recognized as much in its Petition. *See* Petition ¶¶ 106–113. However, the Planning Department attempts to couch the Project's inclusion in the General Plan and the West Kaua'i Community Plan as a mistaken assumption that "there were limited options to modify or prevent the building of the Kapalawai project." *Id.* ¶ 106. This argument should fail because options have always existed (such as updated permit conditions, performance based phasing, etc.). More importantly, the presence of options does not negate the General Plan's policy supporting the inclusion of a resort at Kapalawai. Thus, the requested zoning amendment would contradict both the General Plan and West Kaua'i Community Plan.

Put simply, the governing plans still contemplate a resort at Kapalawai. Downzoning now would create a plan and zoning mismatch and undermine HRS § 46-4's mandate that zoning implements, rather than contradicts, the General Plan. If the County wishes to revisit that policy choice, it must do so through a General Plan amendment with full public process, not via a parcel-specific rezoning that "works backward" from a preferred outcome. On this record, the Petition fails to establish any inconsistency with the General Plan

**E. The Petition Fails to Demonstrate that Public Necessity Requires Reversion.**

The Petition fails to establish the requirement for any zoning amendment under KCC § 8-3.4(d): that "public necessity and convenience and the general welfare require an amendment." This standard is not met by general dissatisfaction or shifting preferences.

Here, the Petition offers no credible justification that public necessity requires downzoning the Property. It only includes cherry-picked, conclusory statements that the zoning amendment

would support the general preference to "manage tourism growth and the associated impacts[.]" Petition ¶ 102. Nor does the Planning Department identify any specific public harm arising from the Project that would require reversion. In fact, eliminating one of the west side's few Resort-zoned parcels forecloses an avenue for balanced, culturally grounded visitor activity and associated employment, and undermines any effort to distribute visitor impacts away from already saturated areas. The Petition provides no fiscal or socio-economic analysis to the contrary.

Accordingly, the Planning Department has not carried its burden to show that public necessity requires reversion, and fails to meet that standard under KCC § 8-3.4.

**F. Hawai'i Law Prohibits Arbitrary Spot Zoning**

Hawai'i law prohibits arbitrary or discriminatory zoning actions that target a specific property without broader policy justification. "Spot zoning" is "an arbitrary zoning action by which a small area within a large area is singled out and specially zoned for a use classification different from and inconsistent with the classification of the surrounding area and not in accord with [the] comprehensive plan." *Life of the Land v. City Council*, 61 Haw. 390, 429, 606 P.2d 866, 890 (1980). Thus, zoning actions must be supported by a rational basis tied to legitimate planning objectives, lest they constitute arbitrary or capricious policymaking.

Here, the Planning Department seeks to downzone a single, privately held parcel—long designated for resort use—without a countywide policy shift, updated land use study, or any showing that similar properties are being treated in the same manner. The Petition offers no evidence of a broader policy to eliminate resort zoning in West Kaua'i or revise the General Plan to reduce tourist accommodations in this region. To the contrary, both the General Plan and the West Kaua'i Community Plan continue to acknowledge the appropriateness and potential community benefits of the Project.

Moreover, the Planning Department's selective attempt to revert this parcel to Agriculture, all while ignoring decades of layered entitlements and developer reliance, undermines the Owners' vested rights. Allowing the Petition to proceed as proposed would set a dangerous precedent.

## IV. CONCLUSION

For the reasons discussed herein, and without waiving further objections to the Petition, Respondent respectfully requests that the Petition be denied or, in the alternative, be set for a contested case hearing to determine the rights of the Owners and other interested parties.

DATED: Honolulu , Hawai'i, November 7, 2025.

DAMON KEY LEONG KUPCHAK HASTERT

*/s/ Gregory W. Kugle*

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ROBINSON FAMILY PARTNERS, a Hawai'i General Partnership

**Shanlee Jimenez**

**Subject:** FW: Planning Commission Meeting 11/10/2025; Objections Re: Agenda Items H.1, M.2, and M.4

**Attachments:** RFPs Objections to Petition to Revoke SMA Permit.pdf; RFPs Objections to Petition for Zoning Amendment.pdf

**From:** David H. Abitbol <dha@hawaiilawyer.com>
**Sent:** Friday, November 7, 2025 12:06 PM
**To:** Planning Department <planningdepartment@kauai.gov>
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**Subject:** Planning Commission Meeting 11/10/2025; Objections Re: Agenda Items H.1, M.2, and M.4

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Aloha Planning Department,

On behalf of Robinson Family Partners, please see the attached objections to: (1) the Planning Department's *Petition for the Revocation of Special Management Area Use Permit SMA(U)-2002-6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20*; and, (2) the Planning Department's *Petition for Zoning Amendment*. The objections relate to the Planning Commission's November 10, 2025 meeting regarding the Kapalawai development in Agenda items H.1, M.2, and M.4.

Thank you,

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BEFORE THE PLANNING COMMISSION

OF THE COUNTY OF KAUA'I

| | |
|---|---|
| In the Matter of the Petition of:<br><br>FOR THE REVOCATION OF SPECIAL MANAGEMENT AREA USE PERMIT SMA(U)-2002-6, PROJECT DEVELOPMENT USE PERMIT PDU-2002-15, AND CLASS IV ZONING PERMIT Z-IV 2002-20 AND REPORT PERTAINING TO KAUAI TAX MAP KEY (4) 1-7-005: 001, KAPALAWAI, MAKAWELI, ISLAND OF KAUAI, STATE OF HAWAI`I, KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII INC., A HAWAII CORPORATION, ROBINSON FAMILY PARTNERS, A HAWAII GENERAL PARTNERSHIP, BRUCE B. ROBINSON, ALICE EST ROBINSON. | DOCKET NO. _____<br><br>ROBINSON FAMILY PARTNERS, A HAWAII GENERAL PARTNERSHIP'S OBJECTION TO PLANNING DEPARTMENT'S PETITION FOR THE REVOCATION OF SPECIAL MANAGEMENT AREA USE PERMIT SMA(U)-2002-6, PROJECT DEVELOPMENT USE PERMIT PDU-2002-15, AND CLASS IV ZONING PERMIT Z-IV-2002-20 |

**OBJECTION TO PETITION FOR THE REVOCATION OF SPECIAL MANAGEMENT AREA USE PERMIT SMA(U)-2002-6, PROJECT DEVELOPMENT USE PERMIT PDU-2002-15, AND CLASS IV ZONING PERMIT Z-IV-2002-20 AND REPORT**

Respondent ROBINSON FAMILY PARTNERS, a Hawaii general partnership, by and through its attorneys, DAMON KEY LEONG KUPCHAK HASTERT, hereby submits its Objection to the Planning Department's Petition for the Revocation of Special Management Area Use Permit SMA (U)-2002-6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 and Report, dated August 14, 2025 (the "***Petition***"), which pertains to the real property located at TMK: (4) 1-7-005:001 (the "***Property***"). The Robinson Family Partners, along with Bruce Robinson, are collectively referred to herein as "***Owners.***" For the reasons set forth below, the Planning Commission should deny and dismiss the Petition.

## I. BRIEF BACKGROUND

As Hawaii's sugar industry became economically unviable, the Robinson family sought other means to sustain their businesses and the employment opportunities they provided for the residents of Kauai. The family envisioned a low profile, low impact resort that would restore the family residence, "Kapalawai", and provide much needed employment opportunities and economic stimulation to Kauai's west side.

The 153.696-acre project site (the "***Project Site***" or "***Kapalawai***") is the former homestead of the Robinson Family. The Property is presently under ownership of several entities, including Robinson Family Partners. The residence at Kapalawai was occupied continuously from its construction (c. 1897) until approximately 1988. Since then, the house has been vacant, but an auxiliary building adjacent to the residence has been used as an office for Robinson Family Partners. The remainder of the Property has historically been used as pasturage for livestock. The Property also features an inland fishpond, adjacent to the Mahaikona Stream.

### A. Proposed Development and Zoning History

In 2000, with the Owners full support, Destination Villages Kauai, LLC petitioned the State Land Use Commission ("***LUC***") to reclassify 153.696 acres in Makaweli from the Agricultural District to the Urban District to develop 250 resort units and accessory uses (the "***Project***"). LUC Docket No A00-731. The County of Kaua'i Planning Department recommended approval of the LUC petition. *Id.* at FOF 3. At the same time, the County of Kaua'i amended its general plan on October 9, 2000, redesignating the Property from Agriculture and Open to Resort for the development of the Project. Ord. No. PM-2000-353, Bill No. 1953 (2000).

The Project would include the development of a low-intensity and low-density resort, and will restore the physical attributes of the entire Property to former conditions, thereby preserving a significant chapter of the history of Hawai'i and Kaua'i. These restoration efforts include improvements to the residence, the fishpond, and the grounds in general. In addition, the Project would serve as an economic stimulus for the West Kaua'i community in the form of employment opportunities and business spending by the guests at the resort.

Once the approvals related to the State Land Use District Boundary Amendment and General Plan were obtained, major portions of the Property (approximately 127.93 acres) were zoned RR-1. Ord. No. PM-2001-356, Bill No. 2004. The remainder of the Property was zoned Open (approximately 25.77 acres). As recently as 2020, the West Kaua'i Community Plan (approved by the Kaua'i County Council) recognized the Property's resort designation, consistent with its prior State LUC and Kaua'i General Plan designations, and noted that the Project "can also increase tourism in this area and generate jobs for the Westside." West Kaua'i Community Plan (2020), p. 106. Significantly, both the Kaua'i General Plan and Community Plan continue to designate the Project on the Property.

With the legislative framework in place, the Planning Commission approved three zoning and development permits related to the Project on May 28, 2002: (1) a Special Management Area ("***SMA***") Use Permit; (2) the Project Development Use Permit; and (3) a Class IV Zoning Permit. These three permits represent the County of Kaua'i's final discretionary permits for the Project.

**B. Development Efforts Pursuant to County's Final Discretionary Permitting**

Following final approval of the discretionary permits, the Project proceeded and progressed in good faith with the developers accomplishing studies and milestones at considerable expense in compliance with the entitlements. The Project's progress continued for approximately five years until the Project experienced a temporary delay prompted by economic downturn. As a result, in 2007, the administration of the Project returned to the Owners, including Robinson Family Partners and Bruce Robinson.

On July 1, 2013, the landowners entered into a letter of intent with a prospective developer to lease and develop the Project. The prospective developer had been actively conducting extensive due diligence, including the preparation of a site plan with an emphasis on protecting the natural landscapes, architectural design, landscaping design, and civil engineering, and incurred extensive pre-construction expenses in excess of one million dollars, including expenses relating to landscape design, architecture, survey work, engineering, legal fees, and administrative expenses. Unfortunately, that prospective developer passed away in 2015. The letter agreement with the developer's company expired in 2019.

In 1998, Bruce Robinson leased his interest in the land to the Robinson Family Partners. Robinson Family Partners worked for years to find a developer and operator for the project. In 2022, Robinson Family Partner entered into a development agreement with Kerzner International

Management Services Hawaii, Inc. ("***Kerzner***"), which has since invested millions of dollars in the Project in reliance of the final discretionary permits issued by the County.

### C. The Petitions

Recently, the Planning Department filed the Petition to revoke Owners' vested development permits. The Planning Department concurrently submitted a related *Petition for Zoning Amendment* (the "***Zoning Petition***") to downzone the Property to the pre-Ordinance PM-2001-356 designations. Together with this Petition, the Planning Department asks the Planning Commission to summarily revoke long-standing vested development rights for the Project. A hearing on the Petition and the Zoning Petition is currently scheduled for November 10, 2025, before the Planning Commission.

## II. ARGUMENT

### A. Granting the Petition is Premature Due to the Lack of an Order to Show Cause.

As a preliminary matter, due process requires the Planning Commission to first enter and serve an order to show cause onto the permit holders prior to granting any petition to revoke a permit. Rule 1-12-5 of the Rules of Practice and Procedure of the Kaua'i County Planning Commission ("***Planning Commission Rules***") states, in relevant part, "[I]f the Commission finds that there is reasonable cause to believe that there currently is a failure to perform according to the conditions imposed, the Commission shall issue and serve upon the party bound by the conditions an Order to Show Cause why the permit should not be revoked or modified." Plan. Comm'n R. § 1-12-5; *see also* Petition at 2 ("[T]he Planning Commission must issue and serve upon the Owners an Order to Show Cause why the permit should not be revoked or modified."). Thereafter, the Planning Commission must conduct an agency hearing on the order to show cause in accordance with the procedures and requirements of Chapter 6 of the Planning Commission Rules. *Id.* § 1-

12-7. The order to show cause must be served upon the permit holders at least thirty (30) days prior to the hearing. *Id.* § 1-12-6(a).

Furthermore, constitutional due process requires notice and a hearing because the permits are constitutionally protected property interests. *Brown v. Thmopson*, 91 Hawaii 1, 11, 976 P.2d 586, 596 (1999) ("Inasmuch as the 'benefit' of obtaining permits for state small boat harbors is granted by statute [] a mooring or live-aboard permit constitutes a constitutionally protected property interest.").

As of this Objection, Owners have not been served with an order to show cause.[1] According to the Planning Commission's agenda, the Planning Commission is set to discuss the Petition on November 10, 2025, in both general and executive sessions. Due to the lack of an order to show cause and hearing thereon, the Planning Commission cannot grant the Petition at the November 10 hearing. Owners respectfully remind the Planning Commission that pursuant to HRS § 92-5, the Commission's executive session must be limited to "consult[ation] with the [Commission's] attorney on questions and issues *pertaining to the [Commission's] powers, duties, privileges, immunities, and liabilities*[,]" and not the merits of the Petition. Haw. Rev. Stat. § 92-5(a) (emphasis added). To the extent deliberations are held in general session regarding whether or not to issue an order to show cause, the Planning Commission should decline to do so for the reasons set forth below.

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[1] This Objection does not constitute a waiver of Owners' due process rights, their right to an order to show cause, and their right to be heard via hearing. Owners reserve all rights to supplement this Objection and/or present further argument in the event that an order to show cause is duly served.

### B. Owners Have Complied With All Conditions and Have Not Abandoned Its Shoreline Certification.

The crux of the Planning Department's arguments to revoke the SMA Permit revolves around Bruce Pleas' pending appeal of Owners' shoreline certification application. The Planning Department presents two alternative arguments related to Condition 3(t) of Ordinance No. PM-2006-385[2] — both of which fail. First, the Planning Department posits that Owner "abandoned" its shoreline certification either in 2007, via the lack of progress for Mr. Pleas' shoreline appeal, or 2011, via an alleged telephone call between Scott Ezer and DLNR. Petition ¶¶ 45, 51. The former fails because Hawaii courts have long held that inaction does not amount to abandonment of a property right, and the latter fails because Ezer did not make the alleged representations to DLNR, Ezer lacked the authority to make such representations on behalf of Owners, and Owners' actions shortly after the supposed phone call contradict abandonment. Second, the Planning Department claims that HAR § 13-222-11, which sets the lifespan of a certified shoreline to twelve months, constitutes a "resolution" of Mr. Pleas' appeal by inherent operation. Notwithstanding that the shoreline has not yet been certified, the County Council clearly explained what it meant by "resolution of the appeal" during its public hearing on November 21, 2006, requiring an affirmative decision from the attorney general's office and DLNR. There is no question that

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[2] Condition 3(t) of Ordinance No. PM-2006-385, which amended said condition of Ordinance No. PM-2001-356, reads, in full:

> (t) Substantial construction of the hotel, defined as completion of at least fifty percent (50%) of building foundations, shall be completed within eighteen (18) months from the date that the appeal of the project's shoreline certification currently pending before the Chair of the Board of Land and Natural Resources, has been resolved. If substantial construction is not completed within this time, the Planning Commission shall initiate proceedings to rezone the property to the designation existing prior the date of this ordinance.

Ordinance No. PM-2006-385, Bill No. 2201, Petition at Exhibit 12.

Condition 3(t), as amended, controls the project's substantial completion deadline, and neither abandonment nor HAR § 13-222-11 have triggered the post-shoreline certification appeal deadline. Owners cannot control a third-party's appeal, let alone the BLNR.

*i.* *Owners Did Not Abandon the Shoreline Certification in 2007 nor 2011, Because Waiting for the Appeal to be Resolved Cannot Constitute Abandonment of a Property Right*

According to the Petition, the Planning Department argues that Owners first abandoned the shoreline appeal as early as October 12, 2007, which is less than a year and a half after the appeal started and less than two years after Owners filed the application. Specifically, the Planning Department asserts that Owners' 2007 LUC status report of the same date abandoned the appeal by stating that "the applicant waited for a ruling on the appeal of the shoreline certification and to date, we have not been informed as yet on the outcome of the appeal." Petition ¶ 45. The 2007 LUC status report also stated that "[i]n 2007, the applicant, Kapalawai Resort LLC, could not secure financing commitment for the project and the landowner sought a new developer." *Id.* In sum, the Planning Department argues that Owners abandoned the shoreline certification through "inaction and failing to seek progress on the certified shoreline appeal[.]" *Id.* ¶ 44.

Contrary to the Planning Department's assertions, the onus is not on Owners to compel the BLNR to act upon Mr. Pleas' appeal; rather, that is for Mr. Pleas to prosecute. Moreover, the Hawaii Supreme Court has repeatedly held that abandonment, like waiver, requires voluntarily, overt action clearly reflecting an intent to relinquish said right. *Fleming v. Napili Kai, Ltd.*, 50 Haw. 66, 69, 430 P.2d 316, 318 (1967) (confirming that "[t]he burden of proving abandonment is upon the party alleging it and must be established by clear and unequivocal evidence of decisive and conclusive acts"); *Motonaga v. Ishimaru*, 38 Haw. 158, 165 (1948) (holding that "inaction is the antithesis of the intelligent action and overt acts which underlie surrender and abandonment");

*Langley & Michaels Co. v. Oka*, 28 Haw. 519, 524 (1925) ("Mere passivity or inaction, however, does not constitute a waiver"). Simply reporting that the shoreline appeal had not yet been resolved falls well short of clear and unequivocal evidence that Owners intended to abandon their shoreline application and/or submit to Mr. Pleas' appeal. The Planning Department's argument is further undermined by that same report when Owners explained, "We had hoped that the State would have resolved the issue of the shoreline certification appeal first before we submitted the Annual Status Report for review, however we were concerned that the delay in reaching a decision could jeopardize[] [the] project's future." 2007 LUC Status Report at 3. The report then stated that Owners "sought a new developer." 2007 LUC Status Report at 3. In other words, Owners fully continued to expect and hope that the appeal would be resolved as of the report, and they were conducting themselves in accordance with that expectation by furthering the project. Nothing in the 2007 LUC status report, whether cherry-picked or in totality, can be construed as abandonment of the shoreline certification.[3] The Planning Department conveniently ignores that less than a year before the 2007 report, Owners' representatives testified before the Kaua'i County Council to secure an extension of the substantial completion date in relation to the shoreline appeal.

In addition, the Planning Department contends that a 2011 telephone call between Ian Hirokawa of DLNR and Mr. Scott Ezer effectively abandoned the shoreline certification. In support of this position, the Planning Department relies on a hand-written note allegedly written by Mr. Hirokawa on October 3, 2011, purportedly documenting a statement from Mr. Ezer

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[3] As noted by the Planning Department, there is no procedural mechanism by which Owners could have forced the BLNR to expedite Mr. Pleas' appeal. *See* Petition at 27, n.2 (citing the shoreline certification appeals procedures in HAR § 13-222-26). The BLNR is only required to opine within 60 days of receipt of briefs. The threshold issue of standing was never adjudicated, and a briefing schedule was never set.

claiming that "landowner desires no further action in regard to appeal." Petition at Exhibit 21. This argument fails for several reasons.

First, the shoreline certification application designated Dennis Esaki Surveying and Mapping as the authorized agent to act on the Owners' behalf. BLNR has no such authorization for Mr. Ezer to act on the Owners' behalf. Neither the Planning Department nor BLNR has produced a written authorization from Owners designating Mr. Ezer as their authorized agent for purposes of the shoreline certification.

Second, Mr. Ezer will testify that he has no recollection of such a conversation with Mr. Hirokawa. He will testify that he has no confirming notes or memorandum of contact with Mr. Hirokawa. He will testify that, to his knowledge (and to Owners' knowledge), neither the BLNR nor Mr. Hirokawa ever issued any written confirmation that the shoreline certification was being withdrawn.

Third, the Owners' 2011 LUC status report, dated December 30, 2011 – two months after Mr. Hirokawa's note – directly contradicts any notion that Owners intended to abandon the shoreline certification. In no uncertain terms, the report states, "The landowners will fully continue with their efforts to develop the property consistent with existing entitlements." Petition at Exhibit 12.

Finally, neither BLNR nor any other agency has once contacted Owners regarding a potential abandonment of their shoreline certification prior to the Planning Department's current efforts to revoke the SMA permit, and BLNR certainly has never issued an order or decision reflecting that it considers Owners' application as abandoned. The Planning Department cannot, on the one hand, chastise Owners for being unable to force BLNR to issue a decision, while, on

the hand, rely on a newly discovered and vaguely worded hand-written note. For these reasons, Owners did not abandon their shoreline certification in 2011, regardless of Mr. Hirokawa's note.

*ii.* *The Kaua'i County Council Explicitly Defined the Meaning of "Resolved" for Purposes of Ordinance No. PM-2006-385.*

Aside from its abandonment arguments, the Planning Department alternatively attempts to construe HAR § 13-222-11 as inherently resolving all shoreline certification applications no later than one year plus sixty days plus any briefing extensions from the day of public notice.[4] Petition ¶¶ 60–63. Again, the Planning Department's argument fails because standing was never adjudicated by the BLNR, the certification process is stayed during an appeal, and the County Council explicitly defined what constitutes a resolution of Mr. Pleas' appeal.

First, Paragraph 60 of the Petition states that, had Mr. Pleas been determined to lack standing, the shoreline certification would have been valid only up to May 8, 2007. Oppositely, if Mr. Pleas was determined to have standing, the BLNR would have 60 days at most to deny the appeal and certify the shoreline, creating a maximum validity date of July 9, 2007, notwithstanding briefing. Neither of these scenarios address the current situations — when the BLNR makes no determination on standing and therefore no decision on shoreline certification. Accordingly, the logic in paragraphs 60 and 61 fail to apply.

Second, the Planning Department appears to erroneously conclude that the start date for certification automatically stems back to the original application, the state land surveyor's inspection, or public notice of the certification, without explanation. Petition ¶ 62. However, certification is its own process that occurs *after* those events. Moreover, the certification process is stayed by any appeal. HAR § 13-222-10(g) states, "If an appeal is filed under section 13-222-

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[4] HAR § 13-222-11(a) states, in relevant part, "Certification of the shoreline shall be valid for a period no longer than twelve months from the date of certification."

26, the certification process shall be stayed until the administrative appeal is resolved by the board or chairperson." Accordingly, Owners' certification has been and continues to be stayed by Mr. Pleas' appeal, and the Planning Department's assertion that "any application or proposed shoreline certification would be obsolete beyond twelve (12) months from the date of application or proposal" is incorrect. Petition ¶ 62.

Third, and most importantly, the Kaua'i County Council specifically explained what it understood to qualify as "resolution" of Mr. Pleas' appeal. At the December 13, 2006 public hearing on Ordinance No. PM-2006-385, which amended Condition 3(t), the Honorable Shaylene Iseri-Carvalho clarified:

> The proposed amendment seeks to define a substantial construction as being completion of at least 50% of building foundation. It also seeks to have some clarity as to when the time period will run for the substantial construction to take place, and that period has been set at 18 months from the date that the appeal that is currently pending before the Board of Land and Natural Resources. Until that appeal has been ***resolved***, so basically ***it tolls the time period until we get a decision from the AG's (Attorney General's) office to the BLNR (Board of Land and National Resources), and from the BLNR to issue a decision on the standing issue as well as certifying the shoreline and then from there 18 months to do substantial construction, which means completion of at least 50% of the building foundations.***

Petition, Exhibit 11 at 89–90 (emphases added). The County Council intended resolution to mean a decision from the AG's office to the BLNR and a decision from BLNR on standing and certification. It is only then that the 18 month deadline for substantial construction begins. As illustrated by the public hearing minutes, there is no evidence that the County Council interpreted HAR § 13-222-11, or any other regulation, as inherently "resolving" the appeal.

There is no question that neither the AG's office nor the BLNR have taken the aforementioned actions regarding the appeal. Therefore, the appeal has not been "resolved" within

the meaning of Condition 3(t), and the 18-month deadline for substantial construction has not begun. Owners cannot be found to be in breach of Condition 3(t) of Ordinance No. PM-2006-385.

Alternatively, the Planning Department also argues that May 28, 2008, the SMA extended date as amended by the Planning Commission, takes precedence over Condition 3(t) of Ordinance No. PM-2006-385. Petition at Exhibit 9. On July 12, 2006, the Planning Commission amended and approved the time extension for Owners' SMA permit to read, "In the event the County Council amends the substantial construction deadline in PM-2001-356, the subject SMA extension date shall be extended to May 28, 2008, or the date established by Ordinance, whichever shall first occur." Shortly thereafter, Ordinance No. PM-2006-385, containing the amended Condition 3(t), was passed on December 13, 2006. Condition 3(t) cannot be interpreted as subordinate to the May 28, 2008 date because doing so would yield an absurd result and render the County Council's amended extension meaningless.

In interpreting an ordinance, Hawaii courts apply the same rules of construction as those applied to statutes. *W. Maui Resort Partners LP v. Cty. of Maui*, 154 Haw. 121, 131, 547 P.3d 454, 464 (2024) ("When interpreting a municipal ordinance, we apply the same rules of construction that we apply to statutes."). "It is a cardinal rule of statutory construction that courts are bound to give effect to all parts of a statute, and that no clause, sentence, or word shall be construed as superfluous, void or insignificant if a construction can be legitimately found which will give force to and preserve all words of the statute." *State v. Ortiz*, 74 Haw. 343, 351-52, 845 P.2d 547, 551-52 (1993). Similarly, "[e]very construction which leads to an absurdity shall be rejected." Haw. Rev. Stat. § 1-15.

At the time the Ordinance was passed, December 14, 2006, it was already impossible for 18 months after resolution of the appeal to occur before May 28, 2008, even if the appeal was

miraculously decided that same day. In other words, if the BLNR issued a decision on Mr. Pleas' appeal on December 14, 2006, eighteen months following that decision would have been June 14, 2008. Considering that the Ordinance was passed *after* the Planning Commission had already enumerated the May 28, 2008 date, it would have been meaningless for the County Council to extend the deadline through the Ordinance since May 28, 2008 would still control Owners' development rights. As such, the County Council must have intended Condition 3(t) to Ordinance No. PM-2006-385 to extend beyond the May 28, 2008 previously set by the Planning Commission. Had the County Council intended otherwise, it simply could have left the Planning Commission's extension untouched.

In sum, none of the Planning Department's proffered dates (2007, 2008, or 2011) act as triggers for lapsing Owners' SMA permit and accompanying development rights. Owners never abandoned their shoreline certification, which remains on appeal and unresolved, and they continue to pursue development of the project.

### C. Revocation of the SMA Permit Would Result in a Taking of Owners' Vested Development Rights Due to the Considerable Funds Expended.

The Petition attempts to characterize Condition 21 of the LUC's Decision and Order as a complete and unequivocal waiver of Owners' vested rights. This is simply not the case. First, the LUC Order and Decision, entered April 6, 2001, pre-dates the County's subsequent re-zoning of the Property and SMA permit approval. To the extent that Owners' development rights did not vest on the date of the LUC's Order and Decision (March 8, 2001), said rights absolutely vested no later than May 29, 2002, the date the SMA, PDU, and Class IV Zoning permits were approved.

Second, Condition 21, and the LUC's Decision and Order altogether, only applies to the State's reclassification of the Property from Agriculture to Urban. Condition 21 expressly states that "Petitioner waives any claims for liability against the State arising from any reversion of the

Petition Area." Moreover, Owners' right to develop the Property vested once "Petitioner has substantially complied with the representations it made to the [Land Use] Commission." LUC Order at 105–06, Conditions ¶ 21. In other words, substantial compliance with representations made to the LUC vested Owners' rights to the Urban reclassification. Condition 22 tellingly goes on to explain that "Petitioner shall develop the Petition Area in substantial compliance with the representations made by the Petitioner to the Commission, including but not limited to the representation that the Project shall be limited to a 250 visitor unit density with existing and accessory uses, as proposed in its Petition." LUC Order at 106, Conditions ¶ 22. Owners' maximum 250 visitor unit density has not changed. Accordingly, Condition 21, which pre-dates the County's zoning and permit approvals, only applies to the State, and, in any case, has been and continues to be satisfied. Significantly, the LUC itself has received annual status reports and has not taken any action to revert the land use classification. Any limited waiver of vested rights by Owners against the State has been satisfied and has no bearing on the Planning Department's instant proposal to revoke Owners' SMA permit and to downzone the Property.

Any action to divest Owners of their rights to develop, whether through revocation of the SMA permit or through downzoning, would amount to a taking, for which Owners would be entitled just compensation. Under Hawaii law, a developer's rights vest upon the government's final discretionary approval and the developer changes its position in reliance of said approval through substantial expenditure of funds. *Life of the Land v. City Council of Honolulu*, 61 Haw. 390, 453, 606 P.2d 866, 902 (1980). Moreover, it has been established that the approval of an SMA permit constitutes a final discretionary approval. *Cty. of Kaua'i v. Pac. Standard Life Ins. Co.*, 65 Haw. 318, 330, 653 P.2d 766, 775 (1982) ("In this case it is undisputed that the last

discretionary permit action by the County was the April 9, 1980 vote of the planning commission authorizing a Special Management Area (SMA) use permit for the Nukolii development.").

There is no question that Owners' SMA permit was previously approved by the Planning Commission. Furthermore, Owners have taken several arduous steps over the course of decades and several economic downturns to entice and retain developers. Owners' current developer, Kerzner, has expended significant funds relating to regulatory review and planning for the project. Revocation of the SMA permit at this stage would be both inequitable and contradictory to Owners' vested development rights.

## III. CONCLUSION

For the reasons discussed herein, and without waiving further objections to the Petition, Respondent respectfully requests that the Petition be denied or, in the alternative, be set for a contested case hearing to determine the rights of the Owners and other interested parties.

DATED: Honolulu , Hawaii, November 7, 2025.

DAMON KEY LEONG KUPCHAK HASTERT

*/s/ Gregory W. Kugle*

GREGORY W. KUGLE
CLINT K. HAMADA
DAVID H. ABITBOL

Attorneys for Respondent
ROBINSON FAMILY PARTNERS, a Hawaii General Partnership

**Shanlee Jimenez**

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**From:** J Moss <moss.jade.e@gmail.com>
**Sent:** Friday, November 7, 2025 1:07 PM
**To:** Planning Department
**Subject:** Re: ZA-2026-2 No surf resort at Pakala

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

Re: ZA-2026-2
Planning Commission Meeting
Nov 10, 2025

Aloha Planning Commissioners,

I'm writing today to say "no" to a surf resort at Pakala.

There are few off-the-beaten-path surf spots on Kauai anymore. Pakala might be the last one left. For the safety of visitors, this would not be an appropriate surf break to have them easily access.

Aside from that, the only rezoning needed on this island is for permanently affordable housing. I know developers hate the thought and it's challenging to find the right public/private partnership to move projects forward. But I'm confident they're not all greedy out there.

We have vacancies all over the island for commercial rentals - look no further than kukui grove shopping center. And we have way more employement opportunities at resorts than there are workers, so the last thing we need is another resort.

I submit this testimony as an employee and manager in the hospitality industry on Kauai since 2008. My current department has job openings consistently and very few candidates apply these days.

Mahalo for your consideration,
Jade Moss
Koloa, HI
808-255-3094

~~Shanlee Jimenez~~

**From:** Regina Gregory <reginagregory24@gmail.com>
**Sent:** Friday, November 7, 2025 1:11 PM
**To:** Planning Department
**Subject:** Zoning amendment

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

I strongly support the proposed zoning amendment ZA-2026-2 from resort to agriculture. Kauai has far too many resorts already.

Regina Gregory

**Shanlee Jimenez**

**From:** Camille Campbell <camikozuki@gmail.com>
**Sent:** Friday, November 7, 2025 2:54 PM
**To:** Planning Department
**Subject:** Testimony in Support of Rezoning and Permit Revocation — TMK (4) 1-7-005:001, Kapalawai, Makaweli, Kaua'i

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

**To:**
Kaua'i County Planning Commission
c/o Planning Department
4444 Rice Street, Suite A473
Līhu'e, HI 96766
Email: planningdepartment@kauai.gov

**Date:** November 7, 2025

**Aloha Chair and Members of the Planning Commission,**

I am writing to submit testimony **in strong support of rezoning the real property situated at Kapalawai, Makaweli, Kaua'i — identified as Tax Map Key (4) 1-7-005:001 — from the Resort District back to the Agricultural District**, which was the designation that existed prior to **Ordinance No. PM-2001-356**.

I also fully support **revoking Special Management Area Use Permit SMA(U)-2002-6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20** pertaining to this parcel. These permits were granted over twenty years ago under assumptions and conditions that no longer reflect the current needs, priorities, or circumstances of Kaua'i's west side.

It has been **two decades since the rezoning was approved**. The vision and conditions attached to this resort zoning no longer align with today's environmental, social, or economic realities. If this project were presented today, it would not meet current standards for environmental protection, cultural sensitivity, or sustainable land use.

Furthermore, the **original terms and agreements established twenty years ago have never been fulfilled**, rendering the original approval **void in purpose and effect**. Allowing the Resort designation to remain in place despite this failure undermines both public trust and the integrity of Kaua'i's planning process.

The Kapalawai and Makaweli region holds immense **cultural, historical, and environmental importance**. Development of this area under outdated resort zoning would jeopardize fragile ecosystems, strain limited water resources, and permanently alter one of the last remaining rural landscapes on our island. The community has repeatedly expressed a desire to preserve and protect these lands, not commercialize them.

Restoring the parcel's **Agricultural zoning** would bring it back into alignment with the **County's General Plan** and community values — prioritizing open space preservation, sustainable agriculture, and the perpetuation of Native Hawaiian and local stewardship practices. This action would not only correct a planning decision that no longer serves the public good but would also honor Kaua'i's commitment to balance, sustainability, and cultural respect.

I respectfully urge the **Planning Commission** to take decisive action to:

1. **Rezone TMK (4) 1-7-005:001 from Resort back to Agricultural**, and
2. **Revoke SMA(U)-2002-6, PDU-2002-15, and Z-IV-2002-20.**

Mahalo for your time and careful consideration of this matter. Please record this testimony as part of the official public record **in support of rezoning and permit revocation for TMK (4) 1-7-005:001, Kapalawai, Makaweli, Kaua'i.**

With respect and aloha,

**Camille Campbell**
135 Keanuhea Street
Kula, HI 96790
(808) 357-1012
camikozuki@gmail.com

**~~Shanlee Jimenez~~**

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**From:** tylea2011@icloud.com
**Sent:** Friday, November 7, 2025 3:27 PM
**To:** Planning Department
**Cc:** michelle.m.molina@k12.hi.us
**Subject:** Monday Agenda Items F4 & H1 (Rezoning Kapalawai)

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

Aloha Kauai Planning Department,

My name is Tylea Yamamoto. I am a freshman at Waimea High School and would like to submit testimony on items F4 and H1 on the Planning Commission Agenda for Monday, November 10, regarding rezoning land at Kapalawai, Makaweli.

I think the land at Kapalawai, Makaweli should stay for agriculture instead of turning it into a resort. This area has a lot of history and meaning to the community, and keeping it agricultural would help protect the land and the environment. Building a resort could bring more traffic, noise, and pollution, and it might change the peaceful and natural feeling of the area. Keeping the land for farming supports local food, jobs, and traditions. It's better for the
People who live on the westside and for further generations who will call this place home.

As someone who was born and raised on the west side of Kauai, the west side means a lot to me. I truly hope the area can remain as it is, not overdeveloped but respected and cared for in a way that keeps it natural and cultural for our community.

Mahalo,
Tylea Yamamoto

**Shanlee Jimenez**

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**From:** Pete Howmiller <petehowmiller@yahoo.com>
**Sent:** Friday, November 7, 2025 4:29 PM
**To:** Planning Department
**Subject:** County Zoning Amendment (ZA-2026-2) petition for a bill to amend Ordinance No. PM-2001-356

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

My name is Pete Howmiller & I am writing to voice my opposition to the below proposed rezoning and subsequent potential development of the property listed below:

**"Ordinance No. PM-2006-385 to rezone approximately 171.72 acres of real property situated at Kapalawai, Makaweli, Island of Kaua'i, State of Hawaii, identified by Kaua'i Tax Map Key (4) 1-7-005:001"**

I currently reside in Kekaha, Kauai & frequently enjoy the public access to Pakala's beautiful surf spot & adjacent pristine beaches and coastline for shore fishing.

I am originally from the Big Island of Hawaii, and have witnessed firsthand the devastatingly negative impacts of similar development(s).
A clear cut example for my case in point would be my old favorite surf spot in Kona, Hawaii commonly referred to as "Pine Trees" just south of the Kona International Airport & north of Honokohau Harbor.

Many years ago, when the County of Hawaii issued permission for the Kohanaiki development at "Pine Trees" we all witnessed it completely transform the entire area from what used to be a place of great natural beauty and abundance, & unfortunately change forever into a tourist destination which displaced many in the local community by limiting access and hours for surfers & only allowing traffic to / from the area via a long narrow road with dozens of speed bumps leading to the beach, alongside the waste water treatment plant for the development which smells horrible when driving in and out.

This development not only limited access for local vehicular traffic but additionally limited parking to access the shore & surf spots along this coastal area.

Needless to say the Kohanaiki developers financially prospered substantially with countless multi-million dollar homes and related amenities for the various owners, but the development has become what's now basically a popular spot for mostly out-of-state people with financial means that locals simply don't have "to buy into a slice of paradise" and undoubtedly remains far outside the price range for any local residents to enjoy the same type of benefits.

Access to Kohanaiki "Beach Club" and other related amenities is limited to owners, (no matter what they say) as access for any locals is restricted & made extremely difficult by the development's rules and regulations.

Below is a short video which summarizes the history of the situation & local community feedback on the project:

https://m.youtube.com/watch?v=JgsZQN1Dyd8

I have no doubt that if the rezoning is approved for the above location in Kauai at TMK (4) 1-7-005:001, the exact same situation & conditions will apply and the resulting scenario will be eerily similar with nearly identical results.

Thanks for your consideration in this matter.

Aloha,
Pete

NOV 7 '25 PM1:23
PLANNING DEPT

To: Kauai Planning Department
From: Blanche Yoshida
Date: 11/07/2025

Attention: Pakala Development

My name is Blanche Yoshida, a long-time resident of Kauai, retired teacher, recreational surfer, and a concerned community member. I am submitting testimony against any commercial real estate development near Pakala.

Pakala is the only "local" surf break left on our island. It is a place, like in the sitcom "Cheers", a place 'where everyone knows your name'. For many of us, Pakala is a gathering place for our surf family. A place where we greet one another by name, cheer each other on, and the only place I know where surf etiquette still exists.

This remote, private area was what the Robinson Family believed in and did their best to uphold. I know this first-hand. Over 55 years ago, our family came to Kauai from Oahu on a surf trip. My dad hauled his camera equipment and we carried our surfboards from the Waimea River Mouth (a trek over 2 miles each way), careful to stay below the high water mark, as that was the route for getting to Pakala. My dad got pulled in by the Robinson family and was grilled about his camera. Who he was filming, the purpose, who was going to see it, etc. In the end, he was permitted to film but was forbidden to say where the movies were taken. The Robinson family made it clear that they did not want publicity, and did not want others to know about the area. This development idea is in stark contrast to their wishes for the area in the past. Instead, it's the community who wants to keep Pakala the remote, secluded area it has always been.

Other concerns are the notorious brown ocean water, which attracts sharks, and the abundance of Kiawe trees that often penetrate through slippers. This is not a good place for swimming or beach outings. In fact, one of the breaks is called "Tigers", for a reason. Lots of tiger sharks have been seen there. If the surfers and fishermen that use the area for recreation were asked, I venture to say that close to 100% would say "yes" to seeing sharks in the area, many within close proximity. Many of us wear shark bands for protection, although we don't rely on them. If someone spots a shark, word spreads quickly and most of us clear the water despite having on the shark band.

Thus, for these reasons, it is my sincere hope that Pakala remains a place for surfers & fishermen to enjoy without attracting more tourists.

1. Maintain the secluded, rural area that the Robinson Family valued from the beginning.
2. The brown sharky waters and the dangerous Kiawe thorns make the area a hazard zone for the unknowing and often irresponsible tourists.

Thank you for your consideration.

Blanche Yoshida

BEFORE THE PLANNING COMMISSION

OF THE COUNTY OF KAUAI

| | |
|---|---|
| In the Matter of the Petition to<br><br>AMEND ORDINANCE NO. PM-2001-356 AS AMENDED IN PART BY ORDINANCE NO. PM-2006-385 FOR REAL PROPERTY SITUATED AT KAPALAWAI, MAKAWELI, ISALND OF KAUA'I, STATE OF HAWAI'I, KAUAI TAX MAK KEY (4) 1-7-005:001, KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII INC., A HAWAII CORPORATION, ROBINSON FAMILY PARTNERS, A HAWAII GENERAL PARTNERSHIP, BRUCE B. ROBINSON, ALICES EST ROBINSON. | DOCKET NO. ZA-2026-2<br><br>KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII INC.'S CONSOLIDATED STATEMENT OF OPPOSITION TO (1) THE PETITION TO REZONE; AND (2) THE PETITION TO REVOKE PERMITS AND REQUEST FOR CONTESTED CASE HEARING; EXHIBITS 1–23; DECLARATION OF JAMES RATKOVICH; DECLARATION OF JEFFREY OVERTON; DECLARATION OF MAX W. J. GRAHAM; CERTIFICATE OF SERVICE |
| In the Matter of the Petition to<br><br>FOR THE REVOCATION OF SPECIAL MANAGEMENT AREA USE PERMIT SMA(U)-2002-6, PROJECT DEVELOPMENT USE PERMIT PDU-2002-15, AND CLASS IV ZONING PERMIT Z-IV-2002-20 AND REPORT PERTAINING TO KAUA'I TAX MAP KEY (4) 1-7-005:001, KAPALAWAI, MAKAWELI, ISLAND OF KAUA'I, STATE OF HAWAI'I, KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII INC., A HAWAII CORPORATION, ROBINSON FAMILY PARTNERS, A HAWAII GENERAL PARTNERSHIP, BRUCE B. ROBINSON, ALICES EST ROBINSON. | |

**KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII INC.'S CONSOLIDATED STATEMENT OF OPPOSITION TO (1) THE PETITION TO REZONE; AND (2) THE PETITION TO REVOKE PERMITS AND REQUEST FOR CONTESTED CASE HEARING**

**EXHIBITS 1–23**

**DECLARATION OF JAMES RATKOVICH**

**DECLARATION OF JEFFREY OVERTON**

**DECLARATION OF MAX W. J. GRAHAM**

**CERTIFICATE OF SERVICE**

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JOSEPH A. STEWART, 7315
RYAN D. LOUIE, 11297

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**KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII INC.'S CONSOLIDATED STATEMENT OF OPPOSITION TO (1) THE PETITION TO REZONE; AND (2) THE PETITION TO REVOKE PERMITS AND REQUEST FOR CONTESTED CASE HEARING**

This Statement of Opposition is submitted on behalf of Kerzner International Management Services Hawaii, Inc. ("**Kerzner**") in response to (1) the Petition to Amend Ordinance No. PM-2001-356 As Amended In Part By Ordinance No. PM-2006-385 For Real Property Situated At Kapalawai, Makaweli, Island Of Kaua'i, State Of Hawai'i, Kauai Tax Map Key (4) 1-7-005:001 ("**Zoning Petition**") and (2) the Petition For The Revocation Of Special Management Area Use Permit SMA(U)-2002-6, Project Development Use Permit Pdu-2002-15, And Class IV Zoning Permit Z-IV-2002-20 And Report Pertaining To Kaua'i Tax Map Key (4) 1-7-005:001, Kapalawai, Makaweli, Island Of Kaua'i, State Of Hawai'i ("**SMA Petition**" and collectively, the "**Petitions**").

As specifically acknowledged in the Petition, Kerzner has an interest in the Kapalawai Resort Project ("**Project**"), that is to be constructed on the parcel designated as TMK No. (4) 1-7-005:001, consisting of two lots designated as Lot 1 (consisting of 26.548 acres) and Lot 2 (containing 144.03 acres) ("**Property**").

## INTRODUCTION

As discussed more fully below, the proposed action of the County of Kauai seeking to rezone the Property and its companion petition to revoke the Permits[1] for the Property is both inappropriate and legally unsound. The County has zoned the Property as "Resort" for more than twenty years. Specifically, the Property was initially designated resort in the 2000 Kaua'i General Plan, followed by approvals from both the Hawai'i Land Use Commission ("**LUC**") and the Kaua'i County Council ("**Council**") in 2001. Further, the Property has had this resort designation affirmed by the County in both the 2018 Kaua'i County General Plan ("**Kaua'i GP**") and the 2020 West Kaua'i Community Plan ("**WKCP**" and collectively, "**Kaua'i Plans**")[2] which both classify the Project as an entitled/approved resort project.

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[1] As used here, Permits means the approved Special Management Area Use Permit SMA (U)-2002-6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Z-IV-2002-20.

[2] The current version of the Kaua'i GP is accessible at https://www.kauai.gov/files/assets/public/v/1/county-council/documents/kauai-kakou-general-plan-2018-appendices.pdf. The Current version of the WKCP is accessible at https://www.kauai.gov/files/assets/public/v/1/planning-department/documents/west-kauai-community-plan_final.pdf.

The Robinson Family Partnership ("**RFP**"), one of the owners of the Property, and its development partners have spent millions of dollars working on development of the Property in reliance on those zoning designations and the Permits. They have performed extensive due diligence in preparation for the construction of the Project, including proceeding with a shoreline certification and appeal, EIS approval and SEIS preparation, and substantial redesigns, all of which have cost millions of dollars. RFP and Kerzner have continued to invest, relying in good faith on repeated interactions with officials and the implicit assurances of such interactions that it was safe to move the Project forward. *Id.* Since Kerzner became involved in the Project, executing a Development Agreement in 2022, it has spent more than $5 million on consultants working on completing the Project. Declaration of James Ratkovich ("**Ratkovich Decl.**"). Further, Kerzner and its representatives have met with the Kauai Planning Department ("**KPD**") on numerous occasions to inform it of the progress that was being made.

Kerzner was therefore surprised when KPD informed it that KPD was planning on filing the present petitions seeking to change the zoning and to revoke the Permits even after hearing of the substantial progress that had been made, as well as the substantial sums that had been spent on such progress.

KPD's actions, seeking to revoke the Permits and change the zoning will likely lead to very costly litigation for all parties, including the County. Such litigation would likely result in a finding that the actions of changing the zoning and revoking the Permits constitutes an improper taking, obligating the County to having to pay significant money to the owners and developers of the Property.

However, we firmly believe that this honorable Commission does not have to choose such a litigation path, as there is a better alternative that would benefit all interested stakeholders. Specifically, as discussed more fully herein, Kerzner is prepared to file a proposed zoning ordinance amendment to the KPD to refine the previously approved development Project. As discussed in the attached Declaration from Max W. Graham, Esq., Kerzner and RFP submitted a proposed amendment to Ordinance PM-2001-356, as amended in part by Ordinance No. PM-2006-385 ("**Proposed Zoning Ordinance**"). *See* Declaration of Max Graham ("**Graham Decl.**"). The substance of the proposed refinement is described more fully in the attached Declaration of Jeffrey Overton ("**Overton Decl.**"). A true and correct copy of the Proposed Zoning Ordinance is attached as Exhibit "A" to the Declaration of Jeffrey Overton. This Proposed Zoning Ordinance was drafted

as part of an iterative process that included refinement after numerous meetings with the KPD. A draft of the Proposed Zoning Ordinance was submitted to the KPD in March 2025. *Id.* In response, the KPD informed Kerzner that it would only advance the Proposed Zoning Ordinance after compliance with any applicable requirements of Hawai'i Revised Statutes ("**HRS**"), Chapter 343, regarding an environmental review process.

Kerzner has retained Jeff Overton of Group 70 to both work in the refinement and improvement of the Project, as well as to comply with the Chapter 343 process. As discussed in Mr. Overton's Declaration, G70 has made substantial and significant progress on completing all needed reports to refine the Project and comply with the KPD instructions. The specific design and process for this new Proposed Zoning Ordinance are discussed more fully in the attached letter/declaration from Jeffrey Overton of G70. The proposed revision would decrease the number of resort units from the originally approved 250 units, to 134. Overton Decl. The number of workforce housing units would be increased from the originally approved 15 units, to 52. *Id.* This is an almost 50% reduction in resort units and a nearly 350% increase in workforce housing units. Along with other refinements, these revisions reduce environmental impact and bring more benefits for the West Side. *Id.* Kerzner and RFP have repeatedly shared the details of this proposed revision with KPD and continued to further refine it in response to comments from KPD. *Id.*; *see also* Graham Decl.

For the reasons set forth herein, Kerzner urges the Commission to not advance the Petitions to change the zoning or to revoke the Permits, and instead to allow Kerzner to finalize and complete the Chapter 343 process, so that the Commission can give the Project a proper hearing.

## OWNERSHIP OF THE PROPERTY & KERZNER INTEREST

Robinson Family Partners, Hawaii general partnership ("**RFP**") owns a 15.5636% undivided interest in the Property, subject to a 99-year Lease over Lot 2. Bruce B. Robinson owns an 83.4364% undivided interest in the Subject Property, which is also subject to the 99-year Lease. Gay & Robinson, Inc. ("**G&R**") is a co-lessee under the 99-year Lease to Lot 2. Our client, Kerzner, currently has a valid development agreement with G&R that will allow Kerzner to lease the Property for the purposes of development of the Project.

## MOTION TO INTERVENE & REQUEST FOR CONTESTED CASE HEARING

As noted, Kerzner has a valid and legally cognizable interest in the Property. To protect this interest, Kerzner hereby expressly moves the County to allow it to intervene in both Petitions,

to the extent that the County has not already allowed such participation by listing Kerzner in the caption.

As these Petitions seek to negatively impact the property interests of Kerzner, Kerzner expressly requests an evidentiary hearing on both Petitions, consistent with Chapter 91, Hawaii Revised Statutes as the Petitions impact Kerzner's property rights and deprivation without the process afforded by a contested case hearing, which would violate due process, as discussed more fully below.

## BACKGROUND OF THE PROJECT

### A. The Robinson Family's long-standing roots with the Property.

The Robinsons have been on Kaua'i since the 1800s and have been a kama'aina family on this land for over 150 years. In 1863, the family's matriarch, Elizabeth Sinclair purchased Ni'ihau from King Kamehameha IV, and the Robinsons' ownership of Ni'ihau preserves the Hawaiian culture to this day. In 1865, the family purchased the Makaweli *ahupua'a* from the King's sister, Victoria Kamamalu. Kapalawai is a portion of the Makaweli *ahupua'a* and has been used as the family's homestead since 1897 when the main residence was built. The Robinson family has been a vital part of Kaua'i's economy by growing crops and providing employment and have preserved the land by practicing conservation efforts.

The Robinsons have used much of their 50,000+ acres for ranching, crop cultivation, and conservation for over 150 years. They significantly contributed to Kaua'i's sugar industry success which provided jobs and supported the local economy. The Robinsons have supplied the island with healthy, local beef from their Makaweli Ranch for over a decade. "Backed by the rich Kaua'i history, land stewardship and sustainable ranching practices, Makaweli Ranch is dedicated to providing premium, all natural, 100% grass fed beef with no hormones or steroids." *See* Ag. Land Assessment for Robinsons Family Partners Proposed Important Ag. Land (June 2016), at 3, attached as **Exhibit 1**.

Of the Robinsons' approximately 50,270 acres of land, roughly 22,630 acres are conservation land. *Id.* at 1. In 2016, the Robinsons voluntarily proposed 20,888 acres to be designated as Important Agricultural Lands ("**IAL**") to further support local beef production. That land represents 22% "of the island's beef needs" in acreage, "increasing the island's ability to become more self-sufficient." *Id.* at 11.

Now, the Robinsons aim to preserve their kama'aina heritage so closely tied to Kaua'i's history, and preserve the critical Hawaiian culture reflected in this Property. As part of the Project, the main house will contain a museum, cultural artifacts on the land will be preserved, and relics of Hawaiian culture will be restored as central points, providing education on Kaua'i's rich history to visitors to the Property. These important cultural benefits are in addition to the jobs and affordable housing to the West Side's economy.

**B. Development History**

In 1998, Destination Villages Kauai ("**DVK**") signed on as a developer for the Project. In 2000, RFP authorized DVK, whose principal was Lewis P. Geyser, to file applications to amend the various land use designations of the Property to allow development of the Project.

The Property was rezoned as "resort" for the Project over 24 years ago, and on March 31, 2000, the KPD accepted the Project's EIS, prepared by DVK. On October 9, 2000, the Council updated the Kaua'i GP which redesignated the Property from Agricultural and Open to Resort Designation by Ordinance No. PM-2000-353. On March 8, 2001, the LUC approved an order to reclassify its designation of the Property from Agricultural to Urban. The Project changed developers in September 2001 when Kapalawai Resort LLC became the new developer as successor to DVK, and Lewis P. Geyser remained the principal. On December 24, 2001, the Council unanimously approved its redesignation of the Property from Agriculture and Open to Resort Designation by Ordinance No. PM-2001-356 ("**Ordinance**"). The Ordinance approved a maximum density of 250 resort units, required 15 workforce employee housing units, and allowed five years for substantial construction to be completed under Condition 3(t).

On May 28, 2002, the Planning Commission ("**Commission**") approved the Permits, authorizing the development of 250 resort units and other amenities to the resort. On December 12, 2005, RFP, via Esaki Surveying, submitted an application for shoreline certification, and acceptance of the application was published in the January 8, 2006, Office of Environmental Quality Control ("**OEQC**") Environmental Bulletin. On February 23, 2006, the State Land Surveyor conducted a shoreline inspection which was attended by Esaki, Bruce Pleas, and other members of the public. A notice of the Acceptance of Proposed Shoreline Certification was published in the April 23, 2006, OEQC Environmental Bulletin.

On May 12, 2006, the DLNR received a Notice of Appeal by Mr. Pleas to the proposed shoreline certification submitted by RFP. Under the Hawai'i Administrative Rules ("**HAR**") § 13-

222-26(e), upon determination of standing, the Chairperson of the BLNR was required to schedule (by written order) the filing of and requirements for briefs by the parties concerning the contested issues. Under HAR § 13-222-26(g), upon receipt of all briefs the Chairperson was required to act on the appeal within 60 days of receipt of all briefs.

Effective July 12, 2006, the Commission amended the SMA Permit to extend the substantial construction completion date to either the Ordinance deadline (Dec. 24, 2006), or May 28, 2008, whichever came earlier. Planning Commission Approval Letter, dated July 12, 2006, attached as **Exhibit 2**. On December 19, 2006, the Mayor approved Ord. No. PM-2006-385, amending Condition 3(t) of the Ordinance to allow RFP more time to obtain the shoreline certification, in light of the pending amendment. The amended condition 3(t) required substantial construction "within eighteen (18) months from the date that the appeal of the projects' shoreline certification currently pending before the Chair of the [BLNR] has been resolved." Ord. No. PM-2006-385, attached as **Exhibit 3**. The Commission was to initiate rezoning proceedings to revert the zoning designations if Condition 3(t) was not met. To date, the BLNR has not issued any determination regarding the appeal, nor has the Chairperson scheduled the filing of briefs or acted on the appeal in any way. As such, there has been no "resolution" of the pending shoreline appeal and therefore the deadline to start the 18-month period contemplated in Condition 3(t) has not yet occurred.

Although RFP has experienced some difficulties in moving forward with the development of the Project over the years, RFP has continuously expressed and affirmed its interest in doing so. Throughout the period of 2003 to 2024, RFP and its development partners have continued to work diligently on pursuing the development of the Project, including retaining lawyers, planners and consultants. Each year, from 2003 to 2024, RFP submitted annual reports apprising the LUC of the Project's progress and delays.

In September of 2007, Kapalawai Resort Development Group, LLC ("**KRDG**") became the new developer for the Project. On July 1, 2013, RFP entered into a letter of intent with another prospective developer to lease and develop the Project. Unfortunately, the developer passed away in 2019 and his family canceled the letter of intent.

On March 15, 2018, the Council approved Ordinance No. 1025 which updated the Kaua'i GP to include the Kapalawai Resort as an entitled project. Kaua'i GP, at Appendix F, Entitled

Projects by District. That Ordinance was an affirmation by the County that the Property was still properly zoned Resort.

On December 3, 2020, Ordinance No. 1083 updated the 2020 WKCP which describes the Kapalawai Resort as "the approved resort project" for the Makaweli region. WKCP, at 106. Again, this Ordinance constituted an affirmation by the County that the Property was still properly zoned "Resort" and that the County did not consider the shoreline approval to have been resolved.

Since Kerzner became the developer of the Project in 2022, it has invested millions of dollars in this Project based on the prior approvals by the County and State, and the County's actions and affirmation of such approvals. Kerzner has invested heavily in site planning and preparation and has worked to prepare an EIS in response to the Commission's request in 2024. Based on such work and investments, the Project is on track for completion, as discussed more fully below and in the Overton Decl.

Throughout the entire process of Kerzner's involvement with the Project, it frequently met with the KPD and informed various stakeholders of its plans and substantial investments. Importantly, neither the KPD, nor anyone else at the County ever informed Kerzner that it considered that the shoreline certification had been resolved or that the 18-month time limit identified in Condition 3(t) had commenced.

On August 13 and 14, 2025, KPD submitted the Zoning Petition and the SMA Petition, respectively. As noted, these Petitions seek to rezone the Property and revoke the Permits. Importantly, while the Petitions provide a lengthy regurgitation of the history of the Project, they do not: (1) identify any specific resolution of the shoreline survey; (2) identify any notice to RFP or its development partners that the County considered the shoreline survey resolved or the survey "abandoned"; or (3) provide any explanation for why the County suddenly sought to change the zoning and revoke the Permits after 20 years and after repeatedly reaffirming the zoning in the Kaua'i GP and WKCP.

Instead, the Petitions now seek to characterize the Project as "abandoned by RFP." However, the only supporting evidence offered by the County to establish such a characterization is an ambiguous hand-written note by a staff person from the State of Hawaii Department of Land and Natural Resources ("**DLNR**") on a piece of paper in reference to a phone call between the staffer and a third party who in fact had no authority to make statements about the Project on behalf of RFP, as RFP has confirmed to the DLNR.

In the absence of any significant supporting evidence, the Petitions are based on conclusory speculation and conjecture as to the intent of RFP and its developers, and in direct contravention of the actions and investment of millions of dollars by RFP and its developers, and the repeated statements made and filed by RFP with the LUC about the Project over many years. Moreover, the claim set forth in the Petitions that the Project has been abandoned is internally inconsistent as well as being legally and factually infirm. RFP and Kerzner have repeatedly demonstrated their commitment to the Project to the KPD and continue to do so by opposing these Petitions.

**THE PLANNING COMMISSION SHOULD REFRAIN FROM TAKING ANY ACTION TO REZONE THE PROPERTY OR REVOKE THE PERMITS.**

Resort Zoning status is essential for the Project to continue. If the zoning amendment is revoked and the Property reverts to agricultural zoning, Kerzner and RFP would sustain massive losses. Their investment values would evaporate, and the land would lose its economic benefit because it is not fit for agriculture.

Amendment of the zoning and revocation of the Permits would also violate applicable law as the County has also never provided notice to RFP or Kerzner that it considered the 18-month construction period to have started. To the contrary, Kerzner has met with County officials dozens of times over the last several years to discuss the status of the project and fully explained that they intended to retain consultants at great expense to bring the Project to completion. The County has never indicated an impending deadline. Revoking the current zoning status would not only be contrary to law but would potentially expose the County to substantial damages claims.

**A. The Property Has Held "Resort" Zoning for Over Twenty Years, Which Was Reaffirmed in Kaua'i's Most Recent General and Community Plans.**

***1. The Property was approved for resort status by the County and State in 2000 and 2001 (respectively).***

The Property has been approved for resort zoning for over 20 years. Specifically, the Kauai County Council granted resort status to the Property in the 2000 General Plan and unanimously approved redesignation by ordinance in 2001. The LUC granted Urban status for the Property in 2001, and the Commission approved the SMA Permit and others in 2002.

***2. Recently, the Property's resort zoning and approval status were reaffirmed in the Kaua'i GP and the WKCP.***

In the most recent community plans, affirmed by the Council, Mayor, and KPD, the County has reconfirmed that it considers the proper zoning to be "Resort." Specifically, in the Kaua'i GP, the Project is listed as a "Resort" and "Entitled Project" approved for 250 units. Kaua'i GP, at

Appendix F, 369, 378–79. In the WKCP, the Project is described as "the approved resort project for [the Makaweli] region." WKCP, at 106. The Project was originally approved because it fit with Kaua'i's plans for development, and it still does today.

3. ***RFP and Kerzner have invested millions of dollars in reliance on the County's repeated affirmation of "resort" zoning.***

For over 20 years RFP has relied on these approvals to make significant investments in the Project. They have faced financing challenges due to downturns in the economy, and administrative and procedural delays that have stalled the Project and driven up costs. Additionally, Kerzner signed a lease/development agreement in May 2022 to complete the Project based on these approvals and other affirmations.

Importantly, neither the KPD nor the Commission ever initiated rezoning proceedings under Condition 3(t) during these difficult periods, thus confirming to RFP and its investors that the County did not consider the conditions to have been breached. Relying on the approval status of the Project for this extended period, Kerzner and RFP continue to make significant investments toward completion.

**B. Reversion Due to Condition 3(t) is Improper; Standing Has Never Been Determined and the Appeal Never Resolved as Intended, So the Condition Was Never Triggered.**

Using Condition 3(t) to revert the Property's zoning status would be improper because the condition's 18-month clock was never triggered as the shoreline appeal was never "resolved" as contemplated. In fact, the appeal was never resolved at all because the standing issue was never decided, as reflected in the absence of any action by the BLNR to this day.

On December 12, 2005, RFP filed an application for a Shoreline Certification via authorized agent, Dennis Esaki of Esaki Surveying and Mapping, Inc. Letter of Transmittal from Esaki Surveying and Mapping Inc. to DLNR, dated Dec. 12, 2005, attached as **Exhibit 4**. The notice of acceptance of the Proposed Shoreline Certification was published in the April 23, 2006 OEQC Environmental Bulletin. *See* OEQC Environmental Bulletin, dated Apr. 23, 2006, attached as **Exhibit 5**. Bruce Pleas timely appealed the proposed shoreline certification, but it was unclear whether Mr. Pleas had standing, which required that the BLNR make a determination on that threshold issue. Per statute, the standing issue must be decided before moving on with the appeal. Once that determination is made, it triggers the next step: brief schedules. Receipt of the briefs starts the clock for the Chairperson to act within 60 days, or the appeal is deemed denied. Under HAR § 13-222-26(e), "[u]pon determination that a person or agency has standing to appeal, the

chairperson by written order shall set forth the schedule for the briefs and requirements for the briefs." "*Upon the receipt of all briefs*, the board or chairperson shall act on any appeal within 60 calendar days." HAR § 13-222-26(g) (emphasis added). But standing was never determined, the brief schedule was never set, and the board/chairperson never received the briefs, thus the 60-day clock was never triggered. Without a standing determination, RFP's hands are tied.

On October 3, 2011, the Special Projects Coordinator for the DLNR, Ian Hirokawa, jotted down a note (explained more fully below) acknowledging that the appeal had not been resolved. The note stated that "if" the appeal moves forward, a new application would potentially be needed "due to the age of map + survey." Thus, even in October of 2011, **more than five years after the filing of the appeal**, a DLNR official considered the appeal to still be pending. It is undisputed that the BLNR took no subsequent action regarding the appeal. In fact, there is no evidence in the record that the BLNR even made Mr. Hirokawa's personal note public. As such there is no basis to conclude that the BLNR ever changed its consideration that the appeal could still move forward.

The Zoning Petition claims that RFP abandoned the shoreline appeal (¶ 70), but this completely ignores the facts. It is indisputable that the BLNR's determination of standing is a threshold issue for resolution of an appeal. As confirmed in Mr. Hirokawa's note, the appeal was still pending in May of 2012 with no decisions made and no clocks running. It is similarly undisputed that there was no subsequent action by the BLNR following Mr. Hirokawa's note. Thus, there is no basis for the County to claim that the BLNR ever resolved the appeal. As there was no resolution, RFP had no way to force the BLNR to render a decision on standing. Without that decision, RFP had no resolution on the issue of whether the proposed shoreline was valid, or if a (costly) redesign was necessary, or if it submitted another application whether such application could again be appealed. If the initial shoreline was valid, these would all be costs unnecessarily incurred.

The appeal was never acted upon, so it cannot, as a matter of law, be deemed denied, thus resulting in a certified shoreline. This is confirmed by the fact that the chairperson never certified the shoreline even though it was never rejected. "A '[s]horeline certification' is defined as 'a signed statement by the chairperson of the [BLNR] that the shoreline is as located and shown on the map as of a certain date.'" *Diamond v. Dobbin*, 132 Hawai'i 9, 25, 319 P.3d 1017, 1033 (2014). Additionally, the "Shoreline Certification – Application Form" expressly states that, if the DLNR Land Division does not render a decision within 90 days, "the shoreline application shall be

deemed certified" and "[w]e will inform you of the commencement and completion dates." Shoreline Certification – Application Form, at 1 ¶ 4, attached as **Exhibit 6**. But the chairperson never certified the shoreline, the DLNR never informed of commencement or completion dates. No action has been taking by the DLNR and therefore, as a matter of law, the appeal has not been resolved.

**C. The Council's purpose in amending Condition 3(t) was to allow RFP time to obtain a shoreline certification since construction cannot begin without it; shoreline certification should have occurred by statute; and a winning appeal would render the 18-month clock moot.**

As the shoreline appeal was pending, the Kauai County Council approved Ordinance No. PM-2006-385, extending the time period for construction to begin until the issue of standing was decided and the shoreline was certified. But the issue of standing was never decided, so the appeal was never resolved. As such, there is no credible argument that shoreline certification was ever resolved.

When the Council amended Condition 3(t), the purpose of the amendment was to give RFP and their developers time to obtain a shoreline certification because construction cannot begin without one, and it was the likely outcome per statute (unless the appeal succeeded). "Prior to commencement of . . . construction activities, the shoreline and shoreline setback line shall be identified . . . ." KCC § 8-27.3(i). The purpose of the amendment is confirmed in its legislative history. Specifically, due to the appeal delay, Lew Geyser, President of Kapalawai Resort LLC, requested an 18-month extension "until we have a shoreline certification, so that we can finally do a plan" and all the revisions necessary to "get this thing built." Nov. 21, 2006 Transcript of Public Hearing, attached as **Exhibit 7**. The Planning Commission agreed with Mr. Geyser and recommended the Council amend Condition 3(t) to allow additional time for RFP to obtain the shoreline certification, which the Council did. *Id.* At the final reading of the amendment, Councilmember Shaylene Iseri-Carvalho summarized it as "basically it tolls the time period ***until we get a decision*** . . . on the ***standing issue*** as well as ***certifying the shoreline*** and then ***from there*** 18 months to do substantial construction." Dec. 13, 2006 Transcript of Council Meeting (emphasis added), attached as **Exhibit 8**. Construction cannot commence without shoreline certification. Even the SMA Petition admits that Condition 3(t) was amended "to allow the Owners additional time to secure the shoreline certification." SMA Petition ¶ 20. Adding, "the proposed zoning ordinance amendment . . . proposed to extend the time . . . until after the date of a final shoreline

certification." *Id.* ¶ 22. The expectation was that the appeal would "resolve" with a certified shoreline. Given the statutory scheme, that should have been how the appeal resolved.

Even if the standing issue could somehow be deemed to be resolved (which it cannot), the Council expected the appeal to "resolve" with a shoreline certification, and it amended Condition 3(t) for that purpose. The statutory scheme further supports that expectation. Under HAR § 13-222-26(g), a shoreline appeal is deemed *denied* if not acted upon after 60 days, which would lead to certification. If after 90 days "the department fails to render a decision on an application, the shoreline application shall be deemed certified and *the chairperson shall certify the maps . . . .*" HAR § 13-222-7 (emphasis added).

Importantly, it is also undisputed that the County provided RFP and Kerzner never informed RFP or Kerzner that it considered the application to be either resolved or abandoned during the lengthy period between Mr. Hirokawa's note and the filing of the present Petitions. To the contrary, as discussed herein, the KPD repeatedly met with Kerzner and its consultants to discuss the Project without ever mentioning that the County either considered the shoreline appeal abandoned or resolved by DLNR.

1. ***The current delay should be forgiven because the pendency of the appeal and the County's silence would deprive RFP and Kerzner with its right to proceed with the zoning.***

While it is true that the appeal has been pending for a not-insignificant period of time, any delay should be excused as even the County's own actions confirmed that it still considered the appeal to be pending. Without a decision on standing, it would be futile to continue to invest in redesigns without any guidance as to what may occur (the proposed shoreline may be certifiable as is).

As RFP stated in the December 30, 2015, status report, pre-construction costs for planning and site design cost upwards of one million dollars. *See* Annual Report to the LUC, dated Dec. 30, 2015, at 2, attached as **Exhibit 9**. Without a decision on the appeal, RFP does not know where their designs stand. It is unclear what changes, if any, need to be made, how far back the setback will be, where to plan buildings, or if an additional application would be appealed again, further increasing costs. Additionally, a start date is needed to begin to schedule contractors, build a construction schedule, and order materials (even more lead time is needed for shipping materials to the islands), none of which can happen without a certified shoreline. Moreover, ordering materials early (prudent preparation) would turn stored lumber into termite fodder in short order.

The Zoning Petition's claims that RFP should have made progress on the shoreline certification completely misses the mark. The petition claims that RFP abandoned the appeal, but there was no legal mechanism available for them to pursue it without a decision on standing. RFP notified the LUC and the KPD that it was still waiting for a decision which prompted no response. Had there been an update or a change in stance, it is reasonable to believe that either department would have responded to the remarks and expressed that it considered the appeal to have been resolved. It is also reasonable to believe that the State should have made a standing determination much earlier.

The Zoning Petition also mischaracterizes the situation in reference to Lew Geyser's words: "virtually every year, or every other year, if you haven't built yet, you have to re-do the shoreline certification." Zoning Petition ¶ 72. The petition then states that "the Owners knew and continues to know that an application for a shoreline certification is required to move forward . . . ." and that "[a]pplying for a new certified shoreline was an immediate means to make progress to seek a certified shoreline." *Id.* ¶ 73. But this is wholly inapplicable in the limbo situation that RFP was in. To "re-do" a certification implies having one in the first place, which RFP never did due to State inaction. That statement was referring to the 12-month expiration of a valid certification obtained. Once certification is obtained, it expires in 12 months, and if you have not built, reapplication is necessary. But when the original application bore neither approval nor denial, it is not a requirement to start over. Otherwise, it would effectively allow an appeal, such as the one in this case, to preclude a project from ever moving forward by consistently delaying it for over a year. Such an outcome would be unjust.

Additionally, applying for a new certified shoreline is not an immediate means to make progress when such necessary issues have not been resolved. The limbo that RFP has been subjected to has no remedy except State action, which never occurred, so reapplication would be pointless. It is still unclear if Mr. Pleas has standing to appeal another proposed shoreline application. It is unclear if the last proposed shoreline is valid or not, so it is unclear if a partial, complete, or any (costly) redesign is necessary. Procedural and administrative limbo is not abandonment. Particularly when RFP and its developers have clearly expressed their intent to move forward with the Project to the County with no pushback from the County of any kind.

## D. The County Never Informed RFP or Kerzner That It Considered the Shoreline Appeal Resolved, the 18-Month Construction Clock Started, or the Shoreline Certified.

RFP and Kerzner have never been informed by the County that the County was going to deem that the shoreline appeal was resolved, that certification was issued or denied, or that the 18-month clock had started, likely because none of those have occurred. It has been nearly 20 years since the 18-month clock in Condition 3(t) should have expired, Zoning Petition ¶ 88, but again, the petition misses the mark. It claims that no matter the provisions of HAR §§ 13-222-26(e) or (g), or 11(a), the shoreline certification expired (even though there never was one). Zoning Petition ¶ 88. But the petition again mischaracterizes the issue. It accurately states that HAR § 13-222-11(a) "specifies that the '*certification* of the shoreline shall be valid . . . from the date of the *certification*." *Id.* (emphasis added). But then inaccurately asserts "any *application or proposed* shoreline certification would be obsolete beyond twelve (12) months from the date of *application or proposal*." *Id.* (emphasis added). That simply is not what the statute says. A *certified* shoreline expires after 12 months; that is what the statute says.

The relevant point is that the 18-month clock was never triggered because there was never a shoreline certification in the first place, so construction could not commence.

### 1. *The County never communicated that it considered the appeal resolved or the 18-month construction period started.*

In the years since the appeal, the County never informed RFP or any developers that it considered the shoreline appeal resolved or that the 18-month clock was ticking, even though the developers have been in regular contact with the KPD. In the status report dated October 12, 2007, Avery Youn, authorized representative of Kapalawai Resort LLC (the developer at the time) stated that "the applicant waited for a ruling on the appeal of the shoreline certification and to date, we have not been informed as yet on the outcome of the appeal." *See* Annual Report to the LUC, dated Oct. 12, 2007, at 5, attached as **Exhibit 10**. The KPD received this status report but never communicated any position of the County that it considered the appeal resolved or the application to be abandoned to Mr. Youn, Kapalawai Resort, LLC, or RFP.

A document signed by Planning Director Costa on November 30, 2007, accepting a status report stated that "[t]o date, the appeal has not been resolved by the State. Without this certification, applicant cannot obtain building permits." *See* Letter Re: Annual Report for Special Management Area Use Permit SMA(U)-2002-6, at 1, attached as **Exhibit 11**. Even with this

acknowledgement, the KPD never informed Mr. Youn, KRDG (also notified as the new developer in the same document), or RFP that the County considered the appeal to be anything other than still pending. Had either statutory clock started (under HAR §§ 13-222-7 or 26(g)), they would have expired by then, but apparently the KPD did not think so, otherwise, notice should have been given.

The Commission, in its regular meeting on December 11, 2007, accepted an annual report and "accepted for the record [KRDG] as the new development entity." *See* KPD Letter, dated Dec. 27, 2007, attached as **Exhibit 12**. KRDG received no notice of ticking construction clock or a decision that could render its subsequent investments worthless. It also received no notice that the clock had expired, rendering any future efforts futile. Clearly, the KPD considered the Project an ongoing and approved project with valid zoning.

2. ***The County has never informed Kerzner (or any other developers) that it considered the shoreline appeal resolved or abandoned.***

It is similarly undisputed that no officials from the County informed Kerzner that the County considered the shoreline appeal resolved or abandoned despite the fact that Kerzner and its representatives met with County officials many times over the years. *See* Ratkovich Decl.; Graham Decl.; Overton Decl. Both the Commission and the KPD were aware that a shoreline certification was required for the Project to move forward. Had one been issued as a result of the appeal, KRDG or Kerzner should have been notified, but they have not. Nor were they notified that the County considered the appeal was resolved in any way, whether it be by success, denial, or any other means. *Id.* Instead, the County kept meeting with Kerzer and listened to Kerzner describe all the consultants it had retained and all the progress that it made while staying silent about the County supposedly considering the appeal to have been resolved.

It would be unjust to punish Kerzner when the Commission and County were also unclear on the issue and only now determine ex post facto that the appeal has somehow resolved.

**E. The Petitions Make No Claim That RFP or Any Developers Communicated Abandonment to County Officials; Only Recently Did County Officials Inform RFP They Considered the Project Abandoned, Even After Repeated Contacts.**

The Petition strains itself to claim that the Project has been abandoned in the face of continued investment, developer engagement, annual status reports, and a complete lack of evidence. The lack of construction is due to the unresolved appeal that stalled shoreline certification which the Project needs to move forward. RFP and Kerzner have yet to be notified

as to the result of the appeal and have continued to invest in the Project while meeting with County officials numerous times toward that end.

1. ***Notably, Petition fails to claim that RFP or developers communicated abandonment to County officials.***

Nowhere in either the Zoning Petition or the SMA Petition is there a claim that either RFP or any developer communicated abandonment to any Kauai County official. The only supposed evidence of abandonment is a conversation between third parties who had no authority to make such representations. The note that the Zoning Petition claims as "overtly" abandoning the shoreline certification is a hand-written, unofficial note from a phone call that did not involve either RFP or KRDG. Zoning Petition ¶ 77. The note was scratched down on a piece of paper by Ian Hirokawa (DLNR Special Projects Coordinator) after a phone call with Scott Ezer of Helbert, Halster & Fee.

Mr. Ezer represented RFP on a limited basis in 2011 for the sole purpose of assisting with due diligence relative to the status of applicable State and County permits and entitlements regarding the Project. Mr. Ezer was not authorized to make any such statements or representations on behalf of RFP regarding the pending shoreline setback application or any other matter involving the Project without express approval from RFP. To the contrary, RFP has subsequently informed DLNR that: (1) it never abandoned the Project or the shoreline appeal; and (2) that Mr. Ezer never had authority to make such an abandonment.

Moreover, while the note was written in 2011, RFP's own actions demonstrate that it had no intention of abandoning as it has since continued to invest, plan, and engage developers for the Project, all while submitting annual status reports indicating its continued commitment to the Project. Their commitment has been repeatedly publicly reaffirmed, thus rendering any reliance on Mr. Hirokawa's note to be completely unreasonable. Over the last 14 years since that note was written, the County has never indicated that it considered the Project abandoned. Further, Kerzner was accepted as the new developer in 2022 and has since invested millions of dollars in the Project based on that acceptance.

2. ***To the contrary, Kerzner has communicated with County officials dozens of times over the last several years to discuss the Project and explained their intention to complete the Project.***

RFP has only ever indicated an intent to move forward with the Project and Kerzner has also invested significant sums toward that end. The Zoning Petition even cites to the fact that from

"2003 to September 5, 2024, [RFP and their representatives] submitted status reports to the LUC." Zoning Petition ¶ 49. The status report submitted December 30, 2015, states that "the landowners entered into a letter of intent with a prospective developer to lease and develop the Project" on July 1, 2013. Dec. 30, 2015 Annual Report to the LUC (**Exhibit 9**). It adds that the "landowners and prospective developer will continue their efforts to develop the property consistent with existing entitlements." *Id.* Unfortunately, in 2019, that developer passed away and his family cancelled the letter of intent. However, before the cancellation, the status report, submitted December 31, 2018, acknowledged that the "letter of intent due diligence period is ongoing, and the landowners are committed to honoring the terms of the letter of intent."

The January 4, 2021 report states that RFP engaged another developer who would be submitting a Letter of Intent "in the next several months to develop the resort property." Annual Report to the LUC, dated Jan. 4, 2021, at 2, attached as **Exhibit 13**. The March 4, 2022, report adds that RFP was currently negotiating a development agreement. Annual Report to the LUC, dated Mar. 4, 2022, at 2, attached as **Exhibit 14**. The April 4, 2023 report states that RFP had selected a developer. Annual Report to the LUC, dated Apr. 4, 2023, at 2, attached as **Exhibit 15**. And the September 5, 2024 report identified Kerzner as that developer. Annual Report to the LUC, dated Sept. 5, 2024, at 2, attached as **Exhibit 16**. Despite receiving all of these updates and continued assurances of Project development over the last several years did any County official inform RFP or any of the Project developers, including Kerzner, that they considered the Project abandoned. Nor did any County officials inform of a certified shoreline (which would have allowed construction to commence) or that the 18-month construction clock had started.

In the County records related to the Property, there is no record that the County ever notified Kerzner, RFP, or any other developer that the County considered the Project abandoned. In each of the annual status reports that were submitted to the LUC and the KPD, RFP and their representatives continually expressed their intent to move forward with the Project. They repeatedly discussed their status with developers (one passed away and RFP engaged, negotiated, and agreed to contract with Kerzner). During this iterative process, the KPD never informed RFP that these efforts were futile because it considered the Project abandoned.

Further, the 2018 GP and 2020 WKCP both acknowledge the Project as entitled and approved, so "abandonment" does not fit the facts. If the County considered the Project abandoned, it likely would not have classified it as "the approved resort project for this region,"

WKCP at 106, and an "entitled" resort for the Waimea-Kekaha district, Kaua'i GP, at 369, 378–79.

Even as late as March 8, 2024, the KPD had not considered Condition 3(t) to have been triggered, apparently still considering the Project viable. In a meeting between Planning Director Hull and Belles Graham LLP (representatives of RFP and Kerzner), the Planning Director indicated that he needed to meet with the County Attorney's Office to determine whether the construction deadline had passed. Graham Decl.; Ratkovich Decl. This indicates that as of March 2024, the County still must have considered the Project approved and that Condition 3(t) had not been triggered because no decision had been made.

It was not until July 25, 2024, in another meeting with Kerzner representatives Belles Graham that the Planning Director indicated that the County had considered the Project abandoned. *Id.* The County should not be able to suddenly decide, *ex post facto*, that RFP abandoned the Project more than a decade ago, subjecting them to significant losses invested in reliance on valid approvals in place all this time.

In the March 8, 2024 meeting, the Planning Director admitted that he did not yet know what the status was. Clearly, up until that point, there was no communication to RFP, KRDG, or Kerzner, that the County considered the Project abandoned. County reliance on notes of a third-party phone call is not in good faith when the County was already in receipt of a clarifying letter from one of the parties to the phone call clarifying that the note does not accurately reflect what he said or RFP's intent. Again, Petitions mischaracterize the facts.

No other evidence indicates abandonment on behalf of RFP. To the contrary, RFP has only ever indicated to the County that it has a commitment to move forward with the Project. Similarly, Kerzner has never indicated any intent to abandon. Neither RFP, nor any authorized representative has ever communicated a desire to abandon the shoreline certification.

Moreover, RFP purchased a strip of land from the BLNR for the Project in 2015. The BLNR acknowledged that the "Kapalawai Resort . . . will ultimately incorporate [the old government road remnant]." DLNR PSF No: 14KD-169, dated Nov. 13, 2015, at 1, attached as **Exhibit 17**. Had RFP abandoned the Project, it would not make sense to buy a virtually unusable land remnant for use as a buffer zone for the resort.

## F. Kerzner and RFP Have Expended Significant Resources in Reliance on the County's Existing Zoning and Is Preparing an Updated EIS at the County's Recent Request.

For over 20 years, RFP and Project developers have relied on these zoning approvals and existing zoning status in preparation for the Resort and in addressing the unique obstacles related to the Project. Such preparations include site plans that focus on protecting the natural landscapes, architectural design, landscaping design, and civil engineering. Sept. 5, 2024 Annual Report (**Exhibit 16**). These preconstruction preparations cost upwards of a million dollars. *Id.* Kerzner has also spent millions of dollars in preparation for developing the Project. Ratkovich Decl.

Recently, in March 2024, Max Graham sent a proposed zoning amendment to the KPD that proposed a refinement to the Project and included a number of consultant reports. *See* Proposed Zoning Amendment (Exhibit "A" to the Overton Decl.). Mr. Graham met with the Planning Director to discuss the proposed amendment. In that meeting, the County indicated that a new or supplemental EIS may be required. In response, Kerzner has engaged a top consulting firm, G70, to prepare the EIS and to conduct extensive research. The 2000 FEIS analyzed a plethora of issues, including potential and projected effects on climate; topography; hydrogeology; soils; agricultural capability; flora; terrestrial fauna; marine environment; historic, cultural, and archaeological resources; scenic resources; flood hazards; air quality; noise; population impacts; economic impacts; fiscal impacts; traditional customs and practices; transportation; utilities; wastewater; grading and drainage; solid waste; recreational facilities; shoreline access; and police/fire/emergency services.

As discussed more fully below, Kerzner has continued to analyze the expected interrelationships and cumulative impacts on various factors in the local and regional community. Kerzner has also tasked G70 with both reviewing and ensuring that the current project scope is still substantially similar to and within the scope of the original 2000 FEIS and to perform updated analyses to address any potential impacts which may have changed between the 2000 FEIS and today. In response, G70 has confirmed that the proposed action is substantially similar to the previous action and that the current iteration of the project is anticipated to result in direct, indirect, and cumulative effects similar to those identified in the previously accepted 2000 EIS. As part of this process, G70 has completed or is in the process of updating the specific consultant reports addressing each of the relevant potential impacts. The Declaration of Jeff Overton of G70 describes this in greater detail.

## G. The County Should Be Estopped from Revoking the Current Zoning Status Because of Official Assurances Proffered by the County That RFP Has Relied on When Continuing to Invest in This Sizable Project.

The Petition states that "[o]wners have no vested interest or right to develop the Petition Area" due to a condition to the zoning ordinance. But Kerzner and RFP have continued to invest in this Project, relying on both explicit and implicit assurances by the County and the State that supported the Project, with such actions being taken with the full knowledge of the County. Vested rights depend on "whether the owner acquired real property rights which cannot be taken away," but equitable estoppel "focuses on whether it would be inequitable to allow the government to repudiate its prior conduct." *Kauai Cnty. v. Pac. Standard Life Ins. Co.*, 65 Haw. 318, 325, 653 P.2d 766, 772 (1982).

> "The doctrine of equitable estoppel is based on a change of position on the part of a land developer by substantial expenditure of money in connection with his project in reliance, not solely on existing zoning laws or on good faith expectancy that his development will be permitted, but on official assurance on which he has a right to rely that his project has met zoning requirements, that necessary approvals will be forthcoming in due course, and he may safely proceed with the project."

*Id.* at 327, 653 P.2d at 774 (quoting *Life of the Land, Inc. v. City Council of City & Cnty. of Honolulu*, 61 Haw. 390, 606 P.2d 866 (1980)).

"Put another way, '[t]he critical questions become: (1) What reliance is 'good faith'; (2) what sums are 'substantial'; (3) what constitutes 'assurance' by officials; and (4) when does a developer have a right to rely on such assurances?'" *Id.*

Kerzner and RFP have continued to invest significant resources in this Project with the necessary approvals remaining in effect and unrevoked for over 20 years. Condition 3(t) was never triggered, as further evinced by the Commission's failure to initiate rezoning proceedings, so the condition is not unmet as a State decision is still pending. And in the nearly 20 years since, the State and County have encouraged further investments, supported Project development, and reaffirmed its zoning and approval status, including confirmations in the Kauai GP and WKCP. These assurances support a good-faith reliance by Kerzner and RFP for further investing in the Project.

1. ***The County and State proffered assurance in support of the Project which constitute final discretionary actions that RFP and Kerzner have a right to rely on.***

The County and State have offered assurances in support of the Project that constitute final discretionary actions that RFP and Kerzner have a right to rely on. What constitutes "assurance" by officials is characterized as "final discretionary action." *Pac. Standard Life Ins. Co.*, 65 Haw. at 328, 653 P.2d at 774. A "final discretionary action constitutes official assurance for zoning estoppel purposes." *Id.* In *Pac. Std. Life* and *Life of the Land*, the final discretionary act was an SMA permit approval and a variance granted, respectively, which the *Pac. Std. Life* court found "analogous" to each other. *Id.* at 330, 653 P.2d at 775. The court found that "the developer had a right to rely on this official assurance" which "conformed with the intent, purpose, and spirit of the amendments to the overall zoning scheme . . . ." *Id.* at 328, 653 P.2d at 774. In *Pac. Std. Life*, the estoppel argument failed because a referendum was certified (final discretionary action) before the developer made the bulk of its expenditures. *Id.*

In our case, the Permits and zoning amendment were granted for the Project over 20 years ago, representing assurances that constitute final discretionary actions. But there were other assurances made by the County and State. Zoning classifications and approval statuses were reaffirmed in the Kaua'i Plans. The State (DLNR) sold a piece of land to RFP for use with the Project. The Commission never initiated rezoning proceedings under Condition 3(t), despite knowing full well that RFP and Kerzner were continuing with the Project, which was further assurance Kerzner to rely on in investing in the Project.

"If a developer obtains final discretionary action for a project under the permit system" then "the common law of zoning estoppel will recognize that action as official assurance on which a developer has a right to rely." *Id.* at 329, 653 P.2d at 775. "The law looks to the conduct of the parties in light of the operative procedures for advancing development." *Id.* It was "undisputed that the last discretionary permit action" was the SMA permit authorization for the development. *Id.* at 330, 653 P.2d at 775. The SMA permit approval would have been the "final discretionary action for estoppel purposes but for the fact that the zoning referendum already had been certified . . . ." *Id.*

In our case, we have analogous approvals that constitute final discretionary actions. For the past 20+ years, the zoning ordinance and Permits have been treated by the County as being in full effect and represent the official assurance on which Kerzner was reasonable to rely.

Considering the conduct of the parties in light of the operative procedures for advancing development, Kerzner signed on as developer and has invested significant sums in preparation for developing the Project. This was in light of the current zoning approval status of the Project and the continued support of the County as State over the years. Thus, Kerzner had a right to rely on these assurances when continuing to invest.

**2. *Kerzner and RFP relied on these official assurances in good faith when continuing to invest substantial resources in the Project.***

"In considering whether a developer's expenditures were made in good faith, we employ an objective standard that reflects 'reasonableness according to the practices of the development industry.'" *Pac. Standard Life Ins. Co.*, 65 Haw. at 332, 653 P.2d at 777. The court found that the developers did not make their investments in good faith because the referendum was certified beforehand. *Id.* The court found that "the development industry" would have deemed "reliance on county approvals and permits . . . unreasonable under the circumstances." *Id.* at 334–35, 653 P.2d at 778.

Our case suffers no such circumstances. There were no intervening factors to render reliance on county approvals and permits unreasonable, and thus, not in good faith. To the contrary, the County and State have continued to show support for and take actions that supported the Project over the years. Standard practice in the industry is to acquire the proper approvals to begin construction, which RFP and developers did (proper zoning amendment under KCC § 8-3.4; valid zoning permit under KCC § 8-5.4(a); SMA Permit under HRS § 205A; and others). Thus, the Project was granted the proper approvals and Kerzner has made subsequent investments in good faith reliance on official assurances which were final discretionary actions.

**H. Changing the Zoning Would Potentially Expose the County to Substantial Damages Claims.**

Revoking the zoning status of the Property could potentially expose the County to substantial damages claims because of the sizeable investments made in the Project to date, and because an agricultural zoning designation would provide virtually no economic use of the land.

> Where a regulation places limitations on land that fall short of eliminating all economically beneficial use, a taking nonetheless may have occurred, depending on a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action.

*Leone v. Cnty. of Maui*, 141 Hawai'i 68, 81, 404 P.3d 1257, 1270 (2017).

Economic use need not be completely eliminated. "Because [the] evidence established a diminution in value that is proportionately too small and because the reversion did not interfere with [owner's] reasonable investment-backed expectations for the land, no reasonable jury could conclude that the reversion effected a taking pursuant to the Penn Central analysis." *Bridge Aina Le'a, LLC v. Land Use Comm'n*, 950 F.3d 610, 637 (9th Cir. 2020).

In our case, the diminution in value would be significant, as would be the interference with reasonable investment-backed expectations if the Property's zoning was reverted. Kerzner has executed a lease/development agreement with RFP to develop the Property and thus meets "the prerequisite that there exists a valid property interest for all takings cases." *Wyatt v. United States*, 271 F.3d 1090, 1097 (Fed. Cir. 2001).

1. ***The economic impact of reverting the zoning amendment would be to render the land nearly useless because it is not suitable for agriculture.***

"[W]e 'compare the value that has been taken from the property with the value that remains in the property.'" *Bridge Aina Le'a*, 950 F.3d at 630–31.

In *Leone*, the court echoed SCOTUS, saying: "regulations that leave the owner of land without economically beneficial or productive options for its use—typically, as here, by requiring land to be left substantially in its natural state—carry with them a heightened risk that private property is being pressed into some form of public service . . . ." *Leone*, 141 Hawai'i at 81, 404 P.3d at 1270.

In our case, if the Property were to be reverted to agricultural zoning, its economic benefit would be nearly eliminated because it is not suitable for agriculture. This "Property is located in a generally dry region that receives the least amount of rainfall on the island . . . " and the Land Study Bureau classifies the Property as "poor to very poor suitability for agricultural use." Findings of Fact, Conclusions of Law, and Decision and Order, *Destination Villages Kauai, LLC.*, Case No. A00-731, ¶¶ 11, 13 (Haw. Land Use Comm'n, Apr. 06, 2001), attached as **Exhibit 18.** Under Robinson Family ownership, "the Property has never been used for commercial agriculture." *Id.* ¶ 66. Just as "development of the Project as a resort will have no impact on agricultural production on Kaua'i," reverting the Property back to agricultural will not help it, nor will it provide value for RFP. *Id.* It would simply be left substantially in its natural state, pressed into the public service of non-use according to the anti-development sentiment on Kaua'i.

In an analogous case, the trial court found that by the time the County "got around to informing [the landowner]" that the regulation would have stopped the project, the landowner "was

fully committed to developing the storage facility and had already spent significant resources committing its property to that specific use." *Lockaway Storage v. County of Alameda*, 216 Cal. App. 4th 161, 185 (2013). The court also found that the landowner "would have incurred substantial costs to convert the property to another use after the County shut it down and would have suffered a material decrease in its value." *Id.* These factors led the court to find that "they all support the . . . conclusion that the County's regulatory action unreasonably impaired both the value and use of the [Property]." *Id.*

In our case, RFP and Kerzner are fully committed to developing the Project and have already spent significant resources to that end by the time the Couty got around to informing them of their intent to revoke the zoning approvals. They would incur substantial losses, and the land would lose significant value. Reverting the Property's zoning back to agricultural would leave RFP and Kerzner with no economically beneficial use because the Property is not suitable for agriculture.

**2. *The extent of interference with reasonable investment-backed expectations would be to destroy significant investments reasonably made during periods of approval.***

"We must consider next 'the extent to which the regulation has interfered with distinct investment-backed expectations . . . .'" *Bridge Aina Le'a*, 950 F.3d at 633. This is "an objective analysis to determine the reasonable investment-backed expectations of the owners" and "what is 'relevant and important in judging reasonable expectations' is 'the regulatory environment at the time'" the investments were made. *Id.* at 633–34.

In *Bridge Aina Le'a*, the court did not find reasonable investment-backed expectations because the landowner speculated investment returns on the hope that the LUC would amend its order's condition. *Id.* In *Lockaway*, the court did find reasonable expectations because "the County expressly confirmed" that the landowner could rely on the current approval to develop the project. 216 Cal. App. 4th at 186. Before the permit's expiration date, the County had offered assurances that the project could proceed (permit implemented), but changed its position after the expiration date had passed and tried to shut the project down. *Id.* The court held that "there is no denying that [the landowner] had a reasonable investment backed expectation its project could proceed from the time it purchased the property . . . until the County changed its position . . . ." *Id.*

Our case is analogous to *Lockaway* and reverting the Property's zoning would severely interfere with Kerzner's reasonable investment-backed expectations. Kerzner invested in the Project reasonably relying on valid approvals, and that reasonableness was further supported by both the Kaua'i GP and the WKCP which reaffirmed the current zoning and approval status. RFP has reaffirmed its commitment to build each year in status reports which have been accepted by the County at State without objection. Kerzner relied on the current regulatory environment when signing the lease/development agreement, making payments, and continuing to invest in EIS preparation and Project planning. Further, Kerzner repeatedly engaged with the KPD on its investments in the Project with no efforts made from KPD to curtail such work. Thus, there is no denying that Kerzner had a reasonable investment-backed expectation that the Project could proceed from the time it made its investments until the County recently changed its position.

3. ***The character of the government action is regulatory, but the County has recently changed course and unreasonably applies the regulation.***

"[W]hether a governmental action 'amounts to a physical invasion or instead merely affects property interests through 'some public program adjusting the benefits and burdens of economic life to promote the common good'—may be relevant in discerning whether a taking has occurred.'" *Lockaway*, 216 Cal. App. 4th at 186. However, "the County's decision to abandon the approvals for the [Project] cannot be justified as a 'mere' consequence of a public program." *Id.* "Instead, the character of the County's decision is defined by the circumstances surrounding the application of the [regulation] to this project." *Id.*

In *Lockaway*, a growth control initiative was enacted that prohibited future development but allowed current developments to proceed under certain provisions. The County allowed the landowner to proceed with its project under the provisions of the initiative (the initiative would otherwise have prohibited the project), but changed its stance when the initiative went into effect claiming that the provisions did not apply. The court found that "the County made a 'showstopping U-turn" when it "took the eleventh-hour position" that the landowner could do nothing to make "any difference in the outcome of the permit process." *Id.* at 186–87. At this point, "the 'character' of the government's conduct revealed itself." *Id.*

Here too, the Petitions represent a showstopping U-turn in the eleventh hour to shut the Project down with no opportunity for Kerzner or RFP to make any difference in the outcome. In light of the appeal's stasis in non-resolution and the Commission's decision not to initiate rezoning proceedings, the Project has been allowed to continue. The County even encouraged the Project

by reaffirming its approval status in the two recent Kaua'i Plans. The County and State, without objection, have repeatedly accepted continued commitments for the Project to proceed in annual status reports. During this time, RFP and developers, including Kerzner, have made significant investments in furthering the Project, including EIS preparation in response to the County's recent request. And now, after 19 years, the Planning Director has decided in the eleventh hour to make a showstopping U-turn and initiate proceedings to revoke necessary approvals. Further, the KPD has sought to proceed with merely a public hearing, not a contested case, which would meaningfully preclude RFP and Kerzner from making a complete record.

In *Bridge Aina Le'a*, the court recognized that "government action that singles out a landowner from similarly situated landowners raises the specter of a taking." 950 F.3d at 636. But the court found the "concentrated effect of the revision" to be "reflective of the confines of a generally applicable Hawaii law land use reclassification procedure." *Id.* It also noted that a takings claims "must be considered 'in light of the context and . . . history' of the land use decisions related to [the] property.'" *Id.* (citing *Buckles v. King County*, 191 F.3d 1127, 1139 (9th Cir. 1999)).

In our case, this is a concentrated effect on the Property, but Condition 3(t) is part of a generally applicable reclassification procedure. However, in light of the context and history of the decisions related to the Property, the Petitions attempt to unreasonably apply the Condition. Because of the unique circumstances related to the land use decisions related to the Property, the appeal was never resolved, and rezoning proceedings were never initiated. Additionally, the Property's valid approval status has been reaffirmed via County and State action. Annual status reports were accepted with no objections and the Kaua'i Plans both confirmed the Project's current approval status. Further, the continued inaction by the Commission in refraining from initiating rezoning proceedings have also confirmed the Project's viability, inviting additional investments.

To revoke zoning under Condition 3(t) ex post facto after all this time is an unreasonable application of the law and represents an abrupt change of course by the County. The delays in construction were caused by State inaction. RFP was left with no and no legal means to progress.

## I. Potential Due Process Issues Resulting from Rezoning.

### 1. *Reverting the Property's zoning status would deprive Kerzner of its vested property rights and violate due process.*

As explained above, and based on the history of this matter, the shoreline certification appeal remains pending with the Chairperson of the DLNR and has not been "resolved" for the

purposes of Ordinance No. PM-2006-385. As such, any action by the County to initiate steps to rezone or revert the zoning classification of the Property pursuant to Ordinance No. PM- 2006-385 would be premature and may give rise to certain due process issues. Further the insufficiency of notice to all relevant parties of the intent to "initiate proceedings to rezone the property to the designations existing prior to the date of [Ordinance No. PM-2006-385]," is addressed below.

As explained by the Hawai'i Intermediate Court of Appeals:

> The United States and Hawai'i Constitutions both provide that no person shall be deprived of property without due process of law. United States Constitution, Amendment V; Hawai'i Constitution, art. I § 5. Therefore, due process principles protect a property owner from having his or her vested property rights interfered with, 8A McQuillin Municipal Corporations § 25.180.20, at 9, and preexisting lawful uses of property are generally considered to be vested rights that zoning ordinances may not abrogate. 83 Am.Jur.2d Zoning and Planning § 624, at 520 (1992); 8A McQuillin Municipal Corporations § 15.180.20, at 10.

*Waikiki Marketplace Inv. Co. v. Chair of Zoning Bd. of Appeals of City & Cnty. of Honolulu*, 86 Hawai'i 343, 353–54, 949 P.2d 183, 193–94 (App. 1997); *see also DW Aina Lea Dev., LLC v. Bridge Aina Lea, LLC.*, 134 Hawai'i 187, 218, 339 P.3d 685, 716 (2014) ("The basic elements of procedural due process of law require notice and an opportunity to be heard at a meaningful time and in a meaningful manner **before governmental deprivation of a significant property interest.**" (quoting *Sandy Beach Def. Fund v. City Council of City & Cnty. of Honolulu*, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989)) (emphasis added)).

Prior to initiating any action to rezone the Property pursuant to County Ordinance PM-2001-356, as amended by Ordinance No. PM-2006-285, a determination would have to be made that the shoreline appeal was "resolved." This is a determination that must be made by the DLNR, as the appeal is being handled by the DLNR. As noted above, the DLNR has not made any determination as to the appeal, and apparently still considers the matter to be pending.

In the absence of a specific date when the DLNR had "resolved" the appeal, as well as written formal notice to RFP of such a resolution, neither RFP nor the County would be able to make a determination as to whether "[s]ubstantial construction of the hotel, defined as completion of at least fifty percent (50%) of building foundations" had been "completed within eighteen (18) months from the date that the appeal of the project's shoreline certification currently pending before the Chair of the [BLNR] has been resolved." In other words, RFP would not know that it

was supposed to begin construction, and the County would have no basis on which to measure the passage of an eighteen-month time period for such construction.

The County has never advised Kerzner or RFP as to exactly what date it deems the shoreline appeal to have actually been "resolved" or "abandoned." We do not believe it would be appropriate, or comport with due process requirements, if the County were to contend that the "substantial construction" deadline in Ordinance No. PM-2006-285 had expired at some undetermined time in the past, where no notice was provided to RFP that the County believed that the appeal had been "resolved" or that the deadline for "substantial construction" had begun to run. In the absence of such notice, RFP would not how to comply with Ordinance No. PM-2006-285. Failure to provide such notice and ability to appeal and/or pursue other remedies would be contrary to the due process provisions of the United States and Hawai'i Constitutions.

Accordingly, any action by the County at this point to rezone the Subject Property pursuant to a claim that the requirements of Ordinance No. PM-2006-285 regarding construction had not been met would not comport with due process and would be unfair to both RFP and Kerzner. Further, as noted above, such action should not be taken without a contested case hearing as that would also be a violation of Kerzner's due process rights.

2. ***The Petition to Rezone Does Not Comply With Kauai Planning Commission Rules.***

Prior to initiating any zoning action to rezone based on a failure to comply with a permit condition, the Kaua'i Planning Commission Rules ("**RPC**") expressly provide for a procedure that includes notice and a meaningful opportunity to be heard. Specifically, RPC Rule 1-12-5 of the Rules provides in relevant part that, if there is "a failure to perform according to the conditions imposed, the Commission shall issue and serve upon the party bound by the conditions an Order to Show Cause why the permit should not be revoked or modified." RPC Rule § 1-12-5. However, while the rule cites the term "permits," it is applicable to "all zoning permits," including "zoning amendments," stating that, for the purposes of this chapter "permit" means any permit, amendment or other approval mentioned above." *Id.* § 1-12-1.

If an order to show cause is issued, then there is a hearing on the order to show cause pursuant to Chapter 6 of the RPC. *Id.* § 1-12-7.

It is undisputed that the Petition to change zoning does not provide such notice of an intent to seek an order to show cause. Further, it does not even request such an order. As neither RFP

nor Kerzner have been provided proper notice, it would be premature to seek an order to show cause without compliance with the RPC.

3. ***Due Process requires a meaningful opportunity to be heard; here, that is a contested case hearing.***

As explained above, Kerzner has a valid property interest in the Project. As such, Kerzner is entitled to due process because that interest would be deprived if the Property was rezoned.

A "fair trial in a fair tribunal is a basic requirement of due process." *Mauna Kea Anaina Hou v. Board of Land and Natural Resources*, 136 Hawai'i 376, 380, 363 P.3d 224, 228 (2015). "Due process 'calls for such procedural protections as the particular situation demands.'" *Id.* at 389, 363 P.3d at 237. "A contested case is an agency hearing that 1) is required by law and 2) determines the rights, duties, or privileges of specific parties." *Id.* at 390, 363 P.3d at 238 (quoting *Pele Def. Fund v. Puna Geothermal Venture*, 77 Hawai'i 64, 67, 881 P.2d 1210, 1213 (1994)). "An agency hearing that is required by law 'may be required by (1) agency rule, (2) statute, or (3) constitutional due process.'" The Hawaii Constitution requires that "No person shall be deprived of life, liberty or property without due process of law . . . ." Haw. Const. art. I § 5.

In *Mauna Kea*, the appellants opposed the approval of a Conservation District Use Permit ("**CDUP**") and requested a contested case hearing to be heard on the matter. *Mauna Kea*, 136 Hawai'i at 390, 363 P.3d at 238. The BLNR granted a contested case hearing, but not before it issued a decision approving the CDUP. *Id.* The Supreme Court of Hawai'i found that "BLNR put the cart before the horse when it approved the permit before the contested case hearing was held." *Id.* at 391, 363 P.3d at 239. "By voting on the permit before the contested case hearing was held, the Board denied the Appellants their due process right to be heard at 'a meaningful time and in a meaningful manner.'" *Id.* at 380, 363 P.3d at 228.

The court found that given the appellants' "substantial interests . . . the risk of an erroneous deprivation absent the protections provided by a contested case hearing, and the lack of undue burden on the government in affording Appellants a contested case hearing, a contested case hearing was 'required by law . . . .'" *Id.* at 390, 363 P.3d at 238.

Both Kerzner and RFP clearly have substantial interests in the Project and as such, is entitled to due process via a contested case hearing in order to be heard.

Accordingly, any action by the County at this point to rezone the Subject Property pursuant to a claim that the requirements of Ordinance No. PM-2006-285 regarding construction had not been met would not comport with due process and would be unfair to both RFP and Kerzner.

Further, as noted above, such action should not be taken without a contested case hearing as that would also be a violation of Kerzner's due process rights.

## THE COMMISSION SHOULD NOT ISSUE AN ORDER TO SHOW CAUSE FOR REVOCATION OF THE PERMITS.

For the reasons set forth herein, Kerzner submits that it is inappropriate, unnecessary and unjust to issue an order to show cause for the revocation of the Permits. While it is true that SMA Rule 10 states that, unless otherwise stated in the permit, the SMA Permit lapses after 2 years if substantial construction has not occurred. However, the Planning Director has previously put permits on hold while other parties have been waiting for a shoreline certification, and the Commission has found grounds to deny petitions to revoke over unmet conditions if they find current reasonable efforts to conform to permit conditions. While the County certainly could have made an argument in 2008 that it considered that the Permits associated with the Project had lapsed because substantial construction was not completed, it is extremely problematic that the County waited more than fifteen years to commence such an action, all the while allowing RFP and its developers to continue to invest in the Project. That is simply unfair and unjust. As such, we believe that it is appropriate for the Commission to deny the petition to revoke and forego the issuance of an Order to Show Cause.

### A. The Commission Should Deny the Petitions to Revoke Because RFP and Kerzner Are Working Towards Reasonable Compliance with All Conditions.

The SMA Permit deadline was also amended to allow RFP and their developers to obtain a shoreline certification, but the Commission has previously recognized efforts toward reasonable compliance as grounds to deny petitions to revoke (explained below). The confusion over the appeal created a unique scenario for all involved, but Kerzner and RFP have continued to exhibit their intentions to move forward, working toward compliance with all zoning conditions. Additionally, "this matter involves approved entitlements . . . and so the potential of revocation of those permits from the county's perspective could expose it to significant liability." Meeting Minutes of the Kaua'i Planning Commission, dated Mar. 12, 2024, at 41, attached as **Exhibit 19**.

*In the Matter of the Petition of Friends of Maha'ulepu* ("***Friends of Maha'ulepu***") is a case to revoke zoning permits from Coco Palms Hui, LLC and is analogous to ours. In *Friends of Maha'ulepu*, the petition claimed that Coco Palms was in violation of permit conditions for failing to properly lease the development land, pay taxes, conduct a Ka Pa'akai Analysis, and widen a nearby road. *Id.* At the time of the hearing, Coco Palms still had not acquired the final signature

required for the lease, but it was otherwise approved by the BLNR. *Id.* It did not widen the road but instead made a $93,000 payment and relied "on the county" to complete the work. *Id.* at 43. The taxes were subsequently paid after being 6 years in arrears, and the Ka Pa'akai Analysis was not addressed, even though petitioners claimed it had been more than 6 years overdue. *Id.* While the case was decided on the basis of standing, the Commission went on to explain that the petitions would have been denied regardless, because they were satisfied that Coco Palms "has either shown sufficient performance" under the conditions "or that the applicant is in the process of working towards reasonable compliance with all conditions." *Id.* at 78. Reasonable compliance in that case apparently was not based on actual construction, instead the Commission recognized Coco Palms' efforts to move forward with the project by its investments (the Commission did not supply details for its reasoning).

In our case, RFP and Kerzner have continued in good faith to push the Project forward and work towards reasonable compliance by making substantial investments and engaging in many agreements. RFP and Kerzner have executed a lease/development agreement to move the Project forward. As part of its development plan for the Project, Kerzner has employed G70 (a renowned consultant group) and has invested significant sums in redesigning the entire Project. Further, G70 is assisting in the preparation of an EIS as requested by the County in March 2024, including completion of the Ka Pa'akai Analysis. *See* Overton Decl. The millions of dollars that Kerzner has invested in moving this Project forward go far beyond what the Commission deemed sufficient performance in Coco Palms. Thus, the Commission would be justified in denying the petitions in this case.

In *Friends of Maha'ulepu*, it had been determined that "the building permits had lapsed," or more "technically" accurate, were "put on hold" for the restaurant on site. *Id.* at 62. This was because, as Planning Director Hull put it, "[t]here was never a shoreline determination made by our department." *Id.* He added that "determinations need to be made concerning where the shoreline is and so we put those building products on hold to determine whether or not a survey is necessary . . . ." *Id.* Director Hull seemed to be defending the project even though the permits had lapsed, because his department put it on hold. Apparently, expired permits were not considered fatal to the progress of a development. To that, the Coco Palms representative, Mr. Trask, responded they "just found that out" and were working to remedy the situation. *Id.*

The same is true in our case: the DLNR never decided the appeal standing issue which stalled the shoreline determination, and the entire Project has been put on hold. *Friends of Maha'ulepu* characterized putting a project on hold as a matter of course without a shoreline determination since a project cannot go forward without one. The expired permits did not seem to matter, and the Commission confirmed that in their decision. Our Project is no different.

Mr. Trask also pointed out that "the DLNR is the largest, most underfunded state agency in [Hawai'i]" and that working with them takes time. *Id.* at 44. Ms. Neustein, District Land Agent for the DLNR reaffirmed this when she acknowledged a five-to-seven-year delay in processing when the tax issue "fell through the cracks." *Id.* at 64 (Ms. Neustein explaining that the issue began in "either 2016 or 2018" and she had only been at the job one year at the time of the case in 2024). Ms. Neustein then issued a notice of default "once it was brought to [her] attention," and Coco Palms paid the tax. *Id.* at 64.

In our case, the shoreline appeal standing issue slipped through the DLNR's cracks and RFP has never been notified of its resolution or that the shoreline certification has been approved or denied. Further, RFP was never issued a notice of default regarding Condition 3(t) until recently, and since then, RFP and Kerzner have been working to remedy the situation.

In *Friends of Maha'ulepu*, Coco Palms made no great strides in advancement, but they did show a good faith effort to proceed, which is what Kerzner has done. Coco Palms almost had a valid lease, but not quite (it was approved, but lacked the final required signature). And while Coco Palms did not make substantial progress on the other issues, save for paying the tax, the Commission was satisfied that they were working toward reasonable compliance with the conditions.

In our case, the Project has been stalled for reasons out of RFP and Kerzner's hands, but they continue to make good faith efforts to advance it. Most recently, the Project has been completely redesigned, and in response to the Planning Director's request, a consultant group has been hired to investigate a supplemental EIS. Additionally, only recently did the County make it known to RFP and Kerzner that they consider Condition 3(t) to have been triggered and since expired. Like Coco Palms, RFP and Kerzner just found this out and are working toward reasonable compliance with the Condition, as well as advancing the Project overall (but still await a decision on standing).

**A BETTER ALTERNATIVE IS AVAILABLE; THE PROJECT HAS BEEN REFINED, SIGNIFICANTLY REDUCING THE RESORT UNITS AND INCREASING HOUSING SUPPLY.**

As noted above, Kerzner submits that rather than proceed with the Petitions at this time, the Planning Commission has a better alternative—to simply hold the Petitions and review the Proposed Zoning Ordinance that will be submitted to the Planning Commission upon completion of the Chapter 343 process. As noted, Kerzner has engaged G70 to conduct comprehensive research regarding the potential impacts associated with the Project and now, the Project has been redesigned. As discussed in the Declaration of Jeff Overton, there has been a significant reduction in the number of resort units, and a significant increase in available housing units. The Project will still preserve and restore the historical and cultural relics and features of the land for public good, which is something the Hawai'i State Constitution promotes and values.

To the extent that there were concerns over the scale and potential impact the Project may have on average daily visitor count, the island's resources and traffic congestion, a significant reduction in overall size, along with the benefits it brings, should alleviate those concerns.

The Project will still provide local employment, more available housing, and cultural and educational experiences for both residents and visitors alike, which all fit with the goals of the Kaua'i GP and the WKCP. Revoking the current resort zoning status is not the solution as it will take these benefits away from the residents and economy of West Kaua'i. Instead, the proposed reduction in resort units and increase in available housing units should go a long way. The profile of the One & Only visitor matches perfectly with the guidelines included in the Kauai Destination Management Action Plan ("**DMAP**"), promoting and providing cultural interaction and integration into all aspects of the experience.

The Project was originally approved for 250 resort units. Recently, the Project has been redesigned to accommodate the natural features of the land and reduce environmental impact. As a result, the number of resort units has been reduced by almost half to 134 units. This significant reduction creates more open, natural space and significantly reduces the average daily visitor count.

Additionally, the number of workforce housing units has more than tripled from 15 units to 52 units, a nearly 350% increase. Much concern has been expressed over the need for workforce housing near town centers on Kaua'i. The Kaua'i GP sees workforce housing as social equity and focuses on bringing this "missing middle" housing type "in proximity" to communities. Kaua'i

GP at 222, 204. This Project is now slated to build much-needed workforce housing within minutes of four of West Kaua'i's most populous communities (Kekaha, Waimea, 'Ele'ele, and Hanapepe).

The Project will also provide residents and visitors alike with educational opportunities and cultural appreciation. The Project provides a museum displaying cultural artifacts and education, including the original structures and their contents. The ancient Hawaiian fishpond will be restored to its original state to display Hawaiian aquaculture for all visitors to experience. Kerzner representatives have already taken the initiative to promote agri-tourism with local growers.

Rather than shutting the Project down, a better alternative is to allow these important benefits to come to fruition, while allowing a modified Project that reduces negative impacts and increases positive ones. The features of this Property are valuable cultural experiences, and the Project brings them to life along with the kama'aina heritage of one of West Kaua'i's historical families. The Project has scaled back in terms of resort units while increasing the workforce housing opportunities the local residents need. This is a better alternative for everyone.

### A. The Constitution of the State of Hawai'i Recognizes the Value of Conserving and Developing the Historic Cultural Property Within the State for the Public Good.

"The State shall have the power to conserve and develop objects and places of historic or cultural interest and provide for public sightliness and physical good order." Haw. Const. art. IX, § 7.

> The Constitution of the State of Hawaii recognizes the value of conserving and developing the historic and cultural property within the State for the public good. The legislature declares that the historic and cultural heritage of the State is among its important assets and that the rapid social and economic developments of contemporary society threaten to destroy the remaining vestiges of this heritage.

HRS § 6E-1.

Since arriving to Hawai'i in the 1860s, the Robinsons have been stewards of the land and of Hawaiian culture. As illustrated in this document, the Project embodies Constitutional concepts; embraces the Hawaiian culture; preserves the unique features of the land; restores ancient Hawaiian practices; and provides a vital lifeline to the communities of West Kaua'i. This Project is not a Hilton, Marriot, Four Seasons, or other commercial giant stomping hallowed ground on these sacred lands. This Project is being carefully considered by a kama'aina family to restore

ancient practices and preserve historical artifacts so closely tied to West Kaua'i's history while bringing a much-needed boost to the local economy. The Project that has endured many delays, but Kerzner is making good-faith efforts to ensure its completion.

**B. The Property Should Keep Its Resort Designation Because the Project Aligns with the WKCP & Kaua'i GP Goals; the Project Fits With Kaua'i's Character and Cultural History, and Brings Essential Employment Opportunities and Affordable Housing To the West Side.**

The Kaua'i Plans have been updated to address Kaua'i's changing needs and the Project should keep its resort status because it continues to fit within and fulfill the goals of both plans. The Project aims to preserve and restore Hawaiian cultural artifacts and features; it will provide local employment opportunities and affordable housing for the communities of West Kaua'i; and it is located near town centers, alleviating commute times and traffic congestion.

Applicable Hawaii state statutes provide: "[n]o amendment of a land use district boundary shall be approved unless the commission finds upon the clear preponderance of the evidence that the proposed boundary is reasonable, not violative of section 205-2 and . . . consistent with the policies and criteria established pursuant to [§§ 205-16 and -17]." HRS § 205-4.

Further, Section 205-2 requires that, when "establishing the boundaries of the districts in each county, the commission shall give consideration to the master plan or general plan of the county." HRS § 205-2(a).

Section 205-17 states: "the [LUC] shall specifically consider" the "impact . . . on the following areas of state concern" including "[p]reservation or maintenance of important natural systems or habitats" and "valued cultural, historical, or natural resources"; "employment opportunities and economic development"; "housing opportunities for all income groups, particularly the low, low-moderate, and gap groups"; and the "county general plan and all community, development, or community development plants adopted pursuant to the county general plan." HRS §§ 205-17(1), -17(3), and -17(5).

The County has stated: "The [WKCP] provides the framework for how we . . . can celebrate the West Side's unique heritage" and "ensure affordable housing for families . . . ." WKCP, at 4, Message from the Mayor. "In addition to infill development, future development should be located close to existing communities and job centers to mitigate commute times and traffic congestion." *Id.* at 26. One of the four main "Vision and Goals" is "An Equitable Place,

with Opportunity for All" that aims to foster "diverse and equitable communities with vibrant economies, access to jobs and housing, and a high quality of life." Kaua'i GP, 32.

1. ***The Kaua'i Plans encompass broader goals than the petition acknowledges, and the Project will help accomplish them.***

"Zoning in all counties shall be accomplished within the framework of a long-range, comprehensive general plan prepared or being prepared to guide the overall future development of the county." HRS § 46-4. The Kaua'i GP is a broad vision for the island's many concerns, and the Zoning Petition's framing of it mischaracterizes its goals as being narrower than they are. For instance, the petition cites "Goal #3: A Healthy and Resilient People," which aims to "increase the resilience and vitality of Kauai's communities and promote better health outcomes through improving the nature [*sic*], built, and social environment." Zoning Petition ¶ 62. It cites Goal #3 as support to revert the zoning status of the Project because it will "encourage resilience and a diverse economy in lieu of a heavy reliance on the visitor industry." *Id.* ¶ 105. The SMA Petition looks to Goal #1, "A Sustainable Island," and its goals to grow responsibly without depleting important resources. SMA Petition ¶ 84. The SMA Petition also cites to the WKCP for "limiting tourism impacts" and erroneously concludes that simply revoking the Project's permits will support these goals but fails to explain how exactly. *Id.* ¶ 85.

The Petitions argue that the Project goes against the Kaua'i Plans' goals and policies but cherry-picks language to make its arguments and mischaracterizes the plan's policies and goals. Contrary to the Petitions' assertions, the Kauai Plans' expressed desire to control growth have already expressly taken into account the Project's current status as a permitted "pipeline" project. Kaua'i GP, at 162. Further, the Petitions completely ignore the ways that the Project will serve the other stated goals of the Kauai plans, including the plan address affordable housing (*id.* at 39, Policy #2), reducing the cost of living and traffic congestion (*id.* at 42, Policies #6 & #7), upholding Kaua'i as a unique visitor destination (*id.* at 43, Policy #9), and helping business thrive (*id.* at 44, Policy #10). The Project supports these policies by providing affordable housing[3] close to West Side communities, providing cultural and educational experiences for residents and visitors alike,

[3] Here, "affordable housing" refers to Ord. No. PM-2001-356, Condition (q) and is "affordable to and benefitting Kauai households earning no more than eighty percent (80%) of the Kauai Median Household Income . . . ." Ord. No. PM-2001-356, at 5–6, attached as **Exhibit 23**.

and bringing an influx of dollars to local businesses, and has been designated by the County as the appropriate place for such a development for more than two decades.

"Goal #4: An Equitable Place, with Opportunity for All" aims "to foster diverse and equitable communities with vibrant economies, access to jobs and housing, and a high quality of life." *Id.* at 36. Goal #4 is reminiscent of the support expressed by West Kaua'i residents when the zoning was initially granted: "overwhelmingly everyone is being very positive . . . they need the jobs," and "our membership [(West Kauai Business & Professional Association)] in it's [*sic*] entirety support the resort because it will bring needed dollars into our community" for "jobs and the continuation of the many small businesses." *See* Public Hearing Minutes of the Kaua'i Planning Commission, dated Apr. 24, 2001, at 6–7, attached as **Exhibit 20**. Similarly, our client continues to hear such support for the Project, as discussed more fully below.

The Project provides affordable housing and close-to-home employment opportunities for West Side communities. Goal #4 addresses the lack of affordable housing for "the average working household" and the added expense of long commutes. Kaua'i GP, at 36. The Project is near town centers and is also supplying affordable housing beyond zoning condition requirements; (as discussed later) its most recent proposed refinement would more than triple the number of affordable homes.

2. ***The Project keeps with Kaua'i's character and cultural history and aligns with the Kaua'i GP and WKCP goals.***

"The Kaua'i Tourism Strategic Plan seeks to reinforce authentic Native Hawaiian culture and local Kaua'i culture." Kaua'i GP, 163. It also aims to "[p]rovide visitors with a unique, positive, culturally rich, and safe experience on Kaua'i." *Id.* at 166. "Both residents and visitors are attracted to the nostalgic plantation character of West Kaua'i's towns . . . ." WKCP, at 43. "Heritage is important in understanding the story of West Kaua'i—its history, identity, and people." *Id.* at 31.

When the LUC approved the zoning amendment to resort designation, it recognized that the Project fits with Kaua'i's character and history. "Kaua'i tends to be perceived as romantic, scenic, quaint and relaxing, which are the feelings that the Project seeks to promote." *Destination Villages Kauai, LLC.* FOF/COL (**Exhibit 18**). "Centered on the historic Robinson Family estate, the Project will also draw on a previously private kama'aina heritage." *Id.* Two focal points for visitors will be an "ancient Hawaiian fishpond" and the "now vacant former residence of the Robinson Family, constructed in 1897." *Id.* at 10. And "the development concept for the Project

appears to build on Kaua'i's existing image and appeal to visitors, and to be compatible with the statewide focus on the westbound market segment as a source of near-term growth." *Id.* at 21.

Agriculture and tourism are not mutually exclusive, and this Project aims to bring visitor's closer to West Kaua'i's agricultural heritage. The Project "is intended to restore the physical attributes of the entire property to former conditions, thereby preserving a significant chapter of the history of Hawaii and Kauai." Planning Dept. EIS Acceptance Notice, dated Mar. 31, 2000, attached as **Exhibit 21**. The land holds remnants of the agricultural history so closely associated with West Kaua'i's plantation character, as well as aquaculture utilized by ancient Hawaiians. "In addition, a second focal point for the project will be the preservation of a 6.5-acre fishpond located in the central portion of the property." *Id.* at 4. "Fishponds served as a unique part of an integrated agricultural and ecosystem management regime today known as the ahupua'a system .... In a culture that honors sustainability, fishponds symbolized the connection between communities, the *'aina* (land), and *mo'omeheu* (culture)."[4] The fishpond can bring Kaua'i's visitors closer to Hawaiian heritage through exposure to this ancient cultural feature which further aligns the Project with the goals expressed by each plan (Currently, only the Menehune Fishpond near Lihue is open to the public; the Nomilo Fishpond is on private property and is not open to the public). A zoning reversion would destroy these efforts to preserve the cultural heritage and artifacts this land holds.

The Project was approved because it fits with Kaua'i's identity, and it is even more true today. Recent revisions have decreased its size from the approved 250 resort units to 134, more closely resembling Kaua'i's scenic and quaint setting, and providing more natural landscapes that reflect Kaua'i's scenic image. The Project aligns with the goals of the Kaua'i GP and the WKCP and will provide visitors with educational exposure to Hawaiian heritage. Maintaining the resort zoning status will allow West Kaua'i and its visitors to experience these opportunities while providing jobs and affordable housing.

### 3. *The Project will provide local employment needs for the community's younger generations and increased affordable housing units.*

The Project is especially beneficial because it addresses the concerns of West Kaua'i which are different than the concerns of population centers like Lihue, Kapa'a, and Poipu. "The lack of

[4] NOAA Fisheries, *Hawaiian Fishponds: Providing Physical and Cultural Sustenance*, https://www.fisheries.noaa.gov/feature-story/hawaiian-fishponds-providing-physical-and-cultural-sustenance (last visited, Sept. 30, 2025).

local jobs on the Westside has perpetuated an exodus of younger generations who may search elsewhere for economic opportunity." WKCP, at 19. "There are more workers than jobs in the region and many residents bear the financial burden of commuting elsewhere." *Id.* at 18. Additionally, "job growth in West Kaua'i will not keep pace with its population growth" which "indicates a worsening shortage in local jobs unless the status quo changes." *Id.* at 19. "Fostering economic development and diverse job opportunities will create new jobs." *Id.* Under Part II, Section F. "Economic Development," the "Value Statement" states that "West Kaua'i's economy" should "create jobs" and "build prosperity and opportunity for all its communities." WKCP, at 42. "Public investment and infrastructure must support the region's existing economic drivers" including "tourism." *Id.* "Over 40 percent of the County's Real Property tax revenue comes from visitor accommodations." Kaua'i GP, at 161.

The Kaua'i GP is a broad view for Kaua'i, and it acknowledges the stark difference between the West Side and the rest of the island. While visitor counts on Kaua'i may be rising and threatening infrastructure capacity elsewhere on the island, the same is not necessarily true for the West Side. Graphs and charts in the Kaua'i GP show historical and projected visitor numbers that illustrate this point. From 1998 to 2035, the historical and projected annual visitor numbers for Lihue are from 186 to 222, and for South Kaua'i it goes from 353 to 548. Kaua'i GP, at 330. But for Waimea-Kekaha, it is 12 to 15 and it is zero for Hanapepe-'Ele'ele for the entire range. *Id.* This language makes it clear that the County has recognized the need for the benefits that this Project can provide.

The Project is being built less than a mile from Waimea Town and less than a 10-minute drive (or 30-minute bike ride) from Kekaha, Hanapepe and 'Ele'ele (according to Google Maps). It will help to alleviate the financial burden of commuting elsewhere for these relatively populous West Side communities and bring much-needed dollars to local artisans. The Project will provide local employment opportunities staffing its restaurants, spa, lounge, resort units and other on-site amenities. The Project will need to hire residents with unique local knowledge to care for the Hawaiian fishpond, the grounds, and "to explain what those plants are" and "what was it like to live in Hawaii when that fishpond was really going." Public Hearing Minutes of the Kaua'i Planning Commission, dated Apr. 27, 2000, at 7, attached as **Exhibit 22**. These kinds of employment opportunities can help to prevent the exodus of younger generations, keeping local

families together. The influx of tourist dollars can also help to revitalize local businesses, improving quality of life for these families.

With affordable housing increased to 52 units, this substantial increase makes affordable housing more accessible to West Side communities than when it was originally approved. It enables employees to walk to work, rather than drive, alleviating traffic concerns and transportation costs, further meeting the goals of the Kaua'i Plans. The Property should maintain its resort designation to allow for the construction of these vital benefits that can help to alleviate some of the West Side's unique needs.

## CONCLUSION AND REQUESTED RELIEF

For the reasons set forth above, Kerzner urges that the Commission refrain from taking action on either Petition until Kerzner has a chance to bring the Proposed Zoning Ordinance before the Commission and have it heard. Kerzner and RFP have invested significant sums in moving this Project forward and have relied in good faith on the belief that approvals are still valid. Alternatively, to the extent that the Commission does take action on the Petitions, Kerzner requests a contested case hearing on both Petitions.

DATED: Honolulu, Hawai'i, November 6, 2025.

/s/ David M. Louie
DAVID M. LOUIE
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# EXHIBIT A

# Agricultural Land Assessment
# For
# Robinson Family Partners
# Proposed Important Agricultural Land



# Makaweli,
# Island of Kaua'i

June 2016

Prepared for:
Robinson Family Partners
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## Introduction/Purpose

To support a Petition for Declaratory Order to Designate 'Important Agricultural Lands' ('IAL'), an Agricultural Land Assessment was prepared for lands owned by Robinson Family Partners on Kaua'i. Located in Makaweli on the southwestern side of Kaua'i, Robinson Family Partners owns approximately 50,270 acres which includes approximately 22,630 acres of conservation land and 27,640 acres of agricultural and urban lands.

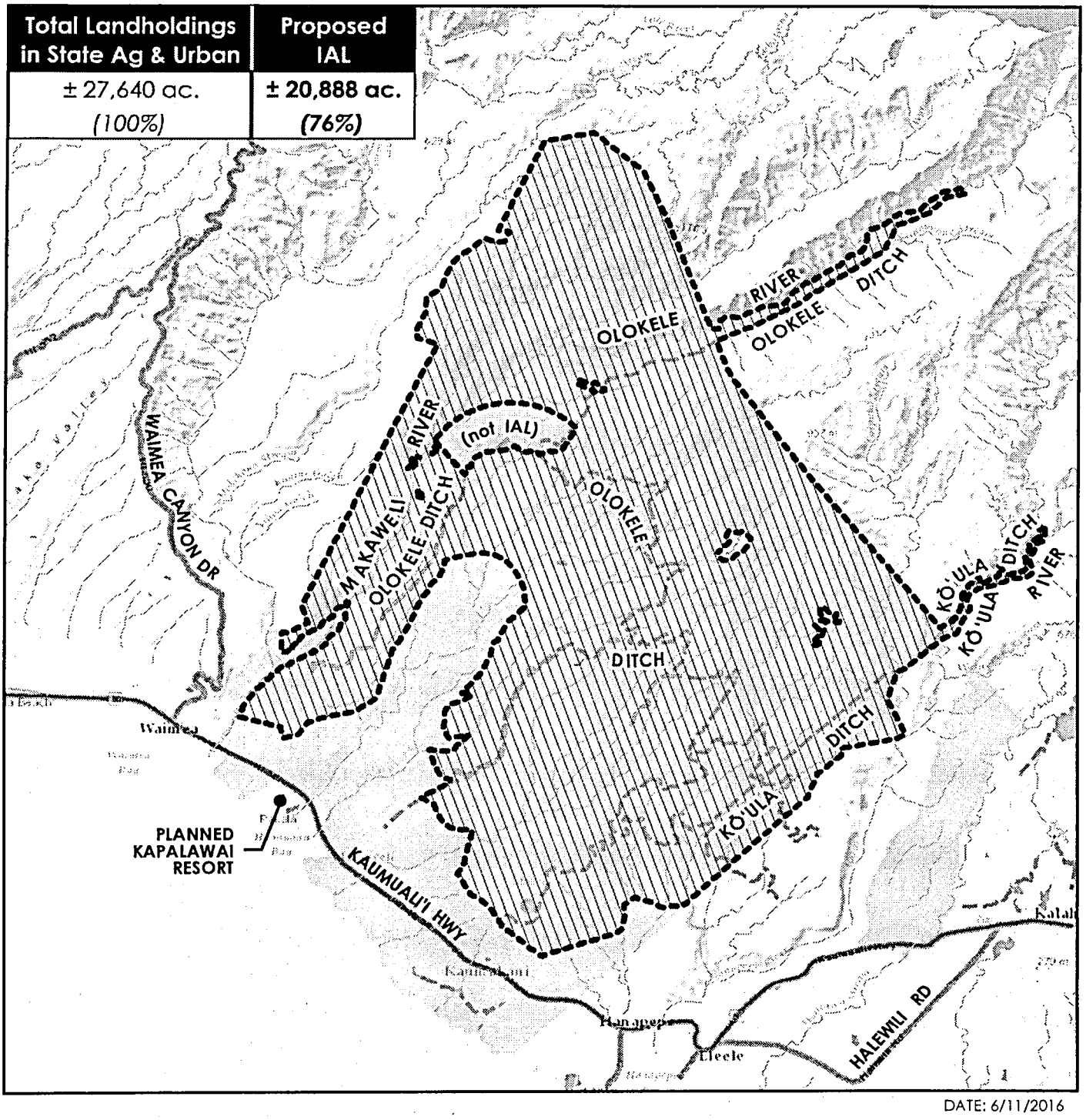
HRS § 205-44(c) provides the standards and criteria to identify IAL. HRS § 205-44(a) provides that lands identified as IAL need not meet every standard and criteria listed in HRS § 205-44(c); rather, lands meeting any of the criteria in HRS § 205-44(c) shall be given initial consideration, provided that the designation of IAL shall be made by weighing the standards and criteria with each other to meet the constitutionally mandated purposes in article XI, section 3, of the Hawai'i Constitution and the objectives and policies for IAL in section 205-42 and 205-43. The standards and criteria of section 205-44(c) are as follows:

1) *Land currently used for agricultural production;*
2) *Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel-and energy-producing crops;*
3) *Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawai'i (ALISH) system adopted by the board of agriculture on January 28, 1977;*
4) *Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production;*
5) *Land with sufficient quantities of water to support viable agricultural production;*
6) *Land whose designation as important agricultural lands is consistent with general, development and community plans of the county;*
7) *Land that contributes to maintaining a critical land mass important to agricultural operation productivity;*
8) *Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water or power.*

In consultation with the County of Kaua'i Planning Department and generally consistent with the County of Kaua'i Important Agricultural Lands Study, approximately 20,888 acres of land owned by Robinson Family Partners are proposed to be voluntarily designated IAL (Figure 1). The following Assessment provides an overview of the various characteristics of the proposed Robinson Family Partners IAL. The attached exhibits (Figure 1 through Figure 9) illustrate and quantify the land characteristics of the proposed IAL lands.

## Agricultural Use History

The Robinson Family Partners' lands comprise the majority of what is commonly referred to as the Gay & Robinson, Inc. lands in West Kaua'i. Lands were held by Robinson Family members from 1865 until 1991 when Robinson Family Partners was formed and almost all of the Family's landholdings were transferred from Robinson Family members to Robinson Family Partners.




File: Q:\Kauai\Robinson Family IAL\GIS\Projects\Figures\FIG Location Map.mxd

DATE: 6/11/2016

**LEGEND**

- Total Landholdings in State Ag. and Urban Districts
- Proposed IAL Boundary
- Canals/Ditches
- Lakes/ Reservoirs

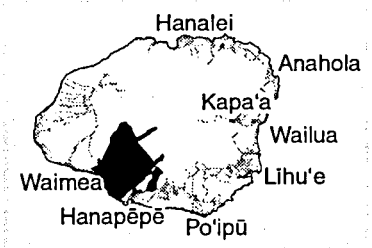



**Figure 1**

**Location Map**

# Robinson Family IAL

Island of Kaua'i

North

Linear Scale (miles)

0 0.75 1.5

Source: County of Kauai. Robinson Family Partners. ESRI Online Basemap.

Disclaimer: This graphic has been prepared for general planning purposes only.

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Robinson Family Partners then leased almost all of its landholdings to Gay & Robinson for use and management. In June 28, 1865, approximately 21,488 acres of the entire ahupua'a (land section) of Makaweli were purchased by Elizabeth McHutcheson Sinclair, the Family matriarch, from her Royal Highness Victoria Kamāmalu Ka'ahumanu IV, the sister of King Kamehameha IV and King Kamehameha V. With additional lands purchased in subsequent years, the Robinson Family's landholdings increased to over 50,000 acres in Makaweli. Elizabeth Sinclair, her daughters and grandsons Francis Gay and Aubrey Robinson, formed a partnership to raise cattle and grow sugar on the Family owned land. The land has been used for ranching, crop cultivation, and conservation for over 150 years.

Cattle ranching was undertaken shortly after the lands were purchased and sugar cultivation followed on Gay & Robinson's land. The first sugar was harvested in 1884 and cultivation later expanded to Hanapēpē Valley. In 1889, approximately 7,000 acres of land in Makaweli were leased to Sir William Renny and he started Hawaiian Sugar Company (HSCo). Gay & Robinson retained 4,000 acres of land to grow sugar cane that was processed at HSCo's mill.

In order to expand the sugar cultivation on the lands between Makaweli River and Hanapēpē River, extensive irrigation systems were built. From east to west, Hanapēpē Ditch System, later known as Kō'ula Ditch System, was first completed in 1892 and Olokele Ditch System was completed in 1904. Subsequently, a 500 kilowatt (KW) hydroelectric plant was constructed (later upgraded to 1.25 MW) which was utilized to supplement the electricity generated by the sugar factory using cane fiber. These infrastructure improvements contributed significantly to the success in sugar production.

In 1941, C. Brewer Company negotiated a lease with Gay & Robinson and bought the HSCo's assets in the same year. The Hawaiian Sugar Company was renamed to Olokele Sugar Company (Olokele Sugar Co.) and many improvements to the facilities and the workers' living conditions were made, including installation of a new drip irrigation system to replace the existing furrow irrigation system. Olokele Sugar Co grew quickly into one of the highest yield-per-acre producers in Hawai'i. With the help of the U.S. government's subsidy, Hawai'i's sugar workers were at the highest standard of living for agricultural workers in the world in 1955.

In 1974, the U.S. government made a policy change that eliminated the subsidy to the domestic sugar industry. As a result, the cost of sugar production in Hawai'i was on the rise and competing against the lower price of imported sugar became increasingly difficult. Olokele Sugar Co. stayed in operation for another twenty years, but was no longer able to maintain the sugar business in good condition. In 1994, less than 8 years before the lease term of Olokele Sugar Co. was to an end, Gay & Robinson purchased the assets of Olokele Sugar Co. from C. Brewer Company. It was the first time that the entire land in Makaweli was under Robinson management.

After Gay & Robinson's purchase, improvements were made to the sugar facilities. Production efficiency allowed Gay & Robinson to continue producing sugar for another 15 years. However, the cost of sugar production in Hawai'i continued to escalate, while the price of domestic sugar was not increasing. Sugar production remained as a very tough business to run profitably. In 2008, Gay & Robinson made the decision to end the sugar production, with the last crop being harvested in October 2009.

When sugar production was flourishing with infrastructure improvements of two ditch systems, the cattle ranch operation remained active on the *mauka* lands above the ditch system and in the uncultivated valleys between sugar cane fields that extended makai. Historically, Gay & Robinson owned slaughter facilities to process meat until Gay & Robinson changed the direction of their cattle operation more toward a cow/ calf operation and began shipping calves to the U.S. mainland for finishing and processing. The profits from the cow/ calf operation, however, were not great. The cost of shipping cattle to the U.S. mainland continued to increase and Gay & Robinson had no control over where the cattle were pastured, the pasture's condition and the timing of processing the cattle on the mainland ranches.

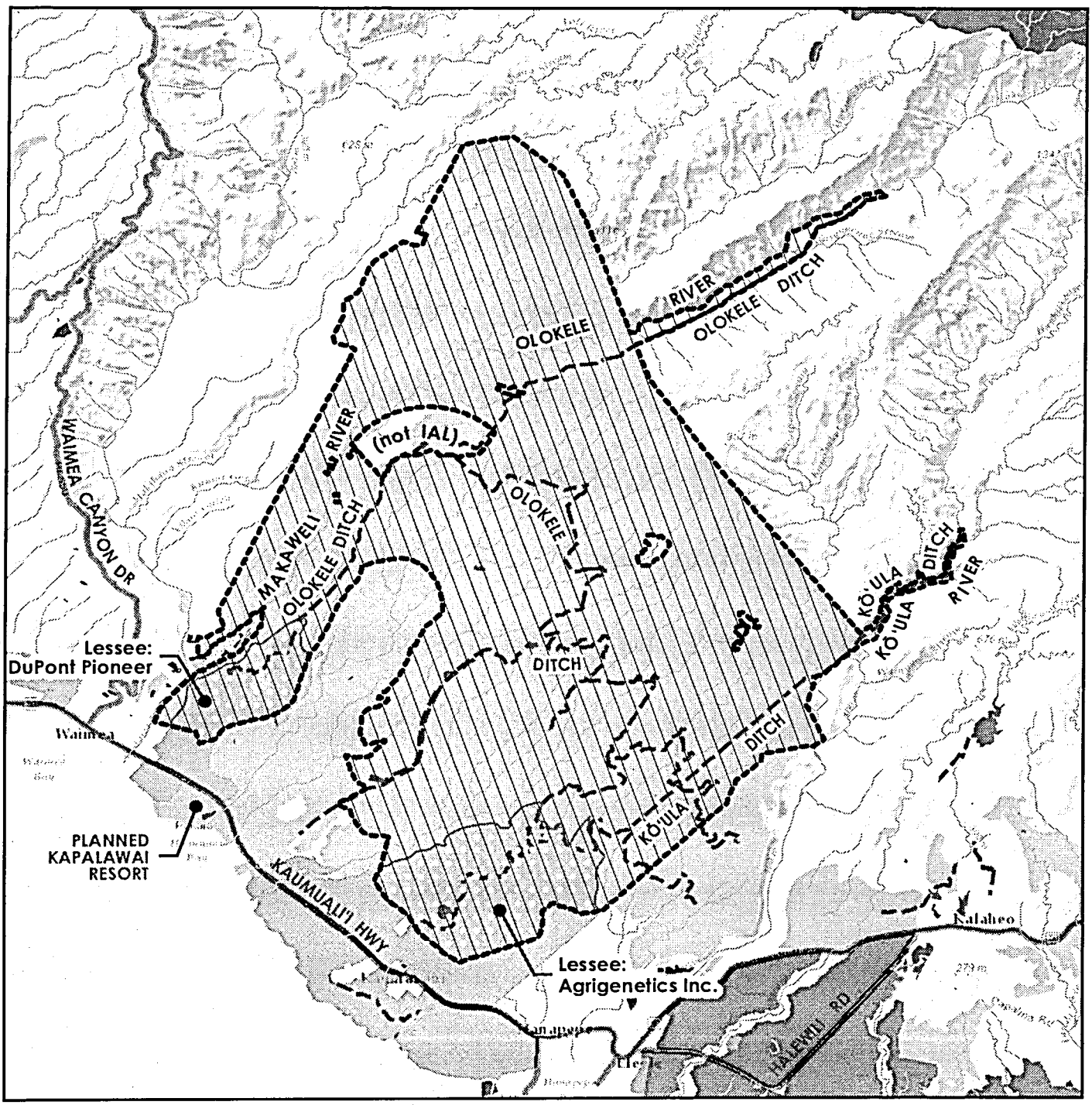
Gay & Robinson made the decision to build a new slaughter/ processing facility within an existing 4,800 sq. ft. warehouse of the old Sugar Mill to process its own cattle. The new facility was completed in 2013 with over $1 million invested. The facility includes the kill floor, mobile slaughter unit, hot box, chill room, processing room, freezer, locker room, shower, toilet, supply storage room and offices for the manager, supervisor, and USDA inspector. The chilling equipment and hot water heater are attached to the exterior of the warehouse. Located outside the warehouse are the cattle/ sheep holding pens and the wastewater treatment facility. The wastewater treatment system converts the liquid by-product into fertilizer for use on the pastures. The facility is owned and operated by Gay & Robinson's wholly owned subsidiary, Makaweli Meat Company LLC (MMC). Beef is sold by MMC under the Makaweli Beef label. Backed by the rich Kaua'i history, land stewardship and sustainable ranching practices, Makaweli Ranch is dedicated to providing premium, all natural, 100% grass fed beef with no hormones or steroids. The closed herd of Devon-Shorthorn crossbred cattle freely roam and graze on the more than 25,000 acres of rich grasslands of Makaweli Ranch. Located in one of the world's cleanest and most isolated environments, the primary mission of Makaweli Ranch and MMC is to supply all natural, consistently tasting and homegrown beef to the residents, businesses and visitors of Kaua'i.

Makaweli Ranch cattle spend their entire life, grazing on Guinea, California and Green Panic grass that are suitable to this climate. There are also thousands of kiawe trees that produce a bean that is high in protein that drops to the ground that the cows love. With this supplemental natural feed source at Makaweli, the MMC beef have been noted for a unique mesquite molasses flavor. Some of the top Hawai'i chefs seek out this all natural beef to serve in their restaurants. Makaweli Ranch is in the process of growing its feeder herd so that more Makaweli Beef brand meat can be provided to an expanding local market.

**Current and Future Agricultural Operation**

Figure 2a illustrates current agricultural use of the region. The figure was compiled from information provided by Robinson Family Partners and the data collected in the 2015 Hawai'i Statewide Agricultural Land Use Baseline study by Spatial Data Analysis and Visualization Laboratory, University of Hawai'i at Hilo. The proposed IAL is shown.

Of the 20,888 acres proposed for IAL, approximately 18,700 acres (90%) of the proposed IAL land has been utilized for cattle ranching by Gay & Robinson's Makaweli Ranch and approximately 2,188 acres (10%) of the *makai* land are a part of leased land for seed production.




File: Q:\Kauai\Robinson Family IAL\GIS\Projects\Figures\FIG Current Ag Use.mxd

DATE: 6/11/2016

**LEGEND**

Current Ag Use

- Seed Production
- Pasture
- Coffee
- Diversified Crop
- Taro
- Proposed IAL Boundary
- Leased Land
- Streams
- Canals/Ditches
- Lakes/ Reservoirs

Source: State Department of Agriculture and University of Hawai'i at Hilo Spatial Data Analyst and Visualization Laboratory (2015). Robinson Family Partners, Inc. (2016). County of Kauai.

Disclaimer: This graphic has been prepared for general planning purposes only.

**Figure 2a**

**Current Agricultural Use**

# Robinson Family IAL

Island of Kaua'i

North

Linear Scale (miles)

0 0.75 1.5

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Current Lessees include Agrigenetics Inc. (subsidiary of Dow Chemical Co.) and DuPont Pioneer.

Ranch Operation

Figures 2b and 2c illustrate the Makaweli Ranch operation within the approximately 18,700 acres proposed for IAL. Of these lands, approximately 11,940 acres of Upper Pasture are located above the ditch system. These lands are managed to control invasive species and improve the grasses that are sustained by rainfall. Depending on the rainfall, the carrying capacity of these mauka pastures will vary. Below the ditch system, the approximately 6,760 acres of pasture are typically more intensely utilized by the cattle herd. These Lower Pasture lands include improved pasture and irrigated pasture. Within the Lower Pastures, the approximately 400 acres of irrigated pasture are noted with the potential of an additional 1,105 acres that could be converted to irrigated pasture to support an increased herd. There are additional 5,255 acres of Lower Pastures that account for the balance of the ranching operation. On average, the carrying capacity of the ranch lands is 1 animal per 5 acres.

The Cattle

The Ranch herd is Devon-Shorthorn crossbreed and managed as a closed herd to prevent disease. The herd is currently comprised of 3,500 to 4,000 head of cattle; approximately 1,100 cows, 850 calves, 1,200 feeders, and 100 to 200 replacement bulls and breeding bulls. Approximately 50% of the herd are located on the proposed IAL at any given time.

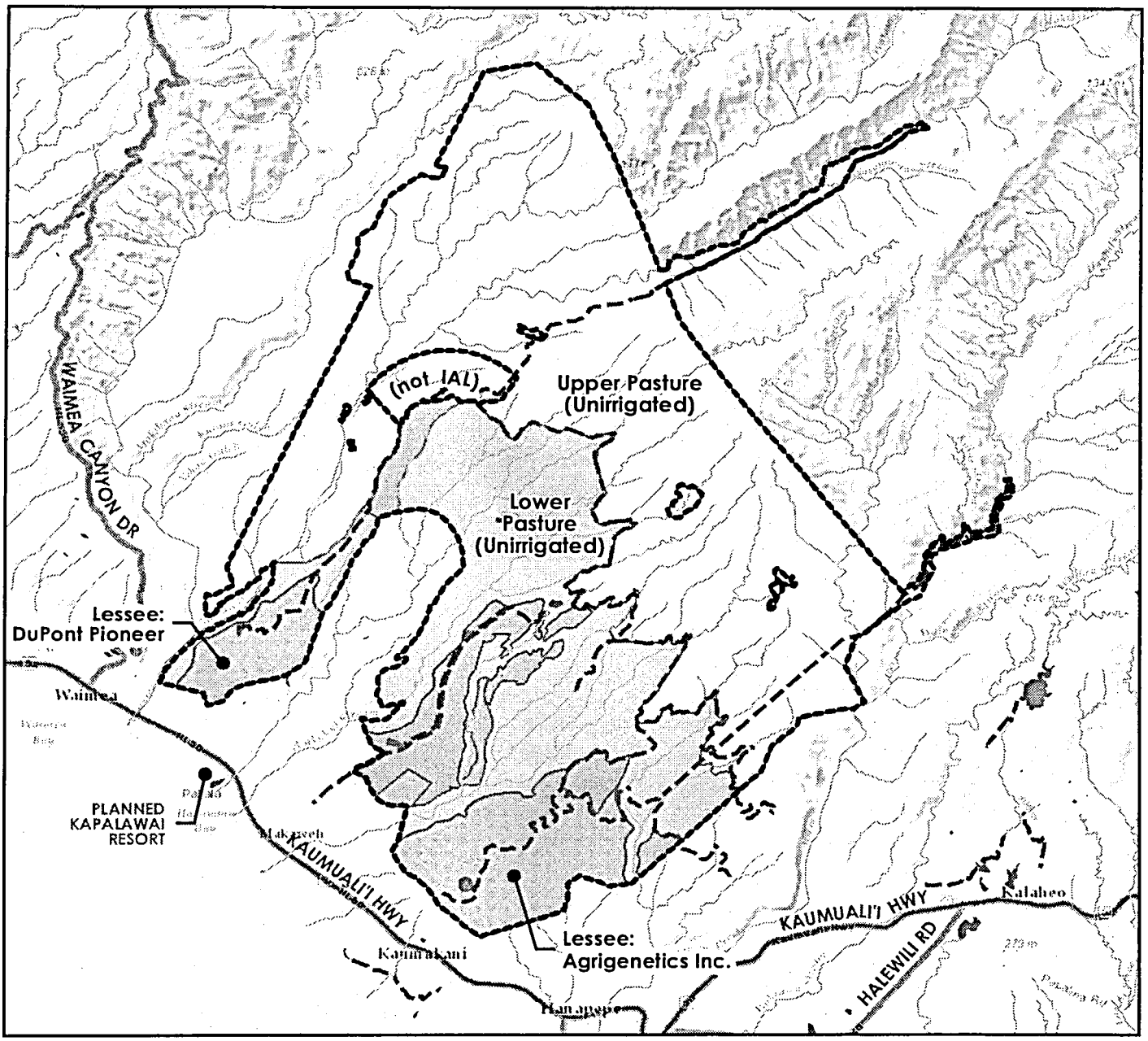
The cattle operation includes year around breeding with calves born all year around to provide a consistent supply of calves. Breeding is in the open and bulls typically never leave the cows. The calving rate is 85%, meaning that 85% of all cows give birth to typically one calf per pregnancy. Cows are fertile immediately after birth and are able to produce on average 4 calves every 3 years.

To manage the herd, the Ranch tries to maintain approximately a 10% breeding cow turnover per year. Heifers go into the herd at approximately 2 years of age and are left in the herd for approximately 10 years then replaced by young heifers. Cows will be removed from the herd earlier if they are not producing calves due to infertility. These cows, along with culled older bulls, are processed at the slaughter facility for hamburger.

Land Management

Land management activities to improve pasture areas include (1) additional irrigated pastures, (2) grass seed production and planting programs, (3) fencing and paddocks repairs, (4) maintaining and upgrading roads, and (5) invasive species eradication to improve pastures.

The majority of the Ranch pastures (Upper and Lower) relies on rainfall to support a stocking rate of approximately 1 head per 5 acres. Cattle are rotated to pastures where there is sufficient rainfall to support grazing. Currently, the ranch has approximately 400 acres of irrigated pastures on proposed IAL. The total potential future acreage of irrigated pasture is 1,105 acres, which is comprised of former sugar cane fields below the ditch system. Refer to Figure 2b.




File: Q:\Kauai\Robinson Family IAL\GIS\Projects\Figures\FIG Ranch Operation.mxd

DATE: 6/11/2016

**LEGEND**

- Proposed IAL Boundary
- Leased Land
- Streams
- Canals/Ditches
- Lakes/ Reservoirs

| Ranch Operation | Approximate Area (in acres) |
|---|---|
| Upper Pasture (year round breeding) | 11,940 |
| Lower Pasture (unirrigated) | 5,255 |
| Lower Pasture (irrigated) | 400 |
| Lower Pasture (potential irrigated) | 1,105 |
| | Total: 18,700 |

Source: Robinson Family Partners, Inc. (2016), County of Kauai.
Disclaimer: This graphic has been prepared for general planning purposes only.

**Figure 2b**

**Makaweli Ranch Operation**

# Robinson Family IAL

Island of Kaua'i

North

Linear Scale (miles)
0 0.75 1.5

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Lower and Upper Pastures



Lower Pasture - Unirrigated (Potential Irrigation)

Lower Fields - Irrigated



Lower Pasture - Irrigated



Devon-Shorthorn Crossbred Cattle and Ranch Access Roads



Lower Pasture (Irrigated - Leased)

**Figure 2c**

**Site Photographs**

## Robinson Family IAL

Island of Kaua'i

Photos Taken:
April, 2016

The 5 year goal is to install approximately 1,000 additional acres of irrigated pasture within the proposed IAL.

The Ranch is also continuing its seed propagation and grass planting program to improve the carrying capacity of the Lower Pastures. The planting program removes invasive species and plants preferred species of pasture grass. Green Panic Grass has proven to be an excellent feed for cattle along with its favorable characteristics; chokes out invasive species, is draught resistant, and is a high protein grass. Green Panic seeds need to be ingested and released through manure in order to germinate. The Ranch is working on producing its own seeds for planting to improve existing pastures.

Other pasture grasses include Guinea, Pangola, California, and Kikuya grass. Grasses with high protein quantity are coveted as cattle feed. Other incidental yet delicious food for cattle include Kiawe beans, mangos, guava, and lilikoi.

The land management and pasture improvement program can be applied to approximately 8,000 to 9,000 acres of current pasture lands within the proposed IAL. The 5 year goal for the planting program is to install an additional 500 acres of improved and managed pasture. These 500 additional acres would be in addition to the 1,000 additional irrigated acres of pasture. This combined additional 1,500 acres of land management improvement is expected to increase the herd capacity by at least one additional head per additional acre of land management improved pasture, or an additional 1,500 head of cattle.

Approximately 15,000 acres of proposed IAL is fenced with a combination of cattle and/or pig fencing. The pig fencing is used to keep out wild pigs and the fenced paddocks are used to corral the cattle, separate sexes, manage bulls, and effectively manage grass growth and maintenance. The fenced paddocks are used to house the cattle. Permanent corrals are built in many locations to provide infrastructure to complete the above activities listed such as separating, branding, and doctoring.

There are also a total of 50 horses that are pastured/ maintained on the Ranch. The Ranch owns 21 horses and the cowboys are allowed to keep their 29 personally owned horses on the Ranch. These horses are working horses and are essential for Ranch operations. Approximately 70% of the horses are female, along with one stallion.

Slaughter Facility Production

Makaweli Ranch sends cattle to the MMC slaughter/ processing facility one day per week and the 100% grass fed Makaweli Beef is distributed to stores and restaurants primarily on Kaua'i but also throughout the State. The facility is allowed to process up to five days per week. Makaweli Ranch is currently in the process of growing its feeder herd in order to produce and distribute more of its branded beef to the local market and throughout the State. This will be accomplished by installing more irrigated pastures on former sugar cane fields in order to produce consistent quality and maintain consistent supply to the marketplace.

Makaweli Ranch production rate through the slaughter facility is currently 9 head per week. At an average carcass weight of 650 pounds with a resulting meat weight of 65%, Makaweli Beef is producing approximately 3,800 pounds of beef per week to the marketplace. Within the next year, the Ranch will increase production to 12 head per week to result in the increase to approximately 5,070 pounds per week or approximately 263,000 pounds annually.

Based on the Kaua'i County IAL study, this level of beef production would meet the dietary needs of a population of 4,100 on Kaua'i; approximately 6% of island's projected needs for beef to sustain a population of a population of 70,000.

Relative to Kaua'i's islandwide beef production, according to statistics provided by the State Department of Agriculture, Makaweli Ranch represents approximately 9% of the island's beef production (2012). With the planned increase in production, Makaweli Ranch will represent approximately 12% of the island's beef production. Makaweli Beef shall be a very important component of the island's future food sustainability plans.

With an increasing demand for local grass fed beef in Hawai'i, maximizing available grassland on Makaweli Ranch has become important in order to successfully run the entire cattle operation locally from raising calves to processing cattle at MMC. Makaweli Ranch and MMC will continue to expand the marketing and distribution of its branded beef locally and contribute significantly towards providing food security and enhancing self-sufficiency for Kaua'i and the State.

## Agricultural Land Productivity Ratings

The Detailed Agricultural Land Productivity Ratings by the Land Study Bureau (LSB), University of Hawai'i are based on a five-class productivity rating system using the letters A, B, C, D, and E, with A representing the class of highest productivity and E the lowest. The LSB's study for Kaua'i was done in 1967 under the assumption that rain is the basic source of irrigation.

As illustrated in Figure 3: Land Study Bureau – Agricultural Land Productivity Ratings, about 7% of the proposed IAL lands are rated A, 7% are rated B, 3% are rated C, 6% are rated D, and 77% are rated E.

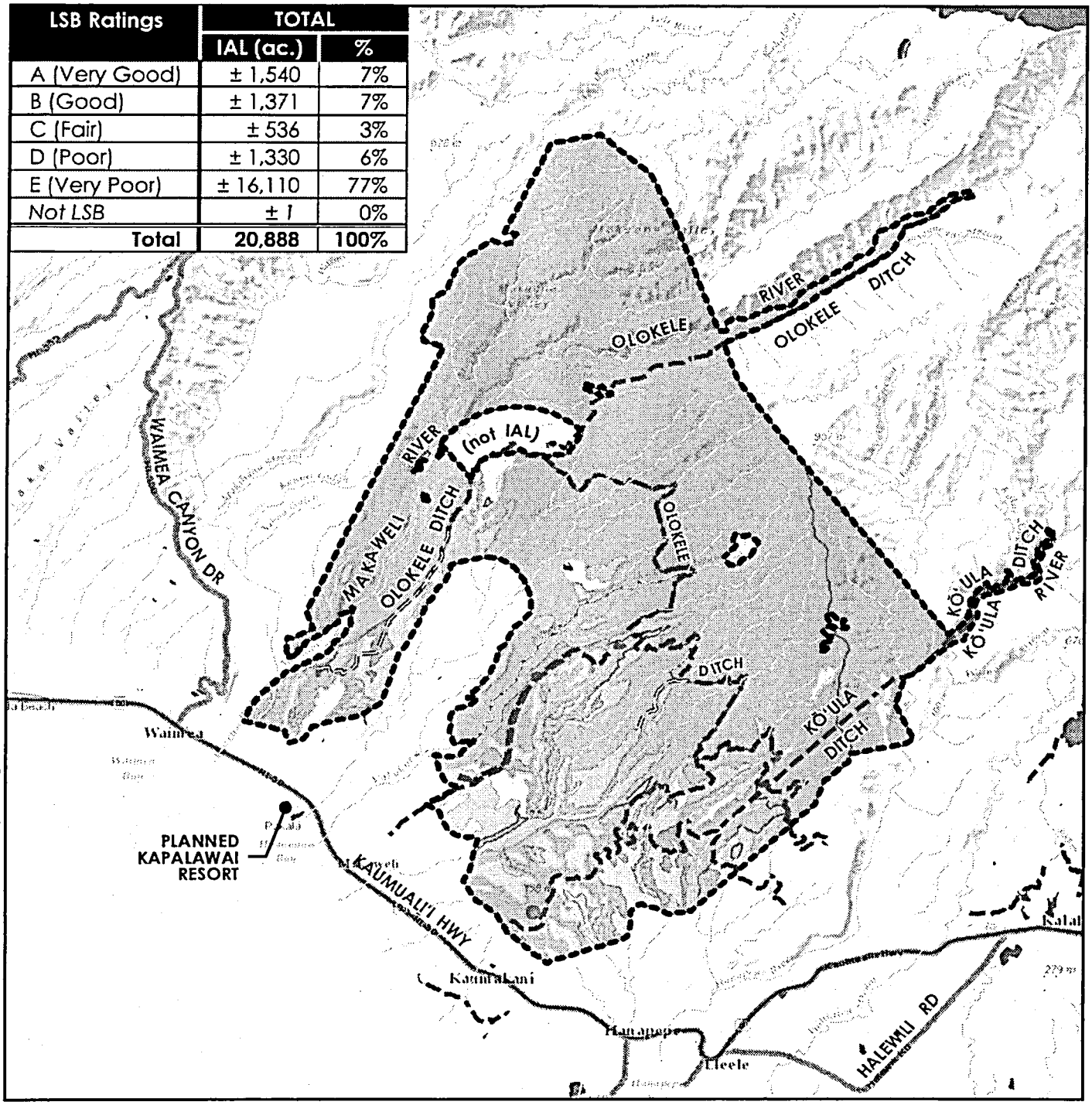
The following table summarizes the productivity rating of the proposed IAL lands as illustrated in Figure 2:

| *Productivity Rating* | *Total IAL* | |
|---|---|---|
| | *Acres* | *% of IAL* |
| A | ± 1,540 | 7% |
| B | ± 1,371 | 7% |
| C | ± 536 | 3% |
| D | ± 1,330 | 6% |
| E | ± 16,110 | 77% |
| Not LSB | ± 1 | 0% |
| **Totals:** | 20,888 | 100% |

## Solar Radiation

Figure 4: Solar Radiation is based on the data from Evapotranspiration of Hawai'i Final Report prepared in February 2014 by Department of Geography, University of Hawai'i at Mānoa for U.S. Army Corps of Engineers Honolulu District and State of Hawai'i Commission on Water Resource Management. Approximately one third of the proposed IAL land in south receives an annual average of 220 to 235 watts of solar energy per square meter per hour. The remaining two thirds of the land in north received an annual average of 205 to 220 watts per square meter per hour, except for the river banks on the steep slopes receiving a little less solar radiation. These levels of solar radiation, when combined with adequate rainfall and suitable soil types, support vigorous forage growth for cattle within the proposed IAL.

| LSB Ratings | TOTAL | |
|---|---|---|
| | IAL (ac.) | % |
| A (Very Good) | ± 1,540 | 7% |
| B (Good) | ± 1,371 | 7% |
| C (Fair) | ± 536 | 3% |
| D (Poor) | ± 1,330 | 6% |
| E (Very Poor) | ± 16,110 | 77% |
| *Not LSB* | *± 1* | 0% |
| **Total** | **20,888** | **100%** |




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DATE: 6/11/2016

**LEGEND**

LSB Land Classification
- A: Excellent
- B: Good
- C: Fair
- D: Poor
- E: Very Poor
- Not Rated

- Proposed IAL Boundary
- Streams
- Canals/Ditches
- Lakes/ Reservoirs

Source: University of Hawaii Land Study Bureau (1967). County of Kauai
Disclaimer: This graphic has been prepared for general planning purposes only.

**Figure 3**

**Land Study Bureau (LSB) Agricultural Land Productivity Ratings**

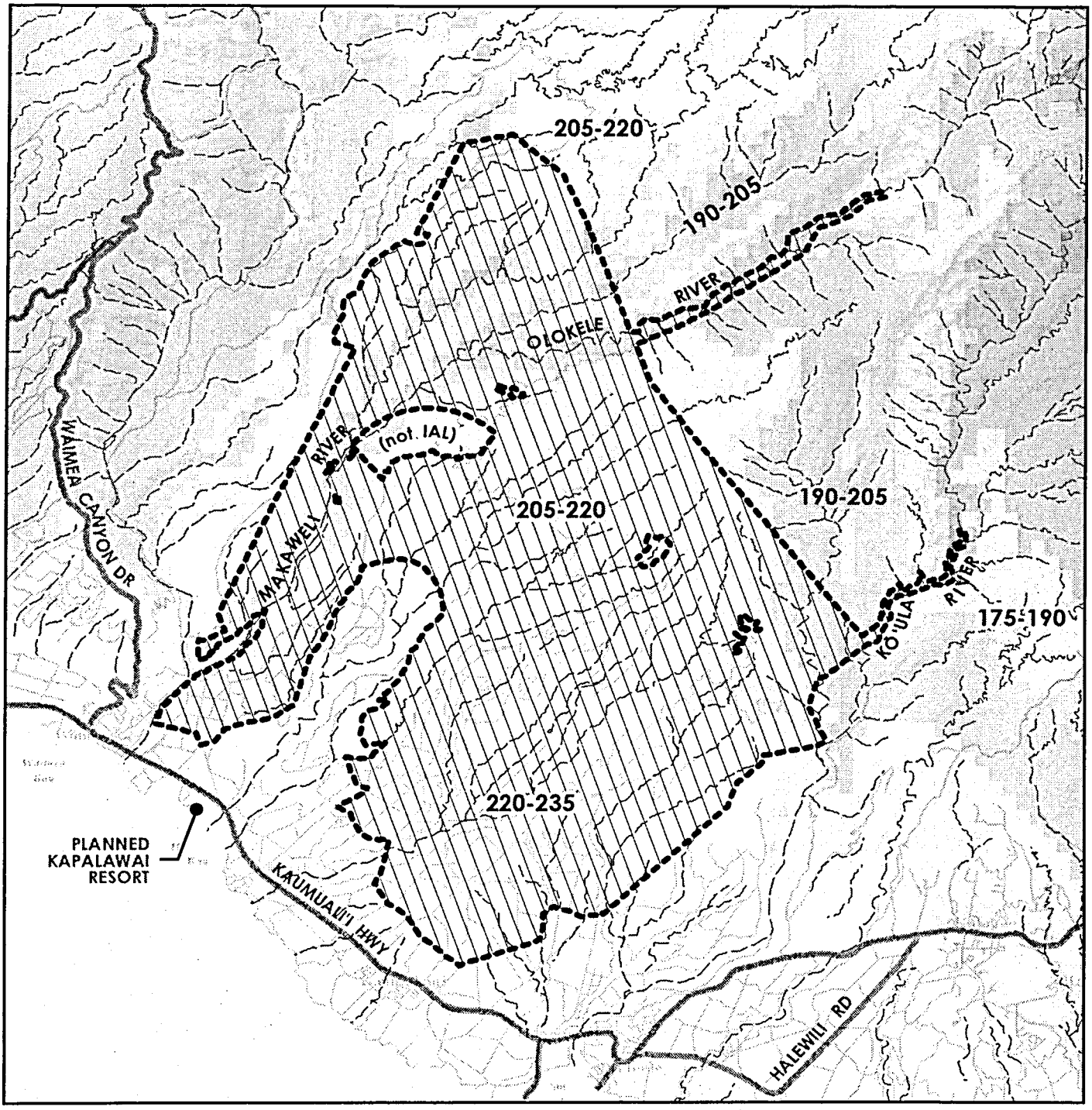
# Robinson Family IAL

Island of Kaua'i

North

Linear Scale (miles) 0 0.75 1.5

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DATE: 6/11/2016

**LEGEND**

- Proposed IAL Boundary
- Streams
- Canals/Ditches

Mean Annual Solar Radiation (Watts/sq.meter/hour)

| | |
|---|---|
| 280 - 300 | 205 - 220 |
| 265 - 280 | 190 - 205 |
| 250 - 265 | 175 - 190 |
| 235 - 250 | 160 - 175 |
| 220 - 235 | 130 - 160 |

Source: University of Hawaii Evapotranspiration of Hawai'i (2014). County of Kauai
Disclaimer: This graphic has been prepared for general planning purposes only.

**Figure 4**

**Solar Radiation**

# Robinson Family IAL

Island of Kaua'i

North

Linear Scale (miles)

0 0.75 1.5

PBR HAWAII & ASSOCIATES, INC.

## Agricultural Infrastructure and Water Resources

As shown in Figure 5: Agricultural Infrastructure and Water Resources, the proposed IAL land can be accessed by cane haul roads off of Kaumuali'i Highway. The land is primarily irrigated by two ditch systems to support the cattle ranch and seed production. Kō'ula Ditch System is approximately 13.5 miles long and the ditch line starts at the base of Manawaiopuna Falls and ends at Field 32 Reservoir. The water capacity of Kō'ula Ditch System is approximately 55 millions of gallons per day (MGD).

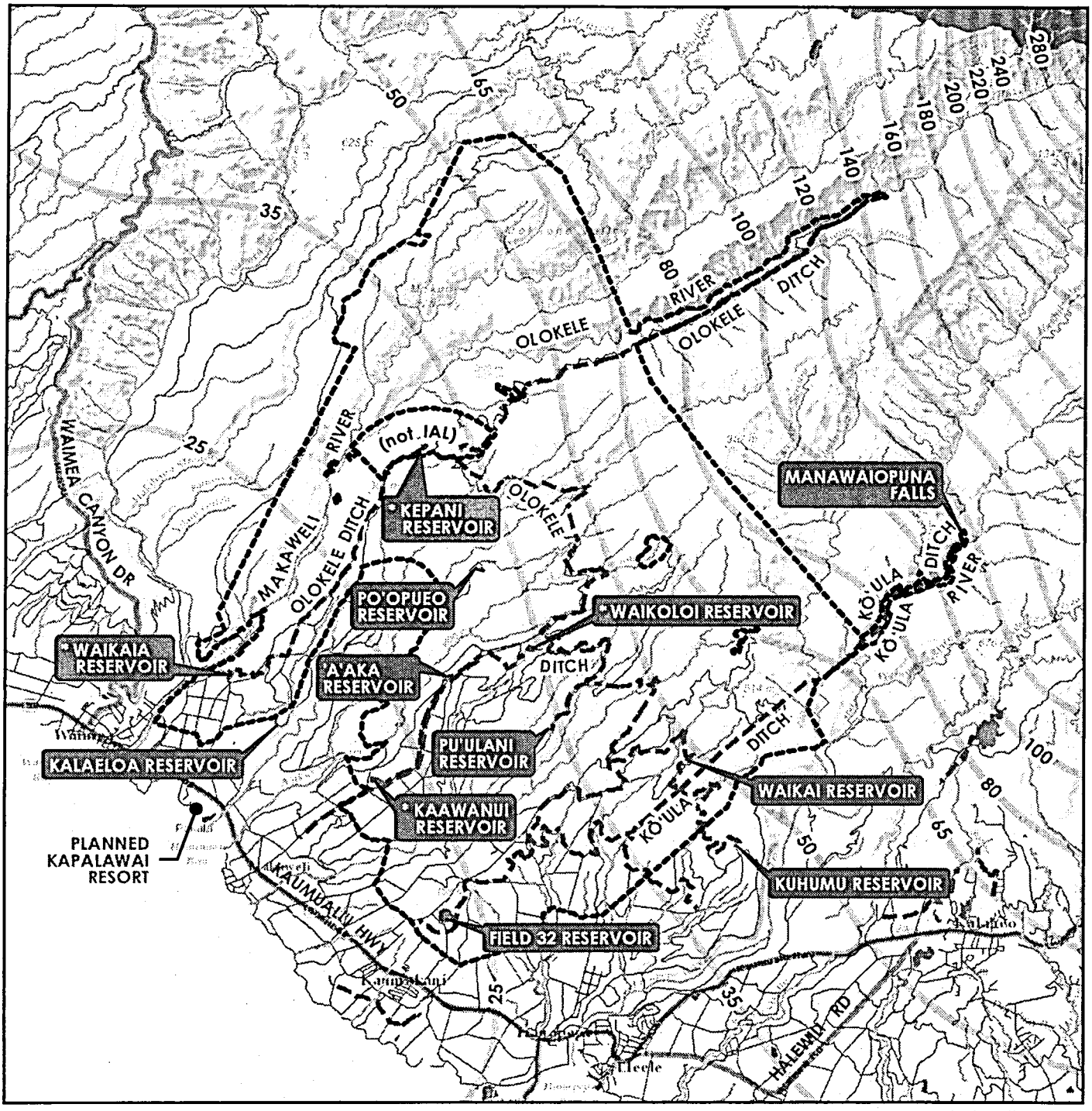
Olokele Ditch System is approximately 20 miles long. Water from Olokele River is diverted at 1,477 feet in elevation and delivered to a 1.25 megawatt (MW) hydroelectric plant. At the hydroelectric plant, the water splits into two directions. One flow goes southwestward to Kepani Reservoir all the way down to Waikaia Reservoir. The other flow goes eastward across the Robinson lands and ends at Kuhumu Reservoir. The water capacity of Olokele Ditch System is approximately 70 MGD.

The proposed IAL land also includes ten reservoirs with the total capacity of 275 million gallons. The following table shows the approximate water capacity for each reservoir.

| RESERVOIR NAME | APPROXIMATE CAPACITY (MG) |
|---|---|
| 1. Kepani | 28 |
| 2. Waikaia | 19 |
| 3. Kalaeloa | 12 |
| 4. Po'opueo | 12 |
| 5. Waikoloi | 48 |
| 6. 'A'aka | 25 |
| 7. Kaawanui | 36 |
| 8. Waikai | 10 |
| 9. Pu'ulani | 5 |
| 10. Field 32 | 80 |
| **TOTAL:** | **275** |

In addition to the above water resources, according to the 2011 Rainfall Atlas of Hawai'i data collected by Department of Geography at University of Hawai'i at Mānoa, the proposed IAL land receives an average of 25 to 30 inches of rain annually on the irrigated land below the east-west Olokele Ditch line and 50 to 80 inches of rain annually on the unirrigated *mauka* land above the same Olokele Ditch line. Two northern agricultural land areas, that include the Olokele Ditch and Kō'ula Ditch above the unirrigated *mauka* land receive more rain – an average of 80 to 140 inches annually.

Therefore, the proposed IAL has adequate quantities of water and infrastructure to support active cattle ranch operation and seed production.




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DATE: 6/11/2016

**LEGEND**

- Proposed IAL Boundary
- Streams
- Canals/Ditches
- Lakes/ Reservoirs ( * Regulated Reservoirs )
- Cane Haul Roads
- Mean Annual Rainfall (inch)

Source:National Hydrography Dataset (2012). University of Hawai'i Rainfall Atlas of Hawai'i (2011). County of Kauai.

Disclaimer: This graphic has been prepared for general planning purposes only.

**Figure 5**

**Agricultural Infrastructure and Water Resources**

# Robinson Family IAL

Island of Kaua'i

North

Linear Scale (miles)

0 0.75 1.5

PBR HAWAII & ASSOCIATES, INC.

**Agricultural Lands of Importance to the State of Hawai'i (ALISH)**

The Agricultural Lands of Importance to the State of Hawai'i (ALISH) classification system were developed in 1977 by the State Department of Agriculture. The system was primarily, but not exclusively, based on the soil characteristics of lands and existing cultivation. There are three classes of ALISH lands – Prime (prime farmland), Unique (unique farmland), and Other (additional farmland of statewide and local importance).

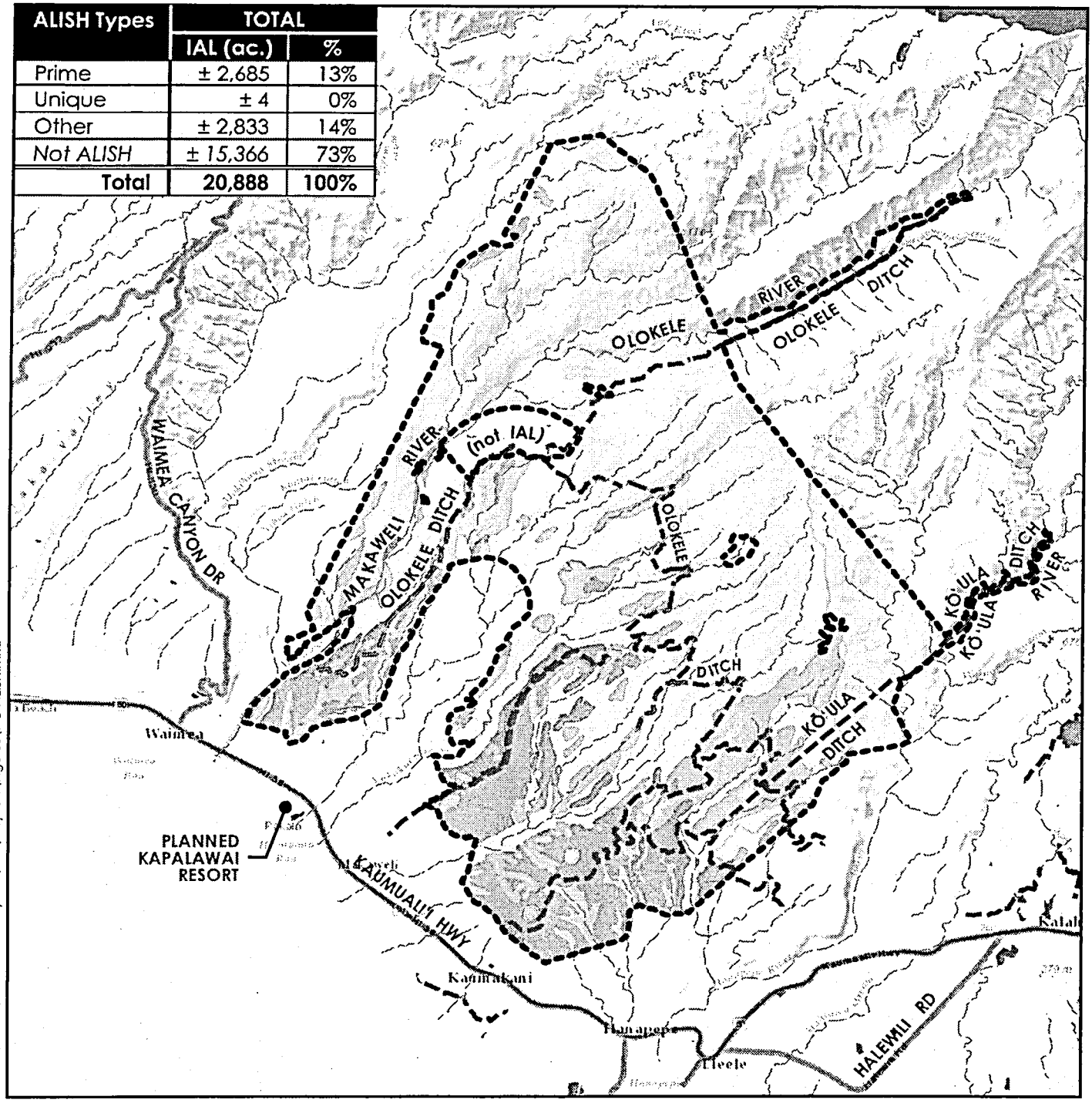
Prime ALISH is land best suited for the production of food, feed, forage and fiber crops. The land has the soil quality, growing season, and moisture supply that are needed to produce high yields of crops economically when the land, including water resources, is treated and managed according to modern farming methods.

Unique ALISH is land other than Prime ALISH that is used for the production of specific high-value food crops. The land has the special combination of soil quality, growing season, temperature, humidity, sunlight, air drainage, elevation, aspect, moisture supply, or other conditions, such as nearness to market, that favor the production of a specific crop of high quality and/or high yield when the land is treated and managed according to modern farming methods. In Hawai'i, some examples of such crops are coffee, taro, rice, watercress, and non-irrigated pineapple.

Other ALISH is land other than Prime or Unique that is of state-wide or local importance for the production of food, feed, fiber, and forage crops. The land is important to agriculture in Hawai'i and yet it exhibits properties, such as seasonal wetness, erodibility, limited rooting zone, slope, flooding, or drought, that exclude the land from Prime or Unique agricultural land use classifications. Two examples are (1) lands which do not have an adequate moisture supply to be qualified as Prime and (2) lands which have similar characteristics and properties as Unique, except that the land is not currently in use for the production of a "unique" crop. These Other lands can be farmed sufficiently by applying greater amounts of fertilizer and other soil amendments, drainage improvement, erosion control practices, and flood protection. Other ALISH land can produce fair to good crop yields when managed properly.

Figure 6 illustrates approximately 27% of the proposed IAL are classified in ALISH: 13% in Prime ALISH, less than 0.1% in Unique ALISH, and 14% in Other ALISH. The balance of the proposed lands is not classified under ALISH classification but the land has been historically used for ranching and the cattle ranch operation is active to date. The unclassified land includes essential elements of the active cattle ranch operation, such as grasslands, ditches, and streams.

| ALISH Types | TOTAL | |
|---|---|---|
| | IAL (ac.) | % |
| Prime | ± 2,685 | 13% |
| Unique | ± 4 | 0% |
| Other | ± 2,833 | 14% |
| *Not ALISH* | ± 15,366 | 73% |
| **Total** | **20,888** | **100%** |




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DATE: 6/11/2016

**LEGEND**

ALISH

- Prime ALISH
- Unique ALISH
- Other ALISH
- Unclassified
- Proposed IAL Boundary
- Streams
- Canals/Ditches
- Lakes/ Reservoirs

Source: State Department of Agriculture (1977). County of Kauai.
Disclaimer: This graphic has been prepared for general planning purposes only.

**Figure 6**

**Agricultural Lands of Importance to the State of Hawaii (ALISH)**

# Robinson Family IAL

Island of Kaua'i

North

Linear Scale (miles) 0 0.75 1.5

PBR HAWAII & ASSOCIATES, INC.

The following table summarizes the ALISH classifications for the proposed IAL lands:

| ALISH Classifications | Total IAL | |
|---|---|---|
| | Acres | % of IAL |
| Prime | ± 2,685 | 13% |
| Unique | ± 4 | 0% |
| Other | ± 2,833 | 14% |
| Not ALISH | ± 15,366 | 73% |
| **Totals:** | 20,888 | 100% |

**Kaua'i General Plan**

The General Plan of the County of Kaua'i is a policy document that is intended to help guide development for the enhancement and improvement of life on Kaua'i. It was last updated in 2000 and provides the County's vision for Kaua'i and establishes the strategies to help achieve that vision.

Figure 7a: The West Side Planning District Land Use Map and Figure 7b: The Kōloa-Po'ipū-Kalāheo Planning District Land Use Map published in the 2000 General Plan Update show portions of the proposed IAL land. The proposed IAL lands covered in both Figure 7a and Figure 7b are designated as Agriculture in south and Open in north.

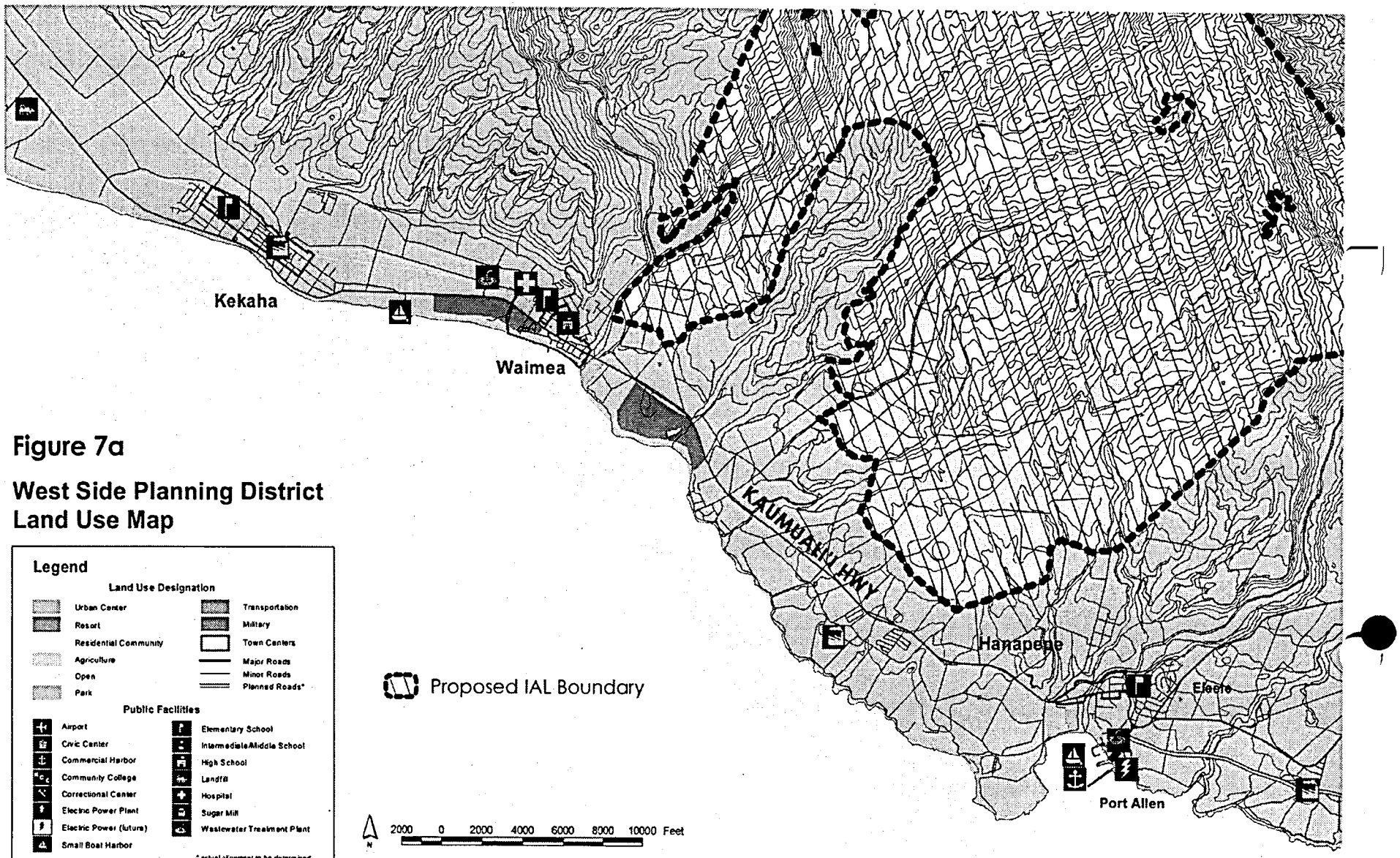
**State Land Use District**

Referencing the 2014 State Land Use District Boundary prepared by State of Hawai'i Land Use Commission, the proposed IAL land in Figure 8 is illustrated to confirm that all the proposed IAL land is within the Agricultural District. Where the proposed IAL land is contiguous to the Conservation District boundary, the proposed IAL boundary follows the Conservation District boundary.

**Kaua'i County Important Agricultural Land Study**

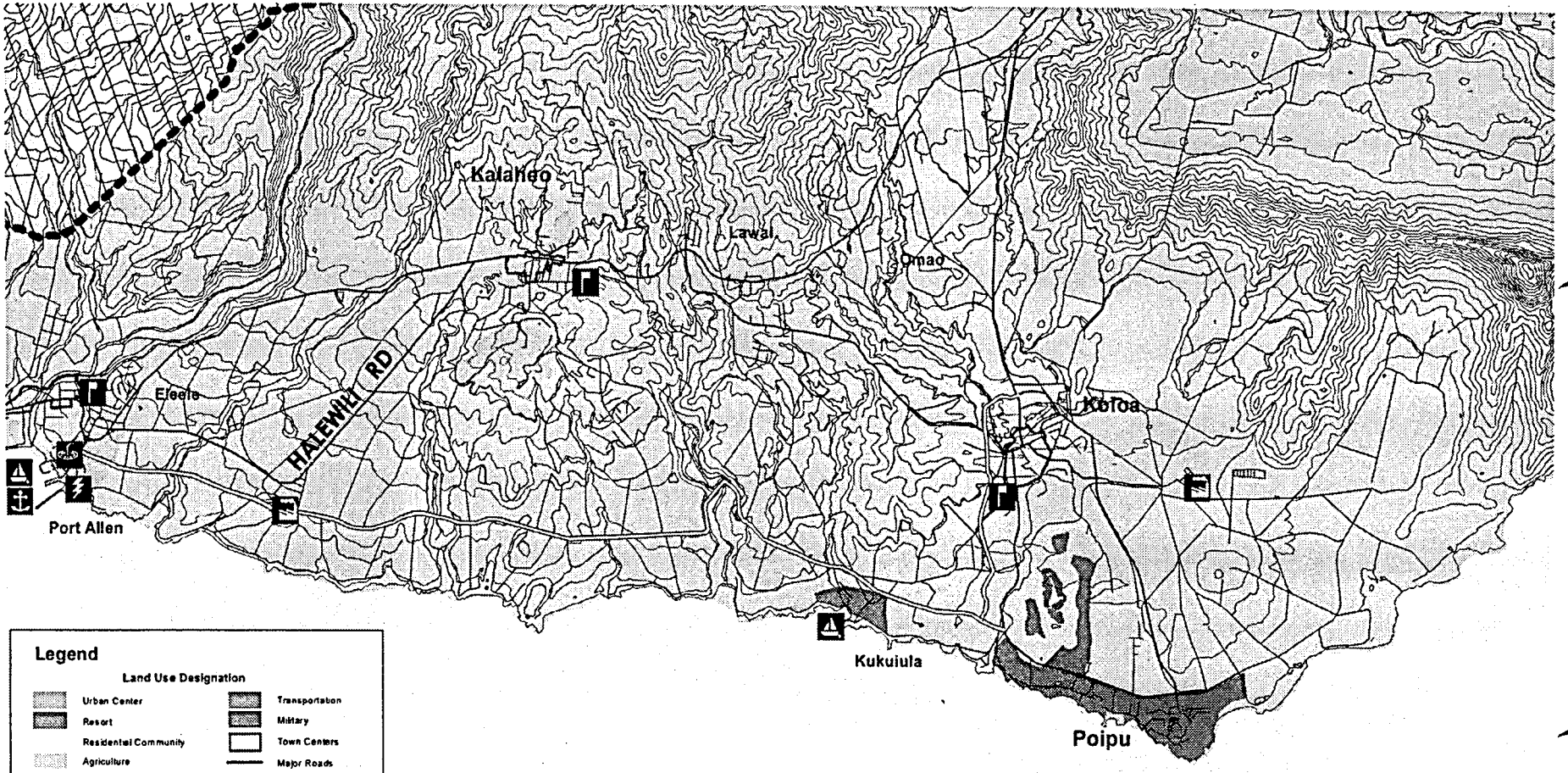
In August 2009, the County of Kaua'i undertook a planning effort to define the Important Agricultural Lands on Kaua'i. In August 2015, the County has released a final report for the IAL study. Utilizing a criteria based analysis with a scoring system and geographic information system (GIS), a series of maps were prepared to illustrate agricultural lands suitable for IAL at varying thresholds from overall ag. scores of 10 to 40.

In Figure 9, the County's assessed agricultural land score at the 23 and above threshold is illustrated within Robinson Family Partners' land. A total of approximately 9,100 acres is determined to be land suitable for IAL at the 23 and above threshold by the County's definition on Robinson Family Partners' land.




# Figure 7a

## West Side Planning District Land Use Map




**Legend**

**Land Use Designation**

- Urban Center
- Resort
- Residential Community
- Agriculture
- Open
- Park
- Transportation
- Military
- Town Centers
- Major Roads
- Minor Roads
- Planned Roads*

**Public Facilities**

- Airport
- Civic Center
- Commercial Harbor
- Community College
- Correctional Center
- Electric Power Plant
- Electric Power (future)
- Small Boat Harbor
- Elementary School
- Intermediate/Middle School
- High School
- Landfill
- Hospital
- Sugar Mill
- Wastewater Treatment Plant

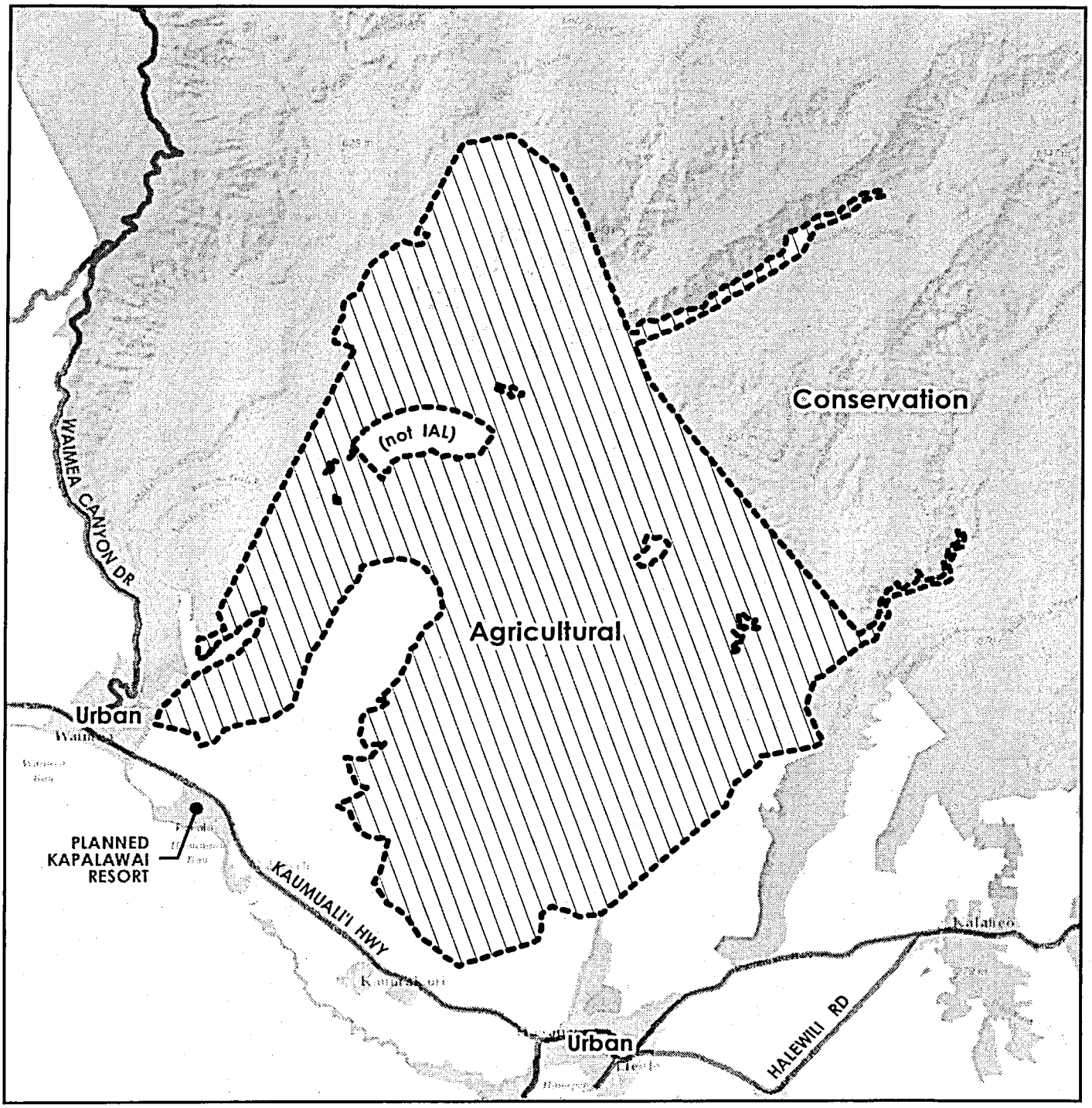
* actual alignment to be determined

Proposed IAL Boundary

## Figure 7b

### Kōloa-Po'ipū-Kalāheo Planning District Land Use Map

N 2000 0 2000 4000 6000 8000 10000 Feet




File: Q:\Kauai\Robinson Family IAL\GIS\Projects\Figures\FIG State Land Use.mxd

DATE: 6/11/2016

**LEGEND**

Proposed IAL Boundary

State Land Use District
- Agricultural
- Conservation
- Rural
- Urban

**Figure 8**
**State Land Use District**

# Robinson Family IAL

Island of Kaua'i

North

Linear Scale (miles)
0 0.75 1.5

Source: State Land Use Commission (2014), County of Kauai
Disclaimer: This graphic has been prepared for general planning purposes only.

PBR HAWAII & ASSOCIATES, INC.

As illustrated within the proposed IAL, the approximate County IAL assessment scores characterize the lands as follows:

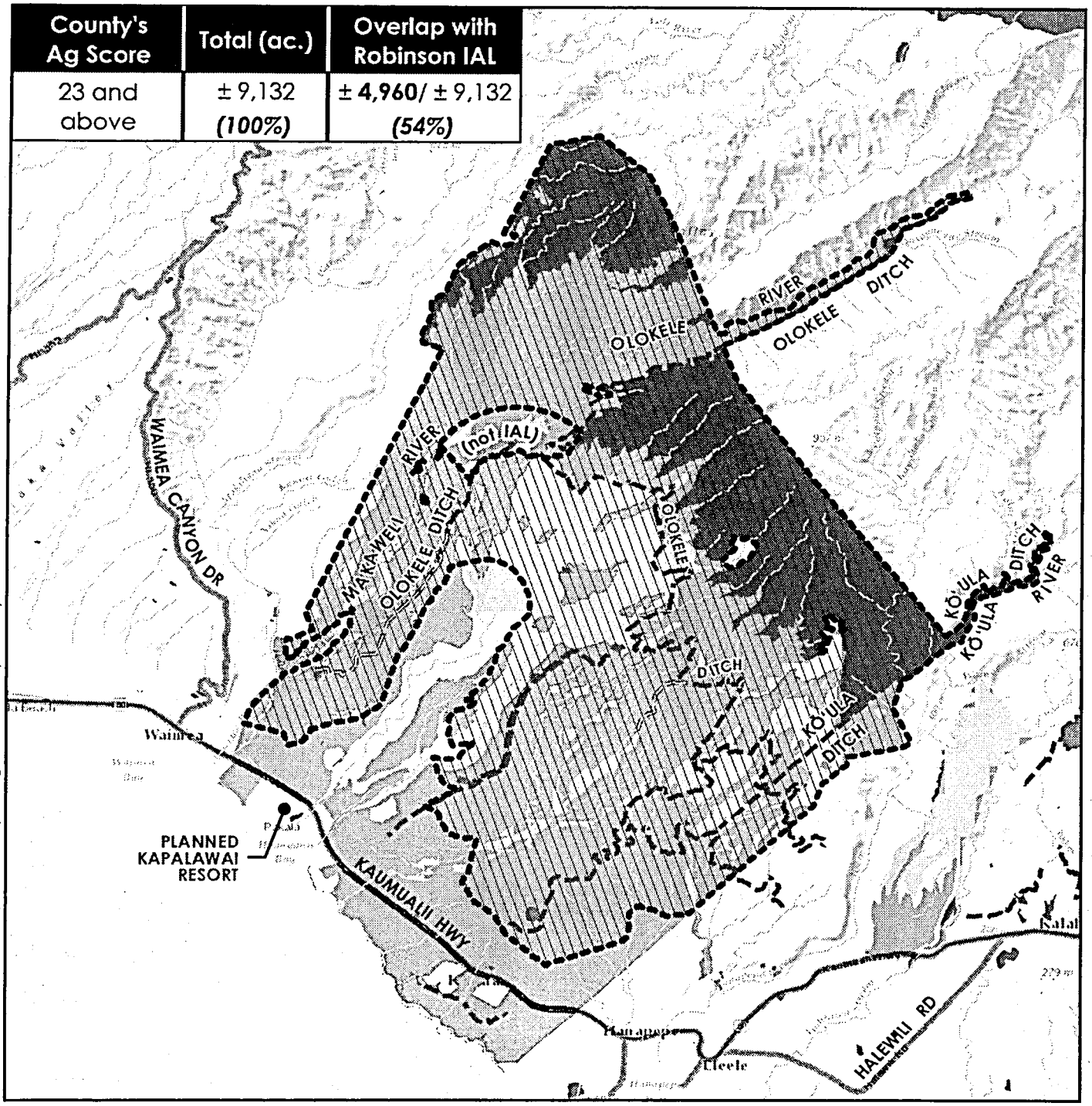
| *COUNTY IAL SCORE* | *APPROXIMATE AREA (ACRES)* |
|---|---|
| 23 and above | 4,960 |
| Between 20 and 23 | 808 |
| Between 15 and 20 | 2,967 |
| Between 10 and 15 | 5,920 |
| Below 10 | 5,233 |
| ***TOTAL:*** | **20,888** |

All the proposed IAL lands meet various levels of the County IAL assessment scores. Collectively, as a single managed agricultural operation, the proposed IAL ensures the long-term protection of a very important agricultural resource for Kaua'i.

Under the County of Kaua'i's IAL Study, it was estimated that "beef production to support the current diet of residents would require approximately 91,533.6 acres of land." If the entire proposed IAL lands by Robinson Family Partners were utilized for beef production, that would represent approximately 22% of the island's beef needs; increasing the island's ability to become more self-sufficient. As noted in the County's IAL Study, it is "important to note that lands for support of beef production does not require the best soils or topography (of "highest importance"). Thus, the county should still consider supporting landowner/ farmer-led petitions for designation of lands for beef production, especially if sufficient water and necessary acreage are met to support the amount of cattle to be managed." The County's IAL Study goal is clearly focused on a County-led IAL petition that should focus on the lands of "high importance" estimated to require approximately 21,000 acres pursuant to the criteria of Act 183. However, the Study notes that this priority "should not preclude the County's support of landowner/ farmer designations of agricultural lands that are being used for beef production." As such, Robinson Family Partners has consulted with the County of Kaua'i Planning Department to voluntarily proposed a majority of their lands IAL; including approximately 4,900 acres of "highest importance" land and the balance of the 20,888 acres a ranch operation that has been in business for over 150 years. A very significant agricultural operation to help the island become more self-sufficient.

As a result of an area calculation from the figure, approximately 4,900 acres of the proposed IAL land overlaps the County's assessed agricultural land with ag. score of 23 and above. In other words, 4,900 acres of the proposed IAL meets the 23 and above threshold criteria as IAL by the County's definition. This quantity of high quality IAL land proposed to be voluntarily designated IAL exceeds the targeted quantity of 4,895 acres recommended by the County for Robinson Family Partners' lands. Therefore, the proposed IAL is generally consistent with the County's IAL assessment at the 23 and above threshold.

| County's Ag Score | Total (ac.) | Overlap with Robinson IAL |
|---|---|---|
| 23 and above | ± 9,132 *(100%)* | ± **4,960**/ ± 9,132 *(54%)* |




File: Q:\Kauai\Robinson Family IAL\GIS\Projects\Figures\FIG County IAL Study.mxd

DATE: 4/20/2016

**LEGEND**

Robinson Family Partners' Lands

County Ag Score

- 23 and above
- Between 20 and 23
- Between 15 and 20
- Between 10 and 15
- Below 10

- Proposed IAL Boundary
- Streams
- Canals/Ditches
- Lakes/ Reservoirs

Source: County of Kaua'i (2015).
Disclaimer: This graphic has been prepared for general planning purposes only.

**Figure 9**

**County of Kaua'i IAL Assessment Agricultural Land Threshold Map**

# Robinson Family IAL

Island of Kaua'i

North

Linear Scale (miles)

0 0.75 1.5

PBR HAWAII & ASSOCIATES, INC.

## References


County of Kaua'i. 2015. *County of Kaua'i Important Agricultural Lands Study.* Hawai'i.

Gay & Robinson Tours, LLC. 2000. *Gay & Robinson: Brief tour of a sugar plantation on the island of Kaua'i.* Makaweli, Hawai'i.

Makaweli Meat Company website. 2016. *www.makawelimeatcompany.com.*

Spatial Data Analysis & Visualization Research Lab, University of Hawai'i at Hilo. 2015. *Stateside Agricultural Land Use Baseline 2015.* Hawai'i.

Star Bulletin News website. 2008. *Gay & Robinson to quit sugar. Vol. 13, Issue 255 – Thursday, September 11, 2008. http://archives.starbulletin.com/2008/09/11/news/story03.html.*

U.S. Department of Agriculture National Agricultural Statistics Service. 2012. *2012 Census of Agriculture. Hawaii. State and County Data. Volume 1. Geographic Area Series. Part 11.*

BRYAN J. BAPTISTE
MAYOR

GARY K. HEU
ADMINISTRATIVE ASSISTANT

IAN K. COSTA
DIRECTOR OF PLANNING

MYLES S. HIRONAKA
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUA'I
PLANNING DEPARTMENT
4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHU'E, KAUA'I, HAWAI'I 96766-1326
TEL. (808) 241-6677 FAX (808) 241-6699

July 12, 2006

Kapalawai Resort, LLC
c/o Avery Youn
Avery Youn Architects
2980 Ewalu Street
Lihue, HI 96766

Subject: Special Management Area Use Permit SMA (U)-2002-6
TMK 1-7-5: 1, Makaweli, Kauai

The Planning Commission, at its meeting held on July 11, 2006, amended and approved the time extension of the subject permit for the proposed Kapalawai Resort. The time extension is retroactive to May 28, 2004, and extended to December 24, 2006, which is the ordinance mandated date to complete substantial construction. In the event the County Council amends the substantial construction deadline in PM-2001-356, the subject SMA extension date shall be extended to May 28, 2008, or the date established by Ordinance, whichever shall first occur.

The original conditions of approval, including the requirement for compliance with conditions of approval of the State Land Use Boundary Amendment, shall remain in effect. In addition approval shall be subject to the following conditions:

21. A building setback line shall be established from the most current shoreline certified by the State of Hawaii at the time of building permit application. This setback line shall take into consideration the "red line" (the 70-year erosion hazard line plus 40 feet as established by the preliminary erosion study by Dr. Chip Fletcher dated June 2006), or 200 ft., whichever is closer to the shoreline, or other acceptable setback based on other models developed by the County of Kauai shoreline erosion study. All criteria and requirements establishing transition zones 1, 2 & 3 as contained in Ordinance No. PM-2001-356 shall apply to the location of all structures and reflected in the final site plan.

22. As represented, Kapalawai Resort LLC and its heirs or assigns shall subsidize a portion of any costs incurred by the County of Kauai to update aerial photography used in the analysis of shoreline erosion on West Kauai, not to exceed average annual payment of $3,000 (in 2006 dollars) over the course of the next 60 years.

23. The 50 ft. wide public lateral beach access established by PM-2001-356 (condition 3.j.vi) shall be floating moveable and perpetual easement that will remain constant at 50 feet wide, measured inland from the current or any future certified shoreline(s).

Should there be any questions regarding the above, please contact planner Michael Laureta at 808-241-6690.

IAN K. COSTA
Planning Director

cc: DPW Engineering Div.
Water Dept.
State Health Dept.
DLNR-Historic Preservation Div.
Fire Dept.
Finance Dept., Real Property Div.

ORDINANCE NO. PM-2006-385 BILL NO. 2201, Draft 1

A BILL FOR AN ORDINANCE
AMENDING ZONING CONDITION IN ORDINANCE NO. PM-2001-356,
RELATING TO ZONING DESIGNATION IN MAKAWELI, KAUA'I
(Kaua'i County Council, Applicant)

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I:

SECTION 1. Section 1, Condition No. 3(t) of Ordinance No. PM-2001-356, is hereby amended as follows:

[(t) Substantial construction of the hotel shall be completed within five years from the effective date of this ordinance. If substantial construction is not completed within this time, the Planning Commission shall initiate proceedings to rezone the property of the designations existing prior to the date of this ordinance.]

(t) Substantial construction of the hotel, defined as completion of at least fifty percent (50%) of building foundations, shall be completed within eighteen (18) months from the date that the appeal of the project's shoreline certification currently pending before the Chair of the Board of Land and Natural Resources has been resolved. If substantial construction is not completed within this time, the Planning Commission shall initiate proceedings to rezone the property to the designations existing prior to the date of this ordinance."

SECTION 2. Ordinance material to be repealed is bracketed. New ordinance material is underscored.

SECTION 3. If any provision of this ordinance or application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 4. This ordinance shall take effect upon its approval.

Introduced by: /s/ Daryl W. Kaneshiro
(By Request)

DATE OF INTRODUCTION:
October 25, 2006
Līhu'e, Kaua'i, Hawai'i

3

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2201, Draft 1, which was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on December 13, 2006, by the following vote:

| | |
|---|---|
| FOR ADOPTION: Bynum, Furfaro, Iseri-Carvalho, Kouchi, Rapozo, Yukimura, Asing | TOTAL - 7, |
| AGAINST ADOPTION: None | TOTAL - 0, |
| EXCUSED & NOT VOTING: None | TOTAL - 0. |

Līhu'e, Hawai'i
December 14, 2006

Peter A. Nakamura
County Clerk, County of Kaua'i

ATTEST:

Bill "Kaipo" Asing
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

December 18, 2006

Approved this 19th day of December, 2006.

Bryan J. Baptiste
Mayor
County of Kaua'i

# ESAKI SURVEYING AND MAPPING INC. KA-193.

1610 Haleukana Street Lihue, Kauai, Hawaii 96766
Phone: (808) 246-0625 Fax: (808) 246-0229

## LETTER OF TRANSMITTAL

**DATE:** December 12, 2005
**PROJECT NUMBER** 03-138

**TO:** State of Hawaii, DLNR

**ATTENTION:** Mr. Morris Atta
**RE:** Shoreline Certification
TMK: (4) 1-7-05:01
Waimea, Makaweli, Kauai, Hawaii

**WE ARE SENDING YOU:**

☒ ATTACHED ☐ FORWARDED SEPARATELY_____

☐ prints ☐ tracings ☐ shop drawings

☐ copy of letter ☐ change order ☐ original

☐ specifications ☐ other_____

| QUANTITY | IDENT. NO. | DATE | DESCRIPTION |
|---|---|---|---|
| 7 | | | Shoreline Survey maps |
| 1 | | | Application letter |
| 1 | | | Letter of Authorization |
| 3 | sets | | Photos |
| 1 | | | Check no. 8638 - $75.00 (application fee) |

**THESE ARE TRANSMITTED** as checked

☒ For approval ☐ Approved ☐ Resubmit _____ copies for

☐ For your use ☐ Approved as noted ☐ Submit _____copies for

☐ As requested ☐ Returned for corrections ☐ Return _____corrected prints

☐ For review and comment ☐ Other _____

**REMARKS:**

**Copy to:**

**Signed:** for Dennis Esaki

RECEIVED
LAND DIVISION
2005 DEC 15 A 10:02
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

# ESAKI SURVEYING & MAPPING, INC.

SURVEYING/CIVIL ENGINEERING/PLANNING
1610 HALEUKANA STREET • LIHUE, KAUAI, HAWAII 96766 • TELEPHONE: (808) 246-0625 • FAX: 246-0229
esm@esakimap.com


KA-193

December 12, 2005

Mr. Morris Atta
Department of Land & Natural Resources
Division of Land Management
P. O. Box 621
Honolulu, HI 96813

**SUBJECT: SHORELINE CERTIFICATION**
**TMK: (4) 1-7-05:01**
**WAIMEA, MAKAWELI, KAUAI, HAWAII**

The subject Shoreline Certification is being submitted as requested by owner, Robinson Family Partners for Building Permit purposes.

The following information is provided as required:
Name and Mailing Address of Property Owner:

Robinson Family Partners
P. O. Box 660088
Makaweli, HI 96769-0088

Address of Property involved:

No physical address - pending building permit

Field Survey of subject property was completed by:

Dennis M. Esaki, LPLS
Esaki Surveying and Mapping, Inc.
1610 Haleukana Street
Lihue, HI 96766

Dates of Field Survey: November 25, 2005

Applicant/Authorized Agent

# LETTER OF AUTHORIZATION

We the undersigned do hereby authorize Esaki Surveying and Mapping, Inc. to submit a Shoreline Certification Survey on my property. TMK: (4) 1-7-05:01, Makaweli, Waimea, Kauai, Hawaii and authorize representatives of the State of Hawaii to enter the property during reasonable business hours for the purpose to check the Shoreline for Certification.

Owners:

Warren S. Robinson, Chairman, Management Committee
Robinson Family Partners

12/12/2005
Date

Bruce B. Robinson (see note below)

12/12/2005
Date

Note: This certification applies only to the above described property and shall not affect any other property in which the signer has an interest.

# The Environmental Notice

A Semi-Monthly Bulletin (Under Section 343-3, HRS) of the Office of Environmental Quality Control



Linda Lingle
*Governor*

Office of
Environmental Quality Control (OEQC),
Department of Health
Genevieve Salmonson
*Director, OEQC*


*The Environmental Notice - review the environmental impacts of projects proposed in Hawai'i!*

Other Resources available . . .

- *June 2004 Guidebook for Hawai'i's Environmental Process (now, Online!)*
- *Environmental Assessments in Adobe Acrobat PDF Format (1990-2005) and Study Resource Library*
- *Environmental Council Annual Reports (now, Online!)*


**OEQC**
*235 South Beretania Street*
*Leiopapa A Kamehameha*
*Suite 702*
*Honolulu, Hawai'i 96813*
Telephone (808) 586-4185
Facsimile (808) 586-4186
email address: oeqc@doh.hawaii.gov

| | | |
|---|---|---|
| Moloka'i/Lana'i: | 1-800-468-4644 | ext.64185 |
| Kaua'i: | 274-3141 | ext. 64185 |
| Maui: | 984-2400 | ext. 64185 |
| Hawai'i: | 974-4000 | ext. 64185 |


April 23, 2006

# Kapolei Harborside EISPN

The State Land Use Commission has submitted an EIS preparation notice (EISPN) for the applicant Kapolei Property Development, requesting a change from Agriculture to Urban for the development of 345 acres of former agricultural land. Intended use of the proposed Kapolei Harborside Center site is industrial and proposed development which includes industrial pads, supporting infrastructure, light manufacturing and warehousing, industrial service businesses and innovative land uses for industrially-zoned lands. Sensitive areas, historically relevant sinkholes, are proposed for preservation for scientific and archeological research. The majority of the site is vacant, though existing on-site uses include a nursery, a green waste collection and compost processing operation, fill material stockpiling, and a coal conveyor belt that transports materials to HECO power stations to the south. New industrial development in this location will provide new job opportunities for the expanding communities of Kapolei, 'Ewa, the Wai'anae Coast and Central O'ahu. See page 5 for more.

## Kalanianaole Highway Improvements

The State Department of Transportation is proposing improvements to Kalaniana'ole Highway in the vicinity of Hawai'i Kai Drive to Keahole Street opposite Maunalua Bay Beach Park. The project will convert one of the two right-turn lanes from Keahole Street onto Kalaniana'ole Highway into a "free right" turn lane, which will allow vehicles to continuously enter Kalaniana'ole Highway regardless of the traffic signal condition. The turning lane will be extended to the Hawai'i Kai Drive intersection. During peak hours when westbound traffic volumes are high, vehicles back up on Keahole Street. The changes will improve the operational efficiency of the Kalaniana'ole Highway and Keahole Street intersection. The project will involve the relocation of the existing mauka sidewalk, bike lane, and utilities. See page 4 for more.

## Mamalahoa Highway Improvements in Kealakekua

The Hawai'i Department of Public Works is proposing to develop a parking lot and bus shelter to serve the community of Kealakekua in South Kona. The property involved is situated on the west side of the Mamalahoa Highway, approximately 234 feet south of the Ke'eKe'e Street-Mamalahoa Highway intersection. They are part of the County's Mamalahoa Highway Improvement Project which extends from Honalo to Captain Cook and are intended to address problems related to traffic congestion within this busy corridor. In addition to the subject parking lot and bus shelter, other improvements planned within the Kealakekua Section of the project include two-way left turn lanes, paved shoulders and sidewalks where possible. To construct the parking lot and bus shelter the County is proposing to lease two privately owned parcels of land totaling about16,800 square feet. See page 8 for more.

# Shoreline Notices

April 23, 2006

## Shoreline Certifications and Rejections

Pursuant to §§13-222-26, HAR the following shorelines have been proposed for certification or rejection by the DLNR. Any person or agency wishing to appeal a proposed shoreline certification or rejection shall file a notice of appeal in writing with the department no later than 20 calendar days from the date of the public notice of the proposed shoreline certification or rejection. The Notice of appeal shall be sent to the Board of Land and Natural Resources, 1151 Punchbowl Street, Room 220, Honolulu, Hawai'i 96813.

| File No. | Proposed | Location | Applicant/Owner | TMK |
|---|---|---|---|---|
| OA-1074 | Proposed Shoreline Certification | Lot 26-A Kahala Subdivision, land situated at Kahala, Island of O'ahu<br>Address: 4415 Kahala Avenue<br>Purpose: New Residence | ParEn, Inc./Barham Family Trust | 3-5-03:10 |
| KA-191 | Proposed Shoreline Certification | Lot 7 of the Wainiha Subdivision II (F.P. 1840), land situated at Wainiha, Hanalei, Kaua'i, Hawai'i<br>Address: 7320 Alealea Road<br>Purpose: Building Permit | Esaki Surveying and Mapping, Inc./Happy House Trust | 5-8-09:46 |
| OA-096-2 | Proposed Shoreline Certification | Portion of Lot 3 and 4 of the P'aa Ha'a Lots, land situated at Wailupe, Honolulu, Island of O'ahu, Hawai'i<br>Address: 5415 & 5435 Kalaniana'ole Hwy<br>Purpose: Sale of Property | Sam O. Hirota, Inc./The Goodwill Group, Inc | 3-6-03:04 and 05 |
| KA-193 | Proposed Shoreline Certification | Lot 1 and 2 of the Kapalawai Resort Site, land situated at Makawell, Waimea, Island of Kaua'i, Hawai'i<br>Address: Vacant Lot<br>Purpose: Building Permit | Dennis Esaki Surveying and Mapping for Robinson Family Trust | 1-7-05:01 |
| MA-052-3 | Proposed Shoreline Certification | Lot 217 of Land Court Application 1804 (Map 31), land situated at Paehu, Honua'ula, Makawao, Island of Maui, Hawai'i<br>Address: 3550 Wailea Alanui Road<br>Purpose: Determine Setback | R.M. Towill Corporation/ Wailea Hotel & Beach Resort, LLC | 2-1-08:67 |
| MA-187-2 | Proposed Shoreline Certification | Portion of Royal Patent 4954, Apana 1, land situated at Haneo'o, Hana, Island of Maui, Hawai'i<br>Address: Haneo'o Street (No Number)<br>Purpose: Determine Setback | Valera, Inc./Gary Stice | 1-4-08:01 |
| OA-1067 | Proposed Shoreline Certification | Lot 321 of Land Court Application 979 (Map 29), land situated at Kahalu'u, Ko'olaupoko, Island of O'ahu, Hawai'i<br>Address: 47-249 Miomio Loop<br>Purpose: Building Permit | Wes Tengan/Stevan Bailey | 4-7-30:17 |
| HA-317 | Proposed Shoreline Certification | Lot 60 of Puako Beach Lots, land situated at Lalamilo, Waimea, South Kohala, Island of Hawai'i, Hawai'i<br>Address: 69-1712 Puako Beach Drive<br>Purpose: Building Permit | Wes Thomas Associate/Hawaii Visions, LLC | 6-9-04:18 |
| KA-034-2A | Rejected | Lot 12 of the Wainiha Subdivision II (F.P. 1840), land situated at Wainiha, Hanalei, Kaua'i, Hawai'i<br>Address: 7310 Alealea Road<br>Purpose: Building Permit | Esaki Surveying and Mapping, Inc./Jeffery Galloway | 5-8-09:51 |

**State of Hawaii**
**Department of Land and Natural Resources**
**Land Division**

## SHORELINE CERTIFICATION – APPLICATION FORM

The attached Application Form is for persons requesting a shoreline certification.

Please note the following important points:

1) Please refer to Chapter 13-222, Shoreline Certifications, Hawaii Administrative Rules, when applying for a shoreline certification. You can find these rules at our website: **https://dlnr.hawaii.gov/ld/rules/**

2) A fee of $75 must accompany your application. This fee may be waived for federal, State and county projects. This fee will be returned only where the application is withdrawn prior to the Department initiating its review for completeness.

3) You will be responsible for reimbursement of any costs incurred by the State for processing of the shoreline certification, such as travel costs for site inspections. We will inform you of these costs when we notify you of the State Land Surveyor's proposed certification or rejection. You must remit payment prior to the Department releasing the signed shoreline maps.

4) The processing of shoreline certifications is subject to automatic approval. If the Department fails to render a decision on an application within 90 days from our acceptance of a completed application or the expiration of any extension granted, then the shoreline application shall be deemed certified. We will inform you of the commencement and completion dates.

5) If you find an encroachment during the shoreline survey, we recommend that you do not submit a shoreline application but rather contact the Land Division District Branch in the applicable county to resolve the encroachment. Shoreline applications will be rejected where encroachments are found.

6) Pursuant to §13-222-26, HAR, persons or agencies meeting certain criteria have standing to appeal any proposed certification or rejection within **20 days** of the OEQC publication. If you would like to file an appeal, please refer to the administrative rules and the Department's "Shoreline Certification – Notice of Appeal " form.

All applications must be complete to be considered for processing. Please submit your completed application form or direct questions to:

Department of Land and Natural Resources
Land Division
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813
Phone: (808) 587-0446; Fax: (808) 587-0455

Please do NOT send your application to our neighbor island District Branches.

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

**SHORELINE CERTIFICATION**
**APPLICATION FORM**

For DLNR use only:
Case file no.: _____
Date application recvd: _____
Date applic. complete: _____
Completion date (+90): _____
1st OEQC notice: _____
2nd OEQC notice: _____
Date appeals due (+20): _____
Date briefs due: _____
Date of decision (+60): _____

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I. APPLICANT/AGENT

Applicant means the person submitting an application for shoreline certification.

Applicant name: _____

Applicant address: _____

_____

Phone numbers: (___) _____ (___) _____
Phone Fax E-mail

II. PROPERTY OWNER

Property owner means the equitable or legal holder of interest in, or the lessee holding under a recorded lease for the property for which a shoreline certification is requested, or the authorized agent.

Owner name: _____

Owner address: _____

_____

Signature: _____ Date: _____

III. LOCATION AND ADDRESS

Island: ( ) Oahu ( ) Kauai ( ) Molokai
( ) Hawaii ( ) Maui ( ) Lanai

Town, District: _____ Tax Map Key: _____

Address: _____

_____

IV. PURPOSE

State the purpose for which the certification is being applied:

_____

_____

_____

V. CHECKLIST OF ENCLOSURES

( ) At least three (3) sets of color photographs of the shoreline, in accordance with §13-222-8, HAR:

- ( ) Shoreline, as delineated on the map, is indicated on each photograph.
- ( ) Permanent markings on the ground or flaggings are indicated on the photographs.
- ( ) Each photograph is labeled by number or alphabet to coincide with the map showing the direction the photograph was taken.
- ( ) Photographs provide accurate perspectives of the shoreline in relation to permanent markings or other land features.
- ( ) Each photograph is marked with the date and time taken.

( ) At least seven (7) maps of the shoreline, in accordance with §13-222-9, HAR:

- ( ) Maps are on whiteprints and are one of the following sizes (in inches): 8.5 x 13, 10 x 15, 13 x 23, 15 x 21, 21 x 32, 22 x 36, 24 x 36, 30 x 36, 36 x 42, 42 x 42-72.
- ( ) Maps are drawn using an engineer or architect scale, in units of feet. Scale is clearly noted on the map. No reduced or enlarged maps allowed.
- ( ) Maps are based on an actual field survey conducted within the prior 90 days.
- ( ) Maps have the licensed surveyor's seal and testament indicating the work was done by the surveyor or under the surveyor's supervision.
- ( ) Maps indicate true north pointing towards the top.
- ( ) Map title and reference to location include the original source of title and name of awardee, patentee, or grantee and the ili, ahupuaa, and the TMK and the property owner's name and address.
- ( ) Maps show all permanent identification marks established on the ground and all pertinent azimuths and distances.
- ( ) Maps indicate the type of shoreline being determined (i.e., vegetation line, debris line, upper reaches of the wash of waves, face of artificial structure, or combination).
- ( ) At least two (2) of the maps show the direction the photographs were taken and the point or shoreline depicted in the photographs.

( ) Field survey was conducted on _____ (date of field survey) by _____ (name of person who conducted field survey).

( ) The licensed land surveyor who made or supervised the field survey was:
Name _____
Address _____
Phone no. _____

( ) Application fee of $75 is enclosed.

( ) Statement signed by property owner granting the State of Hawaii the right to enter the property.

( ) Statement(s) signed by applicable owners granting the State of Hawaii the right to enter land not owned by the property owner necessary for access.

( ) Copy of any federal, State or county enforcement or other legal action involving the subject shoreline.

( ) If shoreline is being located at the base of a manmade structure, copy of all documents supporting that the structure has been approved by the appropriate government agencies or is exempt from such approval.

VI. CERTIFICATION

I hereby certify that the statements and information contained in this application, including all attachments, are true and accurate to the best of my knowledge and understand that if any statements are shown to be false or misrepresented, this application may be rejected. Further, I understand that the Department may review any shoreline certification during its 12-month validity period and may rescind the certification where there is substantial misrepresentation or material fact in the application, whether intentional or unintentional, as determined by the State Land Surveyor or the Department.

_____ _____

Printed Name Date

X_____

Signature

PUBLIC HEARING

NOVEMBER 21, 2006

A public hearing of the Council of the County of Kaua'i was called to order by JoAnn A. Yukimura, Chair, Planning Committee, on Wednesday, November 21, 2006, at 2:41 p.m. at the Council Chambers, Historic County Building, 4396 Rice Street, Līhu'e, Kaua'i, and the presence of the following was noted:

Honorable Jay Furfaro
Honorable Shaylene Iseri-Carvalho
Honorable Daryl W. Kaneshiro
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura
Honorable Bill "Kaipo" Asing, Council Chair

The Clerk read the notice of the public hearing on the following:

BILL NO. 2201 – A BILL FOR AN ORDINANCE AMENDING ZONING CONDITION IN ORDINANCE NO. PM-2001-356, RELATING TO ZONING DESIGNATION IN MAKAWELI, KAUA'I (Kaua'i County Council, Applicant),

which was passed on first reading and ordered to print by the Council of the County of Kaua'i on October 25, 2006, and published in *The Garden Island* newspaper on November 1, 2006.

The following communication was received for the record:

- Bruce Pleas email dated November 21, 2006.

The hearing proceeded as follows:

BRUCE PLEAS: Bruce Pleas for the record. You have my written testimony, and also, you have an attached testimony that I wrote in to the Planning Commission on July 11, I believe. I'm going to talk specifically on this amendment to the ordinance. Substantial construction of the hotel shall be completed within, and this is what has been stricken: five years from the effective date of this ordinance, which is December 24, 2006. What has been added is, 18 months from the date of the shoreline certification from the State of Hawai'i. If substantial construction is not completed within this time, the Planning Commission shall initiate proceedings to rezone the property to the designations existing prior to the date of this ordinance. Now, what we have is on December 24 the Planning Commission would have to begin the rezoning back to the designation prior. What you have proposed here is for 18 months from the date of the shoreline certification

from the State of Hawai'i. This is a broad, vague stroke of what? 18 months from the date of the shoreline certification. Shoreline certification... Which shoreline certification to begin with, and each certified...you know, which one? And also, you have to remember that shoreline certifications are good for one year. So the last one was in February 2006, so even if it is passed now, you'll have to have a new one in February of 2007. As of now, my appeal, I don't know where it is. It's in the limbo of the State. So this amendment is a shoreline certification. This is the 2008 one? This isn't even what the Planning Commission, the wording that was brought forth in the Planning Commission. It's in my written testimony, and I have it here. So this amendment is, to me, just an open-ended off we go. You have to remember that the reason this five-year time period was in it is because back in 2000, 2001, there were many projects that had been on the books in Po'ipū and Kapa'a for 20 years, and they were just becoming...coming back online. There was a realization that the communities had changed, the specifics as to workforce and everything in the areas had changed. So this was a try at having this to be reviewed in five years.

In my written testimony, I have outlined what has changed in five years. Five years ago, the west side was looking at potential problems for workforce employment. Now, the workforce is completely employed, and there are actually quite a few jobs available. So this resort development is really not needed for the workforce. I also covered shoreline certification. I covered the erosion...erosion, what we have for the erosion, and everything in my written testimony. I'm available for any questions if you have them.

Ms. Yukimura: You have done an appeal? You have participated in an appeal, did you say?

Mr. Pleas: I participated in the shoreline survey for the certification. Within two months, I...as I go down to that area quite often, some of the stakes had fallen into the ocean, there were pools of water past the stakes, and I put in an appeal, because at that point over the two months that had happened, or three months, the ocean had continued to erode away the shoreline. To this day now, it continues to erode away in certain areas of the shoreline.

Ms. Yukimura: Thank you. The property is west of KīkīaOla Boat Harbor. Is that correct?

Mr. Pleas: It is east of KīkīaOla Boat Harbor.

Ms. Yukimura: It's east. So it's before you get to KīkīaOla Harbor if you're coming from 'Ele'ele.

Mr. Pleas: It is approximately 1.2 miles east of Waimea River.

Ms. Yukimura: Okay. So your contention is that this...the extension should be given for a year, rather than 18 months from shoreline certification?

Mr. Pleas: My contention is that the extension should not be granted in any form. The applicant knew in year 2000, and agreed in 2001, that this would be completed within five years, and it has not been completed, it has not even been worked on. Therefore, it should not be extended in the least bit. Also, due to the new erosion study and the new setback, and what is happening there, they have to have a new site plan. There has...fire lanes have to be put in, so we have all sorts of lot coverage issues. With moving it back, you now have the restaurant in the middle of a fishpond. So everything has to be changed. This is major changes. Also, in 2003, they put before the Planning Commission a request to put kitchens in units. At that time, they expressed the interest in selling single bedroom units for $420,000, which, if you go back to the EIS, this was a eco-resort as a hotel only. Now they have expressed interest in condominiumizing, which they have denied now, which is not on...not denied. They have said that is not on the table. So I have many issues as to what is going on. There is a major change in this...the atmosphere and the type of resort here, and I feel that this, they should be coming back before the County Council for a new zoning change when they have all their chickens in line, when they have a... The shoreline erosion is done, not a draft. A final one is done. When they have everything else, all their...wherever their units are going to be. This is a new project. Also, they have to specify a type of use for it and stick to that type of use.

Ms. Yukimura: Okay. So I believe the applicant is saying that their request for additional time is justified, because they are actually willing to set back the resort even further than originally, and that they are abiding by shoreline erosion studies. But that... What is your response to that?

Mr. Pleas: The shoreline erosion study is a draft. They have compromised to 200 feet. If you look at Dr. Fletcher's findings there, the erosion study goes from 150 feet to 500 feet. The area where it's 500 feet, the reason behind that is because that area is only four feet to seven feet above sea level. So what you are doing is taking a compromise on a draft preliminary erosion study that is...that has really no scientific bearing on what could happen there. Yes, 200 feet is farther back, but the problem is, if you go back the 500 feet, that whole left side of the complex is underwater. This is what we're trying to avoid.

Ms. Yukimura: So I don't know how familiar you are with the erosion studies, but have they been submitted as part of the docket?

Mr. Pleas: Yes, they have. You have...it was submitted to the July 11 Planning Commission. This is the draft. I also, in my testimony, I have quotations from that, and also I have with me a copy that was of the findings and everything that was in the special management area time extension request before the Planning Commission on July 11.

Ms. Yukimura: Based on those studies, is there evidence of an accelerated erosion process over the last five to ten years?

Mr. Pleas: From going down there for the last 35 years, I...actually, it's kind of scary to think this and everything, but when the resort was proposed, the beach began to go back. This was back in 1999. Until then, the beach had been fairly stable. I had seen some...especially where we walk down, some changes, but they were seasonal and the beach came back. At about that time, it began to erode quite steadily. I mean the first...the 2000 shoreline certification, the stakes, they disappeared within six weeks; they were gone, they were in the ocean. What...I don't know whether it's the timing of the resort, but what I think really is part of why it started to erode at that time, is because if you go back and look at scientific records, that's about the time global warming started to set in and we started to have a rise of the ocean. I think what you're seeing here is, because this is a low sandy area, that this really shows what global warming by either...whatever it's caused by, will do to a shoreline area.

Ms. Yukimura: Now, Mr. Pleas, if you are invoking global warming, do you have knowledge or information about how much of a rise the ocean has actually risen in Hawai'i?

Mr. Pleas: The rise, I believe from what I have seen, is...

Ms. Yukimura: But it can't be what you see. It has to be measured somehow.

Mr. Pleas: Then measured, I could find that on the internet and supply it to you. I do not have those figures now. But I'll tell you right now, from what I have seen, over the 35 years of surfing Pakala, low tide in the Summer, the reef is out...completely out. Every low tide in the morning in the Summer, because low tide is that time of day during the year. The reef was out and has been out a decreasing amount every year for the last five years. This year, I think it was July, and possibly May, that the reef was completely bare with six inches to a foot of the reef out of the water. The rest of the time at low tide, it only had a few rocks sticking out. Before, you could not paddle out where we paddle out, without scraping, hitting bottom, and everything. It is higher than it has been. I will provide some information from sources that you can verify on the internet. But just from what we've seen, the water is much higher. The pile in front where we paddle out is a very good indication of what's going on. It doesn't move, and it's underwater quite a bit.

Ms. Yukimura: Okay, thank you very much. Other questions of Mr. Pleas.

Mr. Kaneshiro: I have a question for you. So Bruce, you're disagreeing with Dr. Fletcher's recommendation? Because obviously, Dr. Fletcher did a erosion

study, and his recommendation was a 200 feet setback, which would give him a 70 year erosion rate plus 40 feet. So you disagreeing with his recommendation?

Mr. Pleas: I do not disagree with the compromise that Dr. Fletcher came up with. If you read the Planning Commission reports, I don't know if I have a copy of that or not, but this is a compromise of 200 feet. What I look at is his base findings that is the red line on that map you have right there of 150 to almost 500 feet. I agree completely with that, because I have...I watch every day where it is eroding, and it is really following what his findings are. I agree with his findings. What I disagree with is the compromise of 200 feet, when scientifically, in the draft, you have 150 to 500 feet, and I would like to see what comes out in the final one. Because to compromise at 200 feet and you know it's going to go 500 feet is not good legislation; it is not good planning.

Mr. Kaneshiro: Okay. No more questions.

Ms. Yukimura: Other questions? If not, thank you very much. Is there anyone else who wishes to testify?

BARBARA ELMORE: I have no feelings one way or the other about this project. My problem is with the agenda and the public notice. According to this, the County Council is the applicant, and there is no identity of who this developer is. I think that would be helpful in publishing your notices and your agenda to list the developer. Thank you.

Ms. Yukimura: Thank you. Any questions? If not, anyone else wishes to testify?

AVERY YOUN: Good afternoon. My name is Avery Youn. I'm the authorized agent for Kapalawai Resort LLC. With me today is Mr. Lew Geyser of Kapalawai Resort LLC. There was just a few things that I wanted to go over today. Firstly, on the appeal for the certified shoreline. We've been contacting the State surveyor, his name is Reid Surratt, for the last three months and we haven't been able to get any kind of information as to the status. The last we heard of, it went to the AG's office and hasn't come back yet. We've contacted Maurice Atta of DLNR who's the one responsible for reviewing the shoreline survey appeals, and to date he hasn't reported back to us also. I just got a call at 1:30 this afternoon stating that the appeal was still pending, and they have no idea as to when it's going to be acted on or be returned from the AG's office.

You are familiar with the background of this, as we have explained. Specifically, earlier this year we had to provide a status report to the Planning Commission. We got the status report approved; however, in the status report we were required to come in for an SMA extension also, of which we did. We ran into some problems on the SMA extension to the fact that a new shoreline certification was required. As you...in writing here, the shoreline certification was submitted in

February, it was appealed in May (I believe), and it's still pending. We got the SMA extension on the basis that the shoreline certification was approved. Also, when we applied for the SMA extension, that's when the shoreline erosion study came up. What that red line you see on the map is the most severe condition that Dr. Chip Fletcher came up with. It's a 70-year erosion plus a 40 feet cushion. That's what that red line...I'll go up there and highlight it later. That's what that red line shows. The compromise he reached that he was satisfied with was either the red line where it falls, or 200 feet, whichever is less. Less, and I will go show you that on the map where it's going to occur. He did recommend the most severe condition, and the global warming issue that Bruce brought up is part of this formula as to how he got the red line. Also, this plan is not scheduled for completion until 2008.

We're in a dilemma right now on the basis that because of the new setback, all the buildings will have to be pushed back. In pushing it back, which is going to require revised utility layouts, revised roadways, revised fire lanes, and revised drainage. In addition to that problem, all of the construction plans will have to be revised. We were in the process of going in for building permits in order to meet this year's deadline, but now those plans are all void. In revising the construction plans, before we can even establish where the new setback line is, we have to get the certified shoreline survey. We cannot get that until the appeal is addressed. Now, I think Bruce brought up a good question—what shoreline survey do we use? I have a funny feeling, although we checked and there are no appeal procedures that we know of, and in checking with DLNR and the State Surveyor's Office, they could not give me any appeal procedures. That's why there's no time limits for them to take action that we are aware of. So lacking any appeal procedure and being familiar with government procedure, I have a feeling that before they finalize or take any action on the appeal, we going have to revisit the site and re-evaluate where that shoreline was that was established back in February, and there may be a new line established, and that may be the result of the appeal and a revised shoreline certification. That being the case, then we have 18 months to come in for a building permit, get all the plans re-approved, and to have substantial construction of at least the foundations. Even at 18 months, with the amount of work that has to be done, it's going to be really tight. Rather than going to the background of justifying the project and re-doing any kind of zoning amendment, I don't think... I know you're all familiar with this project and as to the reasons why it was proposed and approved in the first place. Today's primarily to grant the extension so that we can proceed with revising the plans in accordance to the new shoreline setback, which I think addresses more than the average concerns relative to tsunami requirements, conservation district, shoreline erosion, global warming, etc.

There's also some things I need to clarify—there are no kitchens proposed in this project. It's not as simple as pushing everything back. It won't work like that. If we did push everything back, then Bruce is correct—there will be a restaurant in the fishpond. If you examine the plans earlier, there are transition zones which no buildings are allowed. So if pushing it back, everything has to be readjusted so that

nothing falls within the transition zones. Transition zones were established to protect the fishpond and the tsunami and flood areas. Okay, can I go up to the board?

Ms. Yukimura: Yes. Can we give him a mike, please?

Mr. Youn: First of all, let me highlight the red line that we're talking about. That red line is easier for you to see. See how all of these buildings are and these buildings meet the current 100 feet setback. Now, in pushing everything back, let me draw the compromise. This yellow line here is the original 100 feet setback line. So this gap here shows how everything has to be pushed back. In this case here, where Bruce is mentioning is over 500 feet deep, the 200 feet line is the second purple line which is right here. So this line that I'm drawing now, coupled with the green line, would be where the actual building setback will occur. So even at that, it shows how a lot of the buildings at all of these locations has to be pushed back. This is a protective zone for the fishpond, so we cannot push anything back here. It all would have to be scattered here, meaning all these roads would have to be revised. So in conclusion, we're asking the Council, because we are faced with the dilemma of meeting the new shoreline requirements, and with the hardship of trying to get a building permit and construction going within a year and a half of the approval of the new certified shoreline, we almost necessarily need this extension in order for this project to become of fruition. With me today is Mr. Lew Geyser...(inaudible, change side of tape)...

Ms. Yukimura: How many units are we talking about?

Mr. Youn: 250.

Ms. Yukimura: These are hotel units?

Mr. Youn: Yes...no kitchens.

Ms. Yukimura: How comfortable is the applicant with the newly drawn shoreline? Or actually, excuse me, that's kind of subject to change if the new certification occurs?

Mr. Youn: I just feel that in order for the appeal to be addressed and everybody agree to it, we have to revisit the site and it may require some adjustments to the shoreline survey that was submitted in February. I don't anticipate any radical changes, because I know what they have to check—the new ruling by the Supreme Court that the shoreline now is the debris line, not the certified shoreline. We have no problem with that, because we know that the new setback is way above the debris line, and the debris line is established. The Hurricane Iniki debris line is on there, and we are way behind that.

Ms. Yukimura: Well, I mean the shoreline is from where you start measuring.

Mr. Youn: Yes.

Ms. Yukimura: So it's not...it's not enough to say that the setback is far beyond the certification; it's going to have to be whatev...what is it, 70 plus 40, times the...70 times the erosion rate plus 40 (if you're using that formula) from the shoreline, right?

Mr. Youn: Whatever it is, in cases where the red line is closer, we have to go back 200 feet.

Ms. Yukimura: So that's very much affecting the space that you have for your facilities, I guess.

Mr. Youn: That's correct. It basically affects the entire site plan, and it has to be totally revised.

Ms. Yukimura: So beyond... If you are...if you don't count the setback, how many acres do you have for that resort?

Mr. Youn: Oh, I don't know right offhand. One sixty (160) is the entire parcel.

Ms. Yukimura: One sixty (160) is the entire parcel, so you have to minus the setback area.

Mr. Youn: Yes. I can provide you that information.

Ms. Yukimura: Okay, thank you. I would be interested in it. Then the road is then the other constraint, I guess, right? That pretty much defines the parcel.

Mr. Youn: Just pushing the road back is going to affect the drainage and the drainage basins. So it cannot be just pushed back. We'd have to work together...

Ms. Yukimura: You're talking about the internal road?

Mr. Youn: Yes. The other road, that part has... The plans have already been submitted to Department of Transportation. This is a new access driveway. It has been relocated, and the State did already make comments on the construction plans for that.

Ms. Yukimura: Do you have a pointer?

Mr. Youn: Oh, it's over there.

Ms. Yukimura: Can we give him the pointer? I'll still ask my question now. The road you were just referring to is the one on the...what is that? South...the one closest to Hanapēpē.

Mr. Youn: That road there initially was over here. The State made us take it away from this curve and move it there.

Ms. Yukimura: I see.

Mr. Youn: That was one of the reasons why we had to go through the site plan revision before the Planning Commission. Also, there's roads here with each (inaudible), and that's for fire lane requirements. There's a big drainage basin right over here. So we couldn't just push the road back; it'll go into the drainage basin.

Ms. Yukimura: I see.

Mr. Youn: It would have to be recalculated.

Ms. Yukimura: Okay. So your constraints are the drainage, because that is a huge drainage area, right, coming from mauka.

Mr. Youn: That's right. I believe there's two streams that flow into this property, or two drainage-ways.

Ms. Yukimura: So you have the drainage there, the main highway there, and then you have the shoreline setback that's sort of defining your property. Okay. Other questions? If not, thank you very much.

Mr. Youn: Thank you.

Ms. Yukimura: Is there anyone else who wishes to speak on this matter?

LEW GEYSER: Hi. My name is Lew Geyser, I'm president of Kapalawai Resort. I have been at this from the beginning—since 1998. It's gone through the September 11 issue, it's gone through three years of zoning, including having the State have to change the land use designation. At the State level, it went through the process of just about being ready to be determined, and the State Supreme Court decided that the State Land Use Commission was not adequately protecting Hawaiian rights, and that put us off for another nine months. We finally reached the point where we had the money in place, a builder in place, the plans in place. We got the grading plan done and we found out that several things were not

going to make it the same way they were presented and accepted by the State and the fire people when we first went through the planning process. In doing that, we ran afoul in the next issue, which was that the shoreline erosion issue, not the shoreline certification issue, but the shoreline erosion issue had reached proportions where O'ahu and Maui and Hawai'i were all looking as to what was going to happen to the entire shoreline of the island. At that point, the Planning Commission asked the State for shoreline erosion comments, and there were no comments. We sat there and we waited several months while the State determined just what they were going to comment on, and I finally determined that Dr. Fletcher was the one doing the study and had done a study of this particular piece of property, which is the Robinson's Family Homestead, which is approximately 170 acres, a mile along the ocean, and slightly longer than that along the main highway. Between those two lines, you can see where the green comes straight down—that's the other end of the property. So you have that equivalent of a triangle there that's 170 acres, including the 100 foot setback for the State Conservation District.

When I realized that Dr. Fletcher had prepared this plan, I had somebody from Helber Hastert & Fee go over and see why he did what he did. They concluded, after talking with him, that in the first instance, this was his worst plan. This is the worst thing that could happen. In the second instance, when after talking to him, he went back through it, and he agreed that if we were willing to modify the plan to the extent of going either 200 feet back, or to where his red line was if it was closer than 200 feet, that he would be happy and satisfied. We were faced with the problem that even though his plan is supposedly the worst case, there was no way, and I will get to this and explain it in a second, there was no way that you could sell a condominium-hotel unit to somebody when an expert for the State was saying that somewhere down the road, 50 years, 60 years, 70 years, it was going to fall into the ocean. So the object was to reach an agreement with him where he was willing to say, if you stay behind this line, we know that you will be okay. That's the line we ultimately settled on and went to the Planning Commission with.

I mentioned condo-hotel unit. Ever since September 11 it's been very difficult to find a main loan for a hotel project. So what you have found, the industry has evolved into condo-hotels. In essence, a person buys a condominium unit, whether it's a room, just like happened in the Trump thing that everybody read about a couple weeks ago, or whether it was a cottage, you bought the condo unit, and then you arranged with the hotel operator to rent it. By buying the condo unit, you put in the equity into it, and you were able to get a loan. That loan, combined with the other 249 buyers, created the main loan that enabled the hotel to operate. So it's not condominiums; it's a condo-hotel. It could have just...not could have just as easily, because I couldn't get it done, if you had 240 stockholders each putting up a share, and if you could have gotten the main loan, then you would have the same kind of thing. What you have here instead is a condominium owned by an individual who puts it and allows the hotel operator to rent it when he's not using it, and that is happening right now all across the country. In any event, what now

happened is virtually every year, or every other year, if you haven't built yet, you have to re-do the shoreline certification. We got hung into the shoreline certification thing. Normally, what happens with that, this isn't a guess, this isn't a gee, I went out there and looked at yesterday and the water was higher. Esaki Surveying goes out there and surveys that line. He has lines that he surveyed all the way back to 1999, and he creates a new shoreline certification based on erosion, based on the...exactly what has happened to the shoreline. Normally, we submit that to the State, and the State send their surveyor out, and they end up saying, I agree with this, I don't agree with that, I disagree here, whatever, and you end up with a shoreline that's certifiable. The problem with it is that Bruce Pleas, in his wisdom, appealed it. The question is not that his appeal has any validity, it may or may not, but the Attorney General's Office of the State has not come up with a ruling as to who has the right to appeal a shoreline certification—how close you have to live to the piece of property, and it's just been sitting there. When we finally went to the Planning Commission and we had agreed on the shoreline erosion setback and we were faced with the fact that we not only do we not have the shoreline certified because of this appeal and because the State has not acted, but we are also facing the fact that if the appeal goes on long enough, we may need to do another shoreline certification, which anybody, including Mr. Pleas, could then appeal again. So in discussing this with the Planning Commission, the Planning Department staff and with the Planning Commission, we concluded and they concluded with us and recommended to you that the best way to handle this situation, since you can't guarantee when the State will act, is to make the zoning go for 18 months...extend it for 18 months until we have a shoreline certification, so that we can finally do a plan, revise the grading, revise all the engineering, and change whatever we have to do with the roads, and get the thing built.

Ms. Yukimura: Okay. Is that pretty much it?

Mr. Geyser: I'm sorry I took that long.

Ms. Yukimura: No, it sounds like a developer's nightmare.

Mr. Geyser: Well, development is a nightmare. It just is. That's part of what happens.

Ms. Yukimura: Okay, are there any questions of Mr. Geyser? So Mr. Geyser, you actually did the shoreline survey too for your own benefit. In other words, because you wanted buildings that are both sellable and survivable.

Mr. Geyser: No, you need to do a shoreline certification in order to have the setback that was required by the zoning. The zoning as it's written has two different areas. One is... It's actually got three. One is the Conservation District setback.

Ms. Yukimura: Yes.

Mr. Geyser: That includes within it the 50 foot horizontal across the property walkway for the public. Then there's a 300 foot area on which we can build, but we can only build a maximum of land coverage that's significantly less than what would then be behind that 300 feet setback.

Ms. Yukimura: Okay, but those were conditions of zoning.

Mr. Geyser: Yes.

Ms. Yukimura: They required... At the time of zoning, you didn't have a shoreline certification or...so it was a condition of zoning that you would get a shoreline certification, so that the setbacks could be established.

Mr. Geyser: That's not quite right, because we did a shoreline... We had Esaki Survey do a shoreline certification I think in 1999, so that we would have an idea of what kind of planning we could do when you take into account the fact that there is some historic objects on the property, there's heiau and what not.

Ms. Yukimura: So you had a certification. It wasn't the official State certification by the State surveyor?

Mr. Geyser: No, because... I love the way you're asking the question, but unfortunately, you're pinpointing me to where I can't really...I can't say for sure. It may have been already approved by the State. When we finally did the plan that went before the Planning Commission and then came up to you that resulted in the zoning which was approved. Is that confusing? I'm sorry. In other words, we may have done what we needed to do, and the State may well have done what it needed to do in 1999, but what happens is the State requires that the shoreline certification be brought up to...

Ms. Yukimura: Renewed every year, and because of that, you did that again.

Mr. Geyser: Right.

Ms. Yukimura: Could you clarify what you meant by since 9-1-1, you said at the beginning of your talk. It's been difficult. Is that a reference to the insurance?

Mr. Geyser: No, it's a reference to September 11 and what happened to the entire tourism industry when travel basically ceased.

Ms. Yukimura: Well, it dropped for a month.

Mr. Furfaro: Dropped 30% for about six months.

Mr. Geyser: Well, it dropped enough, so that lenders who were loaning money in one lump sum on a hotel operation became very scarce.

Ms. Yukimura: It hasn't recovered?

Mr. Geyser: It really... To my knowledge and to my abilities, no. I think that's why you'll see that the whole Trump Tower that was just auctioned off on O'ahu was done as a condominium-hotel.

Ms. Yukimura: Oh, you mean that's what's causing the push to a condo-hotel?

Mr. Geyser: Yes. It's a different way of creating the equity in the loan. Instead of getting the equity from one group and a loan from a particular single lender, who then has the risk that is for six months you don't have tourists, you don't pay the loan.

Ms. Yukimura: Okay. So your prognosis for your success and your income and everything is changed substantially since 9-1-1?

Mr. Geyser: The way of creating the hotel operation changed by creating a condominium-hotel, as opposed to creating a typical hotel. But what you have is the same thing—you have an operator who comes in and operates the hotel. In this particular case, as we were going forward, it was to the Outrigger.

Ms. Yukimura: So what you're saying is this form of financing or arrangement or...you know, is a...minimizes the risk.

Mr. Geyser: It minimizes the risk, because each person has a piece of the pie...250 pieces.

Ms. Yukimura: It spreads it out.

Mr. Geyser: Yes. That's why it's more easily done.

Ms. Yukimura: And is it as easily successful?

Mr. Geyser: I think that... I could give you article after article about the condominium-hotel industry and how well it's doing. Again, I point out the best example is that what they just did on O'ahu in Waikīkī.

Ms. Yukimura: What is its impacts on the community?

Mr. Geyser: None. You have a bunch of individual owners who probably will come no matter what, but what you have is a typical hotel, but the

ownership of the hotel is different than a big corporation. It's not a Hilton-owned hotel; it's 250 individuals owning a hotel.

Ms. Yukimura: How do you make decisions?

Mr. Geyser: You make decisions based on it. You end up with a condominium and a condominium association, and you have decisions made by them.

Ms. Yukimura: That's a little different, though, from a single-owner decision maker.

Mr. Geyser: Well, it's a...we have that here on Kaua'i now.

Ms. Yukimura: Alright. Okay, thank you very much.

Mr. Geyser: Sure.

Ms. Iseri-Carvalho: You spoke about that three zoning areas, one being the Conservation District, the other being the 300 foot area, and what was the third?

Mr. Geyser: The rest.

Ms. Iseri-Carvalho: Just the remaining...

Mr. Geyser: Yes. You could go all the way back to the highway if you really wanted to do that.

Ms. Iseri-Carvalho: I think it was made clear by Mr. Youn that the shoreline certification process is held in abeyance at this point?

Mr. Geyser: As far as I can find out, the Attorney General has not ruled on who can make an appeal. Until he rules on who can make an appeal of the shoreline certification, then no one's going to take a look to determine whether or not the Bruce Pleas appeal is correct, needs to be modified, or creates a modi... All that would happen is ultimately you're going to have a shoreline. It's just getting to that point has been very difficult.

Ms. Iseri-Carvalho: Okay. So it's a question of whether the person has standing to appeal the current certification that was done?

Mr. Geyser: Right. Until they determine that, they're not going to determine whether or not the shoreline certification, which has been agreed to by both Esaki here and the State surveyor, from what I know.

Ms. Iseri-Carvalho: Did the AG's office indicate a timeframe as to when they expect to provide an opinion as to the standing issue?

Mr. Geyser: I think Mr. Youn just told you that he had just talked to them as of 1:30, and there still is no answer. I don't know what to tell you about that. This has been more than frustrating.

Ms. Yukimura: That's partly from unclear laws. Okay, any other questions?

Ms. Iseri-Carvalho: Was there a... There was a shoreline certification done in 1999, and since then, when was the next one that you applied for?

Mr. Geyser: The next one was done at the end...towards the end of 2005 in connection with our going for the grading permit. Then I think it was revised again in February after the State surveyor came out.

Ms. Iseri-Carvalho: 2006.

Mr. Geyser: 2006.

Ms. Iseri-Carvalho: That is one that is current...

Mr. Geyser: I think. Don't hold me, please, to those exact dates.

Ms. Iseri-Carvalho: Okay, but around there?

Mr. Geyser: It's around there, and that's what's sitting...

Ms. Iseri-Carvalho: In abeyance at this point...

Mr. Geyser: In abeyance at the State.

Ms. Iseri-Carvalho: ...until the AG's Office is (inaudible).

Mr. Geyser: That's my understanding.

Ms. Iseri-Carvalho: Alright. Thank you.

Mr. Geyser: Any other questions? If not, thank you very much, Mr. Geyser: Anyone else wishes to speak?

BARBARA ELMORE:Just listening and thinking. If the shoreline was certified in 1999 and they knew it was good for one year, this was well before 9-11 and the factors that have been talked about, why didn't they build then? Do we give

developers as long as they want? I know we have in the past, but is there some way to insure that they build within a reasonable time? Just a question. Thank you.

Mr. Pleas: Bruce Pleas for the record. I will go over specific questions and maybe some clarifications that were presented by Avery and Lew. We have the 70 year plus 40 foot setback. What this project has is a 50 foot lateral access, which the applicant agreed to having that in perpetuity, and that's a floating one, which I appreciate greatly. But also you have a 100 foot setback, which was a conservation zone, which I would also like to see added to whatever setback there is, because it was a 100 foot setback to begin with. On the 1990/2000 survey certification, that was certified by the State. It was done, it was official, it was needed for all the proceedings that happened after that. The 2005 was done by Esaki. The 2006 was done by the State surveyor. They moved approximately (I was there for that one) it was approximately twenty some points. It's all in the official...and they took pictures. It's all documented by the State surveyor. They did go the debris line that Chris Conger of the State decided he was the decision maker as to where the debris line was. So that was all done, and that's how it was changed, and there were some changes to it.

On the main road, the questions you had about how far the resort could go, there is 100 foot setback from the main road that needs to be maintained; there can be no buildings within it to continue the green corridor and our view planes that were by the General Plan. That was agreed upon.

On the streams, there are two streams that come through: Maheakona and Ahakukui. There's also a third stream that used to go through there that is where the ditch and the containment pond will be. That stream has been taken away, and was taken away prior to this development plans.

This is my main contention: still a condo-hotel unit to some. Sell a condo-hotel unit to somebody if the unit is going to fall into the ocean. Before the State Land Use Commission, the applicant was asked specifically, because we brought this question up, what type of resort is this? This is a hotel. Will you have condominium units or sell any of these. The answer was no. You will have to go back...I will go back on my tapes if you want me to. I have videotape of it. That was presented before the State Land Use Commission under oath. This is something that needs to be investigated. I was there for them. Cheryl Lovell-Obatake was there for them. Nani Rogers was there. You can ask them too. This is something that has really brought my ire up. This was a hotel. This is not a condo-hotel. You asked about the consequences. What are the consequences? You have the number two surf break on Kaua'i on their front doorsteps. What will happen if people own it? They will come there and they will surf. We will have a residential community in a hotel area. What is the implications of that? You have to look at this. This is not just some resort where there is something. There is a number two surf break on Kaua'i right there. That is a draw for eight months out of the year. People will buy those in a second and live there. What will happen when

they come in? They, as a condo owner, and you've seen it happen, will put a kitchen in it and they will become vacation rentals in a sense that they will put it back in the hotel room pool, but it is basically vacation rentals. This is not a VDA area. We have implications across the board.

Ms. Yukimura: It is a VDA.

Mr. Pleas: It is not a VDA area. It is zoned RR-1. This is not a VDA area. So this is...

Ms. Yukimura: Okay. Can you summarize, please?

Mr. Pleas: Yes. Well, that's basically my...what's going on. We have a use problem here that you have seen come before you in zoning, and then it goes to the Planning Commission, a use is presented to the Planning Commission, and when the development is built, it is put to a different use.

Ms. Yukimura: Okay. Are you done? Questions of Mr. Pleas? Okay, what is the community objection to a condo-hotel versus a hotel?

Mr. Pleas: I cannot speak for the community.

Ms. Yukimura: So your objection. How do you see that the community is badly affected?

Mr. Pleas: A condo area where people can buy the units, is it can be turned into a residential area, and therefore...basically what it is, it is testimony for the State Land Use Commission. They have to go before the State Land Use Commission what they said under oath that they were not going to do this and change the State Land Use Commission.

Ms. Yukimura: I'm still asking you, what is the harm to the community if you change the use in that way? Are there fewer jobs? Is it... Because you're saying they're vacation rentals. They're essentially a resort or visitor use. I'm not presuming any answers.

Mr. Pleas: The main impact will be on the recreational area of Pakala. That will be the main impact.

Ms. Yukimura: Which you'll have more impact on the recreational...adverse impact on the recreational areas of the West side from a semi-residential development versus a hotel development, because not as many tourists surf?

Mr. Pleas: What will happen is that on a hotel, you will have people coming and going. You will have...and some of the units, only a percentage

of the units will be occupied by people using the surf there. If you have a condominium area where people can buy it, people will buy the property, buy the unit, live there and surf, and also will have a tendency to rent it out to other surfers, because those will be the ones that are interested in it. The impact basically, as you're saying, I think the impact, the difference between them will be across the board on a community as negligible. I'll agree with that.

Ms. Yukimura: Alright. I think that's it. Is there any other questions? We do have to take a caption break. Thank you very much. Okay, just under the wire. We'll take a 10-minute caption break and be back in 10 minutes.

There being no objections, the Chair called a recess at 3:37 p.m. The meeting reconvened at 4:23 p.m., and proceeded as follows:

There being no further testimony, the hearing adjourned at 4:24 p.m.

There being no further testimony on this matter, the public hearing adjourned at 4:24 p.m.

Respectfully submitted,

PETER A. NAKAMURA
County Clerk

/ao

# Report Of The COMMITTEE ON PLANNING

COMMITTEE REPORT NO. CR-PL 2007-1



From the
COUNTY COUNCIL
Līhu'e, Hawai'i

TO:

X Mayor

Civil Defense
X County Attorney
Economic Development
Elderly Affairs
Finance Dept.
Fire Dept.
Housing
Information Services
Liquor
Outreach
Personnel Services
Planning Dept.
Police Dept.
Prosecutor
Purchasing
Real Property Div.
Transportation
Water Supply, Board of
PUBLIC WORKS
County Engineer
Building Division
Fiscal Section
Highways Division
Parks & Recreation
Solid Waste

December 13, 2006

RE: **Bill No. 2201**

Honorable Bill "Kaipo" Asing
Chair, Kaua'i County Council
County of Kaua'i
State of Hawai'i

Dear Sir:

Your Committee on Planning, to which was referred Bill No. 2201 which is:

> "A BILL FOR AN ORDINANCE AMENDING ZONING CONDITION IN ORDINANCE NO. PM-2001-356, RELATING TO ZONING DESIGNATION IN MAKAWELI, KAUA'I (Kaua'i County Council, Applicant) (Recommendation from the Planning Commission),"

begs leave to report as follows:

The purpose of this Bill is to amend Condition No. 3(t) of Ordinance No. PM-2001-356, relating to zoning designation in Makaweli, Kaua'i (Kapalawai Resort Project). The amendment to Condition No. 3(t) would extend the substantial construction timeframe to eighteen (18) months from the date of Shoreline Certification by the State of Hawai'i.

Your Committee heard from Bruce Pleas, resident, who provided written testimony which is attached hereto and incorporated herein. Mr. Pleas stated his concern that the Kapalawai Resort project has significantly changed and is not what the Westside community had approved. Mr. Pleas stated that the owners of the Kapalawai Resort intend to create a "condo-hotel", which once individual units are sold, will be utilized as vacation rental units. Mr. Pleas further stated that this project should not be granted a time extension to complete its substantial construction requirement. Mr. Pleas stated that the Kapalawai Resort project is inappropriate as it is not in a Visitor Destination Area (VDA).

Councilmember Ronald Kouchi stated that although the project is not designated within a VDA, the area has been designated in the General Plan (2000) for tourism. Further, Councilmember Kouchi stated that the

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Robinson Family (owners of the property) did not want to allow any time share use/time share units on the property.

Committee Chair JoAnn Yukimura stated that she was under the impression that condominiums, hotels, and vacation rentals needed to be in VDA areas. She questioned how the Kapalawai Resort project was able to proceed without a VDA designation. Council Chair Bill "Kaipo" Asing, non-Committee member, stated that although this appears like "spot zoning" (similar to what occurred with the Nukolii Project), a resort project is not required to have a VDA designation.

Mike Laureta, Planning Department, stated that not all hotels and condominiums are in VDA areas. He further stated that "Developers" often request a VDA designation if they intend to incorporate time share units into the project. He continued to state that a VDA designation would allow units to have a kitchen, whereas, hotels often provide food and beverage services on the premises.

Councilmember Mel Rapozo questioned what would happen if the Kapalawai Resort wanted to incorporate kitchens into some of their units. Mr. Laureta stated that the Developers of the Resort would be required to obtain approval.

Councilmember Shaylene Iseri-Carvalho questioned the rationale for "kitchens" being the determining factor in obtaining a VDA designation. Mr. Laureta stated that he would request that the Planning Director provide an answer to that question.

Committee Chair Yukimura questioned whether the VDA issue will be addressed in the update of the Comprehensive Zoning Ordinance (CZO). She further questioned the impacts (both positive and negative) of a hotel versus time share units. Councilmember Jay Furfaro stated that usually a resort hotel (without kitchens) tends to have a larger workforce as they usually employ 1.5 employees per guest room. Time Share projects usually don't provide certain services that resort hotels provide (daily maid service, valet service, etc.), therefore, the direct workforce is smaller than that of resort hotels.

Committee Chair Yukimura questioned the status of the Special Management Area Use Permit (SMA permit). Mr. Laureta stated that in July 2006, the Planning Commission approved an extension of time. He further stated that in the event the County Council amends the substantial

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construction deadline, the subject SMA extension date shall be extended to May 28, 2008 or the date established by Ordinance, whichever shall occur first. He stated that the primary purpose for the extension is warranted based on the applicant's (Kapalawai Resort) acceptance of the recommendation by Dr. Chip Fletcher of the University of Hawai'i School of Ocean and Earth Science Technology. Dr. Fletcher prepared a coastal erosion study for the subject property, which recommended an approximate 200 ft. building setback from the shoreline, which was the 70 year erosion rate plus 40 feet. The Applicant is now required to develop an entirely new site plan, and have that plan reviewed and approved by the Planning Commission.

Avery Youn, Authorized Agent, Kapalawai Resort, stated that certain issues were brought before the Planning Commission that will prevent the Applicant (Kapalawai Resort) from meeting the deadline set forth in Ordinance No. PM-2001-356. He continued to state that an amendment to Condition 3(t) is needed to complete substantial construction of the project. Mr. Youn stated that the Planning Department has requested that an updated shoreline certification map be provided. A new shoreline survey was submitted in November 2005, reviewed by the State surveyor, and re-submitted in February 2006. In the Applicant's attempt to obtain a certified shoreline survey signed by the State surveyor, the Applicant was informed that the survey was appealed by Mr. Pleas and needs to be resolved prior to approval. Mr. Youn stated that the State is expected to rule on Mr. Pleas's standing (regarding the appeal) in early 2007. Councilmember Iseri-Carvalho stated that in all fairness, the extension of time should begin once the appeal of the shoreline certification is resolved.

Committee Chair Yukimura questioned the status of the restoration of the fish pond located on the property. Mr. Youn stated that the restoration of the fish pond comes with many conditions and the Applicant is committed to implementing the plan that was previously discussed and agreed upon. Committee Chair Yukimura questioned whether the new set back requirements impact the fish pond. Mr. Youn stated that the site plan will need to be altered and the transition areas will need to be designed around the fish pond.

Committee Chair Yukimura questioned whether the Applicant would consider providing the required affordable employee housing units for as long as the resort exists, instead of twenty (20) years as required by Ordinance No. PM-2001-356. Mr. Youn stated that he would discuss the matter with

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Mr. Geyser, Kapalawai Resort, and provide a response by December 13, 2006 Council Meeting.

Councilmember Furfaro stated that the concept of a "condo-hotel" is being utilized as a financing mechanism as it is difficult to obtain financing for a resort hotel in today's financial marketplace. He further stated that this project plays a large role in the overall economic strategy for the Westside as it strives to diversify.

Committee Chair Yukimura stated that she would be inclined to defer this matter and await Mr. Geyser's response on extending the duration of the period of affordability relating to the employee housing units. Councilmember Kouchi stated that in his opinion, due to the short time frame and the request for the time extension, it would be best to move Bill No. 2201 to the full Council and entertain any amendments at that time. Committee Chair Yukimura stated that it may be possible if Council Chair Asing approves of the procedure, as he expects the Committee to complete most of its work before sending the matter to the full Council. Council Chair Asing stated that in this instance, he will allow further discussion of Bill No. 2201 at the full Council level if it is necessary.

Your Committee finds that a public hearing on this bill was held on November 21, 2006.

Upon motion duly made by Councilmember Kouchi, seconded by Councilmember Iseri-Carvalho, and unanimously carried, your Committee on Planning recommends that Bill No. 2201 be approved on second and final reading.

Respectfully submitted,

**JoAnn A. Yukimura**, Chair

**Shaylene Iseri-Carvalho**, Member

**Jay Furfaro**, Vice Chair

**Ronald Kouchi**, Member

**Mel Rapozo**, Member

**ADOPTED**
Meeting Held On 12-13-06

| | *Aye* | *Nay* | *Exc.* |
|---|---|---|---|
| ***Asing*** | x | | |
| ***Bynum*** | x | | |
| ***Furfaro*** | x | | |
| ***Iseri-Carvalho*** | x | | |
| Kouchi | x | | |
| ***Rapozo*** | x | | |
| ***Yukimura*** | x | | |
| *TOTAL* | 7 | 0 | 0 |

**COUNTY COUNCIL**
**County of Kaua'i**
**Līhu'e, Kaua'i, Hawai'i**

## Bruce Pleas

**From:** "Bruce Pleas" [redacted]
**To:** "Kauai County Council".<cokcouncil@kauai.gov>
**Cc:** <mhironaka@kauai.gov>; <icosta@kauai.gov>
**Sent:** Tuesday, December 05, 2006 8:29 PM
**Subject:** Written testimony from Bruce Pleas on Bill 2201

Written testimony on December 5, 2006 from Bruce Pleas on Bill No. 2201 before the Kauai County Council Planning Committee on December 6, 2006

Following is my testimony on Bill No. 2201

**Ordinance wording**

Condition (t) of the original Ordinance (No. PM-2001-356) that the developer agreed to is specific in requiring "Substantial construction of the hotel **shall** be completed **within five years from the effective date of this ordinance.** If substantial construction is not completed within this time, the Planning Commission **shall** initiate proceedings to rezone the property to the designations existing prior to the date of this Ordinance"
This wording, in my opinion, requires that if the **hotel (not condominium-hotel)** does not have substantial construction completed within the time frame agreed upon by the developer then it shall be rezoned by the Planning Commission.
As a few of the present Council members that were in office during the formation of the wording of this Ordinance will remember the long discussions on the 'shall/may' wording on this and other Ordinances and the general consensus that 'shall' means that it will be done and 'may' meaning that is could be done. In any case to uphold the meaning of 'shall' in this and other Ordinances I feel that it is of the best interest of the present County Council to require the developer to follow the Ordinance they agreed to and suggest to the developer that they resubmit the development back to the County for new zoning if they want to. To allow a 'shall' wording not to be followed may set a precedent for other Ordinances which could allow the 'shall' wording to be generally ignored.

**Planning issues**

As I have always and will continue to testify at all planning meetings that it is, in my opinion, a very illogical planning process to allow any development in areas that are in 1) Tsunami zones, 2) Flood zones, and 3) Hurricane inundation zones. To allow development in these areas is knowingly putting the residents of Kauai and citizens of the world into an area that could jeopardize their life.
Therefore because the proposed development in Bill 2201 lies within all 3 of these danger zones (amount of development in each zone is approximately 80% in Tsunami zone, 60% in flood zone and 10% in Hurricane inundation zone) I continue to oppose the development at Kapalawai. With insufficient emergency shelters presently available for the present population of the Westside and no condition(s) in the present Ordinance for the developer to provide any additional shelter(s) for the guests and employees of the resort in the existing Ordinance this Ordinance is in need of revision/resubmittal, not an extension.

At the County Council Public Hearing the developer, Lew Geyser, presented to the Council the new plan to make the development a condo-hotel. In the EIS and in the following meetings with the State and County this project was presented as an 'eco-hotel' and the existing Ordinance passed in 2001 was based on this presentation of use by the developer. In 2004 the developer went before the Planning Commission to add kitchens to some of the units and at that time the development was presented to the Planning Commission as a condominium hotel project which would sell for around $400,000 for a unit with out a kitchen and around $600,000 for a unit with a kitchen. This proposal was withdrawn from the Planning Commission by the developer.
Now again the developer is proposing before the County Council a condo-hotel use for this area which under the existing Ordinance is zoned RR-1, resort/residential with 1 unit per acre and since 2 hotel units are considered 1 unit the development is allowed 250 units on the approximately 160 acres of the project (there are a number of acres that are in Transition zones and Special Treatment zones due to the Historical and Cultural sites located in the development which are not allowed to be included in the acreage to determine the total units allowed). At the present zoning only hotel units should be allowed as these are transitional uses for guests.
To allow a condominium hotel use would mean that the units are being owned and should count as a full unit per acre, which would mean that the present zoning is insufficient to cover 1 unit per acre. In the condo-hotel proposal brought before the Planning Commission in 2004 the developer presented a "Form of Project Ownership" (I will

provide copies of this page to the Council members at the Planning Committee) in which is stated the following "The unit owner is entitled to exclusive ownership of the unit but the land is a common element, owned jointly in common with other unit owners in the condominium project. The project will be owned and managed as a condominium hotel. This means that each unit will be owned by one or more individuals or legal entities (e.g., a corporation). It is possible that individuals or legal entities might own more than one unit.....The individual units **MAY** then be placed in a rental pool by the owner and managed by **a qualified hotel operator.** The operation of the project will **appear** to be the same as a hotel. None of the units in the project will be sold or occupied as time-share units (or fractional units or vacation clubs)." This is on Page 3 of a letter sent to the Planning Director from Helber Haster & Fee, Scott Ezer, Principal, dated September 8, 2004 on the issues pertaining to the new development request that were presented at a Public Hearing on July 13, 2004. Please note that it is stated that "...the land is a common element, owned jointly in common with the other unit owners in the condominium project." A question I have is how can the unit owners own the land in common when the project is on leased land?
From this request and the definition of a condominium hotel use for this project these units;
1) Would be the property of the owners and could be remodeled by the owner (legally or illegally) with or without the consent of the developer or County,
2) Could be lived in full time,
3) Rented out by the owner or any manager/qualified hotel manager,
4) Multiple units could be owned by a corporation and managed by any managing company/qualified hotel manager.

On 1, 3 and 4) This is the problem that Kauai has experienced around the entire island over the last decade and is called **VACATION RENTALS.** Since this project area is only zoned RR-1 and not **VDA zoned** is it sensible to allow a condominium type of hotel operation in which private ownership of the units is allowed with the possibility of the owners renting/leasing out their own units to other people. To allow this is to make more of a hardship ($$ needed in the County Budget for additional inspectors) on the County administration (Planning and Building departments) to inspect and regulate the privately owned units in this project for (illegal) non conforming use (vacation rentals). If the development is to be a condo-hotel then the developer should change the zoning to VDA to allow this use.
On 2) As a private owner of a unit it gives the owner the right to live in the unit full time which changes some to possibly all of the project to a (high end) residential use and therefore the parts of the project that are designated for condominium use should be rezoned as Residential for the residential use and VDA if the units are to be used as vacation rentals.
To allow a condominium type of ownership and the associated changes in land use that could happen with this type of ownership would be a change in use intended by the existing Ordinance.

After the Public Hearing on Bill 2201 I sent via e-mail to the County Council a number of sites on global warming, sea levels and erosion rates that pertain to Hawaii as requested by the Planning Committee Chair. This information shows that there is still the chance that the sea level will continue to rise in the future.
Since approximately 50%+ of this project and most of the proposed units are in areas that are under 10' above sea level these possible erosion rates need to be seriously considered.

All of the above leads to a new use (condo-hotel) of the project that should require new zoning (VDA) and with the new shoreline/erosion setback requiring a completely new site plan that also may require some zoning changes it seems to me that an extension should not be granted and that due to the new nature and lay out of the project, the compromised erosion rate decision not to mention that time has run out (by Ordinance) for the project, that this Bill either be denied or received for the record by the Planning Committee.

Mahalo,
Bruce Pleas
[redacted]
Waimea, [redacted]

[redacted]

accessory buildings, and the use of a major portion of the house as a museum; the preservation of historic sites, the provision of a 2.8-acre public recreation area (with parking) and the provision of 15 employee housing units. These elements of the project will be constructed concurrent with facilities of the resort.

In fact, these commitments will be incorporated into the documents establishing the horizontal property regime for the project by inserting the conditions of approval from the State Land Use Commission, the County Zoning Amendment and the County SMA and Zoning Permits into these documents as a requirement for the association of owners for the resort.

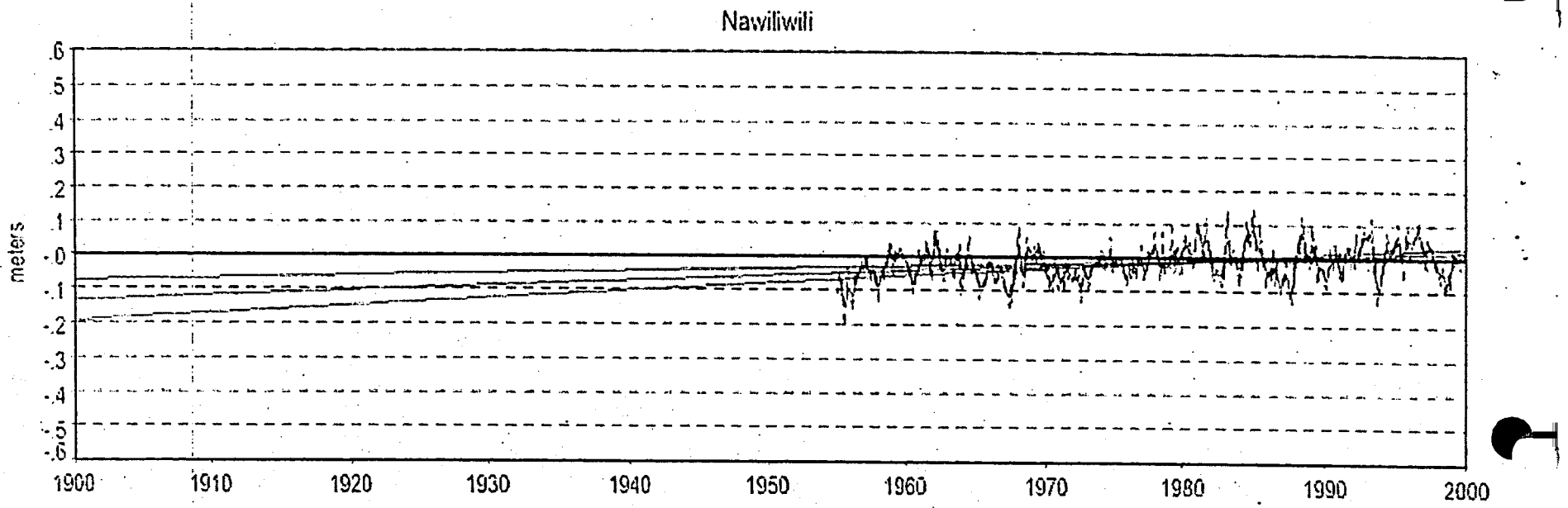
***Form of Project Ownership.*** Condominium Property Regime ("CPR") refers to the specific form of ownership and governing process created when real property becomes a condominium. Condominiums come in many forms and encompass a variety of uses as may be permitted by zoning regulations. Condominium ownership is described as ownership of a unit and a percentage of undivided interest in the common elements. The unit owner is entitled to exclusive ownership of the unit but the land is a common element, owned jointly in common with other unit owners in the condominium project.

The project will be owned and managed as a condominium hotel. This means that each unit will be owned by one or more individuals or legal entities (e.g., a corporation). It is possible that individuals or legal entities might own more than one unit. The remaining project elements will be owned (and maintained) in common by the condominium association, the members of which will be unit owners. Documents creating the condominium units and governing the use of the Project will be prepared and filed with the State Bureau of Conveyances, as required by the Hawaii condominium statute. The statute governs all condominium projects, regardless of intended use.

A condominium hotel is created when the following items are recorded at the Bureau of Conveyances or filed at the Office of the Assistant Registrar of the Land Court:

1) Declaration of Condominium Property Regime
2) Bylaws of the Association of Owners;
3) Condominium Map (floor plans); and
4) Master deed or lease.

The individual units may then be placed in a rental pool by the owner and managed by a qualified hotel operator. The operation of the project will appear to be the same as a hotel. None of the units in project will be sold or occupied as time-share units (or fractional units or vacation clubs).


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# "Coastal Resource Management and Sustainable Tourism"

Testimony of
**David W. Blane, AICP,**
**Director, Office of Planning**
**Department of Business, Economic Development, and Tourism**
**State of Hawaii**

to the
**U.S. Commission on Ocean Policy**
**Hawaii and Pacific Islands Regional Meeting**
**May 14, 2002**

**Introduction:**

Good morning, Chair Watkins and Members of the U.S. Commission on Ocean Policy:

Thank you for this opportunity to share with you some of the results and lessons learned from Hawaii's CZM program. I hope these observations will be helpful as your commission evaluates and proposes new national policies.

My presentation today is titled "Coastal Resource Management & Sustainable Tourism." First, I will describe the critical role that coastal management plays in promoting a sustainable visitor economy. Then, based on Hawaii's experience, I will offer some specific recommendations for programs and policies at the national level.

**I. Sustainable Tourism:**

My theme rests on the fact that tourism is not part of Hawaii's economy, it is our economy. Tourism here is an 11 billion dollar a year industry, with 7 million annual visitors, generating approximately 190,000 direct and indirect jobs. It is larger than all other economic sectors combined, including agriculture, and military spending. Although, there are increased efforts to attract hi-tech companies and to develop diversified agriculture, for the foreseeable future we have all our eggs in one, albeit fragile, basket.

Hawaii's visitors are not drawn by the art and architecture of great cities, or by the rush of gambling and theme parks. They are drawn by our natural environment, specifically- the climate, the imposing volcanic peaks, and most importantly, our ocean beaches. Hawaii's "Signature Allure" namely, our competitive advantage in a global tourism industry, is her coastal and ocean environment.

These unique resources are not merely amenities; they are the very foundations of our economic well being. If we lose or degrade our coastal resources, the impact on our economy would be swift and painful. Our mantra is clear, "our economy is the environment, and our environment is the economy" and vice versa. While "sustainable tourism" is the new buzzword worldwide, it has long been a reality in Hawaii.

Likewise, we cannot focus solely on the quality of the visitor's experience. We firmly believe a healthy visitor industry cannot exist in the midst of an unhealthy society. Tourism is a highly symbiotic industry that must be integrated with the quality of life of the local residents. The profits of tourism must be used to improve local schools, housing, health, and infrastructure. If the local population sees itself as merely raw material for the visitor industry, the results will be a growing resentment, crime and even violence.

## II. Threats to our Coastal Resources:

Given this vital importance, our CZM program concentrates on identifying and responding to continual threats to these resources. These major threats are summarized as follows:

1. **Erosion:** Hawaii continues to lose its sandy beaches, including world famous Waikiki Beach, at an alarming rate. The primary causes are coastal armoring, the disruption of natural sand migration, and sea level rise. It is estimated that

25% of Oahu beaches (over 17 miles) have been narrowed or lost over the past 70 years.

2. **Pollution:** The quality of our offshore waters, streams and estuaries continues to decline. The primary culprits are agricultural run-off, sedimentation due to the loss of natural ground cover, poorly treated wastewater, and urban drainage systems.

3. **Coral Reef Loss:** Coral reefs buffer our shores against wave damage, sustain marine ecosystems, produce white sand for beaches, provide ocean activities and food. Hawaii's reefs are rapidly being degraded through bleaching from global warming, the introduction of alien species, polluted run-off, vessel groundings, and marine debris.

4. **Poor Land Use Planning:** Marginal land developments in the coastal zone have resulted in visual blight, restricted shoreline access, pollution, and erosion. We have also built most of our transportation links, sewage treatment plants and other vital infrastructure in the coastal zone.

5. **Natural Hazards:** The damage and dollar loss from natural disasters grows exponentially with each event. The island of Kauai has still not recovered from the impacts from Hurricane Iniki in 1992. Besides hurricanes, other coastal threats include lava flows from volcanic eruptions, local flooding, and tsunamis.

6. **Cultural alienation:** The heavy influx of foreign and mainland visitors has had a major impact on the traditional Hawaiian culture. Increasingly, Native Hawaiians are turning to the courts for redress of issues like the rights of shoreline access for traditional cultural practices, and for the resolution of

long standing land ownership disputes. On the plus side, there is an increasing interest by the modern tourist to learn from, and share in, the cultural heritage of the Hawaiian people.

**IV. Hawaii's Challenge and Response:**

Through many cooperative efforts, Hawaii has become increasingly successful in responding to these threats. Some of these initiatives include:

1. **Better Marketing, Education and Outreach:** A successful CZM program rests on the general awareness and support of the public. Therefore, we have accelerated our outreach and education programs to promote a better understanding of the importance of our coastal resources. These efforts include community workshops, programs for elementary schools, public service ads and citizens advisory councils.

2. **Hazard Mitigation:** Using both state and FEMA resources, Hawaii has greatly improved its efforts to predict and respond to hurricane threats. A national pilot program was developed on the County of Maui using its GIS system to better coordinate response efforts. Mitigative planning continues to improve through the safer siting of infrastructure; better building codes, stricter shoreline setbacks, and preserving natural buffers.

3. **Better Economic Analysis:** For a coastal state, we have done a poor job of quantifying the economic contributions of coastal resources. While we are making a concerted catch-up effort in this discipline we still lag behind other states, especially Florida and California. While putting a dollar value on clean beaches and other environmental assets is difficult; it is far easier to ask for funding if we show these expenditures as a return on investment rather than a sunk cost.

4. **Regulatory Efforts:** We are trying to promote the concept that environmental protection is good for business. While partially successful, these efforts must go hand in hand with a sensible regulatory environment. We are working towards more consistent and user friendly regulations regarding drainage, building setbacks, sea walls, design standards, and vessel discharge. Unfortunately, we have done little to change the incentive side of this equation by using modern planning tools such as the transfer and purchase of development rights, tax incentives and conservation easements.

**V. Recommendations to the U.S. Commission on Ocean Policy:**

Using the same outline, Hawaii's CZM program would like to make the following recommendations to the Commission:

1. **Marketing, Education, and Outreach:** We encourage the federal administration to expand public information efforts on coastal and ocean stewardship. We would also ask for more Federal cooperation in the education and development of a cadre of professional coastal zone managers, both at home and abroad. Programs such as scholarships, grants, internships and foreign exchange programs would help improve professionalism worldwide.

2. **Hazard Mitigation:** One of the more successful Federal initiatives has been in the area of hazard mitigation, especially since it crosses the jurisdictional lines of so many Federal agencies. We urge continued support for these efforts to prevent beach and dune loss, curb vessel spills and discharge, resist alien species, and improve coastal land use planning.

3. **Economic Analysis:** We need a much better picture of the nationwide impacts and economic contributions of coastal related activities. Better data

will be invaluable in prioritizing federal spending, calculating loss and damages, and evaluating the effectiveness of complex and often conflicting federal programs.

4. **Regulatory Environment:** While most Americans support state's rights and local controls, coastal resource management demands a strong Federal presence. Oceans, rivers and watersheds know no state, territorial or national boundaries. We need cohesive national standards for shoreline setbacks, coastal armoring, public access and ownership, jurisdictional boundaries, dune protection, and floodplain and coastal development.

   Likewise, most Americans would not support the expansion or creation of a new Federal Bureaucracy. Yet the current cat's cradle of conflicting and overlapping Federal programs cannot continue. Therefore, we advocate the creation of a separate Federal agency charged with the administration of key coastal programs. The agency would assemble ocean and coastal programs from NOAA, Departments of Interior and Agriculture, the EPA, and even the Coast Guard. Rather than expanding the federal bureaucracy, we think this will actually streamline it by reducing duplication, improving efficiency and consolidating staffing.

**VI. Conclusion:**

In closing, I hope that illustrating both the successes and shortcomings of the Hawaii CZM program will provide some insights that will help in your efforts to develop new national policies.

Thank you for the opportunity to share our thoughts with you, and for your kind attention. On behalf of my entire staff, I hope you enjoy your stay in our beautiful islands. Aloha

# SEA LEVEL CHANGE AND COASTAL EROSION IN THE PACIFIC ISLANDS

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## ABSTRACT

Mean annual cycle and long-term linear trend of relative sea levels are examined at the selected tide-gauge stations in the North Pacific between the equator and about 30°N. Aerial photographs of shoreline changes in association with sea level fluctuations are reanalyzed in the major Hawaiian Islands (Hawaii, Maui, Oahu, and Kauai). Short-term change of sea levels is also analyzed in association with beach profile change. Two major reasons of relative sea level rise are local tectonism such as volcanic loading, subduction at the plate boundaries and plate movement with reef evolution, and thermal expansion of sea surface waters by global warming. Sea level rise and fall with an interannual time scale may be an important factor for serious erosion problems, which seems to affect beach erosion up to 5 to 10 times the long-term linear trend.

## 1. Introduction

Relative sea-level changes, both in long- and short-term scales, play a significant role in producing beach erosion and in changing other coastal processes such as longshore and cross-shore sediment transports, nearshore circulation, wave transformation.

The major causes of relative sea-level change may be classified into two categories: eustatic (or geoidal) sea-level changes and isostatic land-level changes.

Climate variations may cause volume change in ocean water due to steric effects, melting/freezing of land ice or freshwater input from other sources like lakes and groundwater. Relative sea-level changes occur with different time scales.

One of the most prominent climatic fluctuations is El Nino Southern Oscillation (ENSO) – a coupled oceanic and atmospheric global teleconnection with a period of 2 to 7 years, which shows its strongest effects in the Pacific Ocean. The interannual variability of sea levels in response to ENSO may cause greater impact on coastal erosion than long-term trend of sea-level rise. For instance, the 1982-83 El Nino ever raised the water level on the coasts of Oregon by 60cm within a year, which changed the shape of an inlet there due to erosion (Komar, 1986).

Isostatic land levels are changed by tectonic activities such as volcanism, sea-floor spreading, faults and subduction at the plate boundaries, glacial rebound, sediment compaction, land subsidence, and hydroisostacy on islands and continental margins.

There is little doubt that global mean sea level has risen by 10 to 30cm during the last century. Some local tide-gauge records nonetheless have deviated from the global mean (Emery and Aubrey, 1991). One of the most important factors in determining global warming during the last century is the greenhouse effect. However, the complexity of the feedback mechanism of clouds still leave the uncertainty range at least by about ±30cm in recent predictions of global mean sea level (Wigley and Raper, 1992), regarding the interactions among atmosphere, hydrosphere, and biosphere.

The impact of the short-term events such as typhoons and tropical storms are also significant on coastal erosion. Tropical cyclones or typhoons result in peaks of water level by the combination of inverse barometric response and frictional processes. Since typhoons/hurricanes are maintained by the energy that they extract from the heat in the ocean, thermal effects are very important and the input energy is redistributed within the ocean by stirring action of the storm, in addition to advective effects

(Gill, 1982). Storm waves are usually associated with wave setup and higher tides, and may erode part of dunes. The erosive effect by storm waves could be enhanced by the raised sea level.

## 2. Sea Level Change in the North Pacific Islands

Northeasterly trade winds are predominant over the North Pacific, especially over the central and eastern Pacific. In the Hawaiian Islands, the long-term rising trend of relative sea level decreases from Hilo (+4.0mm/yr), Hawaii to the northwest (Fig. 1). Continual volcanic loading on Kilauea, Hawaii results in the subsidence of not only the island of Hawaii itself but also the neighboring islands due to isostacy. Thus, the island of Maui, next to the island of Hawaii, subsides faster than the islands of Oahu and Kauai, because it is closer to Hawaii and hence more affected by isostatic subsidence due to volcanic loading at Kilauea, Hawaii (Table 1). The subsiding rate of the island Oahu was estimated about +1.0 to +2.0mm/yr from the shallow core measurements of a fringing reef crest at Hanauma Bay, Oahu (Nakiboglu et al., 1983). This is comparable to the rate of relative sea-level rise of +1.6mm/yr obtained from the tide-gauge records at the Honolulu Harbor, Oahu. The rising trend of relative sea level is reduced to the northwest, and even reversed at the Midway by about –0.6mm/yr. This might be related to the reef evolution in the Hawaiian Island chain, running in a southeast and northwest direction (Fig.2).

At the three western Pacific island stations, the long-term linear trend varies from about +1 to +2mm/yr (Jeon, 1995). At Truk Island, two peaks with the periods of 2 to 3 years are stronger than annual peak, and semiannual and 7-year signals are slightly less than the annual signal in the spectral density distribution. At Kwajalein, the 7-year signal is predominant and an annual signal is nor clearly shown. In other words, the signals with semiannual, 10 months, annual, and biennial periods are comparable, but much smaller than the peak with 7-year period. At Wake Island, there exist several spectral peaks, which makes it difficult to analyze the mechanism of the sea level changes. The 10 to 11 year peak and the annual signal are comparably dominant, and there are several other smaller peaks with the periods from 3 months to 5 years.

Clear annual cycles of the monthly-mean sea levels in the Hawaiian Islands (Fig.3) follow the near-sinusoidal pattern at Guam and Eniwetok, except the phase lag: maximum level is about 3 months out of phase (between September and October) and minimum is even more lagged (April to may). While the high heat capacity of seawater and the steric effect may be the major causes of the annual cycle in the Hawaiian Islands, the annual variation of the monsoon winds and surface current system in the western Pacific may result in the complex signals in the annual sea-level cycle (Jeon, 1995).

Table 1. Sea-level trends of rise in the Hawaiian Islands. The numbers after $\pm$ represent standard deviations. The unit is in cm/decade (from Hwang and Fletcher, 1992)

| Station, Island | Net submergence | Submergence rate | Future submergence |
|---|---|---|---|
| Hilo, Hawaii | $3.94 \pm 0.23$ | $2.51 \pm 0.53$ | $8.51 \pm 4.09$ |
| Kahului, Maui | $2.46 \pm 0.23$ | $1.04 \pm 0.53$ | $7.04 \pm 4.09$ |
| Honolulu, Oahu | $1.57 \pm 0.08$ | $0.15 \pm 0.38$ | $6.15 \pm 3.94$ |
| Nawiliwili, Kauai | $1.75 \pm 0.30$ | $0.33 \pm 0.61$ | $6.32 \pm 4.17$ |

## 3. Effect of Sea Level Change on Beach Erosion

Rise in sea level results in receding shorelines and drowning low-lying coastal areas, which causes in turn submerged beach sediments to be transported both in longshore and cross-shore directions by nearshore currents and waves. At most Hawaiian beaches surrounded by wide fringing reefs, longshore sediment transports, in general, are not so significant since waves usually break over the wide and shallow nearshore reefs before they approach the beaches.

A simplified two-dimensional relationship between sea-level rise and cross-shore sediment transport was first suggested by Bruun (1954), and tested and modified by other authors as well as by

himself (Bruun, 1962; Schwartz, 1965, 1967; Dubois, 1975; Dean Maumeyer, 1983; Bruun, 1988). A basic assumption of the Bruun model is the existence of an equilibrium beach profile, which is maintained or eventually achieved following a change in water level. The Bruun model is in fact a simple equilibrium profile model that assumes the constant 'closure depth' or 'depth of effective sediment motion'. In reality, the equilibrium profile is dependent upon wave conditions. And the evolution of a beach profile from one state to another does not occur with a constant profile form because the changes of profile are initiated where the profile is the most out of equilibrium. Despite the controversy of the validity of a closure depth in equilibrium profile models, the Bruun's empirical relationship has been used as the basis for the design of most engineering projects on the continental beaches.

Short-term events in the order of a few hours to days by tropical storms, typhoons, and tsunamis may worsen the erosive problem since the frequency and severity of them may be higher and stronger with rising sea level than those at present, which results in further coastal inundation limit inland.

**4. Shoreline Change and Beach Recovery**

Average yearly trends of accretion or erosion of some beaches on the islands of Kauai, Oahu, Maui, and Hawaii are reanalyzed from historical aerial photographs of shores by taking into account the variation in shoreline position due to the annual cycle in the mean sea level. The most serious erosive problems were reported on the island of Maui, especially on the north shore, among the four major Hawaiian Islands. More than 70 percents of the total number of transects were eroding on Maui (Fig. 4). On the island of Kauai, erosion was reported at about half of the transects. On the west to northwest coast beaches of the island of Hawaii, approximately 60 percents were reported as 'eroding'. But there is a large uncertainty both in photographic measurements by an aircraft and in conversion of the aerial photos into maps. The uncertainty may reverse the mean annual trend of erosion/accretion if the rate of shoreline change is not large. Moreover, when two photos on the same beach with the time difference of several years were not taken in the same month, the shoreline positions (high water level is usually taken in aerial photography) should be converted into those of the same month to minimize the errors. Thus, the information of the beach slope should be incorporated for an estimate of the shoreline position for the same month of the year. An aerial photograph is an instantaneous snap-shot and hence cannot be representative for the shoreline in that year. In other words, calibration of shoreline position must be carried out, at least based on the mean annual cycle of sea level and beach slope, by converting vertical sea level change into horizontal shoreline change.

Beach recovery processes usually much slower than erosion processes, especially after big storm waves. Deep erosion during storm waves cannot be recovered by favorable (or mild) waves of much longer duration. The erosion may be partly recovered by non-breaking long waves such as longer-period swell. But eroded material may be permanently lost to deep water. Even in sea level fluctuations at longer time scales, beach sediments cannot be fully recovered. As a hypothesis it is proposed that the beach recovery rate exponentially decreases as the period of sea level fluctuation increases.

**5. Conclusion**

The mean annual cycle of sea level is the strongest signal at most of the selected tide-gauge stations in the North Pacific between the equator and about 30°N, reaching about 10cm in the mean annual height difference. Long-term linear regression show a trend of relative sea level rise of +1 to +5cm/decade, which primarily results from local tectonism such as volcanic loading, plate movement with reef evolution, and subduction at the plate boundaries. The secondary reason for the rising sea level may be contributions from the thermal expansion of sea surface waters by global warming.

Energy density distribution of monthly sea level values shows a strong peak about about a four-year period. A unique spectral peak with 25 to 30 year period is shown at Honolulu, Oahu, due to its relatively longer time-series. Sea level rise and fall with an interannual time scale may be an important

factor for serious erosion problems, which seems to affect beach erosion up to 5 to 10 times the long-term linear trend. As the time scale of sea level fluctuation becomes longer, beach erosion rate would be higher ( or beach recovery rate would be lower).

Reanalysis of aerial photographs of shoreline changes in association with sea level fluctuations suggests that Maui seems to endure the most serious problem of chronic beach erosion among the major Hawaiian Islands (Hawaii, Maui, Oahu, and Kauai). Measurements at different times of the year may lead to incorrect interpretation, even to reverse trends of erosion/accretion of shoreline changes, unless the potential errors included in aerial photographic measurements and mapping procedures are systematically corrected.

Short-term change of beach profiles is basically caused by wave conditions, in addition to the effects of changes in mean sea level height. The daily-mean significant wave height around Hawaiian Islands exceeds 3 meters and the average wave period is about 8 seconds in winter, while both are greatly reduced in summer. This is because relatively mild trade winds (northeasterlies) prevail most of the year including summer, and stronger North Pacific swells (northwesterlies) control the wave climate in winter.

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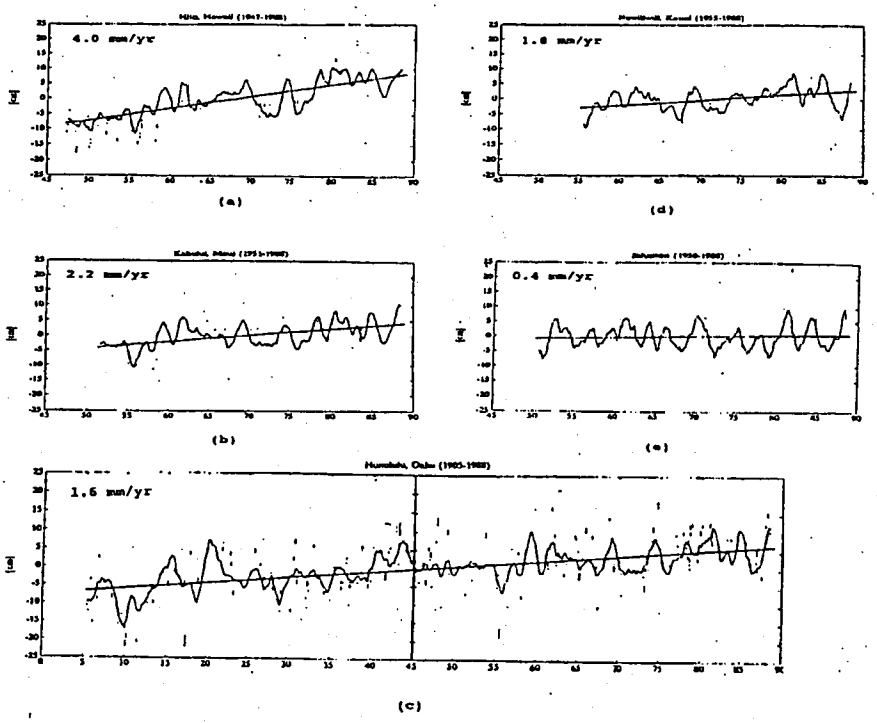



Fig.1. Long-term sea level trend (solid), 12-month running mean (solid curve), and monthly mean sea levels (dotted curve) at (a) Hilo, Hawaii, (b) Kahului, Maui, (c) Honolulu, Oahu, (d) Nawiliwili, Kauai, and at (e) Johnston Island.

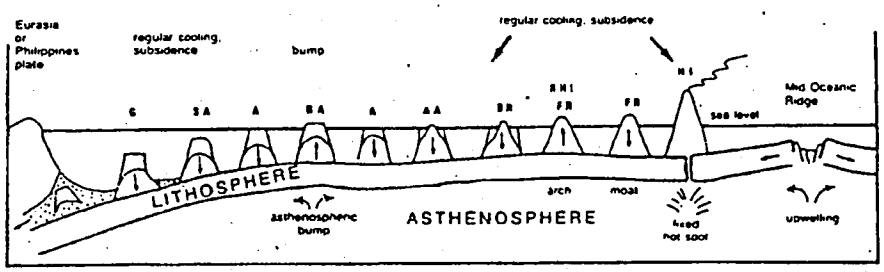



Fig.2. Proposed model for island development on the Pacific plate. Arrows indicate subsidence or emergence. HI: high island, FR: fringing reef, RHI-FR: raised high island with fringing reef, BR: barrier reef, AA: almost-atoll, A: atoll, RA: raised atoll, SA: submerged atoll, G: guyot (simplified Guilcher, 1988, originally from Scott and Rotondo, 1983).

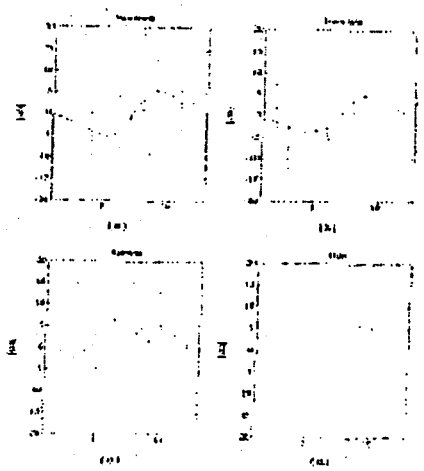


Fig.3. Mean annual cycle of monthly sea levels at (a) Nawiliwili, Kauai; (b) Honolulu, Oahu, (c) Kahului, Maui, and at (d) Hilo, Hawaii.

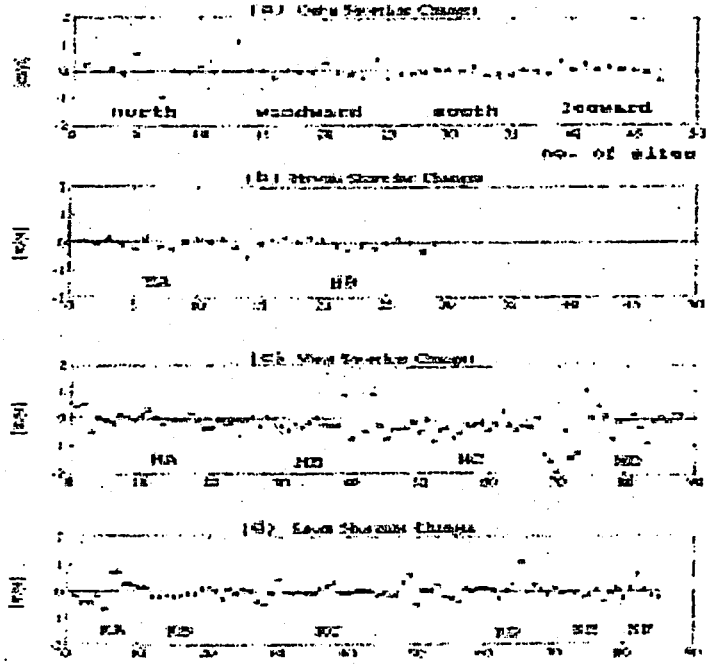



Fig.4. Mean annual trend of shoreline changes in [m/yr] on (a) Oahu, (b) Hawaii, (c) Maui, and on (d) Kauai. Data are selected from Hwang (1981) for (a), and Makai Ocean Eng. & Sea Eng. (1991) for (b), (c), and (d).

# Daniel Kahikina Akaka, U.S. Senator for Hawaii

**May 22, 2006**

**Newsletter pdf**

**President Must Articulate Clear Plan for Iraq Withdrawal**

In 2002, after meeting with many of our field commanders in my capacity as a member of the Senate Armed Services Committee, reviewing intelligence reports that questioned Iraq's purported weapons of mass destruction program, and leading hearings on Iraq as Chairman of the International Security Subcommittee, I voted against authorizing the use of force against Iraq.

The evidence cited by President Bush as justification for going to war was inadequate and I was unwilling to risk the lives of the men and women of our armed services without verification of the presence of weapons of mass destruction. I urged the Administration not to enter Iraq without proper planning, including a clear exit strategy. The war has tragically resulted in the deaths of more than 2,350 dedicated service men and women. Thousands more came home with serious injuries, many of them life altering.

President Bush says withdrawal from Iraq will be up to future Presidents. This is completely unacceptable. While we must not abandon the Iraqi people until we have provided them with the tools necessary to stand on their own, I am outraged that the Administration has no exit strategy to complete our mission and return our soldiers home safely. While many in Congress accept the President's vague promises of an eventual withdrawal, I insist that the Administration provide a more comprehensive plan that includes specific criteria to determine if our goals in Iraq are being met and to develop a timetable for bringing our soldiers back to their families.

Just as I cautioned the Administration not to act in haste in Iraq, I am advising the President not to act heedlessly with regard to Iran. We need to take a strong stand against the development of nuclear weapon technology in Iran, but we must use diplomacy to resolve the issues at hand. The short and long term consequences of military action, including the possibility of alienating our allies in Europe, Russia, and China who have expressed strong opposition to force, have not been adequately assessed. Nor have we explored the full range of diplomatic options available including more stringent economic sanctions against Iran. The better path is to continue to work with the international community for a peaceful solution.



Mosul, Iraq, Mar. 2004-Our service men and women deserve our appreciation and support. It's time to bring our involvement in Iraq to an end.

**Natural Disasters Show Gaps in Emergency Preparedness**

As a senior member of the Senate Homeland Security and Governmental Affairs Committee, I was actively involved in the investigation of the ineffective federal response to Hurricane Katrina. We discovered examples of calls for help that went unanswered, supply requests that went unmet, and flooding notifications that were ignored. While the Committee produced a comprehensive report with some necessary recommendations, we did not go far enough. I firmly believe, as I did in 2002 when the Department of Homeland Security (DHS) was created, that the Federal Emergency Management Agency (FEMA) should be an independent, Cabinet-level agency with a direct line to the President.

I am also committed to fixing the leadership problems at DHS which is why I introduced S. 2040, the Department of Homeland Security Qualified Leaders Act, a bill that requires most Senate-confirmed DHS officials possess a certain level of experience and qualifications. There were many failures during Hurricane Katrina and it will require a lot of work to fix them, but it begins with good leadership.

Six months after Hurricane Katrina hit the Gulf Coast, we experienced our own natural disaster as weeks of severe rainfall flooded parts of the state and caused the Ka Loko Reservoir to collapse killing seven people and devastating farmland. I immediately contacted FEMA to ensure that federal resources were ready to help if needed. Fortunately, federal, state, and local officials banded together to provide a united response and recovery effort in Hawaii. I am proud of the way Hawaii responds in times of crisis. The Ka Loko incident shows we must do more to secure our nation's dams. Senator Dan Inouye and I introduced S. 2444, the Dam Rehabilitation and Repair Act of 2006, to establish a program to provide grants to states for use in rehabilitating publicly-owned dams that fail to meet minimum safety standards; and Senator Christopher Bond (R-MO) and I introduced S. 2735, the National Dam Safety Program Act, which will provide federal funds to state dam safety programs for training, technical assistance, and research.



Kauai, Hawaii, Mar. 22, 2006-Kauai Mayor Brian Baptiste, DLNR Deputy Director Bob Masuda, and I survey damage caused by the failure of Ka Loko Reservoir.

**State of VA Care in Hawaii: Lessons Learned, Promises Kept**

As the Ranking Member of the Senate Committee on Veterans' Affairs, it is my job to ensure that the needs of our nation's veterans are being met. As Senator from Hawaii, it is my responsibility to make sure that the needs of Hawaii's veterans are being met. I take these duties seriously. I consistently encourage federal officials to travel to Hawaii to see the geographic challenges we face as an island state. My constituents deserve the same benefits and services provided in the other 49 states.

For that reason, I was particularly pleased to be joined by Veterans' Affairs Committee Chairman, Senator Larry E. Craig (R-ID), during statewide hearings in January 2006. We were joined on every island by top VA health officials, including the VA Under Secretary of Health and the Director of the Pacific Islands Health Care System. The presence of these officials was important because it demonstrated VA's interest in hearing what veterans had to say and willingness to work to improve services.

On Kauai, we examined the challenges in providing long-term care for veterans in Hawaii. On Maui, we looked at access to VA health care and services given the geographic challenges of an island state. On Oahu we examined VA health care and services in general, while on the Big Island we addressed issues dealing with the transition from DoD to VA, particularly for our soldiers who have redeployed with the National Guard and Reserves.




Hilo, Hawaii, Jan. 13, 2006-Hundreds of Hawaii's veterans turned out for Senate field hearings across the state.

The hearings yielded immediate results. On Kauai, VA announced it would establish a home health care program administered by the Kauai Community Based Outpatient Clinic (CBOC). On Maui, VA officials finally acknowledged that it was time to lift restrictions on services for certain veterans, including home care. VA also committed to funding for much-needed telehealth capabilities with non-VA providers and announced that Molokai veterans will get telehealth equipment in April. During the Hilo hearing, VA announced that the overburdened Kona CBOC will get new space and that VA providers in Hawaii would receive $1 million for improvements in mental health initiatives. With so many returning veterans and so many more veterans from previous conflicts requiring care, services such as readjustment, transition assistance, and PTSD-related counseling are priorities. There is more to do for our veterans and for their families.

As our military engagements in the 21st century become more complex, our all-volunteer military force, particularly our reservists and National Guardsmen and their families, will continue to make unprecedented sacrifices. I will do all that I can to ensure that the voices of Hawaii's veterans and their families are heard so that federal policies address and respond to our needs.



Kahului, Maui, Jan. 10, 2006-Telehealth equipment helps ensure that Maui veterans get appropriate treatment for their health needs. Joining me on a tour of the Maui CBOC were Sen. Larry Craig (R-ID) and VA Under Secretary for Health Jonathan Perlin.

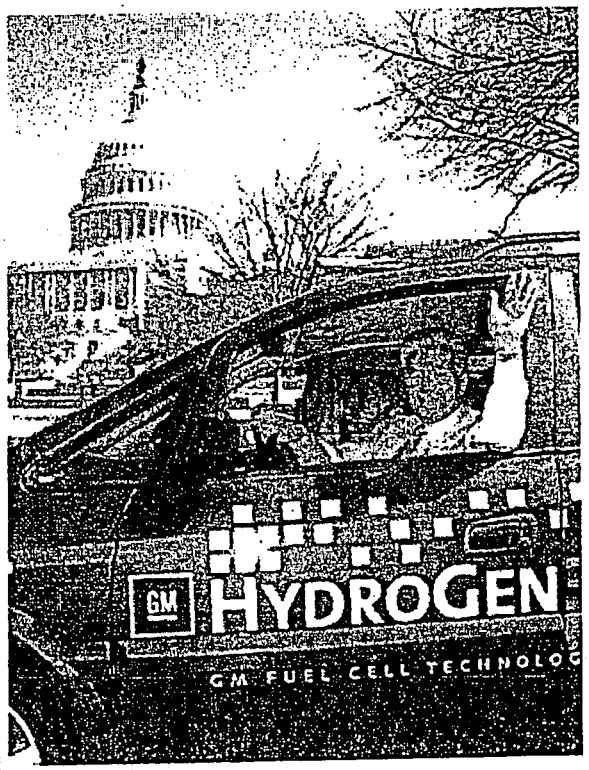
**Global Warming a Serious Threat to Hawaii and Pacific Islanders**

There is no denying that carbon dioxide in the atmosphere has reached higher levels than at any time in the history of mankind. The burning of fossil fuels for the last hundred years has accelerated the situation and the U.S. contributes more carbon dioxide to the atmosphere than any other nation.

I am particularly concerned for islands in the Pacific. In Hawaii, there are changesthat can only be explained by the buildup of carbon dioxide. Globally, sea level has increased 6 to 14 inches in the last century and it is likely to rise another 17 to 25 inches by 2100. You can imagine what this might mean
to port operators, shoreline property owners, tourists and residents who use Hawaii's beautiful beaches, and to island nations and territories in the Pacific where top elevations range between 3 and 100 meters above sea level. A typhoon or hurricane would be devastating to communities on these islands, not to mention the low-lying coastal wetlands of the continental United States.

The U.S. needs to be a leader in addressing climate change and carbon emissions. We must not get stuck in estimating the cost of implementing carbon controls. Inaction may not mean much if you are high and dry in the Nation's Capital, 90 miles from the Atlantic Ocean. But if you are surrounded by water, the risk of inaction is very real, and very frightening.

We must accept the reality of carbon dioxide accumulation -- and embrace the opportunity to use mandatory controls as a way to grow our economy. I would like to see a national commission that would focus on the job growth and technology investment needed to limit or reduce greenhouse gases, and the steps needed for a strategy to get there. If we embrace this issue as a nation, I am convinced that our human resources, technological and scientific expertise, and "national will" can beat it and the U.S. can act as a leader for the rest of the world in reducing carbon emissions.




Washington, D.C., Mar. 10, 2006-Commitment to alternative fuel research is the only sure solution to high gas prices.

**Financial Literacy Promotes Strong Families**

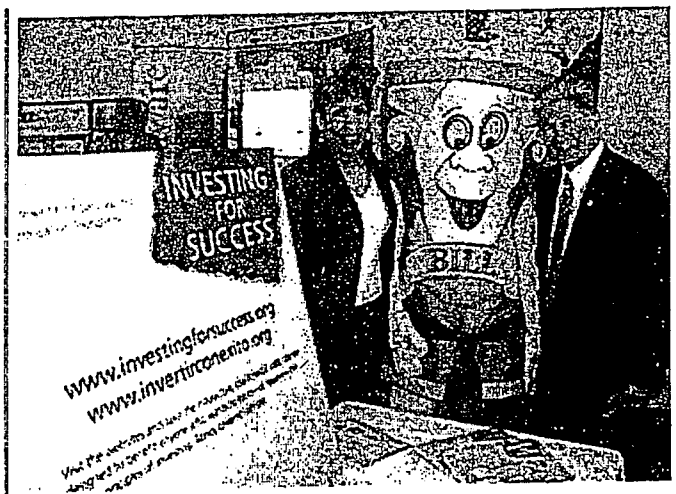
As the Ranking Member on the Readiness Subcommittee in Armed Services, I launched a comprehensive financial education campaign for the military in Honolulu. Sponsored by the National Association of Securities Dealers (NASD) with cooperation from the Department of Defense, the effort will help military personnel and their families manage money with competence and confidence. Honolulu's program will be replicated across the country.



Honolulu, Hawaii, Apr. 12, 2006-More than 600 service members and their families participated in a financial management seminar conducted at my request. The program will be replicated nationwide.

We must promote strong families to maintain a capable and ready military force. Financial stability and readiness is a very important component of this effort. Unfortunately, servicemembers and their families are often victimized by predatory lenders that end up with far too much of the military paycheck. This is happening on or near our bases where unscrupulous financiers are charging hidden fees, applying exorbitant interest rates, and marketing unnecessary products. We must do all we can to protect consumers, and this financial readiness campaign, coupled with my bill S. 1347, the Low-Cost Alternatives to Payday Loans Act, will help.

Civilians can use sound financial management and investment advice too. I recently partnered with the NASD, the Hawaii State Department of Commerce and Consumer Affairs, and the Hawaii Council on Economic Education to bring smart investing forums to the people of Kauai and the Big Island, similar to successful workshops I organized last year on Maui and Oahu.




Washington, D.C., Apr. 25, 2006-Financial Literacy Day on the Hill. The Senate approved my resolution designating April as Financial Literacy Month. This is a good time to focus on savings, budgeting, maintaining good credit histories, and applying economic concepts to our daily decisions.

**Year:** [2006] , 2005

May 2006

- ~~Memorial Day 2006 [May 27, 2006]~~
- News from United States Senator Daniel K. Akaka-Summer 2006 [May 22, 2006]
- Akaka Amendment Gives Filipino World War II Veterans a Chance to Reunite with Sons and Daughters [May 19, 2006]
- Preparing for a Pandemic [May 12, 2006]

-----Original Message-----
**From:** Bruce Pleas [redacted]
**Sent:** Tuesday, November 21, 2006 12:13 PM
**To:** COK Council
**Cc:** Lestor Chang; Adam Harju
**Subject:** From Bruce Pleas 11/21/06

Public testimony on November 21, 2006 from Bruce Pleas on Bill No. 2201

Following is my testimony on Bill No. 2201 that covers many different areas of the Kapalawai project.

**Process at last Planning Commission meeting on recommendations presently before the County Council**

At the last Public Hearing before the Planning Commission in which the legislation on Kapalawai that is presently before the County Council was passed the following timeline was followed;

The Public Hearing was convened late (around 6:30pm) with only 1 person of the 3 people signed up to give public testimony in attendence. The Public Hearing was closed after 1 person testified, the other 2 people were not given the chance to present their testimony thru either oral or written forms.

The Planning Commission went directly into formation and discussion of the recommendation before the Council today with again only 1 person available to give public testimony and the Planning Commission then passed the recommendations sent to the County Council.

I brought up the fast process to the Planning Commission Chair and read the Planning Commission Rules in which this process is allowed.

In the past the Planning Commission has kept open Public Hearings when they are held late and people who are signed up to testify are not present. This is done as a courtesy to the public so that the people who have expressed interest in the Public Hearing have a chance to present their testimony to the Planning Commission by either written form or at the next scheduled continued Public Hearing.

I feel that this process followed by the Planning Commission on the recommendations now before the County Council did not allow the interested public a fair opportunity to present their testimony.

**On the shoreline certification**

The first shoreline certification was approved in 2001 and even with 2 amendments presented to the Planning Commission for approval there was not another shoreline survey done for a shoreline certification done until November 2005, which was reviewed and re-submitted in February of 2006. This review/re-submittal was appealed in May 2006 by myself and to my knowledge the appeal has not had a decision made on it.

In any case State/County regulations require a new shoreline certification within 1 year of any building, grading and grubbing permits being issued and since the last shoreline survey was done on February 2006, only good until February 2007, the project will need another new shoreline survey/certification done before any permits can be issued.

It is pointless to pass an amendment (At the writing of this I do not have a copy of the legal amendment before the County Council, all I have to go on are my notes from the Planning Commission meeting, copy of Special Management Area Time Extension Request dated July 11, 2006 and what was in the newspaper) that is tied to the shoreline certification and gives the applicant a set amount of time for an extension (18 months) "from the most current shoreline certified by the State of Hawaii at the **time of building permit application.**" As I presented to the Planning Commission this equates to a pretty much open ended extension unless specific wording is inserted to specify which shoreline certification (2005?, 2006? 2007?) and how to deal with the appeal process (does the appeal process supercede the shoreline certification or does it run concurrent with the shoreline certification?) and is this the final or just the first in a line of extensions?

All of this adds up to a confused amendment when the original Ordinance (No. PM-2001-356) that the applicant agreed to is specific in requiring "Substantial construction of the hotel **shall** be completed **within five years from the effective date of this ordinance."**

The original intent of this five year requirement on completion of "substantial construction" was from the realization in 2000/2001 of prior resort zoned areas that had set idle for 20+ years that were then coming back on line due to the availability of monies and the renewed interest of building resort-condo developments on Kauai. The realization that over the last 20+ years that the infrastructure and the local work/living conditions have changed so much in these areas (and on Kauai as a whole)that prior resort zoned areas that looked feasible 20+ years ago were no longer as feasible and in some cases no longer needed. This is why Council member Valenciano proposed the five year requirement on both Westside resort zoning Ordinances so that in five years these projects could be reviewed and see if they were still a viable project. Five years ago PMRF had almost closed, Kekaha Sugar was closed, G&R Sugar was in dire straights and unemployment was much higher than today. Now there are not enough workers for the businesses on Kauai, PMRF needs trained and untrained employees, there are more agriculture jobs in seed companies than there were in Kekaha Sugar,

aquaculture has returned more jobs to the Westside, G&R sugar is now expanding into energy production with a new plant and increased acreage in energy crops and unemployment is at an all time low. Plus now there are 2,000 to 3,000+ resort units planned for Kauai with more waiting in the wings to be passed which will employ any resident who wishes to be employed in this field of work and to complete these already passed projects some workers will probably have to be brought in from other areas. All of this adds up to another reason that the five year requirement be enforced and not extended as there is not the great need for another development on Kauai at this time, especially one that will only be paying service level wages when there are higher level wages available on many different types of employment.

**On the erosion setback**

The erosion study presented is a "The data presented here represent a **draft** analysis of the maximum erosion hazard." and "This map is not a final product....Our final product will have a more accurate and precise analysis of erosion hazards that may vary significantly from this. For instance, one crucial missing piece of information is a modern, high resolution aerial photograph. We hope to have such a photo within the next 6 months to assist in the production of our final erosion analysis."

The recommendation (#21) from the Planning Commission (as presented to me in July 2006) states that "A building setback line **shall** be established from the most current shoreline certified by the State of Hawaii at the time of **building permit application**. This setback line **shall** take into **consideration** the "red line" (the 70-year erosion hazard line plus 40 feet as established by the preliminary erosion study by Dr Chip Fletcher dated June 2006, or 200 ft., **whichever is closer to the shoreline**, or **other acceptable setback** based on other models developed by the County of Kauai shoreline erosion study." There was another note written in by Mike Laureta that I could not decipher completely that could of also been added to this condition that has to do with the Transition zones along the shoreline.

A note is that the setback agreed upon and presented in all of the maps is 100' for this project, not 40' and that the setback line only has to take into **consideration** the 70-year erosion hazard line and has the phrase "whichever is closer to the shoreline" as a loop hole to allow buildings as close to the shoreline as possible. On the map that was presented by Dr. Fletcher (available at http://www.soest.hawaii.edu/coasts/images/Kapalawai1200.jpg ) the original computed erosion setback varied from 100+ feet to around 500 feet for the 70-year erosion rate and if you add the 100' setback to these figures the agreed upon 200' setback does not appear to be supported by even the draft erosion analysis.

**On type of resort**

There is still the question as to the type of resort this will be. It started out as an Eco-hotel on which the EIS was based on, on July 13, 2004 the applicant submitted a

modification to the Conceptual Site Plan that included kitchens in some units along with a proposal to make the use of this parcel a Condo-resort with the starting price for a 1 bedroom unit at $420,000. This request was withdrawn by the applicant.

This still brings up the question as to the present plans as to what type of hotel/resort/condo is planned for this land parcel. Please remember that developers at the zoning amendment stage have presented one type of use to the County Council and at the opening of the project the type of use has changed from what was presented as a conceptual plan/use to the Planning Commission after it left the Council's venue.

**On planning**

From the time of the formation and passing of the 2000 General Plan this project has been considered and was included in the General Plan. Since then this project has been before the Planning Commission and County Council in various forms. For the entire time I have been questioning the location of this proposed resort on a couple of different levels;

1) Fully 75%+ of the land area is in Flood and Tsunami zones, the entire area along the ocean (approximately 10%+ of the project area) is in the Hurricane Inundation Zone. I have always questioned the logic of putting any people into an area that has potential to harm those people, especially with the project providing no shelters in case of an emergency situation (evacuation of resort area and housing of visitors if the resort is destroyed or not livable) for their guests and the additional residents that will be needed to staff the project.

2) This project is a prime example of spot zoning as it does not adjoin any significant residential/commercial area that will support it or that the resort will support and will require that all guests at this project will have to drive into the closest town. There is an adjoining parcel of land that lies next to the Russian Fort and is well within walking distance of Waimea town that I have long contended is a better location for a resort. Also this adjoining parcel of land is 90%+ out of the Flood, Tsunami and Hurricane Inundation zones and is a much better land parcel for this type of development.

3) The Cultural and Historical significance of this parcel is very well documented in the EIS (Section 4-9 @ 22 pages-Historic, Cultural and Archaeological Resources, Appendix D @ 108 pages-Archaeological Inventory Survey, Appendix E @ 54 pages-Architectural Analysis of Structures at Kapalawai, Appendix G @ 48 pages-Traditional Customs and Practices Report) which makes up a decent portion of the EIS. From the beginning of this project certain members of the public have presented testimony on the Cultural significance of this area and have expressed their concerns of developing this very unique area of Kauai into a resort development. At the same time these members of the public have asked that legislation be passed to protect this area as a Historic and Cultural Preserve and move the project to the adjoining parcel of land closer to Waimea. From the beginning of this project I have asked that due to the sensitive nature in both previous Cultural and Historic uses that the entire project (especially any area that will have trenching or ground disturbing activities) be gone over with Ground Penetrating Radar to begin to identify the areas that there may be some Cultural and Historic

deposits before any Grading and Grubbing Permits are applied for. Five years ago this was a tall task to ask for as that technology was not available in Hawaii but now that technology is in Hawaii, is being used to identify Cultural and Historic deposits with this new condition needed to be added to any legislation that is passed for this parcel of land. Please reference the EIS and note that only 27 areas were trenched and fully 17 of those contained the minimal 'charcoal deposits' and much more including a burial site.

**Assorted issues**

Presently the work force on Kauai (including the Westside) is barely to not able to provide sufficient workers for the existing businesses on Kauai. When this project was proposed it was to provide additional jobs for Westside residents in case sugar was phased out. Presently the unemployment figures are under 3%, the local businesses can not find enough workers to fill existing job openings, there are proposed increases in jobs at PMRF, at presently being built and passed projects from Hanapepe to Poipu and at the new ethanol production facility (7,500 additional acres in sugar and 150+ more workers within 2 years). At this time this project is not needed to supply employment.

The applicant agreed on December 24, 2001 to the condition (t) that "Substantial construction of the hotel **shall** be completed within five years from the effective date of this ordinance. If substantial construction is not completed within this time, the Planning Commission **shall** initiate proceedings to rezone the property to the designations existing prior to the date of this ordinance." From the beginning the applicant agreed to and has know that "substantial construction" was to be completed by December 24, 2006.

Over the last 5 years there has been an unprecedented amount of previously Resort zoned areas around Kauai brought up before the Planning Commission to be developed, yet this and the other Westside resort project have not been developed or even worked on. Both of these projects have a 'five year use it or lose it condition' which should be enforced.

For the Kapalawai project there is now a revised setback of 200' which will require a completely new site plan, possibly a change in the Zoning since a percentage of the proposed units and most, if not all, of the restaurants/snack bars are within this 200' setback. There is also a % of lot coverage that is allowed by Ordinance in each zoned area and with the units being compressed and paved fire lanes being added it is questionable that the existing Zoning will allow the entire 250 units and associated amenities to be located within the existing zoned areas.

To change the Zoning, to change the lot coverage or to significantly change to site plan would be a significant change in the complexion of the proposed resort, with the possibility of a change in type of use (eco-hotel to proposed condo-resort ownership of units), with the 200' setback only a **draft** proposal along with the significant Cultural and

Historical sites on this parcel I ask the County Council to deny this request for an extension and require the applicant to reapply for a new Zoning request once they have completed a new site plan, defined what type of unit use will be used in the project, provided a **final shoreline erosion rate** for the project and have fully identified the cultural areas that exist over the entire project.

Mahalo,

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LAND USE COMMISSION
STATE OF HAWAII
2015 DEC 30 A 8:52

December 30, 2015

HAND DELIVERY

Mr. Daniel Orodenker, Executive Officer
Land Use Commission, State of Hawai'i
Department of Business, Economic
Development & Tourism
235 South Beretania Street, 4th Floor
Honolulu, Hawai'i 96813

Re: Annual Report to the Land Use Commission - Destination Villages Kauai, A Limited Liability Company; LUC Docket No. A00-731

Dear Mr. Orodenker:

Pursuant to Condition No. 25 of the Findings of Fact, Conclusions of Law, and Decision, and Order ("Decision and Order") of the Land Use Commission ("Commission") in the above-entitled docket, the landowners of the petition area in the above-entitled docket hereby submit the annual report for the years 2012 through 2015, regarding the (1) general progress of the 250 resort units and accessory uses project within the approximately 153.696 acre petition area ("Project"), and the (2) status and progress toward compliance with the conditions imposed as set forth in the Decision and Order.

1. General Progress of the Project

The Decision and Order for the above-entitled docket was certified on April 6, 2001. Subsequently, the property was designated Resort by Kauai County Council action on the General Plan Update (Ordinance No. PM-2000-353, Bill No. 1953). Once the approvals related to the State Land Use District Boundary Amendment and County General Plan were obtained, major portions of the property (127.93 acres, more or less) were zoned RR-1 (Ordinance No. PM-2001-356, Bill No. 2004). The remainder of the property was zoned Open (25.77 acres, more or less).

Subsequent to the approval of the zoning amendment, on February 25, 2002, the Petitioner filed an application with the County of Kauai for three permits ("final County zoning permits"): (1) Special Management Area Use Permit; (2) Project Development Use Permit; and (3) Class IV Zoning Permit. These three permits represent the final discretionary permits required for the proposed resort by the County of Kauai. The permits were approved by the Kauai Planning Commission on May 28, 2002.

Following the approval of the County of Kauai permits, the Project had progressed in good faith with developers by accomplishing studies and milestones at considerable expense in compliance with entitlements. The Project's progress continued for approximately five (5) years until the Project unfortunately experienced a temporary delay that was prompted by the downturn in the economy.

In 2007, the administration of the project reverted to the landowners of the petition area who include the Robinson Family Partners and Bruce Robinson.

On July 1, 2013, the landowners entered into a letter of intent with a prospective developer to lease and develop the Project. The prospective developer has been actively conducting extensive due diligence, including the preparation of a site plan with an emphasis on protecting the natural landscapes, architectural design, landscaping design, and civil engineering. The prospective developer has incurred extensive pre-construction expenses in excess of one million dollars, including expenses relating to landscape design, architecture, survey work, engineering, legal fees and administrative expenses.

The landowners and prospective developer will continue their efforts to develop the property consistent with existing entitlements.

2. Progress in Complying with Conditions Imposed

Condition No. 1:

"1. Petitioner shall provide affordable housing opportunities for residents of the State of Hawaii to include employees of the proposed resort in accordance with applicable affordable housing requirements of the County of Kauai. The location and distribution of the affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and the County of Kaua' i."

Status:

The County Zoning Amendment Ordinance (Ordinance No. PM-2001-35C Bill No. 2004, Draft 2) specifies that the applicant provide 15 employee housing units at affordable rentals (80% of Kauai Median Household Income). The Project site plan that was submitted with the application for final permits (Exhibit I of the application), includes 15 employee housing units. If the prospective developer proceeds with the Project, the prospective developer's revised site plan will comply with this requirement.

Condition No. 2:

"2. Petitioner shall design and construct drainage improvements requirements as a result of the development of the Property to the satisfaction of the Department of Health and the Commission on Water Resource Management of the State Department of Land and Natural Resources."

Status:

This condition will be implemented during review of construction documents for building permits. A grading and drainage plan was approved by the County.

**Condition No. 3:**

"3. Petitioner shall conduct proper and regular maintenance of the existing streambeds and the proposed grass-lined channel which is essential to ensure maximum flood protection for the project as may be required by the County Department of Public Works. In addition, Petitioner shall institute Best Management Practices in the design of the drainage system to reduce the potential for sediments and other pollutants to reach the ocean and on-site streams as may be required by the County of Kaua'i and/or the State of Hawai'i."

**Status:**

This condition will be documented during preparation and review of construction documents for grading permits, once final zoning permits are granted by the County of Kaua'i.

**Condition No. 4:**

"4. Petitioner shall locate all building construction mauka of the Hurricane Iniki inundation line and shall mitigate flood hazards as shown on Petitioner's Exhibit No. 32 to the satisfaction of appropriate Federal, State and County agencies."

**Status:**

Exhibit I of the application submitted to the County of Kauai Planning Department identifies the Hurricane Iniki Inundation Line. All proposed structures are mauka of this line. Construction drawings will deal with specific flood hazard requirements (County and Federal) for each affected structure, when applications are submitted for building permits. If the prospective developer proceeds with the Project, the prospective developer's revised site plan will comply with this requirement.

**Condition No. 5:**

"5. Petitioner shall provide adequate water source facilities and improvements to accommodate the proposed Project. Water source facilities and improvements shall be coordinated and approved by the Commission on Water Resource Management of the State Department of Land and Natural Resources."

**Status:**

Approval from the Commission on Water Resource Management will be required to construct the potable well that will service the Kapalawai Resort. Application for approval of the well will not occur until after approval of final County zoning permits.

**Condition No. 6:**

"6. Petitioner shall provide adequate wastewater treatment, transmission and disposal facilities as determined by the State Department of Health."

**Status:**

DOH will have oversight for construction plans pertaining to the design of the on-site wastewater treatment plant and other facilities. These plans will be prepared as part of the submittal of construction drawings for building permits.

**Condition No. 7:**

"7. Petitioner shall fund and construct adequate civil defense measures as determined by the State of Hawai'i Department of Defense, Office of Civil Defense."

**Status:**

Design and location of required civil defense facilities will be coordinated with the State Department of Defense prior to submittal of building permits.

Condition No. 8:

"8. To ensure that the proposed land uses will not adversely impact endangered species and environmentally sensitive areas such as wetlands, ponds, or streams, the Petitioner shall consult with the appropriate Federal and State agencies whenever, in the course of developing the proposed project, it reasonably appears that an endangered specie or sensitive area may be affected by a particular development activity."

Status:

Appropriate consultations will occur when necessary. Primary agencies of responsibility are the U.S. Fish and Wildlife Service and DLNR Division of Forestry and Wildlife.

Condition No. 9:

"9. Should any previously unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, Petitioner shall stop work in the immediate vicinity and the State Historic Preservation Division of the Department of Land and Natural Resources (SI-IPD) shall be notified immediately. The significance of these finds shall then be determined and approved by the SHPD. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to their satisfaction."

Status:

Development contractors will be made aware of requirements prior to commencement of construction activities. Archaeological monitoring will be required in sensitive areas during construction. Should any unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, SHPD will be notified immediately.

**Condition No. 10:**

"10. Petitioner shall follow the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD) recommendations for mitigation of impacts resulting from the development and for archaeological data recovery and preservation. An archaeological data recovery plan (scope of work) must be approved by the SHPD. That plan must then be successfully executed (to be verified in writing by SHPD) prior to any grading, clearing, grubbing or other land alteration in these areas. A preservation plan must also be approved by SHPD. This plan, or minimally its interim protection plan phase, must be successfully executed (to be verified in writing by SHPD) prior to any grading clearing, grubbing or other land alteration in these areas."

**Status:**

SHPD has advised Petitioner of necessity to prepare appropriate data recovery plans. Data recovery and preservation plans will be prepared by the Petitioner and approved by SHPD subsequent to approval of final County zoning permits and prior to submittal of building permits.

**Condition No. 11:**

"11. Petitioner shall implement efficient soil erosion and dust control measures during and after the development process to the satisfaction of the State Department of Health."

**Status:**

Soil and erosion control plans were included in the approved rough grading permit.

Condition No. 12:

"12. Petitioner shall participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed development in designs and schedules accepted and determined by the State Department of Transportation (DOT). Agreement between the Petitioner and the DOT as to the level of funding and participation shall be obtained prior to the Petitioner acquiring County zoning or prior to building permits if county zoning is not required."

Status:

Petitioner has coordinated these requirements with State DOT Highways Division per Exhibit O of the application submitted for final zoning permits. In addition, Petitioner must confirm whether DOT will require Petitioner to pay for access to the State Highway (Kaumualii Highway). Off-site construction plans have been completed for the Kaumualii Highway improvements.

Condition No. 13:

"13. Petitioner, where feasible, shall use indigenous and water conserving plants and turf and incorporate the same into common area landscape planting."

Status:

The Petitioner has addressed this condition by preparing a conceptual landscape plan for the Project, which is included in the application submitted for final zoning permits as Exhibit J. Many native species are listed on the proposed landscape palette, as well as other species already found on the property that currently survive without irrigation. If the prospective developer proceeds with the Project, the prospective developer will submit a revised conceptual landscape plan in compliance with this condition.

**Condition No. 14:**

"14. Petitioner shall notify all prospective buyers of property of the potential odor, noise and dust pollution resulting from surrounding agricultural uses."

**Status:**

No sale of property has occurred to date. Should a sale in property occur, or be contemplated, prospective buyers will be notified of the potential odor, noise and dust pollution resulting from surrounding agricultural uses.

**Condition No. 15:**

"15. Building setback lines shall be established during the Zoning Amendment and SMA Permit approval process to ensure proper siting of the proposed buildings and structures to mitigate any adverse visual and/or environmental impacts."

**Status:**

The Kauai County Zoning Amendment Ordinance (Ordinance No. PM-2001-356, Bill No. 2004, Draft 2) has established specific setback and transition areas designed to mitigate visual and other impacts. These setbacks are respected by a revised sited plan for the Project that has been submitted to the Kauai County Planning Department for review and approval by the Kauai County Planning Commission. The Special Management Area Use Permit also established additional setback requirements along the shoreline.

**Condition No. 16:**

"16. Petitioner shall provide public pedestrian access to the shoreline and shall develop the public restroom facilities, vehicular access to Kaumualii Highway and shower and parking facilities substantially as represented by the Petitioner and as shown on Petitioner's Exhibit 53. The public facilities shall be built and maintained by

Petitioner, with twenty-four hour security. The duration and term of the public access to the shoreline and to the public facilities shall be coterminous with the term of Petitioner's Lease with the landowner."

Status:

Public facilities presented to the Land Use Commission as part of Petitioner's Exhibit 53 are included in the project site plan (Exhibit I of the application submitted for final zoning permits). A similar requirement has been established by the County of Kauai (Zoning Amendment Ordinance, Section 3(j)). If the prospective developer proceeds with the Project, the prospective developer's revised site plan will comply with this requirement.

Condition No. 17:

"17. Petitioner shall dedicate a public easement to the State of Hawai'i for 99 years adequate and reasonable with respect to beach and surfing ingress and egress and shall develop public restroom and shower facilities, vehicular access to Kaumuali'i Highway and public parking facilities as described by the Petitioner and as shown on Petitioner's exhibit 53. The public facilities shall be built and maintained by Petitioner, with twenty-four security. It is the LUC's intent that the duration and term of the public access to the shoreline and to the public facilities shall be coterminous with the term of Petitioner's Lease with the landowner. The facility shall be developed in consultation with the appropriate state and county agencies and the surfing community."

Status:

Easement dedication shall occur prior to submittal of building permits. The term of the easement shall be coterminous with the term of the landowner's lease with the developer.

Condition No. 18:

"18. Petitioner shall provide public pedestrian access from the Project's proposed parking facility to the rock platform substantially as represented by the Petitioner and as shown on Petitioner's Exhibit 55. No structures or buildings shall be constructed closer than fifty (50) feet from the rock platform. The duration and term of the public access shall be coterminous with the term of Petitioner's Lease with the landowner."

Status:

Exhibit I of the application submitted for final zoning permits identifies pedestrian access to the rock platform. Kauai County has recognized the rock platform and its buffer zone, by creating a Special Treatment-Cultural District (O/ST-C) around it as part of the Zoning Amendment Ordinance (Ordinance No. PM-2001-356, Bill No. 2004, Draft 2). If the prospective developer proceeds with the Project, the prospective developer's revised site plan will comply with this requirement.

Condition No. 19:

"19. Relying on its earlier decision in Public Access Shoreline Hawaii v. Hawaii County Planning Commission, 79 Haw. 425, 903 P.2d 1.246 (1995), the Supreme Court in Ka Pa`alcai o Ka`aina v. Land Use Commission, 94 Haw. 31, 46, 7 P3d 1068, 1083 (2000), declared that "to the extent feasible when granting a petition for reclassification of district boundaries," this Commission must "protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians." To satisfy that obligation, "[s]pecific considerations regarding the extent of customary and traditional practices and the impairment and feasible protection of those uses must first be made before a petition for a land use boundary change is granted." Id., 94 Haw. At 52, 7 P.3d at 1089. The Commission's findings of fact and conclusions of law in land use boundary change proceedings must therefore specify "(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; and (3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist." Id."

Status:

Petitioner acknowledges the meaning and intent of Condition No. 19.

Condition No. 20:

"20. There is some evidence of native Hawaiians' entry onto the property to gather and otherwise use it to exercise traditional and customary Hawaiian rights prior to the 1800s, particularly with respect to the fishpond. Native Hawaiian maka'ainana activity appears to have occurred only with the permission of the parcel's owners, after acquisition of the Property by Victoria Kamamalu. Accordingly and consistent with Petitioner's expressed willingness and commitment to restore, maintain, and operate the Kapalawai Fishpond as a Hawaiian fishpond, the Kapalawai Fishpond shall be restored, maintained, and operated in the manner consistent with traditional and customary Hawaiian practices as provided in P.A.S.H., supra., which the Commission finds to exist in the pond. Petitioner shall utilize recognized ancient Hawaiians [sic] pond experts such as Dr. Kikuchi and Professor Marion Kelly from the University of Hawaii, for guidance and assistance in the effort.

(a) Restoration shall proceed pursuant to a mitigation plan the Petitioner prepares and submits to the SHPD for review and approval prior to commencement of any restoration activity, and in accordance with the traditional and customary method described by Dr. Kikuchi, see Finding of Fact 109. Restoration shall be done deliberately and with sensitivity to the preservation of the fishpond and any marine and bird life at the site. Because large heavy- equipment could adversely affect the extant pond walls if the full weight of the vehicle is brought to bear on the wall, Petitioner shall make every effort to avoid using such equipment in the pond's restoration. The pohaku on which the fishpond's legendary mo'o wahine is said to have sat will be retrieved from the debris, and it shall be re-placed and preserved in the

place at its legendary location before restoration work begins. The public shall have access to the Kapalawai Fishpond to observe its restoration by traditional and cultural native Hawaiian means.

(b) Petitioner shall establish a management plan for the maintenance and operation of the fishpond which is consistent with traditional and customary historic Hawaiian practices. It shall include provisions for sharing fish harvested from the fishpond, for educating the fishpond's caretakers and Petitioner's staff about Hawaiian fishponds and the Kapalawai Fishpond in particular, and for training fishpond caretakers in the traditional and customary Hawaiian practices for the maintenance and operation of the fishpond. The management plan shall also include provision for a fishpond management entity composed of a representative from the Petitioner and a representative from the West Kaua'i Hawaiian community to be selected by the Hawaiian community. This entity shall manage all aspects of the pond's use and utilization as a natural resource including harvesting, water use, and visitor access. This entity shall be responsible for the resolution of any dispute which may arise as to the management and operation of the Kapalawai Fishpond in accordance with traditional and customary Hawaiian practices. The selection of the management committee shall take place no later than six months after the approval of the SMA Permit. In addition, the plan shall include a process for the two members of the management entity to select a third member to overcome any stalemate. It is the intent of the Commission that as far as possible, Petitioner select individuals living in the West Kaua'i community who are familiar with the area and have a love for the 'aina to maintain and operate the Kapalawai fishpond. The management plan shall remain in effect for the duration of the original term of the Petitioner's lease with the landowner. The Hawaiian gathering rights on the pond shall not be affected by the expiration or termination of the lease. It shall be a further condition of the Commission that Petitioner shall report back to the Commission within one year from the approval of the SMA permit on the understanding that the Commission reserves the power and authority to amend the condition herein to better operate the management committee.

(c) Further, no Project building or structure shall be constructed closer than one hundred (100) feet from the fishpond. Every effort shall also be made to prevent the contamination of the fishpond during the construction and operation of the Project due to water and waste runoff, the operation of pumps or other machinery in the area, and human access and habitation."

Status:

Initial consultation with Dr. Kikuchi concluded that the current condition of the fishpond could not be improved without the assistance of mechanical equipment. In Dr. Kikuchi's letter report following a site inspection in November 2001, he endorsed the use of an excavator within the pond, based on an immediate need for gross vegetation clearance, economic considerations, and the need for speed in completing the job. SHPD, the County of Kauai Planning Department, and the U.S. Army Corps of Engineers approved this approach to the first step of pond clearance. At this date, no activities have commenced within the pond.

As clearing of the fishpond proceeds, the pohaku will be located, if it is still present, and preserved in place.

A Management Plan shall be prepared in conjunction with the appointment of a management entity. The management entity will be in place within 6 months of the approval of the SMA Permit. The management entity was established on November 26, 2002.

All of the details of the management plan (including those details specified in LUC Condition #20b) will be implemented subsequent to the approval of the SMA Permit.

Exhibit I (Site plan) of the application submitted for final zoning permits package includes a 100-foot setback from the fishpond, which has been adopted as part of the zoning requirements established by the County Zoning Amendment Ordinance (Zoning district Open/Special Treatment-Cultural). If the prospective developer proceeds with the Project, the prospective developer's revised site plan will comply with this requirement.

**Condition No. 21:**

"21. Petitioner acknowledges and agrees that it has no vested interest or right to develop the Petition Area, as reclassified, until Petitioner has substantially complied with the representations it made to the Commission. Petitioner waives any claims for liability against the State arising from any reversion of the Petition Area."

**Status:**

Petitioner acknowledges the meaning and intent of Condition No. 21.

**Condition No. 22:**

"22. Petitioner shall develop the Petition Area in substantial compliance with the representations made by the Petitioner to the Commission, including but not limited to the representation that the Project shall be limited to a 250 visitor unit density with existing and accessory uses as proposed in its Petition. Failure to do so for any reason, including economic feasibility, may result in the imposition of fines as provided by law, removal of improvements by Petitioner at Petitioner's own expense, reversion of the Petition area to its former condition by Petitioner at Petitioner's own expense, reversion of the Petition Area to its former classification, or a change to a more appropriate classification, or any other legal remedies."

**Status:**

The Petitioner has consistently maintained a desire to adhere to a 250 visitor unit limit. This restriction is now part of the records of approval for both the Commission and Kauai County (Zoning Amendment Ordinance, Section 3(h)(i)), and is reflected in the most current site plan (dated April 6, 2004) submitted to the County Planning Department for approval. If the prospective developer proceeds with the Project, the prospective developer's revised site plan will comply with this requirement.

**Condition No. 23:**

"23. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to the development of the Property. The decision herein, including the conditions imposed on Petitioner, shall be binding on Petitioner's successors and assigns according to law."

**Status:**

Gay & Robinson, Inc. transferred the last of its ownership interest in the Property to Robinson Family Partners in 2001. The remaining owners of the Property are Robinson Family Partners and Bruce Robinson.

**Condition No. 24:**

"24. Petitioner shall timely provide, without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Kauai Planning Department, in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission."

**Status:**

The Petitioner will comply with this condition.

**Condition No. 25:**

"25. The Commission may fully or partially release the conditions provided herein, as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner."

Status:

To date, there has been no need for full or partial release from any of the conditions included as part of the April 6, 2001 Decision and Order.

Condition No. 26:

"26. Within seven days of the issuance of Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances, a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission."

Status:

Petitioner recorded a statement with the Bureau of Conveyances that the property is subject to conditions imposed by the Commission on April 17, 2001 as Doc. No. 2001-054811.

Condition No. 27:

"27. Petitioner shall record conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules."

Status:

Petitioner recorded the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules, on June 14, 2001, as Doc. No. 2001-089516.

Please do not hesitate to contact the undersigned should you have any questions or comments with respect to the matters discussed above.

Very truly yours,

MATSUBARA – KOTAKE

Curtis T. Tabata

cc: Planning Department, County of Kauai
Office of Planning, State of Hawai'i

# EXHIBIT 10

AVERY YOUN, ARCHITECT
2980 EWALU ST.
LIHUE, HAWAII 96766
PH. (808) 246 9414
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October 12, 2007

Land Use Commission
Department of Business, Economic
Development & Tourism
State of Hawaii
P.O. Box 2359
Honolulu, Hawaii 96804-2359

Kauai Planning Department
4444 Rice St. Ste. 473
Lihue, Hawaii 96766

Re: Annual Report to the Land Use Commission, State Planning Office and to the County of Kauai Planning Department
LUC Docket No. AOO-731
Special Management Area Use Permit SMA (U) –2002-6
Kapalawai Resort, LLC

Gentlemen,

Pursuant to LUC Docket No. A00-731, Condition No. 24 of the Decision and Order of the Land Use Commission, and Condition #8 of the Special Management Area Use Permit SMA (U)–2002-6, Petitioner Kapalawai Resort Development Group, LLC (formerly Kapalawai Resort, LLC) hereby submits the Annual Report for the year 2007, describing the general progress of the project to date and status toward compliance with the conditions of approval.

## 1. General Progress of the Project

A. Background Information

1.) April 6, 2001: Land Use Commission Decision and Order approved.

2.) November 30, 2000: The Kauai General Plan Update, Ord. No. PM-2000-353, designated the project site as "Resort".

3.) February 25, 2002: Ordinance No. PM-2001-356 (Bill No. 2004), amends zoning to

Resort Residential (RR-1) for 127.93 acres, and Open District (O) for the remaining 25.77 acres.

4.) May 28, 2002: Kauai Planning Commission approves:
(a) Special Management Area Use Permit SMA (U)-2002-6;
(b) Project Development Use Permit PDU-2002-15; and
(c) Class IV Zoning Permit Z-IV-2002-20

The status report requirement stems from the following previously approved conditions:

Special Management Area Use Permit SMA(U)-2002-6, Condition # 8 states:

"8. Commencing on May 28, 2003, and on every May 28 thereafter until completion of the project, the applicant shall submit a written report to the Planning Department stating the status of the project and the manner in which the applicant has complied with these conditions of approval."

LUC Docket No. A))-731, also approved the project, of which Condition #24 states:

"24. Petitioner shall timely provide, without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Kaua'i Planning Department, in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission."

*This report is being filed subsequently to the above date because the applicant is still awaiting a decision from the State Surveyor's Office of the Department of Accounting and General Services and the Land Division of the Department of Land and Natural Resources on the status of an appeal filed by an area resident on the acceptance of an updated shoreline certification map prepared for the project site. The appeal was filed in April of 2006, and still has not been resolved by those State agencies as of this date. The following section describes the series of events that occurred. We had hoped that the State would have resolved the issue of the shoreline certification appeal first before we submitted the Annual Status Report for review, however we were concerned that the delay in reaching a decision could jeopardized project's future.*

B. Progress since 2006 Update

A series of events took place in 2006, which required the project to be reviewed by the Kauai Planning Commission and the Kauai County Council.

On January 28, 2006, the annual status report was presented to the Planning Commission for review. At that time, the Planning Department concluded that the Special Management Area Use Permit (SMA) –U- 2002-6 had expired, and an extension of time on that permit must be first obtained. Prior to acceptance of the annual status report, an application for an extension of time for the SMA permit was

applied for and reviewed by the Planning Commission at their meeting, at which time both the acceptance of the status report and extension request was deferred.

To further complicate the issue, the Planning Department concluded that a new updated certified shoreline survey for the project had to be submitted before an SMA time extension request could be granted.

The certified shoreline survey was prepared by Esaki Surveying and initially submitted to the State Surveyor for certification review on November 25, 2005. It was resubmitted on February 23, 2006, for re-certification and subsequently appealed by Bruce Pleas, a Waimea resident. The appeal delayed the approval of the shoreline survey to the point where it still has not been resolved.

During the review of the SMA time extension application by the Planning Commission, comments from the State Department of Land and Natural Resources made reference to a new Coastal Erosion Management Study being prepared by Dr. Chip Fletcher of the University of Hawaii, and that it may affect the location of the building setbacks along the shoreline. Because this new information will affect the decision on the SMA time extension, it was concluded that the shoreline certification must first be resolved before the new building setbacks can be established. Because of the appeal of the shoreline certification submitted, it became apparent that a decision would take several months or longer.

To add to the dilemma, Zoning Amendment (Ord. PM-2006-385) Condition 3(t), had a five (5) year time period for the project to complete substantial construction, of which the deadline was December 24, 2006. Without an approved certified shoreline, an overall site plan with the required building setbacks cannot be set; thus the construction plans necessary for building permits cannot be completed in time in order to achieve substantial construction by the December 24, 2006, deadline. As such, the applicant had to apply to the County Council for an extension of time beyond the December 24, 2006 deadline to complete substantial construction.

The following chronology describes the series of events that occurred in order to obtain the necessary extensions to keep the project alive.

| | |
|---|---|
| November 25, 2005: | Shoreline survey map submitted by Esaki Surveying |
| January 28, 2006: | Planning Commission Review of Status Report |
| February 23, 2006: | Revised shoreline survey re-submitted to State Surveyor |
| April 11, 2006: | Status Report and Revised Site Plan Approval by Planning Commission |
| April, 2006: | Certified Shoreline survey appealed |
| May 23, 2006: | Planning Commission presentation on shoreline erosion and SMA extension |
| July 11, 2006: | SMA Extension Request approval by Planning Commission |

| | |
|---|---|
| August 7, 2006: | Zoning Amendment Request for an extension of time to complete substantial construction submitted to County Council |
| September 26, 2006: | Planning Commission approval of Zoning Amendment extension. |
| October 25, 2006: | Council Review, First Reading of Zoning Amendment request |
| November 9, 2006: | Council Public Hearing |
| December 13, 2006: | Council approval, Third Reading |
| December 19, 2006: | Mayor approval of Ord. PM-2006-385, granting a time extension for the project |

The Special Management Area Use Permit extension approval granted in July, 2006,included the following conditions:

"In the event the County Council amends the substantial construction date deadline in PM-2001-356, the subject SMA extension date shall be extended to May 28, 2008, or the date established by Ordinance, whichever shall first occur.

21. A building setback line shall be established from the most current shoreline certified by the State of Hawaii at the time of building permit application. This setback line shall take into consideration the "red line" (the 70-year erosion hazard line plus 40 feet as established by the preliminary erosion study by Dr. Chip Fletcher dated June, 2006), or 200 ft., whichever is closer to the shoreline, or other acceptable setback based on other models developed by the County of Kauai shoreline erosion study. All criteria and requirements establishing transition zones 1, 2 and 3 as contained in Ordinance No. PM-2001-356 shall apply to the location of all structures and reflected in the final site plan.

22. As represented, Kapalawai Resort LLC and its heirs or assigns shall subsidize a portion of any costs incurred by the County of Kauai to update aerial photography used in the analysis of shoreline erosion on West Kauai, not to exceed average annual payment of $3,000.00 (in 2006 dollars) over the course of the next 60 years.

23. The 50 feet wide public lateral beach access established by PM-2001-356 (condition 3.j.vi) shall be floating, moveable and perpetual easement that will remain constant at 50 feet wide, measured inland from the current or any future certified shoreline(s)."

Relative to the above condition, the County Council did amend Ord. PM-2001-356 by adopting Ord. PM–2006-385, which amended condition (t) to read as follows:

(t) Substantial construction of the hotel, defined as completion of at least fifty

percent (50%) of building foundations, shall be completed within eighteen (18) months from the date that the appeal of the project's shoreline certification currently pending before the Chair of the Board of Land and Natural Resources has been resolved. If substantial construction is not completed within this time, the Planning Commission shall initiate proceedings to rezone the property to the designations existing prior to the date of this ordinance."

Upon obtaining this extension in December of 2006, the applicant waited for a ruling on the appeal of the shoreline certification and to date, we have not been informed as yet on the outcome of the appeal.

In 2007, the applicant, Kapalawai Resort LLC, could not secure financing commitment for the project and the landowner sought a new developer. In August of 2007, the new applicant is:

Kapalawai Resort Development Group LLC
P.O. Box 223129
Princeville, HI 96722

Contact Person:
Steven Oldfield

## 2. Progress in Complying with Conditions Imposed

The Land Use Commission's Decision and Order, requires compliance with 27 conditions.

The Zoning Amendment sets forth a list of 24 conditions of approval.

The SMA, Project Development and Class IV permits established 20 conditions to be complied with.

Many of the above conditions are repetitious, being listed in all three of the approvals above. The Land Use Commission's conditions and the Zoning Amendment conditions have been incorporated as part of the SMA approval, conditions 1 and 2. The repetitive conditions are outlined in the following. The status of other non-repetitive conditions will be addressed separately.

These conditions are each numbered as identified in the Decision and Order and set forth below and followed by a brief status summary.

### Condition No. 1:

*"1. Petitioner shall provide affordable housing opportunities for residents of the State of Hawai`i to include employees of the proposed resort in accordance with applicable affordable housing requirements of the County of Kauai. The location and distribution of the affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and the County of Kaua`i."*

**Status**:

The County Zoning Ordinance No. PM-2001-356 requires provision of 15 employee housing units at affordable rentals (80% of Kauai Median Household Income). The revised project site plan to be developed after approval of the certified shoreline will include the 15 employee housing units.

**Condition No. 2**:

*"2. Petitioner shall design and construct drainage improvements requirements as a result of the development of the Property to the satisfaction of the Department of Health and the Commission on Water Resource Management of the State Department of Land and Natural Resources."*

**Status**:

A grading and drainage plan was approved by the County prior to obtaining a time extension. It will be amended to conform to the new site plan that will be developed upon approval of the certified shoreline.

**Condition No. 3**:

*"3. Petitioner shall conduct proper and regular maintenance of the existing streambeds and the proposed grass-lined channel which is essential to ensure maximum flood protection for the project as may be required by the County Department of Public Works. In addition, Petitioner shall institute Best Management Practices in the design of the drainage system to reduce the potential for sediments and other pollutants to reach the ocean and on-site streams as may be required by the County of Kaua`i and/or the State of Hawai`i."*

**Status**:

This condition will be accommodated during preparation and review of the revised grading permits to be submitted to the County of Kauai once the shoreline certification is approved. SMA condition #10 and #14 are related to this condition and requires a flood study and the utilization of "Best Management Practices" during all phases of construction. The flood study was prepared as part of the grading and drainage plans previously approved by the County public Works Department.

**Condition No. 4**:

*"4. Petitioner shall locate all building construction mauka of the Hurricane Iniki inundation line and shall mitigate flood hazards as shown on Petitioner's Exhibit No. 32 to the satisfaction of appropriate Federal, State and County agencies."*

**Status**:

The building setback line of the July, 2006 SMA extension approval

established by condition #21 (the 70-year erosion hazard line plus 40 feet as established by the preliminary erosion study by Dr. Chip Fletcher dated June, 2006, or 200 ft., whichever is closer to the shoreline) will place the proposed buildings much further inland of the tsunami inundation line, thus assuring compliance with this condition.

**Condition No. 5:**

*"5. Petitioner shall provide adequate water source facilities and improvements to accommodate the proposed Project. Water source facilities and improvements shall be coordinated and approved by the Commission on Water Resource Management of the State Department of Land and Natural Resources."*

**Status:**

Preliminary design studies for a potable well have been performed and an application to the Commission on Water Resource Management with their findings will be filed as part of the application for the appropriate permits.

**Condition No. 6:**

*"6. Petitioner shall provide adequate wastewater treatment, transmission and disposal facilities as determined by the State Department of Health."*

**Status:**

Preliminary design and engineering for the wastewater treatment plant and other facilities were begun. Zoning Amendment Condition 3g and SMA Condition #14 relates to compliance with Department of Health requirements.

**Condition No. 7:**

*"7. Petitioner shall fund and construct adequate civil defense measures as determined by the State of Hawai`i Department of Defense, Office of Civil Defense."*

**Status:**

Design and location of required civil defense facilities will be coordinated with the State Department of Defense prior and incorporated into the construction plans.

**Condition No. 8:**

*"8. To ensure that the proposed land uses will not adversely impact endangered species and environmentally sensitive areas such as wetlands, ponds, or streams, the Petitioner shall consult with the appropriate Federal and State agencies whenever, in the course of developing the proposed project, if it reasonably appears that an endangered species or sensitive area may be affected by a particular development activity."*

**Status**:

Appropriate consultations have not occurred as yet but will occur after completion of the new site plan, with the primary responsible agencies, these being the U.S. Fish and Wildlife Service and DLNR Division of Forestry and Wildlife. SMA Conditions #12 and #13 are related, in that it refers to shielded lights to protect Newell's shearwaters, Hawaiian monk seals and green sea turtles. The site, landscaping and exterior building electrical lighting plans will be reviewed by the Planning Department prior to building permit approval.

**Condition No. 9**:

*"9. Should any previously unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, Petitioner shall stop work in the immediate vicinity and the State Historic Preservation Division of the Department of Land and Natural Resources (SHPD) shall be notified immediately. The significance of these finds shall then be determined and approved by the SHPD. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to their satisfaction."*

**Status**:

Development contractors will be made aware of requirements prior to commencement of construction activities. On-site archaeological monitoring will be provided in sensitive areas during the removal of mature vegetation, grading and excavation of foundations. Should any unidentified human burials, archaeological or historic sites, artifacts, or data be found work must be stopped and SHPD be notified immediately. SMA condition #15 similarly refers to the discovery of historic/cultural remains, requiring a work stoppage also.

Zoning Amendment Condition #3(c)(i) and 3(c)(ii) requires a preservation plan and a data recovery plan to be approved by the SHPD. Zoning Amendment Condition 3(c)(iii) and SMA Condition #3c refer to preservation of a burial site and the provision of a burial treatment plan, and Condition 3(c)(iv) require an archaeological monitoring plan. SMA Condition #3d also requires an archaeological monitoring plan. The following provides the status of each plan:

(a) Archaeological Survey: Completed and approved by SHPD.

(b) Preservation Plan: Submitted to and reviewed by State Historic Preservation

Division, letter dated March 23, 2006. Further discussions relative to suggestions made in the letter, are needed with the SHPO and with KHPRC prior to final approval of the plan.

(c) Monitoring Plan: Reviewed and approved by the State Historic Preservation Division, letter to Dr. Hal Hammat dated March 24, 2006.

(d) Data Recovery Plan:

(e) Burial Treatment Plan: Submitted but not approved as yet by SHPO. Approval awaiting GPS information and burial registration in the Bureau.

Approval of the above plans will be secured subsequent to final approval of County grading permits and prior to submittal of building permits. In addition, SMA Condition #3 requires the preparation of a preservation plan for the five sites to be preserved, which has been approved as mentioned above. SMA Condition #3b requires a mitigation plan for the restoration of the fishpond, which is still in the process of being developed.

**Condition No. 10:**

*"10. Petitioner shall follow the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD) recommendations for mitigation of impacts resulting from the development and for archaeological data recovery and preservation. An archaeological data recovery plan (scope of work) must be approved by the SHPD. That plan must then be successfully executed (to be verified in writing by SHPD) prior to any grading, clearing, grubbing or other land alteration in these areas. A preservation plan must also be approved by SHPD. This plan, or minimally its interim protection plan phase, must be successfully executed (to be verified in writing by SHPD) prior to any grading clearing, grubbing or other land alteration in these areas."*

**Status**: See status described in Condition No. 9 above.

**Condition No. 11:**

*"11. Petitioner shall implement efficient soil erosion and dust control measures during and after the development process to the satisfaction of the State Department of Health."*

**Status**:

Soil erosion and dust control plans are included in the previously approved rough grading permit.

**Condition No. 12:**

*"12. Petitioner shall participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed*

*development in designs and schedules accepted and determined by the State Department of Transportation (DOT). Agreement between the Petitioner and the DOT as to the level of funding and participation shall be obtained prior to the Petitioner acquiring County zoning or prior to building permits if county zoning is not required."*

**Status**:

Off-site construction plans have been completed for the Ka'umualii Highway improvements and review comments from the State Dept. of Transportation have been made. The revisions will be made and re-submitted to the State for review and approval.

Zoning Amendment Condition 3f and 3(n) requires compliance with State Highways Division comments, and SMA Condition #9 requires compliance with State Highways Division regarding the resort's main entry/exit, service access, beach access and parking, etc., which have been incorporated into the construction plans.

**Condition No. 13**:

*"13. Petitioner, where feasible, shall use indigenous and water conserving plants and turf and incorporate the same into common area landscape planting."*

**Status**:

A conceptual landscape plan for the Project, was included in the application submitted for final zoning permits as Exhibit J. Native species will be used on the proposed landscape palette, as well as other species already found on the property. A new landscape plan is being prepared that will be consistent with the new revised master plan that will be provided once the shoreline certification has been approved.

Zoning Amendment Condition #3(o) also requires preparation of a landscape plan to be approved by the Planning Commission and required an inventory of all major plants, of which has been completed.

SMA Condition #7, refers to the Conceptual Landscaping Plan approved by the Planning Commission. The revised landscape plan will be submitted to the Planning Director at time of revised site plan approval.

**Condition No. 14**:

*"14. Petitioner shall notify all prospective buyers of property of the potential odor, noise and dust pollution resulting from surrounding agricultural uses."*

**Status**:

It will be disclosed to prospective buyers of the potential odor, noise and dust pollution resulting from surrounding agricultural uses.

**Condition No. 15:**

*"15. Building setback lines shall be established during the Zoning Amendment and SMA Permit approval process to ensure proper siting of the proposed buildings and structures to mitigate any adverse visual and/or environmental impacts."*

**Status**:

Specific setback and transition areas designed to mitigate visual and other impacts are established by Ordinance No. PM-2001-356.

The Special Management Area Use Permit extension approval granted in July, 2006, further established additional setback requirements along the shoreline which will be addressed in the revised site plan for the project once the shoreline certification has been approved. These are:

"21. A building setback line shall be established from the most current shoreline certified by the State of Hawaii at the time of building permit application. This setback line shall take into consideration the "red line" (the 70-year erosion hazard line plus 40 feet as established by the preliminary erosion study by Dr. Chip Fletcher dated June, 2006), or 200 ft., whichever is closer to the shoreline, or other acceptable setback based on other models developed by the County of Kauai shoreline erosion study. All criteria and requirements establishing transition zones 1, 2 and 3 as contained in Ordinance No. PM-2001-356 shall apply to the location of all structures and reflected in the final site plan.

**Condition No. 16:**

*"16. Petitioner shall provide public pedestrian access to the shoreline and shall develop the public restroom facilities, vehicular access to Kaumuali`i Highway and shower and parking facilities substantially as represented by the Petitioner and as shown on Petitioner's Exhibit 53. The public facilities shall be built and maintained by Petitioner, with twenty-four hour security. The duration and term of the public access to the shoreline and to the public facilities shall be coterminous with the term of Petitioner's Lease with the landowner."*

**Status**:

Public facilities presented to the Land Use Commission as part of Petitioner's Exhibit 53 are included in the project. A similar requirement has been established by Zoning Amendment Condition 3(j)). The SMA Condition #4 is also related to this condition in that it requires the establishment of public access easement documents. The SMA extension also added the following condition to address lateral shoreline access along the shoreline.

"23. The 50 feet wide public lateral beach access established by PM-2001-356 (condition 3.j.vi) shall be floating, moveable and perpetual easement that will remain constant at 50 feet wide, measured inland from the current or any future certified shoreline(s)." Petitioner is following these requirements.

**Condition No. 17:**

*"17. Petitioner shall dedicate a public easement to the State of Hawai`i for 99 years adequate and reasonable with respect to beach and surfing ingress and egress and shall develop public restroom and shower facilities, vehicular access to Kaumuali`i Highway and public parking facilities as described by the Petitioner and as shown on Petitioner's exhibit 53. The public facilities shall be built and maintained by Petitioner, with twenty-four security. It is the LUC's intent that the duration and term of the public access to the shoreline and to the public facilities shall be coterminous with the term of Petitioner's Lease with the landowner. The facility shall be developed in consultation with the appropriate state and county agencies and the surfing community."*

**Status:**

Easement dedication per SMA condition #4 mentioned above, and in accordance to SMA condition #23 relating to lateral shoreline access as stated above, shall occur prior to submittal of building permits. The term of the easement shall be coterminous with the term of the Petitioner's Lease with the landowner.

**Condition No. 18:**

*"18. Petitioner shall provide public pedestrian access from the Project's proposed parking facility to the rock platform substantially as represented by the Petitioner and as shown on Petitioner's Exhibit 55. No structures or buildings shall be constructed closer than fifty (50) feet from the rock platform. The duration and term of the public access shall be coterminous with the term of Petitioner's Lease with the landowner."*

**Status:**

Kauai County has recognized the rock platform and its buffer zone, by creating a Special Treatment-Cultural District (O/ST-C) around it as part of the Zoning Amendment Ordinance (Ordinance No. PM-2001-356, Bill No. 2004, Draft 2), and this requirement will be provided by the applicant.

**Condition No. 19:**

*"19. Relying on its earlier decision in Public Access Shoreline Hawaii v. Hawaii County Planning Commission, 79 Haw. 425, 903 P.2d 1246 (1995), the Supreme Court in Ka Pa`akai o Ka`aina v. Land Use Commission, 94 Haw. 31, 46, 7 P3d 1068, 1083 (2000), declared that "to the extent feasible when granting a petition for reclassification of district boundaries," this Commission must "protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians." To satisfy that obligation, "[s]pecific*

*considerations regarding the extent of customary and traditional practices and the impairment and feasible protection of those uses must first be made before a petition for a land use boundary change is granted." Id., 94 Haw. At 52, 7 P.3d at 1089. The Commission's findings of fact and conclusions of law in land use boundary change proceedings must therefore specify "(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; and (3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist." Id."*

**Status**:

Petitioner acknowledges the meaning and intent of Condition No. 19 and will accommodate such rights to persons if they can demonstrated that these traditionally existed. It should be noted however, that the Robinson family has not allowed such rights to occur on their propert(ies) since their purchase 136 years ago.

**Condition No. 20:**

*"20. There is some evidence of native Hawaiians' entry onto the property to gather and otherwise use it to exercise traditional and customary Hawaiian rights prior to the 1800s, particularly with respect to the fishpond. Native Hawaiian maka`ainana activity appears to have occurred only with the permission of the parcel's ali`i owners, after acquisition of the Property by Victoria Kamamalu. Accordingly and consistent with Petitioner's expressed willingness and commitment to restore, maintain, and operate the Kapalawai Fishpond as a Hawaiian fishpond, the Kapalawai Fishpond shall be restored, maintained, and operated in the manner consistent with traditional and customary Hawaiian practices as provided in P.A.S.H., supra., which the Commission finds to exist in the pond. Petitioner shall utilize recognized ancient Hawaiians [sic] pond experts such as Dr. Kikuchi and Professor Marion Kelly from the University of Hawaii, for guidance and assistance in the effort.*

*(a) Restoration shall proceed pursuant to a mitigation plan the Petitioner prepares and submits to the SHPD for review and approval prior to commencement of any restoration activity, and in accordance with the traditional and customary method described by Dr. Kikuchi, see Finding of Fact 109. Restoration shall be done deliberately and with sensitivity to the preservation of the fishpond and any marine and bird life at the site. Because large heavy-equipment could adversely affect the extant pond walls if the full weight of the vehicle is brought to bear on the wall, Petitioner shall make every effort to avoid using such equipment in the pond's restoration. The pohaku on which the fishpond's legendary mo`o wahine is said to have sat will be retrieved from the debris, and it shall be re-placed and preserved in the place at its legendary location before restoration work begins. The public shall have access to the Kapalawai Fishpond to observe its restoration by traditional and cultural native Hawaiian means.*

*(b) Petitioner shall establish a management plan for the maintenance and operation of the fishpond which is consistent with traditional and customary*

*historic Hawaiian practices. It shall include provisions for sharing fish harvested from the fishpond, for educating the fishpond's caretakers and Petitioner's staff about Hawaiian fishponds and the Kapalawai Fishpond in particular, and for training fishpond caretakers in the traditional and customary Hawaiian practices for the maintenance and operation of the fishpond. The management plan shall also include provision for a fishpond management entity composed of a representative from the Petitioner and a representative from the West Kaua`i Hawaiian community to be selected by the Hawaiian community. This entity shall manage all aspects of the pond's use and utilization as a natural resource including harvesting, water use, and visitor access. This entity shall be responsible for the resolution of any dispute which may arise as to the management and operation of the Kapalawai Fishpond in accordance with traditional and customary Hawaiian practices. The selection of the management committee shall take place no later than six months after the approval of the SMA Permit. In addition, the plan shall include a process for the two members of the management entity to select a third member to overcome any stalemate. It is the intent of the Commission that as far as possible, Petitioner select individuals living in the West Kaua`i community who are familiar with the area and have a love for the `aina to maintain and operate the Kapalawai fishpond. The management plan shall remain in effect for the duration of the original term of the Petitioner's lease with the landowner. The Hawaiian gathering rights on the pond shall not be affected by the expiration or termination of the lease. It shall be a further condition of the Commission that Petitioner shall report back to the Commission within one year from the approval of the SMA permit on the understanding that the Commission reserves the power and authority to amend the condition herein to better operate the management committee.*

*(c) Further, no Project building or structure shall be constructed closer than one hundred (100) feet from the fishpond. Every effort shall also be made to prevent the contamination of the fishpond during the construction and operation of the Project due to water and waste runoff, the operation of pumps or other machinery in the area, and human access and habitation."*

**Status**:

The use of an excavator within the pond, based on an immediate need for gross vegetation clearance, economic considerations, and for speed in completing the job, has been approved by SHPD, the County of Kauai Planning Department, and the U.S. Army Corps of Engineers. This approach is the first step of pond clearance which the applicant will begin immediately upon status report approval due to the fact that deterioration of the pond has progressed significantly since the initial project approval.

As clearing of the fishpond proceeds, the stone wall will be located, if it is still present, and preserved or restored in place.

The management entity was established on November 26, 2002, and consisted of Lewis P. Geyser and Aletha Kaohi. Mr. Geyser will be replaced by Steven Oldfield and re-confirmation of Aletha Kaohi will be pursued.

All of the details of the management plan (including those details specified in LUC Condition #20b) will be implemented in accordance with the SMA Permit, including the 100-foot setback from the fishpond.

SMA Condition #3b requires the development of a mitigation plan for the fishpond that will address all of the issues mentioned above. This plan is still in the process of being developed.

**Condition No. 21:**

*"21. Petitioner acknowledges and agrees that it has no vested interest or right to develop the Petition Area, as reclassified, until Petitioner has substantially complied with the representations it made to the Commission. Petitioner waives any claims for liability against the State arising from any reversion of the Petition Area."*

**Status:**

Petitioner acknowledges the meaning and intent of Condition No. 21.

**Condition No. 22:**

*"22. Petitioner shall develop the Petition Area in substantial compliance with the representations made by the Petitioner to the Commission, including but not limited to the representation that the Project shall be limited to a 250 visitor unit density with existing and accessory uses as proposed in its Petition. Failure to do so for any reason, including economic feasibility, may result in the imposition of fines as provided by law, removal of improvements by Petitioner at Petitioner's own expense, reversion of the Petition area to its former condition by Petitioner at Petitioner's own expense, reversion of the Petition Area to its former classification, or a change to a more appropriate classification, or any other legal remedies."*

**Status:**

The Petitioner has consistently maintained a desire to adhere to a 250 visitor unit limit. This restriction is now part of the record of approval as established by Zoning Amendment Ordinance, Condition 3(h)(i)), which also reflects the 250 unit maximum density.

**Condition No. 23:**

*"23. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to the development of the Property. The decision herein, including the conditions imposed on Petitioner, shall be binding on Petitioner's successors and assigns according to law."*

**Status:**

In August, 2007, the landowner began negotiating a new lease and development agreement with:

Kapalawai Resort Development Group, LLC
P.O. Box 223129
Princeville, HI 96722

The above is a new development entity headed by Mr. Steven Oldfield, who will replace Kapalawai Resort, LLC.

**Condition No. 24:**

*"24. Petitioner shall timely provide, without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Kaua`i Planning Department, in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission."*

**Status**:

The fourth annual report was submitted to the LUC in January, 2006, and accepted by the Planning Commission on April 11, 2006. The submission of this fifth report was delayed because of the above change in the applicant identified in condition #23 above (Kapalawai Resort Development Group, LLC), which was not established until September, 2007.

**Condition No. 25:**

*"25. The Commission may fully or partially release the conditions provided herein, as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner."*

**Status**:

To date, there has been no need for full or partial release from any of the conditions included as part of the April 6, 2001 Decision and Order.

**Condition No. 26:**

*"26. Within seven days of the issuance of Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances, a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission."*

**Status**:

Recordation occurred on April 17, 2001 as Doc. No. 2001-054811.

**Condition No. 27:**

*"27. Petitioner shall record conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawai`i Administrative Rules."*

**Status**:

Recordation occurred on June 14, 2001, as Doc. No. 2001-089516.

## ZONING AMENDMENT CONDITIONS

Additional conditions established at time of zoning amendment approval that were not listed as part of the LUC conditions are summarized below with a brief status provided.

### Condition No. 3(b):

*Applicant shall provide appropriate documentation pertaining to historic preservation philosophy and methodology, including the preservation of the carriage house and green house. SHPD and KHPRC shall be given the opportunity to provide further comments as more detailed historic preservation information and plans become available.*

**Status:**

Conceptual Preservation plans for the historic buildings were previously prepared and it will be reviewed by the new applicant for continued implementation. Preservation implementation will be done in accordance with SHPD and KHPRC approval. The preservation plan will include two older buildings including the main residence, the pond, and the archaeological sites identified for preservation.

### Condition No. 3(c)(i):

*Applicant shall prepare a preservation plan for the five historic sites to be preserved. The plan must include buffer zones, interim protection measures and long range preservation measures. Before land alteration can occur, minimum buffer zones and interim protection measures need to be approved and the SHPD must verify in writing that this plan has been successfully executed.*

**Status:**
See 3(b) above.

### Condition No. 3(d):

*The applicant shall comply with requirements of the Fire Department.... Water storage tank should increase to 0.3 MG, private water system shall comply with installation / testing / maintenance standards of NFPA 22, Water Tanks for Fire Protection, NFPA 24, Private Fire Service Mains, NFPA 25, Water based Fire Protection Systems, and appropriate installation / testing / maintenance standards of County Dept. of Water and State Dept. of Health. Fire alarm system for the cottages shall be incorporated into the museum*

*building and other major structures. The museum building should be fire-sprinklered to further protect and preserve the historic structure.*

**Status:**

This condition will be complied with during preparation of the revised site plan, grading plan and subsequent construction plans for the above facilities. The engineering consultant(s) has already begun review of the requirements and codes for compliance.

**Condition No. 3(h)(iii)**

*One parking space shall be provided for each resort unit.*

**Status:**

This requirement will be incorporated into the new site plan for the project.

**Condition No. 3(h)(iv)**

*Maximum height will be set at 35 feet for non-resort buildings.*

**Status:**

This condition was addressed in the construction plans submitted for foundation permits.

**Condition No. 3(h)(v) and (vi)**

*Resort units restricted to duplex attachment; units limited to 800 s.f., with max. 200 s.f. deck, or deck 1/3 the floor area, whichever is smaller.*

**Status:**

The unit sizes will be revised to be at 800 s.f. each for the units and 200 s.f. for the decks.

**Condition No. 3(h)(vii)**

*Resort units shall be limited to 30 feet height.*

**Status:**

The re-designed cottages will comply with this 30 feet height requirement.

**Condition No. 3(j)**

*Prior to occupancy, the applicant shall provide facilities for public use (comfort station, outdoor shower, 2.5 ac. Passive recreation area, 50 feet wide lateral beach access easement along entire shoreline to be open 24 hours per day.*

**Status:**

The above items have been incorporated into the project and is in the preliminary development stages.

**Condition No. 3(k)**

*No encroachment of commercial buildings or resort units allowed within the Open / Special Treatment District.*

**Status:**

This requirement will be addressed in the new site plan.

**Condition No. 3(l)**

*Existing foliage along the highway within the Open – Special Treatment - Resource District shall not be removed.*

**Status:**

This item has already been addressed per the approved landscape plan submitted at time of SMA permit approval and will be carried out in the final revised landscape plan.

**Condition 3(m)**

*Signs shall comply with county Sign Ordinance; No direct lighting shall be allowed. Indirect lighting is allowed.*

**Status:**

This requirement will be complied upon applying for the applicable sign permits.

**Condition No. 3(o)**

*Applicant must prepare a landscape plan to be approved by the Planning Commission as part of issuance of applicable land use permits for the project. Landscape plan to include inventory of all major landscape elements covering major plants that are to be removed, retained and new landscaping.*

**Status:**

The Landscape Plan has been approved by the SMA permit process (SMA Condition #7) and the inventory completed. The detailed landscape plan will be re-developed in accordance with the revised site plan once shoreline certification is obtained.

**Condition No. 3(p)**

*Density for single family residential within the Open District with special treatment overlays shall be established at 1 unit/acre. This open density shall be transferred to RR-1 portion of the project and be used only to cover part of the density for the eight existing plantation homes...*

**Status:**

The project is designed in compliance with this condition.

**Condition No. 3(s)**

*Sufficient employee parking above and beyond the requirement for the hotel units shall be required during the permitting stage.*

**Status:**

The one (1) parking stall per hotel unit already exceeds the CZO requirement. SMA Condition #5 also requires the provision of 656 parking stalls and overflow parking areas.

**Condition 3(t)**

*Substantial construction of the hotel shall be completed within 5 years from the effective date of the Zoning Amendment Ordinance.*

**Status:**

Relative to the above condition, the County Council did amend Ord. PM-2001-356 by adopting Ord. PM–2006-385, which granted a time extension beyond the Dec.24, 2006 deadline, by amending condition (t) to read as follows:

(t) Substantial construction of the hotel, defined as completion of at least fifty percent (50%) of building foundations, shall be completed within eighteen (18) months from the date that the appeal of the project's shoreline certification currently pending before the Chair of the Board of Land and Natural Resources has been resolved. If substantial construction is not completed within this time, the Planning Commission shall initiate proceedings to rezone the property to the designations existing prior to the date of this ordinance."

A ruling on the appeal of the shoreline certification has not been made to date.

## SMA CONDITIONS

Most of the SMA conditions have been addressed by the LUC and Zoning Amendment conditions described above. The following provides the status for those not covered by other conditions above.

### Condition #3e

*The applicant shall implement the guidelines and recommendations set forth in the Rural Historic Landscape Plan and incorporate them into the overall development scheme of the project. Implementation measures for the guidelines shall be addressed and incorporated into the timelines, milestones and priorities component set forth in Condition #5 of this approval.*

**Status:**

These requirements are being presently incorporated into the ongoing design plans.

### Condition #6

*The applicant shall develop project timelines and milestones and identify development priorities. The timelines, milestones and priorities shall be developed in consultation with the Planning Department and other relevant agencies and organizations, and be subject to the review and approval of the Planning Director, prior to submittal of applications for building permits. Public, environmental and cultural amenities, and project mitigation measures shall be developed concurrently with construction and opening of resort facilities, and the timeliness and milestones shall include these amenities and measures.*

**Status:**

### Condition #17

*An environmental Impact Assessment fee of $1000.00 per unit for each of the 250 cottage units for a total of $250,000.00, shall be paid prior to building permit approval.*

**Status:**

This condition will be paid to the Planning Department upon submittal of building permit applications.

### Condition #18

The new applicant will develop project timelines to meet the new schedule that will be dependent upon the date of the decision of the appeal on the shoreline certification. Once determined and a shoreline has been certified, the project schedule will be geared to meeting the 18 month deadline for completion of substantial construction.

*The applicant shall pay a Park Dedication Fee pursuant to the park Dedication Ordinance. An appraisal report and price list shall be provided to the Planning Department to forward to the Real Property Division to help calculate the fee.*

**Status:**

Similar to the above condition, the Park Dedication Fee will be paid at time of building permit application.

The foregoing constitutes Petitioner's fifth annual status report. Should you have any questions or desire any additional information or clarification with respect to the matters discussed above, please feel free to contact the undersigned as Authorized Agent for the Applicant, at (808) 246 9414.

Very truly yours,

Avery H. Youn, Architect

RE: Annual Report for
Special Management Area Use Permit SMA(U)-2002-6
Project Development Use Permit PDU-2004-15
Class IV Zoning Permit Z-IV-2002-15
TMK 1-7-5: 1, Makaweli, Kauai

SUBJECT TO CHANGE

APPLICANT: Kapalawai Resort LLC

Background

An extension to the above referenced permits was granted by the Planning Commission at its meeting of July 11, 2006 to December 24, 2006, which was the construction deadline established by County Ordinance PM-2001-356. If the County Council concurred and amended the substantial construction deadline, the subject SMA extension date was to have ben extended to May 28, 2008, or the date established by Ordinance, which shall first occur. On December 19, 2006, the County Council approved Ordinance No. PM-2006-385 which granted an extension that would allow substantial construction to be completed within 18 months from the date the shoreline certification appeal was resolved by the Chairperson of the Board of Land and Natural Resources.

A shoreline certification was filed by the applicant with the State Surveyors Office in February of 2006, and an appeal to the certification was made by Bruce Pleas. To date, the appeal has not been resolved by the State. Without this certification, applicant cannot obtain building permits.

The submittal of an annual status report is a requirement of the above referenced permits. Said report was received by the Commission at its November 13, 2007 meeting. At this meeting, Bruce Pleas raised cultural and archaeological related concerns, and recommended that ground penetrating radar (GPR) be required over every centimeter of the project.

Considerations

The Department has had extensive discussions with the Department of Land and Natural Resources, State Historic Preservation Division's Kaua'i archaeologist Nancy McMahon. These discussions were in regard to the recommendations of Bruce Pleas (regarding Kapalawai Resort), and Harold Bronstein (regarding the Joseph Brescia and Anthony Kiedis projects in Hā'ena) for the need to use GPR. Simply stated, she does not agree with the use of GPR in those geographical environments. SEE Attachment 1. Ms. McMahon will also provide additional information to the Commission at it's December 11, 2007 meeting regarding this matter.

In addition,

1. An archaeological survey has been completed and approved by DLNR-SHPD;
2. A Preservation Plan has been submitted and reviewed by DLNR-SHPD (3/23/06). Further discussions relative to suggestions made in the letter are needed with SHPD and with the Kaua'i Historic Preservation Review Commission (KHPRC) prior to final approval of the plan;
3. A monitoring plan has been reviewed and approved by DLNR-SHPD (3/24/06)
4. A Burial Treatment Plan has been submitted but not approved as yet by SHPD. Approval awaiting GPS information and burial registration at the Bureau of Conveyances.

D. 1.
DEC 1 1 2007

The applicant has made much progress in satisfying the cultural and archaeological related conditions imposed with the approvals by the Land Use Commission, Planning Commission and County Council.

Applicant is also notifying us that the new development entity that is replacing Kapalawai Resort LLC is Kapalawai Resort Development Group, LLC.

Recommendations

Based on the foregoing, it is hereby recommended that the Annual Report be accepted.

By _____
Michael L. Laureta
Planner

Approved & Recommended to Commission:

By _____
Ian K. Costa
Planning Director

Date: 11/30/07

# EXHIBIT 12

BRYAN J. BAPTISTE
MAYOR

GARY K. HEU
ADMINISTRATIVE ASSISTANT

IAN K. COSTA
DIRECTOR OF PLANNING

IMAIKALANI P. AIU
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUA'I
PLANNING DEPARTMENT
4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHU'E, KAUA'I, HAWAI'I 96766-1326
TEL (808) 241-6677 FAX (808) 241-6699

COPY

December 27, 2007

Avery Youn, Architect
2980 Ewalu Street
Līhu'e, Hawai'i 96766

Subject: Annual Status Report Review for Kapalawai Resort
Special Management Area Use Permit SMA(U)-2002-6
Project Development Use Permit PDU-2004-15
Class IV Zoning Permit Z-IV-2002-20
Tax Map Key: 1-7-5: 1, Kapalawai, Kauai

Dear Avery:

The Planning Commission, at its meeting held on December 11, 2007, accepted the annual report dated October 26, 2007 for the above referenced subject matter. Also accepted for the record was Kapalawai Resort Development Group, LLC as the new development entity.

Should there be any questions regarding the above, please contact planner Michael Laureta at 808-241-6690.

IAN K. COSTA
Planning Director

MATSUBARA, KOTAKE & TABATA
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BENJAMIN M. MATSUBARA
MERVYN M. KOTAKE
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(808) 538-3840

January 4, 2021

**VIA U.S. MAIL**

Mr. Daniel E. Orodenker, Executive Officer
Land Use Commission, State of Hawai`i
P.O. Box 2359
Honolulu, Hawai`i 96804

Re: Annual Report to the Land Use Commission - Destination Villages Kauai, A Limited Liability Company; LUC Docket No. A00-731

Dear Mr. Orodenker:

Pursuant to Condition No. 25 of the Findings of Fact, Conclusions of Law, and Decision, and Order ("Decision and Order") of the Land Use Commission ("Commission") in the above-entitled docket, the landowners of the petition area in the above-entitled docket hereby submit the annual report for the years 2019 and 2020, regarding the (1) general progress of the 250 resort units and accessory uses project within the approximately 153.696 acre petition area ("Project"), and the (2) status and progress toward compliance with the conditions imposed as set forth in the Decision and Order.

## 1. General Progress of the Project

The Decision and Order for the above-entitled docket was certified on April 6, 2001. Subsequently, the property was designated Resort by Kauai County Council action on the General Plan Update (Ordinance No. PM-2000-353, Bill No. 1953). Once the approvals related to the State Land Use District Boundary Amendment and County General Plan were obtained, major portions of the property (127.93 acres, more or less) were zoned RR-1 (Ordinance No. PM-2001-356, Bill No. 2004). The remainder of the property was zoned Open (25.77 acres, more or less). Recently the newly released West Kauai Regional Plan (approved by the Kauai County Council) designated the property as resort in keeping with its prior State LUC and Kauai GP designations.

Subsequent to the approval of the zoning amendment, on February 25, 2002, the Petitioner filed an application with the County of Kauai for three permits ("final County zoning permits"): (1) Special Management Area Use Permit; (2) Project Development Use Permit; and (3) Class IV Zoning Permit. These three permits represent the final discretionary permits required for the proposed resort by the County of Kauai. The permits were approved by the Kauai Planning Commission on May 28, 2002.

Following the approval of the County of Kauai permits, the Project had progressed in good faith with developers by accomplishing studies and milestones at considerable expense in compliance with entitlements. The Project's progress continued for approximately five (5) years until the Project unfortunately experienced a temporary delay that was prompted by the downturn in the economy.

In 2007, the administration of the project reverted to the landowners of the petition area who include the Robinson Family Partners and Bruce Robinson.

On July 1, 2013, the landowners entered into a letter of intent with a prospective developer to lease and develop the Project. The prospective developer had been actively conducting extensive due diligence, including the preparation of a site plan with an emphasis on protecting the natural landscapes, architectural design, landscaping design, and civil engineering. The prospective developer has incurred extensive pre-construction expenses in excess of one million dollars, including expenses relating to landscape design, architecture, survey work, engineering, legal fees and administrative expenses. Unfortunately in 2019 the prospective developer passes away and his family canceled the letter of intent for the project.

With the property unencumbered by the prior letter of intent Robinson Family Partners and Bruce Robinson have entertained several proposals from other developers for the property. At present there is a developer and operator, who have partnered on the property and have conducted extensive due diligence and presented a term sheet that is agreeable to Robinson Family Partners and Bruce Robinson. This developer/operator will be submitting a Letter of Intent to Robinson Family Partners and Bruce Robinson in the next several months to develop the resort property.

Both the developer and operator have extensive experience in Hawaii with the developer have done numerous projects in Hawaii and the operator owning and operating numerous hotels throughout the world.

2. **Progress in Complying with Conditions Imposed**

**Condition No. 1:**

"1. Petitioner shall provide affordable housing opportunities for residents of the State of Hawaii to include employees of the proposed resort in accordance with applicable affordable housing requirements of the County of Kauai. The location and distribution of the affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and the County of Kaua`i."

**Status:**

The County Zoning Amendment Ordinance (Ordinance No. PM-2001-35C Bill No. 2004, Draft 2) specifies that the applicant provide 15 employee housing units at affordable rentals (80% of Kauai Median Household Income). The Project site plan that was submitted with the application for final permits (Exhibit I of the application), includes 15 employee housing units. If the prospective developer proceeds with the Project, the prospective developer's revised site plan will comply with this requirement.

**Condition No. 2:**

"2. Petitioner shall design and construct drainage improvements requirements as a result of the development of the Property to the satisfaction of the Department of Health and the Commission on Water Resource Management of the State Department of Land and Natural Resources."

**Status:**

This condition will be implemented during review of construction documents for building permits. A grading and drainage plan was approved by the County.

**Condition No. 3:**

"3. Petitioner shall conduct proper and regular maintenance of the existing streambeds and the proposed grass-lined channel which is essential to ensure maximum flood protection for the project as may be required by the County Department of Public Works. In addition, Petitioner shall institute Best Management Practices in the design of the drainage system to reduce the potential for sediments and other pollutants to reach the ocean and on-site streams as may be required by the County of Kaua`i and/or the State of Hawai`i."

**Status:**

This condition will be documented during preparation and review of construction documents for grading permits, once final zoning permits are granted by the County of Kaua`i.

**Condition No. 4:**

"4. Petitioner shall locate all building construction mauka of the Hurricane Iniki inundation line and shall mitigate flood hazards as shown on Petitioner's Exhibit No. 32 to the satisfaction of appropriate Federal, State and County agencies."

**Status:**

Exhibit I of the application submitted to the County of Kauai Planning Department identifies the Hurricane Iniki Inundation Line. All proposed structures are mauka of this line. Construction drawings will deal with specific flood hazard requirements (County and Federal) for each affected structure, when applications are submitted for building permits. If the prospective developer proceeds with the Project, the prospective developer's revised site plan will comply with this requirement.

**Condition No. 5:**

"5. Petitioner shall provide adequate water source facilities and improvements to accommodate the proposed Project. Water source facilities and improvements shall be coordinated and approved by the Commission on Water Resource Management of the State Department of Land and Natural Resources."

**Status:**

Approval from the Commission on Water Resource Management will be required to construct the potable well that will service the Kapalawai Resort. Application for approval of the well will not occur until after approval of final County zoning permits.

**Condition No. 6:**

"6. Petitioner shall provide adequate wastewater treatment, transmission and disposal facilities as determined by the State Department of Health."

**Status:**

DOH will have oversight for construction plans pertaining to the design of the on-site wastewater treatment plant and other facilities. These plans will be prepared as part of the submittal of construction drawings for building permits.

**Condition No. 7:**

"7. Petitioner shall fund and construct adequate civil defense measures as determined by the State of Hawai'i Department of Defense, Office of Civil Defense."

**Status:**

Design and location of required civil defense facilities will be coordinated with the State Department of Defense prior to submittal of building permits.

**Condition No. 8:**

"8. To ensure that the proposed land uses will not adversely impact endangered species and environmentally sensitive areas such as wetlands, ponds, or streams, the Petitioner shall consult with the appropriate Federal and State agencies whenever, in the course of developing the proposed project, it reasonably appears that an endangered specie or sensitive area may be affected by a particular development activity."

**Status:**

Appropriate consultations will occur when necessary. Primary agencies of responsibility are the U.S. Fish and Wildlife Service and DLNR Division of Forestry and Wildlife.

**Condition No. 9:**

"9. Should any previously unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, Petitioner shall stop work in the immediate vicinity and the State Historic Preservation Division of the Department of Land and Natural Resources (SI-IPD) shall be notified immediately. The significance of these finds shall then be determined and approved by the SHPD. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to their satisfaction."

**Status:**

Development contractors will be made aware of requirements prior to commencement of construction activities. Archaeological monitoring will be required in sensitive areas during construction. Should any unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, SHPD will be notified immediately.

**Condition No. 10:**

"10. Petitioner shall follow the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD) recommendations for mitigation of impacts resulting from the development and for archaeological data recovery and preservation. An archaeological data recovery plan (scope of work) must be approved by the SHPD. That plan must then be successfully executed (to be verified in writing by SHPD) prior to any grading, clearing, grubbing or other land alteration in these areas. A preservation plan must also be approved by SHPD. This plan, or minimally its interim protection plan phase, must be successfully executed (to be verified in writing by SHPD) prior to any grading clearing, grubbing or other land alteration in these areas."

**Status:**

SHPD has advised Petitioner of necessity to prepare appropriate data recovery plans. Data recovery and preservation plans will be prepared by the Petitioner and approved by SHPD subsequent to approval of final County zoning permits and prior to submittal of building permits.

**Condition No. 11:**

"11. Petitioner shall implement efficient soil erosion and dust control measures during and after the development process to the satisfaction of the State Department of Health."

**Status:**

Soil and erosion control plans were included in the approved rough grading permit.

**Condition No. 12:**

"12. Petitioner shall participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed development in designs and schedules accepted and determined by the State Department of Transportation (DOT). Agreement between the Petitioner and the DOT as to the level of funding and participation shall be obtained prior to the Petitioner acquiring County zoning or prior to building permits if county zoning is not required."

**Status:**

Petitioner has coordinated these requirements with State DOT Highways Division per Exhibit O of the application submitted for final zoning permits. In addition, Petitioner must confirm whether DOT will require Petitioner to pay for access to the State Highway (Kaumualii Highway). Off-site construction plans have been completed for the Kaumualii Highway improvements.

**Condition No. 13:**

"13. Petitioner, where feasible, shall use indigenous and water conserving plants and turf and incorporate the same into common area landscape planting."

**Status:**

The Petitioner has addressed this condition by preparing a conceptual landscape plan for the Project, which is included in the application submitted for final zoning permits as Exhibit J. Many native species are listed on the proposed landscape palette, as well as other species already found on the property that currently survive without irrigation. If the prospective developer proceeds with the Project, the prospective developer will submit a revised conceptual landscape plan in compliance with this condition.

**Condition No. 14:**

"14. Petitioner shall notify all prospective buyers of property of the potential odor, noise and dust pollution resulting from surrounding agricultural uses."

**Status:**

No sale of property has occurred to date. Should a sale in property occur, or be contemplated, prospective buyers will be notified of the potential odor, noise and dust pollution resulting from surrounding agricultural uses.

**Condition No. 15:**

"15. Building setback lines shall be established during the Zoning Amendment and SMA Permit approval process to ensure proper siting of the proposed buildings and structures to mitigate any adverse visual and/or environmental impacts."

**Status:**

The Kauai County Zoning Amendment Ordinance (Ordinance No. PM-2001-356, Bill No. 2004, Draft 2) has established specific setback and transition areas designed to mitigate visual and other impacts. These setbacks are respected by a revised sited plan for the Project that has been submitted to the Kauai County Planning Department for review and approval by the Kauai County Planning Commission. The Special Management Area Use Permit also established additional setback requirements along the shoreline.

**Condition No. 16:**

"16. Petitioner shall provide public pedestrian access to the shoreline and shall develop the public restroom facilities, vehicular access to Kaumualii Highway and shower and parking facilities substantially as represented by the Petitioner and as shown on Petitioner's Exhibit 53. The public facilities shall be built and maintained by

Petitioner, with twenty-four hour security. The duration and term of the public access to the shoreline and to the public facilities shall be coterminous with the term of Petitioner's Lease with the landowner."

**Status:**

Public facilities presented to the Land Use Commission as part of Petitioner's Exhibit 53 are included in the project site plan (Exhibit I of the application submitted for final zoning permits). A similar requirement has been established by the County of Kauai (Zoning Amendment Ordinance, Section 3(j)). If the prospective developer proceeds with the Project, the prospective developer's revised site plan will comply with this requirement.

**Condition No. 17:**

"17. Petitioner shall dedicate a public easement to the State of Hawai`i for 99 years adequate and reasonable with respect to beach and surfing ingress and egress and shall develop public restroom and shower facilities, vehicular access to Kaurnuali`i Highway and public parking facilities as described by the Petitioner and as shown on Petitioner's exhibit 53. The public facilities shall be built and maintained by Petitioner, with twenty-four security. It is the LUC's intent that the duration and term of the public access to the shoreline and to the public facilities shall be coterminous with the term of Petitioner's Lease with the landowner. The facility shall be developed in consultation with the appropriate state and county agencies and the surfing community."

**Status:**

Easement dedication shall occur prior to submittal of building permits. The term of the easement shall be coterminous with the term of the landowner's lease with the developer.

**Condition No. 18:**

"18. Petitioner shall provide public pedestrian access from the Project's proposed parking facility to the rock platform substantially as represented by the Petitioner and as shown on Petitioner's Exhibit 55. No structures or buildings shall be constructed closer than fifty (50) feet from the rock platform. The duration and term of the public access shall be coterminous with the term of Petitioner's Lease with the landowner."

**Status:**

Exhibit I of the application submitted for final zoning permits identifies pedestrian access to the rock platform. Kauai County has recognized the rock platform and its buffer zone, by creating a Special Treatment-Cultural District (O/ST-C) around it as part of the Zoning Amendment Ordinance (Ordinance No. PM-2001-356, Bill No. 2004, Draft 2). If the prospective developer proceeds with the Project, the prospective developer's revised site plan will comply with this requirement.

**Condition No. 19:**

"19. Relying on its earlier decision in Public Access Shoreline Hawaii v. Hawaii County Planning Commission, 79 Haw. 425, 903 P.2d 1.246 (1995), the Supreme Court in Ka Pa`alcai o Ka`aina v. Land Use Commission, 94 Haw. 31, 46, 7 P3d 1068, 1083 (2000), declared that "to the extent feasible when granting a petition for reclassification of district boundaries," this Commission must "protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians." To satisfy that obligation, "[s]pecific considerations regarding the extent of customary and traditional practices and the impairment and feasible protection of those uses must first be made before a petition for a land use boundary change is granted." Id., 94 Haw. At 52, 7 P.3d at 1089. The Commission's findings of fact and conclusions of law in land use boundary change proceedings must therefore specify "(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; and (3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist." Id."

**Status:**

Petitioner acknowledges the meaning and intent of Condition No. 19.

**Condition No. 20:**

"20. There is some evidence of native Hawaiians' entry onto the property to gather and otherwise use it to exercise traditional and customary Hawaiian rights prior to the 1800s, particularly with respect to the fishpond. Native Hawaiian maka`ainana activity appears to have occurred only with the permission of the parcel's owners, after acquisition of the Property by Victoria Kamamalu. Accordingly and consistent with Petitioner's expressed willingness and commitment to restore, maintain, and operate the Kapalawai Fishpond as a Hawaiian fishpond, the Kapalawai Fishpond shall be restored, maintained, and operated in the manner consistent with traditional and customary Hawaiian practices as provided in P.A.S.H., supra., which the Commission finds to exist in the pond. Petitioner shall utilize recognized ancient Hawaiians [sic] pond experts such as Dr. Kikuchi and Professor Marion Kelly from the University of Hawaii, for guidance and assistance in the effort.

(a) Restoration shall proceed pursuant to a mitigation plan the Petitioner prepares and submits to the SHPD for review and approval prior to commencement of any restoration activity, and in accordance with the traditional and customary method described by Dr. Kikuchi, see Finding of Fact 109. Restoration shall be done deliberately and with sensitivity to the preservation of the fishpond and any marine and bird life at the site. Because large heavy- equipment could adversely affect the extant pond walls if the full weight of the vehicle is brought to bear on the wall, Petitioner shall make every effort to avoid using such equipment in the pond's restoration. The pohaku on which the fishpond's legendary mo`o wahine is said to have sat will be retrieved from the debris, and it shall be re-placed and preserved in the

place at its legendary location before restoration work begins. The public shall have access to the Kapalawai Fishpond to observe its restoration by traditional and cultural native Hawaiian means.

(b) Petitioner shall establish a management plan for the maintenance and operation of the fishpond which is consistent with traditional and customary historic Hawaiian practices. It shall include provisions for sharing fish harvested from the fishpond, for educating the fishpond's caretakers and Petitioner's staff about Hawaiian fishponds and the Kapalawai Fishpond in particular, and for training fishpond caretakers in the traditional and customary Hawaiian practices for the maintenance and operation of the fishpond. The management plan shall also include provision for a fishpond management entity composed of a representative from the Petitioner and a representative from the West Kaua`i Hawaiian community to be selected by the Hawaiian community. This entity shall manage all aspects of the pond's use and utilization as a natural resource including harvesting, water use, and visitor access. This entity shall be responsible for the resolution of any dispute which may arise as to the management and operation of the Kapalawai Fishpond in accordance with traditional and customary Hawaiian practices. The selection of the management committee shall take place no later than six months after the approval of the SMA Permit. In addition, the plan shall include a process for the two members of the management entity to select a third member to overcome any stalemate. It is the intent of the Commission that as far as possible, Petitioner select individuals living in the West Kaua`i community who are familiar with the area and have a love for the `aina to maintain and operate the Kapalawai fishpond. The management plan shall remain in effect for the duration of the original term of the Petitioner's lease with the landowner. The Hawaiian gathering rights on the pond shall not be affected by the expiration or termination of the lease. It shall be a further condition of the Commission that Petitioner shall report back to the Commission within one year from the approval of the SMA permit on the understanding that the Commission reserves the power and authority to amend the condition herein to better operate the management committee.

(c) Further, no Project building or structure shall be constructed closer than one hundred (100) feet from the fishpond. Every effort shall also be made to prevent the contamination of the fishpond during the construction and operation of the Project due to water and waste runoff, the operation of pumps or other machinery in the area, and human access and habitation."

**Status:**

Initial consultation with Dr. Kikuchi concluded that the current condition of the fishpond could not be improved without the assistance of mechanical equipment. In Dr. Kikuchi's letter report following a site inspection in November 2001, he endorsed the use of an excavator within the pond, based on an immediate need for gross vegetation clearance, economic considerations, and the need for speed in completing the job. SHPD, the County of Kauai Planning Department, and the U.S. Army Corps of Engineers approved this approach to the first step of pond clearance. At this date, no activities have commenced within the pond.

As clearing of the fishpond proceeds, the pohaku will be located, if it is still present, and preserved in place.

A Management Plan shall be prepared in conjunction with the appointment of a management entity. The management entity will be in place within 6 months of the approval of the SMA Permit. The management entity was established on November 26, 2002.

All of the details of the management plan (including those details specified in LUC Condition #20b) will be implemented subsequent to the approval of the SMA Permit.

Exhibit I (Site plan) of the application submitted for final zoning permits package includes a 100-foot setback from the fishpond, which has been adopted as part of the zoning requirements established by the County Zoning Amendment Ordinance (Zoning district Open/Special Treatment-Cultural). If the prospective developer proceeds with the Project, the prospective developer's revised site plan will comply with this requirement.

**Condition No. 21:**

"21. Petitioner acknowledges and agrees that it has no vested interest or right to develop the Petition Area, as reclassified, until Petitioner has substantially complied with the representations it made to the Commission. Petitioner waives any claims for liability against the State arising from any reversion of the Petition Area."

**Status:**

Petitioner acknowledges the meaning and intent of Condition No. 21.

**Condition No. 22:**

"22. Petitioner shall develop the Petition Area in substantial compliance with the representations made by the Petitioner to the Commission, including but not limited to the representation that the Project shall be limited to a 250 visitor unit density with existing and accessory uses as proposed in its Petition. Failure to do so for any reason, including economic feasibility, may result in the imposition of fines as provided by law, removal of improvements by Petitioner at Petitioner's own expense, reversion of the Petition area to its former condition by Petitioner at Petitioner's own expense, reversion of the Petition Area to its former classification, or a change to a more appropriate classification, or any other legal remedies."

**Status:**

The Petitioner has consistently maintained a desire to adhere to a 250 visitor unit limit. This restriction is now part of the records of approval for both the Commission and Kauai County (Zoning Amendment Ordinance, Section 3(h)(i)), and is reflected in the most current site plan (dated April 6, 2004) submitted to the County Planning Department for approval. If the prospective developer proceeds with the Project, the prospective developer's revised site plan will comply with this requirement.

**Condition No. 23:**

"23. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to the development of the Property. The decision herein, including the conditions imposed on Petitioner, shall be binding on Petitioner's successors and assigns according to law."

**Status:**

Gay & Robinson, Inc. transferred the last of its ownership interest in the Property to Robinson Family Partners in 2001. The remaining owners of the Property are Robinson Family Partners and Bruce Robinson.

**Condition No. 24:**

"24. Petitioner shall timely provide, without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Kauai Planning Department, in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission."

**Status:**

The Petitioner will comply with this condition.

**Condition No. 25:**

"25. The Commission may fully or partially release the conditions provided herein, as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner."

**Status:**

To date, there has been no need for full or partial release from any of the conditions included as part of the April 6, 2001 Decision and Order.

**Condition No. 26:**

"26. Within seven days of the issuance of Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances, a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission."

**Status:**

Petitioner recorded a statement with the Bureau of Conveyances that the property is subject to conditions imposed by the Commission on April 17, 2001 as Doc. No. 2001-054811.

**Condition No. 27:**

"27. Petitioner shall record conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules."

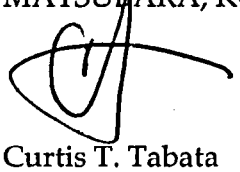
**Status:**

Petitioner recorded the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules, on June 14, 2001, as Doc. No. 2001-089516.

Please do not hesitate to contact the undersigned should you have any questions or comments with respect to the matters discussed above.

Very truly yours,

MATSUBARA, KOTAKE & TABATA



Curtis T. Tabata

cc: Ms. Mary Alice Evans , Director, Office of Planning, State of Hawai`i
Mr. Kaaina Hull, Director, Planning Department, County of Kaua`i
Dawn T. Apuna, Esq., Deputy Attorney General
Matthew M. Bracken, Esq., Kaua`i County Attorney

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March 4, 2022

**VIA U.S. MAIL**

Mr. Daniel E. Orodenker, Executive Officer
Land Use Commission, State of Hawai`i
P.O. Box 2359
Honolulu, Hawai`i 96804

Re: Annual Report to the Land Use Commission - Destination Villages Kauai, A Limited Liability Company; LUC Docket No. A00-731

Dear Mr. Orodenker:

Pursuant to Condition No. 25 of the Findings of Fact, Conclusions of Law, and Decision, and Order ("Decision and Order") of the Land Use Commission ("Commission") in the above-entitled docket, the landowners of the petition area in the above-entitled docket hereby submit the annual report for the year 2021, regarding the (1) general progress of the 250 resort units and accessory uses project within the approximately 153.696 acre petition area ("Project"), and the (2) status and progress toward compliance with the conditions imposed as set forth in the Decision and Order.

## 1. General Progress of the Project

The Decision and Order for the above-entitled docket was certified on April 6, 2001. Subsequently, the property was designated Resort by Kauai County Council action on the General Plan Update (Ordinance No. PM-2000-353, Bill No. 1953). Once the approvals related to the State Land Use District Boundary Amendment and County General Plan were obtained, major portions of the property (127.93 acres, more or less) were zoned RR-1 (Ordinance No. PM-2001-356, Bill No. 2004). The remainder of the property was zoned Open (25.77 acres, more or less). Recently the newly released West Kauai Regional Plan (approved by the Kauai County Council) designated the property as resort in keeping with its prior State LUC and Kauai GP designations.

Subsequent to the approval of the zoning amendment, on February 25, 2002, the Petitioner filed an application with the County of Kauai for three permits ("final County zoning permits"): (1) Special Management Area Use Permit; (2) Project Development Use Permit; and (3) Class IV Zoning Permit. These three permits represent the final discretionary permits required for the proposed resort by the County of Kauai. The permits were approved by the Kauai Planning Commission on May 28, 2002.

Following the approval of the County of Kauai permits, the Project had progressed in good faith with developers by accomplishing studies and milestones at considerable expense in compliance with entitlements. The Project's progress continued for approximately five (5) years until the Project unfortunately experienced a temporary delay that was prompted by the downturn in the economy.

In 2007, the administration of the project reverted to the landowners of the petition area who include the Robinson Family Partners and Bruce Robinson.

On July 1, 2013, the landowners entered into a letter of intent with a prospective developer to lease and develop the Project. The prospective developer had been actively conducting extensive due diligence, including the preparation of a site plan with an emphasis on protecting the natural landscapes, architectural design, landscaping design, and civil engineering. The prospective developer has incurred extensive pre-construction expenses in excess of one million dollars, including expenses relating to landscape design, architecture, survey work, engineering, legal fees and administrative expenses. Unfortunately in 2019 the prospective developer passes away and his family canceled the letter of intent for the project.

With the property unencumbered by the prior letter of intent Robinson Family Partners and Bruce Robinson have entertained several proposals from other developers for the property. Bruce Robinson has leased his interest in the land to the Robinson Family Partners, and Robinson Family Partners is currently negotiating a development agreement and long term lease with a developer and operator.

Both the developer and operator have extensive experience in Hawaii with the developer have done numerous projects in Hawaii and the operator owning and operating numerous hotels throughout the world.

2. **Progress in Complying with Conditions Imposed**

**Condition No. 1:**

"1. Petitioner shall provide affordable housing opportunities for residents of the State of Hawaii to include employees of the proposed resort in accordance with applicable affordable housing requirements of the County of Kauai. The location and distribution of the affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and the County of Kaua`i."

**Status:**

The County Zoning Amendment Ordinance (Ordinance No. PM-2001-35C Bill No. 2004, Draft 2) specifies that the applicant provide 15 employee housing units at affordable rentals (80% of Kauai Median Household Income). The Project site plan that was submitted with the application for final permits (Exhibit I of the application), includes 15 employee housing units. If the prospective developer proceeds with the Project, the prospective developer's revised site plan will comply with this requirement.

**Condition No. 2:**

"2. Petitioner shall design and construct drainage improvements requirements as a result of the development of the Property to the satisfaction of the Department of Health and the Commission on Water Resource Management of the State Department of Land and Natural Resources."

**Status:**

This condition will be implemented during review of construction documents for building permits. A grading and drainage plan was approved by the County.

**Condition No. 3:**

"3. Petitioner shall conduct proper and regular maintenance of the existing streambeds and the proposed grass-lined channel which is essential to ensure maximum flood protection for the project as may be required by the County Department of Public Works. In addition, Petitioner shall institute Best Management Practices in the design of the drainage system to reduce the potential for sediments and other pollutants to reach the ocean and on-site streams as may be required by the County of Kaua`i and/or the State of Hawai`i."

**Status:**

This condition will be documented during preparation and review of construction documents for grading permits, once final zoning permits are granted by the County of Kaua`i.

**Condition No. 4:**

"4. Petitioner shall locate all building construction mauka of the Hurricane Iniki inundation line and shall mitigate flood hazards as shown on Petitioner's Exhibit No. 32 to the satisfaction of appropriate Federal, State and County agencies."

**Status:**

Exhibit I of the application submitted to the County of Kauai Planning Department identifies the Hurricane Iniki Inundation Line. All proposed structures are mauka of this line. Construction drawings will deal with specific flood hazard requirements (County and Federal) for each affected structure, when applications are submitted for building permits. If the prospective developer proceeds with the Project, the prospective developer's revised site plan will comply with this requirement.

**Condition No. 5:**

"5. Petitioner shall provide adequate water source facilities and improvements to accommodate the proposed Project. Water source facilities and improvements shall be coordinated and approved by the Commission on Water Resource Management of the State Department of Land and Natural Resources."

**Status:**

Approval from the Commission on Water Resource Management will be required to construct the potable well that will service the Kapalawai Resort. Application for approval of the well will not occur until after approval of final County zoning permits.

**Condition No. 6:**

"6. Petitioner shall provide adequate wastewater treatment, transmission and disposal facilities as determined by the State Department of Health."

**Status:**

DOH will have oversight for construction plans pertaining to the design of the on-site wastewater treatment plant and other facilities. These plans will be prepared as part of the submittal of construction drawings for building permits.

**Condition No. 7:**

"7. Petitioner shall fund and construct adequate civil defense measures as determined by the State of Hawai`i Department of Defense, Office of Civil Defense."

**Status:**

Design and location of required civil defense facilities will be coordinated with the State Department of Defense prior to submittal of building permits.

**Condition No. 8:**

"8. To ensure that the proposed land uses will not adversely impact endangered species and environmentally sensitive areas such as wetlands, ponds, or streams, the Petitioner shall consult with the appropriate Federal and State agencies whenever, in the course of developing the proposed project, it reasonably appears that an endangered specie or sensitive area may be affected by a particular development activity."

**Status:**

Appropriate consultations will occur when necessary. Primary agencies of responsibility are the U.S. Fish and Wildlife Service and DLNR Division of Forestry and Wildlife.

**Condition No. 9:**

"9. Should any previously unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, Petitioner shall stop work in the immediate vicinity and the State Historic Preservation Division of the Department of Land and Natural Resources (SI-IPD) shall be notified immediately. The significance of these finds shall then be determined and approved by the SHPD. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to their satisfaction."

**Status:**

Development contractors will be made aware of requirements prior to commencement of construction activities. Archaeological monitoring will be required in sensitive areas during construction. Should any unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, SHPD will be notified immediately.

**Condition No. 10:**

"10. Petitioner shall follow the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD) recommendations for mitigation of impacts resulting from the development and for archaeological data recovery and preservation. An archaeological data recovery plan (scope of work) must be approved by the SHPD. That plan must then be successfully executed (to be verified in writing by SHPD) prior to any grading, clearing, grubbing or other land alteration in these areas. A preservation plan must also be approved by SHPD. This plan, or minimally its interim protection plan phase, must be successfully executed (to be verified in writing by SHPD) prior to any grading clearing, grubbing or other land alteration in these areas."

**Status:**

SHPD has advised Petitioner of necessity to prepare appropriate data recovery plans. Data recovery and preservation plans will be prepared by the Petitioner and approved by SHPD subsequent to approval of final County zoning permits and prior to submittal of building permits.

**Condition No. 11:**

"11. Petitioner shall implement efficient soil erosion and dust control measures during and after the development process to the satisfaction of the State Department of Health."

**Status:**

Soil and erosion control plans were included in the approved rough grading permit.

**Condition No. 12:**

"12. Petitioner shall participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed development in designs and schedules accepted and determined by the State Department of Transportation (DOT). Agreement between the Petitioner and the DOT as to the level of funding and participation shall be obtained prior to the Petitioner acquiring County zoning or prior to building permits if county zoning is not required."

**Status:**

Petitioner has coordinated these requirements with State DOT Highways Division per Exhibit O of the application submitted for final zoning permits. In addition, Petitioner must confirm whether DOT will require Petitioner to pay for access to the State Highway (Kaumualii Highway). Off-site construction plans have been completed for the Kaumualii Highway improvements.

**Condition No. 13:**

"13. Petitioner, where feasible, shall use indigenous and water conserving plants and turf and incorporate the same into common area landscape planting."

**Status:**

The Petitioner has addressed this condition by preparing a conceptual landscape plan for the Project, which is included in the application submitted for final zoning permits as Exhibit J. Many native species are listed on the proposed landscape palette, as well as other species already found on the property that currently survive without irrigation. If the prospective developer proceeds with the Project, the prospective developer will submit a revised conceptual landscape plan in compliance with this condition.

**Condition No. 14:**

"14. Petitioner shall notify all prospective buyers of property of the potential odor, noise and dust pollution resulting from surrounding agricultural uses."

**Status:**

No sale of property has occurred to date. Should a sale in property occur, or be contemplated, prospective buyers will be notified of the potential odor, noise and dust pollution resulting from surrounding agricultural uses.

**Condition No. 15:**

"15. Building setback lines shall be established during the Zoning Amendment and SMA Permit approval process to ensure proper siting of the proposed buildings and structures to mitigate any adverse visual and/or environmental impacts."

**Status:**

The Kauai County Zoning Amendment Ordinance (Ordinance No. PM-2001-356, Bill No. 2004, Draft 2) has established specific setback and transition areas designed to mitigate visual and other impacts. These setbacks are respected by a revised sited plan for the Project that has been submitted to the Kauai County Planning Department for review and approval by the Kauai County Planning Commission. The Special Management Area Use Permit also established additional setback requirements along the shoreline.

**Condition No. 16:**

"16. Petitioner shall provide public pedestrian access to the shoreline and shall develop the public restroom facilities, vehicular access to Kaumualii Highway and shower and parking facilities substantially as represented by the Petitioner and as shown on Petitioner's Exhibit 53. The public facilities shall be built and maintained by

Petitioner, with twenty-four hour security. The duration and term of the public access to the shoreline and to the public facilities shall be coterminous with the term of Petitioner's Lease with the landowner."

**Status:**

Public facilities presented to the Land Use Commission as part of Petitioner's Exhibit 53 are included in the project site plan (Exhibit I of the application submitted for final zoning permits). A similar requirement has been established by the County of Kauai (Zoning Amendment Ordinance, Section 3(j)). If the prospective developer proceeds with the Project, the prospective developer's revised site plan will comply with this requirement.

**Condition No. 17:**

"17. Petitioner shall dedicate a public easement to the State of Hawai`i for 99 years adequate and reasonable with respect to beach and surfing ingress and egress and shall develop public restroom and shower facilities, vehicular access to Kaurnuali`i Highway and public parking facilities as described by the Petitioner and as shown on Petitioner's exhibit 53. The public facilities shall be built and maintained by Petitioner, with twenty-four security. It is the LUC's intent that the duration and term of the public access to the shoreline and to the public facilities shall be coterminous with the term of Petitioner's Lease with the landowner. The facility shall be developed in consultation with the appropriate state and county agencies and the surfing community."

**Status:**

Easement dedication shall occur prior to submittal of building permits. The term of the easement shall be coterminous with the term of the landowner's lease with the developer.

**Condition No. 18:**

"18. Petitioner shall provide public pedestrian access from the Project's proposed parking facility to the rock platform substantially as represented by the Petitioner and as shown on Petitioner's Exhibit 55. No structures or buildings shall be constructed closer than fifty (50) feet from the rock platform. The duration and term of the public access shall be coterminous with the term of Petitioner's Lease with the landowner."

**Status:**

Exhibit I of the application submitted for final zoning permits identifies pedestrian access to the rock platform. Kauai County has recognized the rock platform and its buffer zone, by creating a Special Treatment-Cultural District (O/ST-C) around it as part of the Zoning Amendment Ordinance (Ordinance No. PM-2001-356, Bill No. 2004, Draft 2). If the prospective developer proceeds with the Project, the prospective developer's revised site plan will comply with this requirement.

**Condition No. 19:**

"19. Relying on its earlier decision in Public Access Shoreline Hawaii v. Hawaii County Planning Commission, 79 Haw. 425, 903 P.2d 1.246 (1995), the Supreme Court in Ka Pa`alcai o Ka`aina v. Land Use Commission, 94 Haw. 31, 46, 7 P3d 1068, 1083 (2000), declared that "to the extent feasible when granting a petition for reclassification of district boundaries," this Commission must "protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians." To satisfy that obligation, "[s]pecific considerations regarding the extent of customary and traditional practices and the impairment and feasible protection of those uses must first be made before a petition for a land use boundary change is granted." Id., 94 Haw. At 52, 7 P.3d at 1089. The Commission's findings of fact and conclusions of law in land use boundary change proceedings must therefore specify "(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; and (3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist." Id."

**Status:**

Petitioner acknowledges the meaning and intent of Condition No. 19.

**Condition No. 20:**

"20. There is some evidence of native Hawaiians' entry onto the property to gather and otherwise use it to exercise traditional and customary Hawaiian rights prior to the 1800s, particularly with respect to the fishpond. Native Hawaiian maka`ainana activity appears to have occurred only with the permission of the parcel's owners, after acquisition of the Property by Victoria Kamamalu. Accordingly and consistent with Petitioner's expressed willingness and commitment to restore, maintain, and operate the Kapalawai Fishpond as a Hawaiian fishpond, the Kapalawai Fishpond shall be restored, maintained, and operated in the manner consistent with traditional and customary Hawaiian practices as provided in P.A.S.H., supra., which the Commission finds to exist in the pond. Petitioner shall utilize recognized ancient Hawaiians [sic] pond experts such as Dr. Kikuchi and Professor Marion Kelly from the University of Hawaii, for guidance and assistance in the effort.

(a) Restoration shall proceed pursuant to a mitigation plan the Petitioner prepares and submits to the SHPD for review and approval prior to commencement of any restoration activity, and in accordance with the traditional and customary method described by Dr. Kikuchi, see Finding of Fact 109. Restoration shall be done deliberately and with sensitivity to the preservation of the fishpond and any marine and bird life at the site. Because large heavy- equipment could adversely affect the extant pond walls if the full weight of the vehicle is brought to bear on the wall, Petitioner shall make every effort to avoid using such equipment in the pond's restoration. The pohaku on which the fishpond's legendary mo`o wahine is said to have sat will be retrieved from the debris, and it shall be re-placed and preserved in the

place at its legendary location before restoration work begins. The public shall have access to the Kapalawai Fishpond to observe its restoration by traditional and cultural native Hawaiian means.

(b) Petitioner shall establish a management plan for the maintenance and operation of the fishpond which is consistent with traditional and customary historic Hawaiian practices. It shall include provisions for sharing fish harvested from the fishpond, for educating the fishpond's caretakers and Petitioner's staff about Hawaiian fishponds and the Kapalawai Fishpond in particular, and for training fishpond caretakers in the traditional and customary Hawaiian practices for the maintenance and operation of the fishpond. The management plan shall also include provision for a fishpond management entity composed of a representative from the Petitioner and a representative from the West Kaua`i Hawaiian community to be selected by the Hawaiian community. This entity shall manage all aspects of the pond's use and utilization as a natural resource including harvesting, water use, and visitor access. This entity shall be responsible for the resolution of any dispute which may arise as to the management and operation of the Kapalawai Fishpond in accordance with traditional and customary Hawaiian practices. The selection of the management committee shall take place no later than six months after the approval of the SMA Permit. In addition, the plan shall include a process for the two members of the management entity to select a third member to overcome any stalemate. It is the intent of the Commission that as far as possible, Petitioner select individuals living in the West Kaua`i community who are familiar with the area and have a love for the `aina to maintain and operate the Kapalawai fishpond. The management plan shall remain in effect for the duration of the original term of the Petitioner's lease with the landowner. The Hawaiian gathering rights on the pond shall not be affected by the expiration or termination of the lease. It shall be a further condition of the Commission that Petitioner shall report back to the Commission within one year from the approval of the SMA permit on the understanding that the Commission reserves the power and authority to amend the condition herein to better operate the management committee.

(c) Further, no Project building or structure shall be constructed closer than one hundred (100) feet from the fishpond. Every effort shall also be made to prevent the contamination of the fishpond during the construction and operation of the Project due to water and waste runoff, the operation of pumps or other machinery in the area, and human access and habitation."

**Status:**

Initial consultation with Dr. Kikuchi concluded that the current condition of the fishpond could not be improved without the assistance of mechanical equipment. In Dr. Kikuchi's letter report following a site inspection in November 2001, he endorsed the use of an excavator within the pond, based on an immediate need for gross vegetation clearance, economic considerations, and the need for speed in completing the job. SHPD, the County of Kauai Planning Department, and the U.S. Army Corps of Engineers approved this approach to the first step of pond clearance. At this date, no activities have commenced within the pond.

As clearing of the fishpond proceeds, the pohaku will be located, if it is still present, and preserved in place.

A Management Plan shall be prepared in conjunction with the appointment of a management entity. The management entity will be in place within 6 months of the approval of the SMA Permit. The management entity was established on November 26, 2002.

All of the details of the management plan (including those details specified in LUC Condition #20b) will be implemented subsequent to the approval of the SMA Permit.

Exhibit I (Site plan) of the application submitted for final zoning permits package includes a 100-foot setback from the fishpond, which has been adopted as part of the zoning requirements established by the County Zoning Amendment Ordinance (Zoning district Open/Special Treatment-Cultural). If the prospective developer proceeds with the Project, the prospective developer's revised site plan will comply with this requirement.

**Condition No. 21:**

"21. Petitioner acknowledges and agrees that it has no vested interest or right to develop the Petition Area, as reclassified, until Petitioner has substantially complied with the representations it made to the Commission. Petitioner waives any claims for liability against the State arising from any reversion of the Petition Area."

**Status:**

Petitioner acknowledges the meaning and intent of Condition No. 21.

**Condition No. 22:**

"22. Petitioner shall develop the Petition Area in substantial compliance with the representations made by the Petitioner to the Commission, including but not limited to the representation that the Project shall be limited to a 250 visitor unit density with existing and accessory uses as proposed in its Petition. Failure to do so for any reason, including economic feasibility, may result in the imposition of fines as provided by law, removal of improvements by Petitioner at Petitioner's own expense, reversion of the Petition area to its former condition by Petitioner at Petitioner's own expense, reversion of the Petition Area to its former classification, or a change to a more appropriate classification, or any other legal remedies."

**Status:**

The Petitioner has consistently maintained a desire to adhere to a 250 visitor unit limit. This restriction is now part of the records of approval for both the Commission and Kauai County (Zoning Amendment Ordinance, Section 3(h)(i)), and is reflected in the most current site plan (dated April 6, 2004) submitted to the County Planning Department for approval. If the prospective developer proceeds with the Project, the prospective developer's revised site plan will comply with this requirement.

**Condition No. 23:**

"23. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to the development of the Property. The decision herein, including the conditions imposed on Petitioner, shall be binding on Petitioner's successors and assigns according to law."

**Status:**

Gay & Robinson, Inc. transferred the last of its ownership interest in the Property to Robinson Family Partners in 2001. The remaining owners of the Property are Robinson Family Partners and Bruce Robinson, and Bruce Robinson has leased his interest in the land to Robinson Family Partners.

**Condition No. 24:**

"24. Petitioner shall timely provide, without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Kauai Planning Department, in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission."

**Status:**

The Petitioner will comply with this condition.

**Condition No. 25:**

"25. The Commission may fully or partially release the conditions provided herein, as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner."

**Status:**

To date, there has been no need for full or partial release from any of the conditions included as part of the April 6, 2001 Decision and Order.

**Condition No. 26:**

"26. Within seven days of the issuance of Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances, a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission."

**Status:**

Petitioner recorded a statement with the Bureau of Conveyances that the property is subject to conditions imposed by the Commission on April 17, 2001 as Doc. No. 2001-054811.

**Condition No. 27:**

"27. Petitioner shall record conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules."

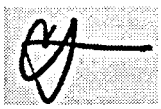
**Status:**

Petitioner recorded the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules, on June 14, 2001, as Doc. No. 2001-089516.

Please do not hesitate to contact the undersigned should you have any questions or comments with respect to the matters discussed above.

Very truly yours,

MATSUBARA, KOTAKE & TABATA



Curtis T. Tabata

cc: Robinson Family Partners
Ms. Mary Alice Evans, Director, Office of Planning and Sustainable Development, State of Hawai`i
Mr. Ka`āina S. Hull, Director, Planning Department, County of Kaua`i
Alison Kato, Esq., Deputy Attorney General
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April 4, 2023

VIA E-MAIL & U.S. MAIL

Mr. Daniel E. Orodenker, Executive Officer
Land Use Commission, State of Hawai`i
P.O. Box 2359
Honolulu, Hawai`i 96804

Re: Annual Report to the Land Use Commission - Destination Villages Kauai, A Limited Liability Company; LUC Docket No. A00-731

Dear Mr. Orodenker:

Pursuant to Condition No. 25 of the Findings of Fact, Conclusions of Law, and Decision, and Order ("Decision and Order") of the Land Use Commission ("Commission") in the above-entitled docket, the landowners of the petition area in the above-entitled docket hereby submit the annual report for the year 2022, regarding the (1) general progress of the 250 resort units and accessory uses project within the approximately 153.696 acre petition area ("Project"), and the (2) status and progress toward compliance with the conditions imposed as set forth in the Decision and Order.

1. General Progress of the Project

The Decision and Order for the above-entitled docket was certified on April 6, 2001. Subsequently, the property was designated Resort by Kauai County Council action on the General Plan Update (Ordinance No. PM-2000-353, Bill No. 1953). Once the approvals related to the State Land Use District Boundary Amendment and County General Plan were obtained, major portions of the property (127.93 acres, more or less) were zoned RR-1 (Ordinance No. PM-2001-356, Bill No. 2004). The remainder of the property was zoned Open (25.77 acres, more or less). Recently the newly released West Kauai Regional Plan (approved by the Kauai County Council) designated the property as resort in keeping with its prior State LUC and Kauai GP designations.

Subsequent to the approval of the zoning amendment, on February 25, 2002, the Petitioner filed an application with the County of Kauai for three permits ("final County zoning permits"): (1) Special Management Area Use Permit; (2) Project Development Use Permit; and (3) Class IV Zoning Permit. These three permits represent the final discretionary permits required for the proposed resort by the County of Kauai. The permits were approved by the Kauai Planning Commission on May 28, 2002.

Following the approval of the County of Kauai permits, the Project had progressed in good faith with developers by accomplishing studies and milestones at considerable expense in compliance with entitlements. The Project's progress continued for approximately five (5) years until the Project unfortunately experienced a temporary delay that was prompted by the downturn in the economy.

In 2007, the administration of the project reverted to the landowners of the petition area who include the Robinson Family Partners and Bruce Robinson.

On July 1, 2013, the landowners entered into a letter of intent with a prospective developer to lease and develop the Project. The prospective developer had been actively conducting extensive due diligence, including the preparation of a site plan with an emphasis on protecting the natural landscapes, architectural design, landscaping design, and civil engineering. The prospective developer has incurred extensive pre-construction expenses in excess of one million dollars, including expenses relating to landscape design, architecture, survey work, engineering, legal fees and administrative expenses. Unfortunately in 2019 the prospective developer passes away and his family canceled the letter of intent for the project.

Bruce Robinson has leased his interest in the land to the Robinson Family Partners, and Robinson Family Partners has selected a developer and operator.

Both the developer and operator have extensive experience in Hawaii with the developer have done numerous projects in Hawaii and the operator owning and operating numerous hotels throughout the world.

2. **Progress in Complying with Conditions Imposed**

**Condition No. 1:**

"1. Petitioner shall provide affordable housing opportunities for residents of the State of Hawaii to include employees of the proposed resort in accordance with applicable affordable housing requirements of the County of Kauai. The location and distribution of the affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and the County of Kaua'i."

**Status:**

The County Zoning Amendment Ordinance (Ordinance No. PM-2001-35C Bill No. 2004, Draft 2) specifies that the applicant provide 15 employee housing units at affordable rentals (80% of Kauai Median Household Income). The Project site plan that was submitted with the application for final permits (Exhibit I of the application), includes 15 employee housing units. As the developer proceeds with the Project, the developer's revised site plan will comply with this requirement.

**Condition No. 2:**

"2. Petitioner shall design and construct drainage improvements requirements as a result of the development of the Property to the satisfaction of the Department of Health and the Commission on Water Resource Management of the State Department of Land and Natural Resources."

**Status:**

This condition will be implemented during review of construction documents for building permits. A grading and drainage plan was approved by the County.

**Condition No. 3:**

"3. Petitioner shall conduct proper and regular maintenance of the existing streambeds and the proposed grass-lined channel which is essential to ensure maximum flood protection for the project as may be required by the County Department of Public Works. In addition, Petitioner shall institute Best Management Practices in the design of the drainage system to reduce the potential for sediments and other pollutants to reach the ocean and on-site streams as may be required by the County of Kaua`i and/or the State of Hawai`i."

**Status:**

This condition will be documented during preparation and review of construction documents for grading permits, once final zoning permits are granted by the County of Kaua`i.

**Condition No. 4:**

"4. Petitioner shall locate all building construction mauka of the Hurricane Iniki inundation line and shall mitigate flood hazards as shown on Petitioner's Exhibit No. 32 to the satisfaction of appropriate Federal, State and County agencies."

**Status:**

Exhibit I of the application submitted to the County of Kauai Planning Department identifies the Hurricane Iniki Inundation Line. All proposed structures are mauka of this line. Construction drawings will deal with specific flood hazard requirements (County and Federal) for each affected structure, when applications are submitted for building permits. As the developer proceeds with the Project, the developer's revised site plan will comply with this requirement.

**Condition No. 5:**

"5. Petitioner shall provide adequate water source facilities and improvements to accommodate the proposed Project. Water source facilities and improvements shall be coordinated and approved by the Commission on Water Resource Management of the State Department of Land and Natural Resources."

**Status:**

Approval from the Commission on Water Resource Management will be required to construct the potable well that will service the Kapalawai Resort. Application for approval of the well will not occur until after approval of final County zoning permits.

**Condition No. 6:**

"6. Petitioner shall provide adequate wastewater treatment, transmission and disposal facilities as determined by the State Department of Health."

**Status:**

DOH will have oversight for construction plans pertaining to the design of the on-site wastewater treatment plant and other facilities. These plans will be prepared as part of the submittal of construction drawings for building permits.

**Condition No. 7:**

"7. Petitioner shall fund and construct adequate civil defense measures as determined by the State of Hawai`i Department of Defense, Office of Civil Defense."

**Status:**

Design and location of required civil defense facilities will be coordinated with the State Department of Defense prior to submittal of building permits.

**Condition No. 8:**

"8. To ensure that the proposed land uses will not adversely impact endangered species and environmentally sensitive areas such as wetlands, ponds, or streams, the Petitioner shall consult with the appropriate Federal and State agencies whenever, in the course of developing the proposed project, it reasonably appears that an endangered specie or sensitive area may be affected by a particular development activity."

**Status:**

Appropriate consultations will occur when necessary. Primary agencies of responsibility are the U.S. Fish and Wildlife Service and DLNR Division of Forestry and Wildlife.

**Condition No. 9:**

"9. Should any previously unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, Petitioner shall stop work in the immediate vicinity and the State Historic Preservation Division of the Department of Land and Natural Resources (SI-IPD) shall be notified immediately. The significance of these finds shall then be determined and approved by the SHPD. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to their satisfaction."

**Status:**

Development contractors will be made aware of requirements prior to commencement of construction activities. Archaeological monitoring will be required in sensitive areas during construction. Should any unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, SHPD will be notified immediately.

**Condition No. 10:**

"10. Petitioner shall follow the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD) recommendations for mitigation of impacts resulting from the development and for archaeological data recovery and preservation. An archaeological data recovery plan (scope of work) must be approved by the SHPD. That plan must then be successfully executed (to be verified in writing by SHPD) prior to any grading, clearing, grubbing or other land alteration in these areas. A preservation plan must also be approved by SHPD. This plan, or minimally its interim protection plan phase, must be successfully executed (to be verified in writing by SHPD) prior to any grading clearing, grubbing or other land alteration in these areas."

**Status:**

SHPD has advised Petitioner of necessity to prepare appropriate data recovery plans. Data recovery and preservation plans will be prepared by the Petitioner and approved by SHPD subsequent to approval of final County zoning permits and prior to submittal of building permits.

**Condition No. 11:**

"11. Petitioner shall implement efficient soil erosion and dust control measures during and after the development process to the satisfaction of the State Department of Health."

**Status:**

Soil and erosion control plans were included in the approved rough grading permit.

**Condition No. 12:**

"12. Petitioner shall participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed development in designs and schedules accepted and determined by the State Department of Transportation (DOT). Agreement between the Petitioner and the DOT as to the level of funding and participation shall be obtained prior to the Petitioner acquiring County zoning or prior to building permits if county zoning is not required."

**Status:**

Petitioner has coordinated these requirements with State DOT Highways Division per Exhibit O of the application submitted for final zoning permits. In addition, Petitioner must confirm whether DOT will require Petitioner to pay for access to the State Highway (Kaumualii Highway). Off-site construction plans have been completed for the Kaumualii Highway improvements.

**Condition No. 13:**

"13. Petitioner, where feasible, shall use indigenous and water conserving plants and turf and incorporate the same into common area landscape planting."

**Status:**

The Petitioner has addressed this condition by preparing a conceptual landscape plan for the Project, which is included in the application submitted for final zoning permits as Exhibit J. Many native species are listed on the proposed landscape palette, as well as other species already found on the property that currently survive without irrigation. As the developer proceeds with the Project, the developer will submit a revised conceptual landscape plan in compliance with this condition.

**Condition No. 14:**

"14. Petitioner shall notify all prospective buyers of property of the potential odor, noise and dust pollution resulting from surrounding agricultural uses."

**Status:**

No sale of property has occurred to date. Should a sale in property occur, or be contemplated, prospective buyers will be notified of the potential odor, noise and dust pollution resulting from surrounding agricultural uses.

**Condition No. 15:**

"15. Building setback lines shall be established during the Zoning Amendment and SMA Permit approval process to ensure proper siting of the proposed buildings and structures to mitigate any adverse visual and/or environmental impacts."

**Status:**

The Kauai County Zoning Amendment Ordinance (Ordinance No. PM-2001-356, Bill No. 2004, Draft 2) has established specific setback and transition areas designed to mitigate visual and other impacts. These setbacks are respected by a revised sited plan for the Project that has been submitted to the Kauai County Planning Department for review and approval by the Kauai County Planning Commission. The Special Management Area Use Permit also established additional setback requirements along the shoreline.

**Condition No. 16:**

"16. Petitioner shall provide public pedestrian access to the shoreline and shall develop the public restroom facilities, vehicular access to Kaumualii Highway and shower and parking facilities substantially as represented by the Petitioner and as shown on Petitioner's Exhibit 53. The public facilities shall be built and maintained by

Petitioner, with twenty-four hour security. The duration and term of the public access to the shoreline and to the public facilities shall be coterminous with the term of Petitioner's Lease with the landowner."

**Status:**

Public facilities presented to the Land Use Commission as part of Petitioner's Exhibit 53 are included in the project site plan (Exhibit I of the application submitted for final zoning permits). A similar requirement has been established by the County of Kauai (Zoning Amendment Ordinance, Section 3(j)). Asthe developer proceeds with the Project, the developer's revised site plan will comply with this requirement.

**Condition No. 17:**

"17. Petitioner shall dedicate a public easement to the State of Hawai'i for 99 years adequate and reasonable with respect to beach and surfing ingress and egress and shall develop public restroom and shower facilities, vehicular access to Kaumuali'i Highway and public parking facilities as described by the Petitioner and as shown on Petitioner's exhibit 53. The public facilities shall be built and maintained by Petitioner, with twenty-four security. It is the LUC's intent that the duration and term of the public access to the shoreline and to the public facilities shall be coterminous with the term of Petitioner's Lease with the landowner. The facility shall be developed in consultation with the appropriate state and county agencies and the surfing community."

**Status:**

Easement dedication shall occur prior to submittal of building permits. The term of the easement shall be coterminous with the term of the landowner's lease with the developer.

**Condition No. 18:**

"18. Petitioner shall provide public pedestrian access from the Project's proposed parking facility to the rock platform substantially as represented by the Petitioner and as shown on Petitioner's Exhibit 55. No structures or buildings shall be constructed closer than fifty (50) feet from the rock platform. The duration and term of the public access shall be coterminous with the term of Petitioner's Lease with the landowner."

**Status:**

Exhibit I of the application submitted for final zoning permits identifies pedestrian access to the rock platform. Kauai County has recognized the rock platform and its buffer zone, by creating a Special Treatment-Cultural District (O/ST-C) around it as part of the Zoning Amendment Ordinance (Ordinance No. PM-2001-356, Bill No. 2004, Draft 2). As the developer proceeds with the Project, the developer's revised site plan will comply with this requirement.

**Condition No. 19:**

"19. Relying on its earlier decision in Public Access Shoreline Hawaii v. Hawaii County Planning Commission, 79 Haw. 425, 903 P.2d 1.246 (1995), the Supreme Court in Ka Pa`akai o Ka`aina v. Land Use Commission, 94 Haw. 31, 46, 7 P3d 1068, 1083 (2000), declared that "to the extent feasible when granting a petition for reclassification of district boundaries," this Commission must "protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians." To satisfy that obligation, "[s]pecific considerations regarding the extent of customary and traditional practices and the impairment and feasible protection of those uses must first be made before a petition for a land use boundary change is granted." Id., 94 Haw. At 52, 7 P.3d at 1089. The Commission's findings of fact and conclusions of law in land use boundary change proceedings must therefore specify "(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; and (3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist." Id."

**Status:**

Petitioner acknowledges the meaning and intent of Condition No. 19.

**Condition No. 20:**

"20. There is some evidence of native Hawaiians' entry onto the property to gather and otherwise use it to exercise traditional and customary Hawaiian rights prior to the 1800s, particularly with respect to the fishpond. Native Hawaiian maka`ainana activity appears to have occurred only with the permission of the parcel's owners, after acquisition of the Property by Victoria Kamamalu. Accordingly and consistent with Petitioner's expressed willingness and commitment to restore, maintain, and operate the Kapalawai Fishpond as a Hawaiian fishpond, the Kapalawai Fishpond shall be restored, maintained, and operated in the manner consistent with traditional and customary Hawaiian practices as provided in P.A.S.H., supra., which the Commission finds to exist in the pond. Petitioner shall utilize recognized ancient Hawaiians [sic] pond experts such as Dr. Kikuchi and Professor Marion Kelly from the University of Hawaii, for guidance and assistance in the effort.

(a) Restoration shall proceed pursuant to a mitigation plan the Petitioner prepares and submits to the SHPD for review and approval prior to commencement of any restoration activity, and in accordance with the traditional and customary method described by Dr. Kikuchi, see Finding of Fact 109. Restoration shall be done deliberately and with sensitivity to the preservation of the fishpond and any marine and bird life at the site. Because large heavy- equipment could adversely affect the extant pond walls if the full weight of the vehicle is brought to bear on the wall, Petitioner shall make every effort to avoid using such equipment in the pond's restoration. The pohaku on which the fishpond's legendary mo`o wahine is said to have sat will be retrieved from the debris, and it shall be re-placed and preserved in the

place at its legendary location before restoration work begins. The public shall have access to the Kapalawai Fishpond to observe its restoration by traditional and cultural native Hawaiian means.

(b) Petitioner shall establish a management plan for the maintenance and operation of the fishpond which is consistent with traditional and customary historic Hawaiian practices. It shall include provisions for sharing fish harvested from the fishpond, for educating the fishpond's caretakers and Petitioner's staff about Hawaiian fishponds and the Kapalawai Fishpond in particular, and for training fishpond caretakers in the traditional and customary Hawaiian practices for the maintenance and operation of the fishpond. The management plan shall also include provision for a fishpond management entity composed of a representative from the Petitioner and a representative from the West Kaua`i Hawaiian community to be selected by the Hawaiian community. This entity shall manage all aspects of the pond's use and utilization as a natural resource including harvesting, water use, and visitor access. This entity shall be responsible for the resolution of any dispute which may arise as to the management and operation of the Kapalawai Fishpond in accordance with traditional and customary Hawaiian practices. The selection of the management committee shall take place no later than six months after the approval of the SMA Permit. In addition, the plan shall include a process for the two members of the management entity to select a third member to overcome any stalemate. It is the intent of the Commission that as far as possible, Petitioner select individuals living in the West Kaua`i community who are familiar with the area and have a love for the `aina to maintain and operate the Kapalawai fishpond. The management plan shall remain in effect for the duration of the original term of the Petitioner's lease with the landowner. The Hawaiian gathering rights on the pond shall not be affected by the expiration or termination of the lease. It shall be a further condition of the Commission that Petitioner shall report back to the Commission within one year from the approval of the SMA permit on the understanding that the Commission reserves the power and authority to amend the condition herein to better operate the management committee.

(c) Further, no Project building or structure shall be constructed closer than one hundred (100) feet from the fishpond. Every effort shall also be made to prevent the contamination of the fishpond during the construction and operation of the Project due to water and waste runoff, the operation of pumps or other machinery in the area, and human access and habitation."

**Status:**

Initial consultation with Dr. Kikuchi concluded that the current condition of the fishpond could not be improved without the assistance of mechanical equipment. In Dr. Kikuchi's letter report following a site inspection in November 2001, he endorsed the use of an excavator within the pond, based on an immediate need for gross vegetation clearance, economic considerations, and the need for speed in completing the job. SHPD, the County of Kauai Planning Department, and the U.S. Army Corps of Engineers approved this approach to the first step of pond clearance. At this date, no activities have commenced within the pond.

As clearing of the fishpond proceeds, the pohaku will be located, if it is still present, and preserved in place.

A Management Plan shall be prepared in conjunction with the appointment of a management entity. The management entity will be in place within 6 months of the approval of the SMA Permit. The management entity was established on November 26, 2002.

All of the details of the management plan (including those details specified in LUC Condition #20b) will be implemented subsequent to the approval of the SMA Permit.

Exhibit I (Site plan) of the application submitted for final zoning permits package includes a 100-foot setback from the fishpond, which has been adopted as part of the zoning requirements established by the County Zoning Amendment Ordinance (Zoning district Open/Special Treatment-Cultural). Asthe developer proceeds with the Project, the developer's revised site plan will comply with this requirement.

**Condition No. 21:**

"21. Petitioner acknowledges and agrees that it has no vested interest or right to develop the Petition Area, as reclassified, until Petitioner has substantially complied with the representations it made to the Commission. Petitioner waives any claims for liability against the State arising from any reversion of the Petition Area."

**Status:**

Petitioner acknowledges the meaning and intent of Condition No. 21.

**Condition No. 22:**

"22. Petitioner shall develop the Petition Area in substantial compliance with the representations made by the Petitioner to the Commission, including but not limited to the representation that the Project shall be limited to a 250 visitor unit density with existing and accessory uses as proposed in its Petition. Failure to do so for any reason, including economic feasibility, may result in the imposition of fines as provided by law, removal of improvements by Petitioner at Petitioner's own expense, reversion of the Petition area to its former condition by Petitioner at Petitioner's own expense, reversion of the Petition Area to its former classification, or a change to a more appropriate classification, or any other legal remedies."

**Status:**

The Petitioner has consistently maintained a desire to adhere to a 250 visitor unit limit, subject to any future motion to amend that may seek to change the unit count. This restriction is now part of the records of approval for both the Commission and Kauai County (Zoning Amendment Ordinance, Section 3(h)(i)), and is reflected in the most current site plan (dated April 6, 2004) submitted to the County Planning Department for approval. Asthe developer proceeds with the Project, the developer's revised site plan will comply with this requirement.

**Condition No. 23:**

"23. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to the development of the Property. The decision herein, including the conditions imposed on Petitioner, shall be binding on Petitioner's successors and assigns according to law."

**Status:**

Gay & Robinson, Inc. transferred the last of its ownership interest in the Property to Robinson Family Partners in 2001. The remaining owners of the Property are Robinson Family Partners and Bruce Robinson, and Bruce Robinson has leased his interest in the land to Robinson Family Partners.

**Condition No. 24:**

"24. Petitioner shall timely provide, without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Kauai Planning Department, in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission."

**Status:**

The Petitioner will comply with this condition.

**Condition No. 25:**

"25. The Commission may fully or partially release the conditions provided herein, as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner."

**Status:**

To date, there has been no need for full or partial release from any of the conditions included as part of the April 6, 2001 Decision and Order.

**Condition No. 26:**

"26. Within seven days of the issuance of Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances, a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission."

**Status:**

Petitioner recorded a statement with the Bureau of Conveyances that the property is subject to conditions imposed by the Commission on April 17, 2001 as Doc. No. 2001-054811.

**Condition No. 27:**

"27. Petitioner shall record conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules."

**Status:**

Petitioner recorded the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules, on June 14, 2001, as Doc. No. 2001-089516.

Please do not hesitate to contact the undersigned should you have any questions or comments with respect to the matters discussed above.

Very truly yours,

MATSUBARA, KOTAKE & TABATA



Curtis T. Tabata

cc: Robinson Family Partners
Mr. Scott Glenn, Director, Office of Planning and Sustainable Development, State of Hawai`i
Mr. Ka`āina S. Hull, Director, Planning Department, County of Kaua`i
Alison Kato, Esq., Deputy Attorney General
Matthew M. Bracken, Esq., Kaua`i County Attorney

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September 5, 2024

**VIA E-MAIL & U.S. MAIL**

Mr. Daniel E. Orodenker, Executive Officer
Land Use Commission, State of Hawai`i
P.O. Box 2359
Honolulu, Hawai`i 96804

Re: Annual Report to the Land Use Commission - Destination Villages Kauai, A Limited Liability Company; LUC Docket No. A00-731

Dear Mr. Orodenker:

Pursuant to Condition No. 25 of the Findings of Fact, Conclusions of Law, and Decision, and Order ("Decision and Order") of the Land Use Commission ("Commission") in the above-entitled docket, the landowners of the petition area in the above-entitled docket hereby submit the annual report for the year 2023, regarding the (1) general progress of the 250 resort units and accessory uses project within the approximately 153.696 acre petition area ("Project"), and the (2) status and progress toward compliance with the conditions imposed as set forth in the Decision and Order.

## 1. General Progress of the Project

The Decision and Order for the above-entitled docket was certified on April 6, 2001. Subsequently, the property was designated Resort by Kauai County Council action on the General Plan Update (Ordinance No. PM-2000-353, Bill No. 1953). Once the approvals related to the State Land Use District Boundary Amendment and County General Plan were obtained, major portions of the property (127.93 acres, more or less) were zoned RR-1 (Ordinance No. PM-2001-356, Bill No. 2004). The remainder of the property was zoned Open (25.77 acres, more or less). Recently the newly released West Kauai Regional Plan (approved by the Kauai County Council) designated the property as resort in keeping with its prior State LUC and Kauai GP designations.

Subsequent to the approval of the zoning amendment, on February 25, 2002, the Petitioner filed an application with the County of Kauai for three permits ("final County zoning permits"): (1) Special Management Area Use Permit; (2) Project Development Use Permit; and (3) Class IV Zoning Permit. These three permits represent the final discretionary permits required for the proposed resort by the County of Kauai. The permits were approved by the Kauai Planning Commission on May 28, 2002.

Following the approval of the County of Kauai permits, the Project had progressed in good faith with developers by accomplishing studies and milestones at considerable expense in compliance with entitlements. The Project's progress continued for approximately five (5) years until the Project unfortunately experienced a temporary delay that was prompted by the downturn in the economy.

In 2007, the administration of the project reverted to the landowners of the petition area who include the Robinson Family Partners and Bruce Robinson.

On July 1, 2013, the landowners entered into a letter of intent with a prospective developer to lease and develop the Project. The prospective developer had been actively conducting extensive due diligence, including the preparation of a site plan with an emphasis on protecting the natural landscapes, architectural design, landscaping design, and civil engineering. The prospective developer has incurred extensive pre-construction expenses in excess of one million dollars, including expenses relating to landscape design, architecture, survey work, engineering, legal fees and administrative expenses. Unfortunately in 2019 the prospective developer passes away and his family canceled the letter of intent for the project.

Bruce Robinson has leased his interest in the land to the Robinson Family Partners, and Robinson Family Partners has entered into an agreement with Kerzner International to develop the Project. Kerzner is conducting the initial stages of planning and regulatory review. The developer is actively conducting due diligence for the Project, including the preparation of a revised site plan with an emphasis on protecting the natural landscapes, architectural design, landscaping design, and civil engineering. The SMA (Major) Use Permit expired in 2008 and the developer will be preparing and filing an application for a new SMA (Major) Use Permit and applicable County permits.

2. **Progress in Complying with Conditions Imposed**

**Condition No. 1:**

"1. Petitioner shall provide affordable housing opportunities for residents of the State of Hawaii to include employees of the proposed resort in accordance with applicable affordable housing requirements of the County of Kauai. The location and distribution of the affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and the County of Kaua`i."

**Status:**

In May 2024, the developer consulted with the County Housing Agency to confirm the affordable housing requirements for the Project. The County Housing Agency determined the housing condition set out in PM-2001-356 was not fully satisfied as of the enactment of Ordinance 860 (Chapter 7A, Housing Policy for the County of Kaua'i, November 20, 2007) and the County has not agreed to specific means of satisfying the requirement through an executed affordable housing agreement, and the Project is subject to reassessment under Chapter 7A (Exhibit I of the application). As the developer proceeds with the Project, the developer will continue to consult with the County Housing Agency and execute an affordable housing agreement to meet the requirements of Chapter 7A.

**Condition No. 2:**

"2. Petitioner shall design and construct drainage improvements requirements as a result of the development of the Property to the satisfaction of the Department of Health and the Commission on Water Resource Management of the State Department of Land and Natural Resources."

**Status:**

This condition will be implemented during review of construction documents for building permits. A grading and drainage plan will be prepared as part of the preparation of a revised site plan.

**Condition No. 3:**

"3. Petitioner shall conduct proper and regular maintenance of the existing streambeds and the proposed grass-lined channel which is essential to ensure maximum flood protection for the project as may be required by the County Department of Public Works. In addition, Petitioner shall institute Best Management Practices in the design of the drainage system to reduce the potential for sediments and other pollutants to reach the ocean and on-site streams as may be required by the County of Kaua`i and/or the State of Hawai`i."

**Status:**

This condition will be documented during preparation and review of construction documents for grading permits, once final zoning permits are granted by the County of Kaua`i.

**Condition No. 4:**

"4. Petitioner shall locate all building construction mauka of the Hurricane Iniki inundation line and shall mitigate flood hazards as shown on Petitioner's Exhibit No. 32 to the satisfaction of appropriate Federal, State and County agencies."

**Status:**

As the developer proceeds with the Project, the developer's revised site plan will ensure building construction is mauka of the Hurricane Iniki inundation line. Construction drawings will deal with specific flood hazard requirements (County and Federal) for each affected structure, when application are submitted for building permits.

**Condition No. 5:**

"5. Petitioner shall provide adequate water source facilities and improvements to accommodate the proposed Project. Water source facilities and improvements shall be coordinated and approved by the Commission on Water Resource Management of the State Department of Land and Natural Resources."

**Status:**

The Petitioner has identified off-site water source facilities and improvements to support the Project. The testing and construction plans for offsite water source facilities and improvements will be submitted to the Commission on Water Resource Management for approval.

**Condition No. 6:**

"6. Petitioner shall provide adequate wastewater treatment, transmission and disposal facilities as determined by the State Department of Health."

**Status:**

DOH will have oversight for construction plans pertaining to the design of the on-site wastewater treatment plant and other facilities. These plans will be prepared as part of the submittal of construction drawings for building permits.

**Condition No. 7:**

"7. Petitioner shall fund and construct adequate civil defense measures as determined by the State of Hawai`i Department of Defense, Office of Civil Defense."

**Status:**

Design and location of required civil defense facilities will be coordinated with the State Department of Defense prior to submittal of building permits.

**Condition No. 8:**

"8. To ensure that the proposed land uses will not adversely impact endangered species and environmentally sensitive areas such as wetlands, ponds, or streams, the Petitioner shall consult with the appropriate Federal and State agencies whenever, in the course of developing the proposed project, it reasonably appears that an endangered specie or sensitive area may be affected by a particular development activity."

**Status:**

Appropriate consultations will occur when necessary. Primary agencies of responsibility are the U.S. Fish and Wildlife Service and DLNR Division of Forestry and Wildlife.

**Condition No. 9:**

"9. Should any previously unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, Petitioner shall stop work in the immediate vicinity and the State Historic Preservation Division of the Department of Land and Natural Resources (SHPD) shall be notified immediately. The significance of these finds shall then be determined and approved by the SHPD. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to their satisfaction."

**Status:**

Development contractors will be made aware of requirements prior to commencement of construction activities. Archaeological monitoring will be required in sensitive areas during construction. An Archaeological Monitoring Plan has been prepared and accepted by SHPD (Log No. 2006.0855). Should any unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, SHPD will be notified

immediately. As the developer proceeds with the Project, the developer will re-engage consultation with SHPD in compliance with this condition.

**Condition No. 10:**

"10. Petitioner shall follow the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD) recommendations for mitigation of impacts resulting from the development and for archaeological data recovery and preservation. An archaeological data recovery plan (scope of work) must be approved by the SHPD. That plan must then be successfully executed (to be verified in writing by SHPD) prior to any grading, clearing, grubbing or other land alteration in these areas. A preservation plan must also be approved by SHPD. This plan, or minimally its interim protection plan phase, must be successfully executed (to be verified in writing by SHPD) prior to any grading clearing, grubbing or other land alteration in these areas."

**Status:**

A Preservation Plan (Log No. 2006.1191) and Architectural Historic Structures Report (Log No. 2010.2389) have been prepared and submitted to SHPD for review and approval. As the developer proceeds with the Project, the developer will reengage consultation with SHPD in compliance with this condition.

**Condition No. 11:**

"11. Petitioner shall implement efficient soil erosion and dust control measures during and after the development process to the satisfaction of the State Department of Health."

**Status:**

Grading plans will include soil erosion and dust control measures. These plans will be prepared as part of the submittal of construction drawings for building permits.

**Condition No. 12:**

"12. Petitioner shall participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed development in designs and schedules accepted and determined by the State Department of Transportation (DOT). Agreement between the Petitioner and the DOT as to the level of funding and participation shall be obtained prior to the Petitioner acquiring County zoning or prior to building permits if county zoning is not required."

**Status:**

Petitioner has coordinated these requirements with State DOT Highways Division per Exhibit O of the application submitted for final zoning permits. In addition, Petitioner must confirm whether DOT will require Petitioner to pay for access to the State Highway (Kaumualii Highway). Off-site construction plans have been completed for the Kaumualii Highway improvements. As the developer proceeds with the Project, the developer will re-engage consultation with State DOT Highways Division in compliance with this condition.

**Condition No. 13:**

"13. Petitioner, where feasible, shall use indigenous and water conserving plants and turf and incorporate the same into common area landscape planting."

**Status:**

The Petitioner has addressed this condition by preparing a conceptual landscape plan for the Project, which is included in the application submitted for final zoning permits as Exhibit J. Many native species are listed on the proposed landscape palette, as well as other species already found on the property that currently survive without irrigation. As the developer proceeds with the Project, the developer will submit a revised conceptual landscape plan in compliance with this condition.

**Condition No. 14:**

"14. Petitioner shall notify all prospective buyers of property of the potential odor, noise and dust pollution resulting from surrounding agricultural uses."

**Status:**

No sale of property has occurred to date. Should a sale in property occur, or be contemplated, prospective buyers will be notified of the potential odor, noise and dust pollution resulting from surrounding agricultural uses.

**Condition No. 15:**

"15. Building setback lines shall be established during the Zoning Amendment and SMA Permit approval process to ensure proper siting of the proposed buildings and structures to mitigate any adverse visual and/or environmental impacts."

**Status:**

The Kauai County Zoning Amendment Ordinance (Ordinance No. PM-2001-356, Bill No. 2004, Draft 2) has established specific setback and transition areas designed to mitigate visual and other impacts. These setbacks will be incorporated in the design of the revised site plan. The developer will be preparing and filing an application for a new SMA (Major) Use Permit.

**Condition No. 16:**

"16. Petitioner shall provide public pedestrian access to the shoreline and shall develop the public restroom facilities, vehicular access to Kaumualii Highway and shower and parking facilities substantially as represented by the Petitioner and as shown on Petitioner's Exhibit 53. The public facilities shall be built and maintained by

Petitioner, with twenty-four hour security. The duration and term of the public access to the shoreline and to the public facilities shall be coterminous with the term of Petitioner's Lease with the landowner."

**Status:**

Public facilities presented to the Land Use Commission as part of Petitioner's Exhibit 53 are included in the project site plan (Exhibit I of the application submitted for final zoning permits). A similar requirement has been established by the County of Kauai (Zoning Amendment Ordinance, Section 3(j)). As the developer proceeds with the Project, the developer's revised site plan will comply with this requirement

**Condition No. 17:**

"17. Petitioner shall dedicate a public easement to the State of Hawai`i for 99 years adequate and reasonable with respect to beach and surfing ingress and egress and shall develop public restroom and shower facilities, vehicular access to Kaumuali`i Highway and public parking facilities as described by the Petitioner and as shown on Petitioner's exhibit 53. The public facilities shall be built and maintained by Petitioner, with twenty-four security. It is the LUC's intent that the duration and term of the public access to the shoreline and to the public facilities shall be coterminous with the term of Petitioner's Lease with the landowner. The facility shall be developed in consultation with the appropriate state and county agencies and the surfing community."

**Status:**

Easement dedication shall occur prior to submittal of building permits. The term of the easement shall be coterminous with the term of the landowner's lease with the developer.

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"18. Petitioner shall provide public pedestrian access from the Project's proposed parking facility to the rock platform substantially as represented by the Petitioner and as shown on Petitioner's Exhibit 55. No structures or buildings shall be constructed closer than fifty (50) feet from the rock platform. The duration and term of the public access shall be coterminous with the term of Petitioner's Lease with the landowner."

**Status:**

Exhibit I of the application submitted for final zoning permits identifies pedestrian access to the rock platform. Kauai County has recognized the rock platform and its buffer zone, by creating a Special Treatment-Cultural District (O/ST-C) around it as part of the Zoning Amendment Ordinance (Ordinance No. PM-2001-356, Bill No. 2004, Draft 2). As the developer proceeds with the Project, the developer's revised site plan will comply with this requirement.

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"19. Relying on its earlier decision in Public Access Shoreline Hawaii v. Hawaii County Planning Commission, 79 Haw. 425, 903 P.2d 1.246 (1995), the Supreme Court in Ka Pa`akai o Ka`aina v. Land Use Commission, 94 Haw. 31, 46, 7 P3d 1068, 1083 (2000), declared that "to the extent feasible when granting a petition for reclassification of district boundaries," this Commission must "protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians." To satisfy that obligation, "[s]pecific considerations regarding the extent of customary and traditional practices and the impairment and feasible protection of those uses must first be made before a petition for a land use boundary change is granted." Id., 94 Haw. At 52, 7 P.3d at 1089. The Commission's findings of fact and conclusions of law in land use boundary change proceedings must therefore specify "(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; and (3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist." Id."

**Status:**

Petitioner acknowledges the meaning and intent of Condition No. 19.

**Condition No. 20:**

"20. There is some evidence of native Hawaiians' entry onto the property to gather and otherwise use it to exercise traditional and customary Hawaiian rights prior to the 1800s, particularly with respect to the fishpond. Native Hawaiian maka`ainana activity appears to have occurred only with the permission of the parcel's owners, after acquisition of the Property by Victoria Kamamalu. Accordingly and consistent with Petitioner's expressed willingness and commitment to restore, maintain, and operate the Kapalawai Fishpond as a Hawaiian fishpond, the Kapalawai Fishpond shall be restored, maintained, and operated in the manner consistent with traditional and customary Hawaiian practices as provided in P.A.S.H., supra., which the Commission finds to exist in the pond. Petitioner shall utilize recognized ancient Hawaiians [sic] pond experts such as Dr. Kikuchi and Professor Marion Kelly from the University of Hawaii, for guidance and assistance in the effort.

(a) Restoration shall proceed pursuant to a mitigation plan the Petitioner prepares and submits to the SHPD for review and approval prior to commencement of any restoration activity, and in accordance with the traditional and customary method described by Dr. Kikuchi, see Finding of Fact 109. Restoration shall be done deliberately and with sensitivity to the preservation of the fishpond and any marine and bird life at the site. Because large heavy- equipment could adversely affect the extant pond walls if the full weight of the vehicle is brought to bear on the wall, Petitioner shall make every effort to avoid using such equipment in the pond's restoration. The pohaku on which the fishpond's legendary mo`o wahine is said to have sat will be retrieved from the debris, and it shall be re-placed and preserved in the

place at its legendary location before restoration work begins. The public shall have access to the Kapalawai Fishpond to observe its restoration by traditional and cultural native Hawaiian means.

(b) Petitioner shall establish a management plan for the maintenance and operation of the fishpond which is consistent with traditional and customary historic Hawaiian practices. It shall include provisions for sharing fish harvested from the fishpond, for educating the fishpond's caretakers and Petitioner's staff about Hawaiian fishponds and the Kapalawai Fishpond in particular, and for training fishpond caretakers in the traditional and customary Hawaiian practices for the maintenance and operation of the fishpond. The management plan shall also include provision for a fishpond management entity composed of a representative from the Petitioner and a representative from the West Kaua`i Hawaiian community to be selected by the Hawaiian community. This entity shall manage all aspects of the pond's use and utilization as a natural resource including harvesting, water use, and visitor access. This entity shall be responsible for the resolution of any dispute which may arise as to the management and operation of the Kapalawai Fishpond in accordance with traditional and customary Hawaiian practices. The selection of the management committee shall take place no later than six months after the approval of the SMA Permit. In addition, the plan shall include a process for the two members of the management entity to select a third member to overcome any stalemate. It is the intent of the Commission that as far as possible, Petitioner select individuals living in the West Kaua`i community who are familiar with the area and have a love for the `aina to maintain and operate the Kapalawai fishpond. The management plan shall remain in effect for the duration of the original term of the Petitioner's lease with the landowner. The Hawaiian gathering rights on the pond shall not be affected by the expiration or termination of the lease. It shall be a further condition of the Commission that Petitioner shall report back to the Commission within one year from the approval of the SMA permit on the understanding that the Commission reserves the power and authority to amend the condition herein to better operate the management committee.

(c) Further, no Project building or structure shall be constructed closer than one hundred (100) feet from the fishpond. Every effort shall also be made to prevent the contamination of the fishpond during the construction and operation of the Project due to water and waste runoff, the operation of pumps or other machinery in the area, and human access and habitation."

**Status:**

Initial consultation with Dr. Kikuchi concluded that the current condition of the fishpond could not be improved without the assistance of mechanical equipment. In Dr. Kikuchi's letter report following a site inspection in November 2001, he endorsed the use of an excavator within the pond, based on an immediate need for gross vegetation clearance, economic considerations, and the need for speed in completing the job. SHPD, the County of Kauai Planning Department, and the U.S. Army Corps of Engineers approved this approach to the first step of pond clearance. At this date, no activities have commenced within the pond.

As clearing of the fishpond proceeds, the pohaku will be located, if it is still present, and preserved in place.

A Management Plan shall be prepared in conjunction with the appointment of a management entity. The management entity will be in place within 6 months of the approval of the forthcoming SMA (Major) Use Permit. The management entity was established on November 26, 2002.

All of the details of the management plan (including those details specified in LUC Condition #20b) will be implemented subsequent to the approval of the SMA Permit.

Exhibit I (Site plan) of the application submitted for final zoning permits package includes a 100-foot setback from the fishpond, which has been adopted as part of the zoning requirements established by the County Zoning Amendment Ordinance (Zoning district Open/Special Treatment-Cultural). As the developer proceeds with the Project, the developer's revised site plan will comply with this requirement.

**Condition No. 21:**

"21. Petitioner acknowledges and agrees that it has no vested interest or right to develop the Petition Area, as reclassified, until Petitioner has substantially complied with the representations it made to the Commission. Petitioner waives any claims for liability against the State arising from any reversion of the Petition Area."

**Status:**

Petitioner acknowledges the meaning and intent of Condition No. 21.

**Condition No. 22:**

"22. Petitioner shall develop the Petition Area in substantial compliance with the representations made by the Petitioner to the Commission, including but not limited to the representation that the Project shall be limited to a 250 visitor unit density with existing and accessory uses as proposed in its Petition. Failure to do so for any reason, including economic feasibility, may result in the imposition of fines as provided by law, removal of improvements by Petitioner at Petitioner's own expense, reversion of the Petition area to its former condition by Petitioner at Petitioner's own expense, reversion of the Petition Area to its former classification, or a change to a more appropriate classification, or any other legal remedies."

**Status:**

The Petitioner has consistently maintained a desire to adhere to a 250 visitor unit limit, subject to any future motion to amend that may seek to change the unit count. This restriction is now part of the records of approval for both the Commission and Kauai County (Zoning Amendment Ordinance, Section 3(h)(i)), and is reflected in the most current site plan (dated April 6, 2004) submitted to the County Planning Department for approval. As the developer proceeds with the Project, the developer's revised site plan will comply with this requirement.

**Condition No. 23:**

"23. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to the development of the Property. The decision herein, including the conditions imposed on Petitioner, shall be binding on Petitioner's successors and assigns according to law."

**Status:**

Gay & Robinson, Inc. transferred the last of its ownership interest in the Property to Robinson Family Partners in 2001. The remaining owners of the Property are Robinson Family Partners and Bruce Robinson, and Bruce Robinson has leased his interest in the land to Robinson Family Partners.

**Condition No. 24:**

"24. Petitioner shall timely provide, without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Kauai Planning Department, in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission."

**Status:**

The Petitioner will comply with this condition.

**Condition No. 25:**

"25. The Commission may fully or partially release the conditions provided herein, as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner."

**Status:**

To date, there has been no need for full or partial release from any of the conditions included as part of the April 6, 2001 Decision and Order.

**Condition No. 26:**

"26. Within seven days of the issuance of Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances, a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission."

**Status:**

Petitioner recorded a statement with the Bureau of Conveyances that the property is subject to conditions imposed by the Commission on April 17, 2001 as Doc. No. 2001-054811.

**Condition No. 27:**

"27. Petitioner shall record conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules."

**Status:**

Petitioner recorded the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawaii Administrative Rules, on June 14, 2001, as Doc. No. 2001-089516.

Please do not hesitate to contact the undersigned should you have any questions or comments with respect to the matters discussed above.

Very truly yours,

MATSUBARA, KOTAKE & TABATA

Curtis T. Tabata

Curtis T. Tabata

cc: Robinson Family Partners
Ms. Mary Alice Evans, Director, Office of Planning and Sustainable Development, State of Hawai`i
Mr. Ka`āina S. Hull, Director, Planning Department, County of Kaua`i
Alison Kato, Esq., Deputy Attorney General
Matthew M. Bracken, Esq., Kaua`i County Attorney

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

November 13, 2015

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No: 14KD-169
Kauai

Amend Prior Board Action of July 10, 2015, Item D-3, Sale of Old Government Road Remnant to Robinson Family Partners, por. of Makaweli, Waimea, Kauai, Tax Map Key: (4) 1-7-005:por. 001. The purpose of the amendment is to include the issuance of a right-of-entry permit to Robinson Family Partners, its consultants, contractors, and persons acting on its behalf, for site visit and survey purposes.

BACKGROUND:

At its meeting on July 10, 2015, under Item D-3, the board approved the sale of old government road remnant to Robinson Family Partners, por. of Makaweli, Waimea, Kauai. See Exhibit A.

As part of the applicant requirements, an appraisal is required to determine the one-time fair market value for the remnant. Since this process is taking longer than anticipated, applicant is requesting an immediate right-of-entry permit to conduct surveys on the remnant.

Applicant, its consultants and contractors would like to conduct a preliminary site visit and survey of the remnant. This will assist them in drafting a landscaping plan for entry points and a buffer zone between the current Kaumualii Highway and the proposed Kapalawai Resort, which will ultimately incorporate this remnant parcel. The right-of-entry permit will not allow any construction or site work on the remnant.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exhibit B.

REMARKS:

Prior Board approval did not include a right-of-entry permit. Staff recommends an immediate right-of-entry permit over subject parcel for site visit and survey purposes, which will expire upon execution of sale of remnant parcel to Robinson Family Partners. No construction or site work will be permitted under the right-of-entry.

RECOMMENDATION: That the Board:

I. Amend its prior Board action of July 10, 2015, under agenda item D-3, by adding a new paragraph 5 at the end of the Recommendation section:

5. Authorize the issuance of an immediate right-of-entry permit to the Robinson Family Partners, its consultants, contractors and persons acting on its behalf, covering the subject lands under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

a. The Standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;

b. Right-of-entry permit will expire upon execution of sale of remnant parcel to Robinson Family Partners; and

c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

II. All terms and conditions listed in its July 10, 2015 approval to remain the same.

Respectfully Submitted,

Marvin Mikasa
District Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D, Case, Chairperson

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

July 10, 2015

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 14KD-169

Kauai

Sale of Old Government Road Remnant to Robinson Family Partners, por. of Makaweli, Waimea, Kauai, Tax Map Key: (4) 1-7-005:por. 001.

APPLICANT:

Robinson Family Partners, a Hawaii general partnership.

LEGAL REFERENCE:

Section 171-52, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at por. of Makaweli, Waimea, Kauai identified by Tax Map Key: (4) 1-7-005, as shown on the attached map labeled Exhibit A.

AREA:

1.23 acres, more or less.

ZONING:

| | |
|---|---|
| State Land Use District: | Agriculture |
| County of Kauai CZO: | Agriculture |

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
July 10, 2015

D-3
EXHIBIT "A"

CURRENT USE STATUS:

Vacant and unencumbered.

CONSIDERATION:

One-time lump sum payment of fair market value to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. Subject lands are to be conveyed to abutting landowner(s) and will become privately owned land at that point.

DCCA VERIFICATION:

| | |
|---|---|
| Place of business registration confirmed: | YES |
| Registered business name confirmed: | YES |
| Applicant in good standing confirmed: | YES |

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1) Pay for an appraisal to determine the one-time payment of fair market value for the remnant and;
2) Consolidate the remnant with the Applicant's abutting property through the County subdivision process; and
3) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

Pursuant to section 171-52, HRS, a remnant is defined as "a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics." The subject parcel has been determined to be a remnant by this definition for the following reasons:

1) The parcel is a discontinued portion of an old government road.

Applicant in late 2012 applied to Department of Transportation, Highways Division (DOT-Highways), to purchase the road remnant assuming it was part of the old Kaumualii Highway before the highway was realigned.

On March 15, 2013, DOT-Highways wrote to the applicant explaining that a certificate of search was completed by DOT-Highways showing that the old government road remnant was acquired for the State of Hawaii through the Admissions Act. DOT-Highways determined that the remnant belongs to Department of Land and Natural Resources.[1] See Exhibits B & C.

Applicant is the owner of parcel (4) 1-7-005:006 (Parcel 6) as staff has confirmed by County of Kauai Real Property Tax Assessment website. Other abutting property to the subject remnant parcel includes parcel (4) 1-7-005:001 (Parcel 1), which is also owned by the applicant and is the planned future site of the Kapalawai Resort.

When the Kauai Belt Road project was completed, a portion of the new Kaumualii Highway dissected applicant's property, Parcel 6, and the adjoining property, Tax Map Key: (4) 1-7-005:002. This created an access situation for Parcel 1, which is separated from Kaumualii Highway by the highway remnant. See Exhibit D. Access to the planned Kapalwai Resort will need to cross the highway remnant.

Applicant Robinson Family Partners proposes to purchase the old government highway remnant and consolidate it into Parcel 6. This area will have two entrances to the resort and will landscape the remaining area between the highway and resort. See Exhibit E.

Kapalawai Resort is a planned 160-acre eco-tourist resort in Makaweli. Robinson Family Partners is leasing the land to Kapalawai Resort.

Robinson Family Partners has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Comments were solicited from the agencies identified below with the results indicated.

State Agencies:

| | |
|---|---|
| DOH | No environmental health concerns |
| DLNR – Historic Preserv. | No response by suspense date |
| OHA | Revenue reported in annual accounting of public land trust |
| DOT – Highways Div. | No objections |

1 At its meeting of March 23, 1984, Item D-4, the Board authorized DOT-Highways to sell a number of road remnants statewide. Although the subject remnant was not included on the approved list, Land Division staff believes the remnant is under the jurisdiction of DOT-Highways pursuant to applicable law. Nevertheless, in order to facilitate a resolution of this matter, Land Division staff will process this disposition, if approved.

County Agencies

| | |
|---|---|
| County Planning | No objections |
| Public Works | No comments |

Staff has no objections to the request.

RECOMMENDATION:

That the Board:

1. Find that the subject lands are economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics and, therefore, by definition is a remnant pursuant to Chapter 171, HRS.

2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (4) 1-7-005:001, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

3. Authorize the subdivision and consolidation of the subject remnant by the Applicant.

4. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the sale of the subject remnant to Robinson Family Partners covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

   a. The standard terms and conditions of the most current deed or grant (remnant) form, as may be amended from time to time;

   b. Review and approval by the Department of the Attorney General; and

   c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Marvin Mikasa
District Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D. Case, Chairperson

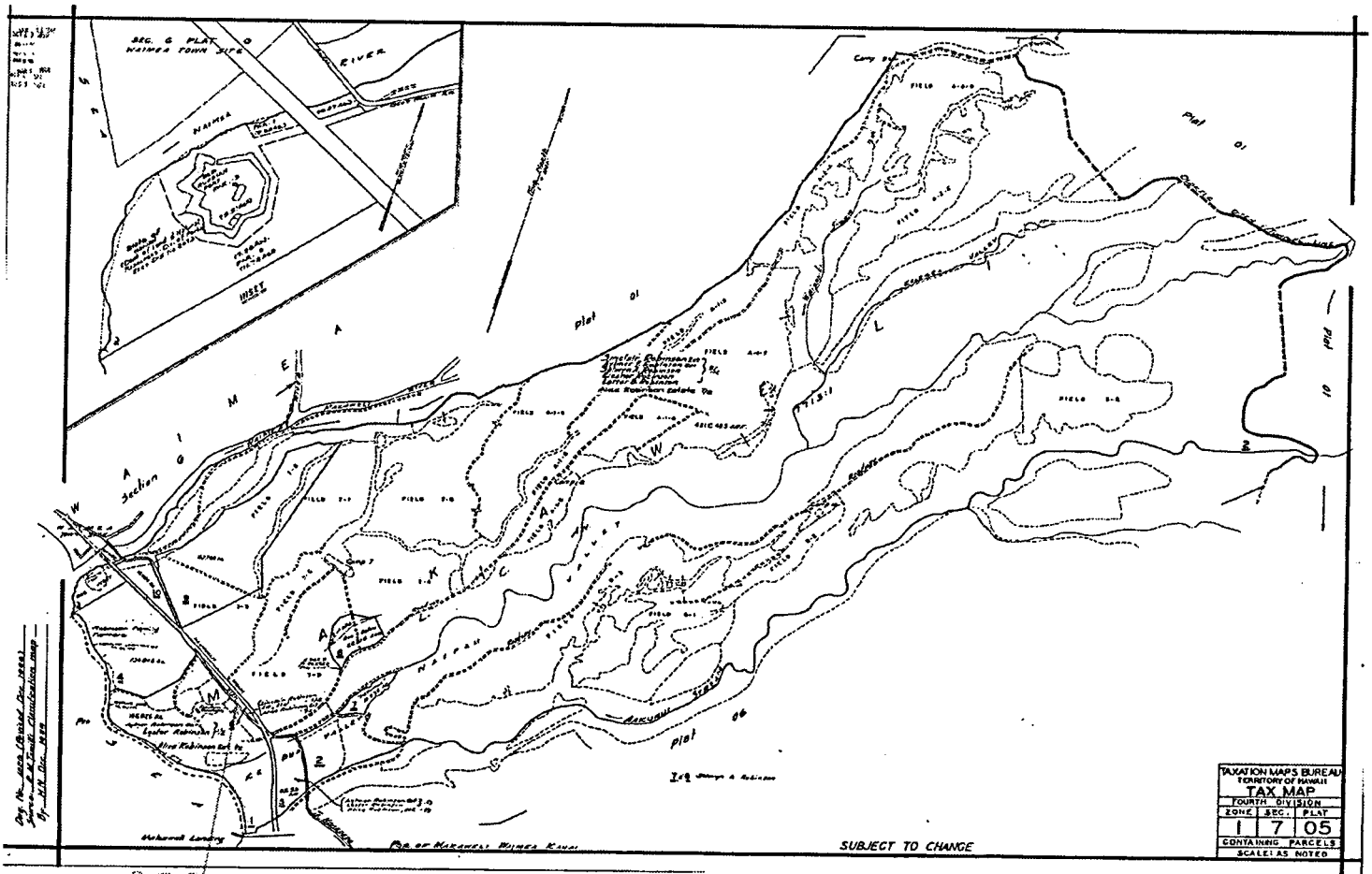
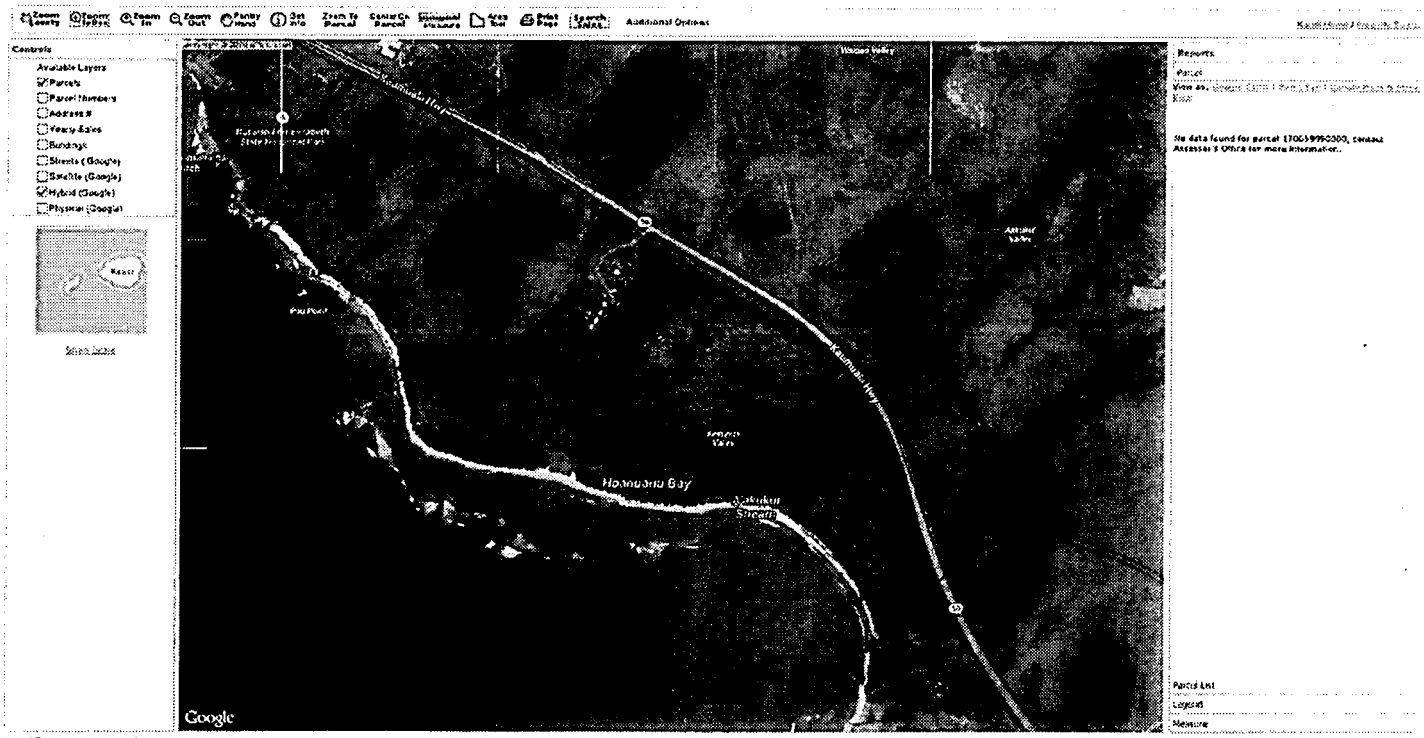

SEC. 6 PLAT
WAIMEA TOWN SITE
WAIMEA
RIVER
INSET
Plat 01
Plat 10
Plat 06
Section
Waimea Landing
SUBJECT TO CHANGE
TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP
FOURTH DIVISION
ZONE 1 | SEC. 7 | PLAT 05
CONTAINING PARCELS
SCALE: AS NOTED

EXHIBIT "A"




Kauai County makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll.

EXHIBIT "A"

NEIL ABERCROMBIE
GOVERNOR

HIGHWAY DIVISION BRANCH, ROOM 692A
BRIDGE DIVISION SECTION, ROOM 611
CADASTRAL DESIGN SECTION, ROOM 609
HIGHWAY DESIGN SECTION, ROOM 699
HYDRAULIC DESIGN SECTION, ROOM 696
TECHNICAL DESIGN SERVICE, ROOM 698
LANDSCAPE DESIGN SECTION, ROOM 699

RIGHT OF WAY BRANCH, ROOM 691

TRAFFIC BRANCH, ROOM 603

MOTOR VEHICLE SAFETY OFFICE, ROOM 511

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION AT KAPOLEI
601 KAMOKILA BOULEVARD
KAPOLEI, HAWAII 96707

GLENN M. OKIMOTO
DIRECTOR

DEPUTY DIRECTORS
JADE T. BUTAY
LORD N. FUCHIGAMI
HANDY GRUNE
JADINE URASAKI

IN REPLY REFER TO
HWY-RM
3.90057

March 15, 2013

Mr. Charles Okamoto
Robinson Family Partners

Kaumakani, Hawaii 96747

Dear Mr. Okamoto:

Subject: Kaumualii Highway, Old Government Road
At Makaweli, Waimea, Kauai, Hawaii
TMKs: (4) 1-7-05:01, 02, 05, 06, 09 and 10, (4) 1-7-06:04, 06, 09 and 10
Request to Purchase Old Government Road

We regret to inform you that the processing of the sale of a portion of Old Government Road is being deferred to the Department of Land and Natural Resources. It was determined that the land belongs to DLNR and therefore would be the appropriate agency to process the sale.

Please contact Milo Spindt, Kauai District Land Agent at (808) 274-3491 for further information.

If you have any questions, please call me at (808) 692-7331 or you can email me at Katja.M.Jordan-King@Hawaii.Gov .

Very truly yours,

Katja Jordan-King

KATJA M. JORDAN-KING
Right-of-Way Agent
Property Management

EXHIBIT "B"

265-B

CERTIFICATE OF SEARCH

Dated February 22, 2012

FAP F-29(4)
KAUAI BELT ROAD
(Makaweli Section)

TAX KEYS: 1-7-05-portion of
Old Government Road and
1-7-06-portion of
Old Government Road

PORTIONS OF OLD GOVERNMENT ROAD RUNNING THROUGH
ROYAL PATENT NO. 4476, LAND COMMISSION AWARD NO. 7713,
APANA 1 TO V. KAMAMALU,
SITUATE AT MAKAWELI, DISTRICT OF WAIMEA,
ISLAND AND COUNTY OF KAUAI,
STATE OF HAWAII

STATE OF HAWAII

LIENS and/or ENCUMBRANCES: NONE

Request by K. Jordan-King dated 5/31/12 - Job No. 12-035-CS

EXHIBIT "C"

THIS IS TO CERTIFY that we have carefully examined the INDICES and RECORDS of the Public Lands Office and the Bureau of Conveyances of the Department of Land and Natural Resources, both at Honolulu, City and County of Honolulu, State of Hawaii, with reference to the title of

STATE OF HAWAII

All of that certain parcel of land situate at Makaweli, District of Waimea, Island and County of Kauai, State of Hawaii, described as follows:

PORTIONS OF AREA HIGHLIGHTED IN YELLOW AS SHOWN ON TAX MAPS 1-7-05 (Page 4) and 1-7-06 (Page 5)

(NOTE: As of July 5, 2012, no right-of-way map provided to HWY-RA. No area given for area highlighted in yellow. Search based on area highlighted in yellow as shown on pages 4-5, as provided by Katja Jordan-King, HWY-RM.)

Being portion of the government road running through Royal Patent Grant No. 4476, Land Commission Award No. 7713, Apana 1 to V. Kamamalu,

Being a portion of the land transferred to the STATE OF HAWAII by operation of Section 5(b) of the Admission Act (Act of March 18, 1959, Public Law 86-3, 73 Stat. 4).

NOTE: Registered Map 2246, dated 1891, "Map of Kauai Compiled from Government Surveys and Private Surveys of Lands belonging to Gay and Robinson", survey and map done by L. E. Imlay, shows said road in existence at that time.

No conveyance found of record to the City and County of Honolulu.

AND WE CERTIFY that there are no liens and/or encumbrances appearing of record of whatsoever kind or nature affecting the title at this time.

WE FURTHER CERTIFY that title to the premises herein described is in the said

STATE OF HAWAII

all as shown by said INDICES and RECORDS.

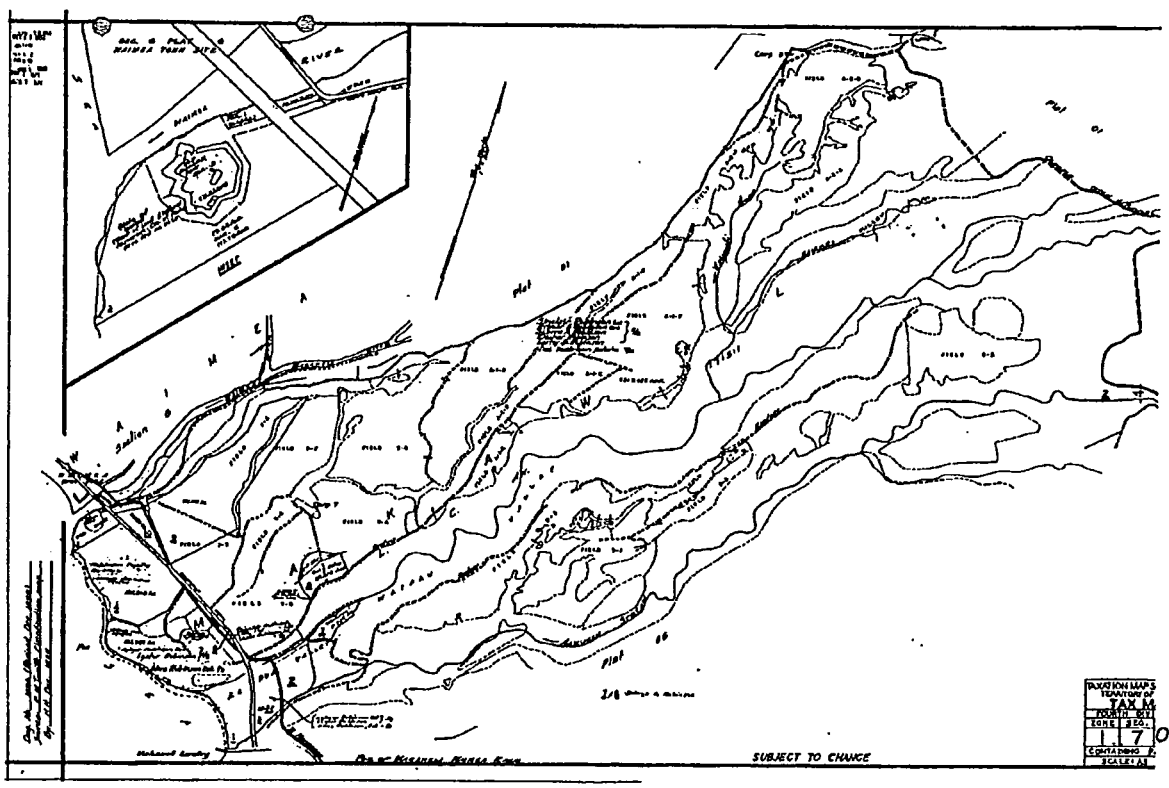
DATED at Honolulu, City and County of Honolulu, State of Hawaii, this 22nd day of January A.D. 2012, at 3:29 o'clock p.m.

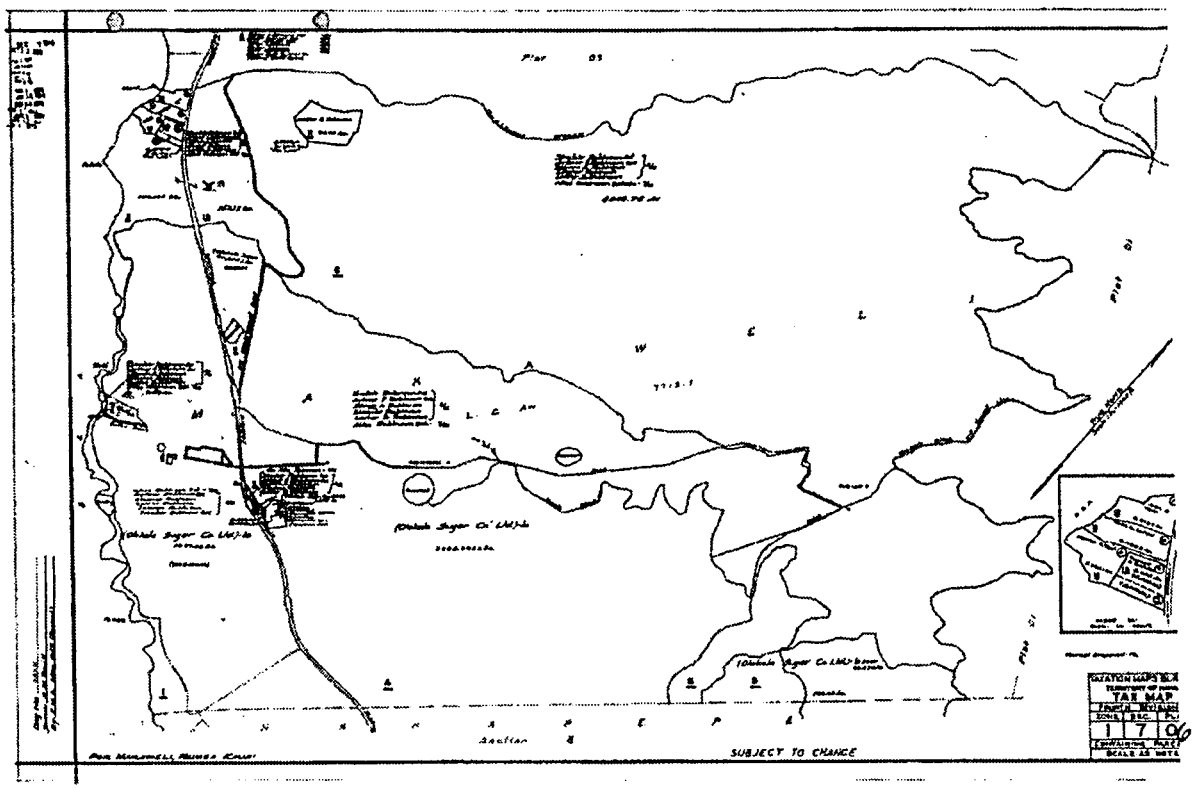
ABSTRACTING SECTION
STATE DEPARTMENT OF TRANSPORTATION

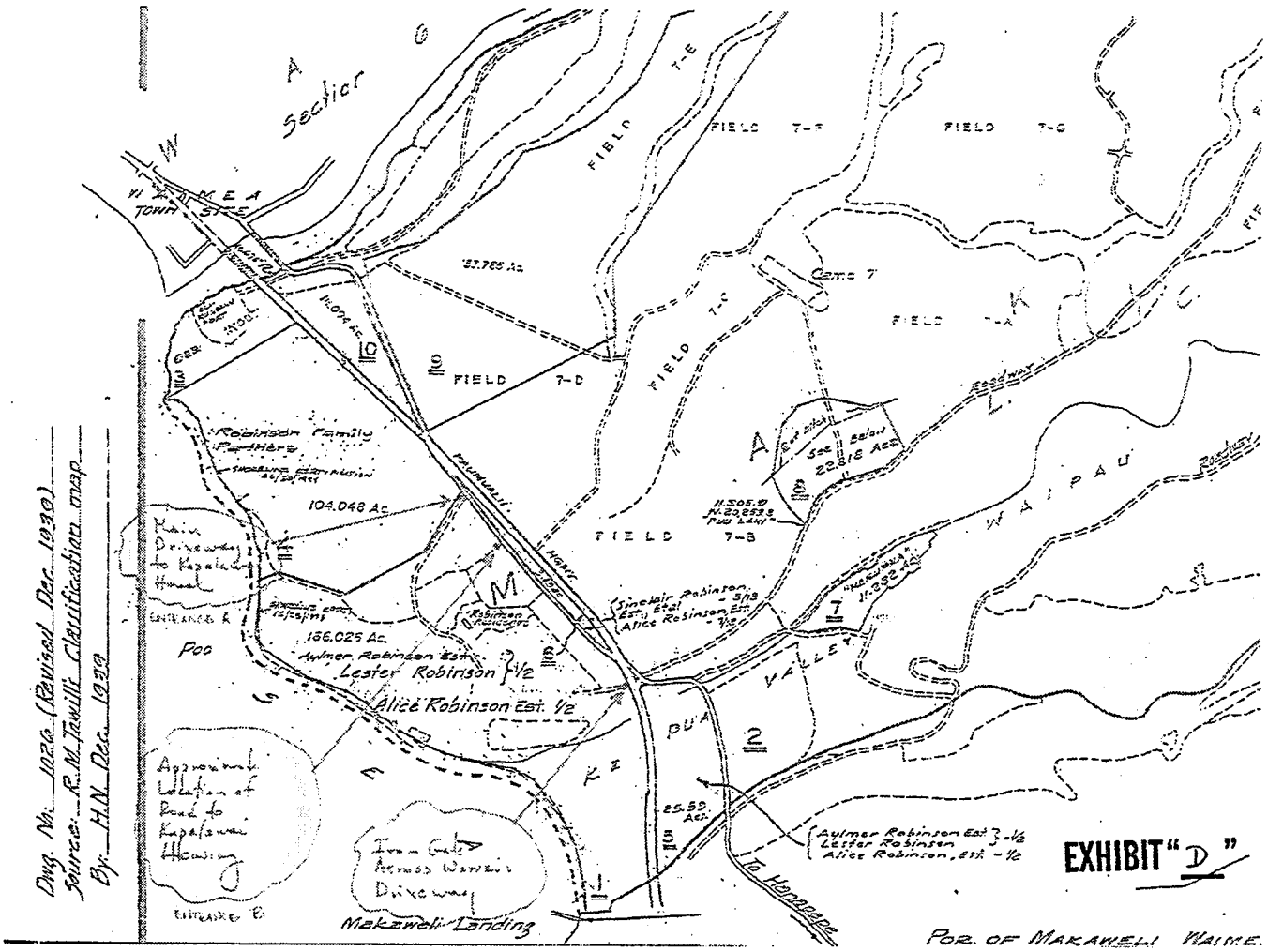
By Charla al Santiago

TK/tk

The foregoing Certificate of Search and any further Continuation(s) thereto, are for the exclusive use of the State of Hawaii, its Department of Transportation, and shall not be relied upon by any person or corporation, individually or collectively.


SUBJECT TO CHANGE
TAX MAP
ZONE
SEC.
05


TAX MAP
SUBJECT TO CHANGE




Dwg. No. 1026 (Revised Dec. 1990)
Source: R.M. Towill Classification map
By: H.N. Dec. 1990

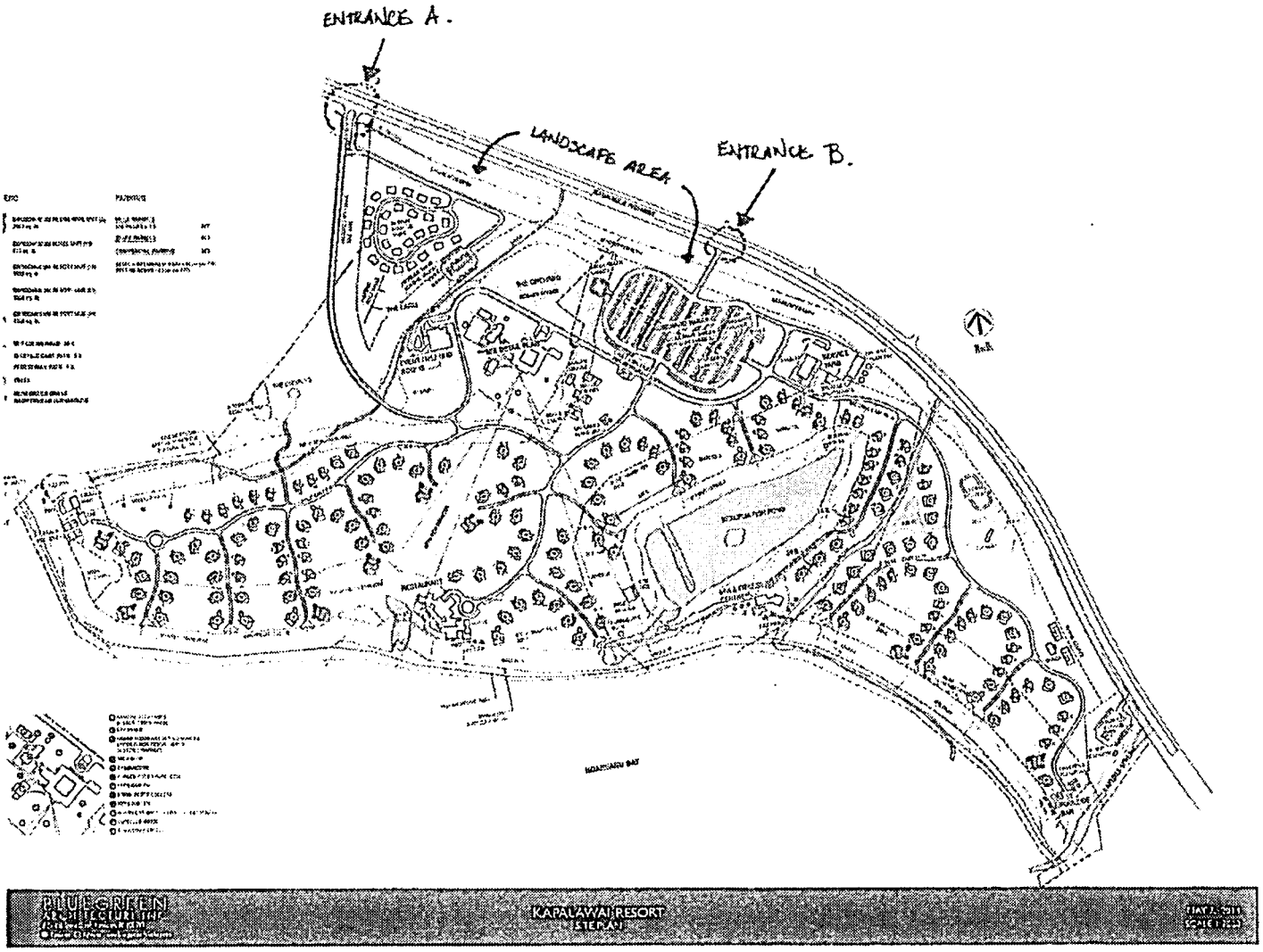
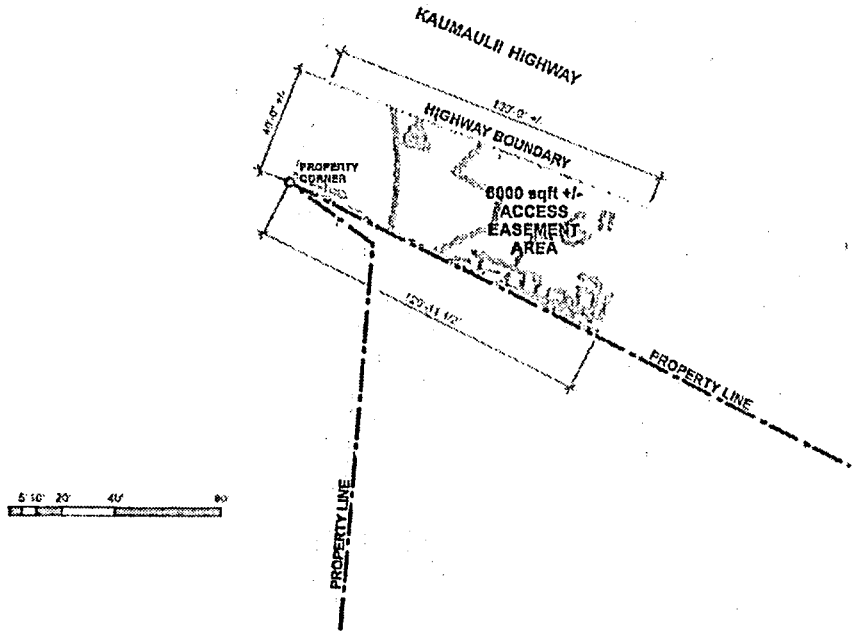
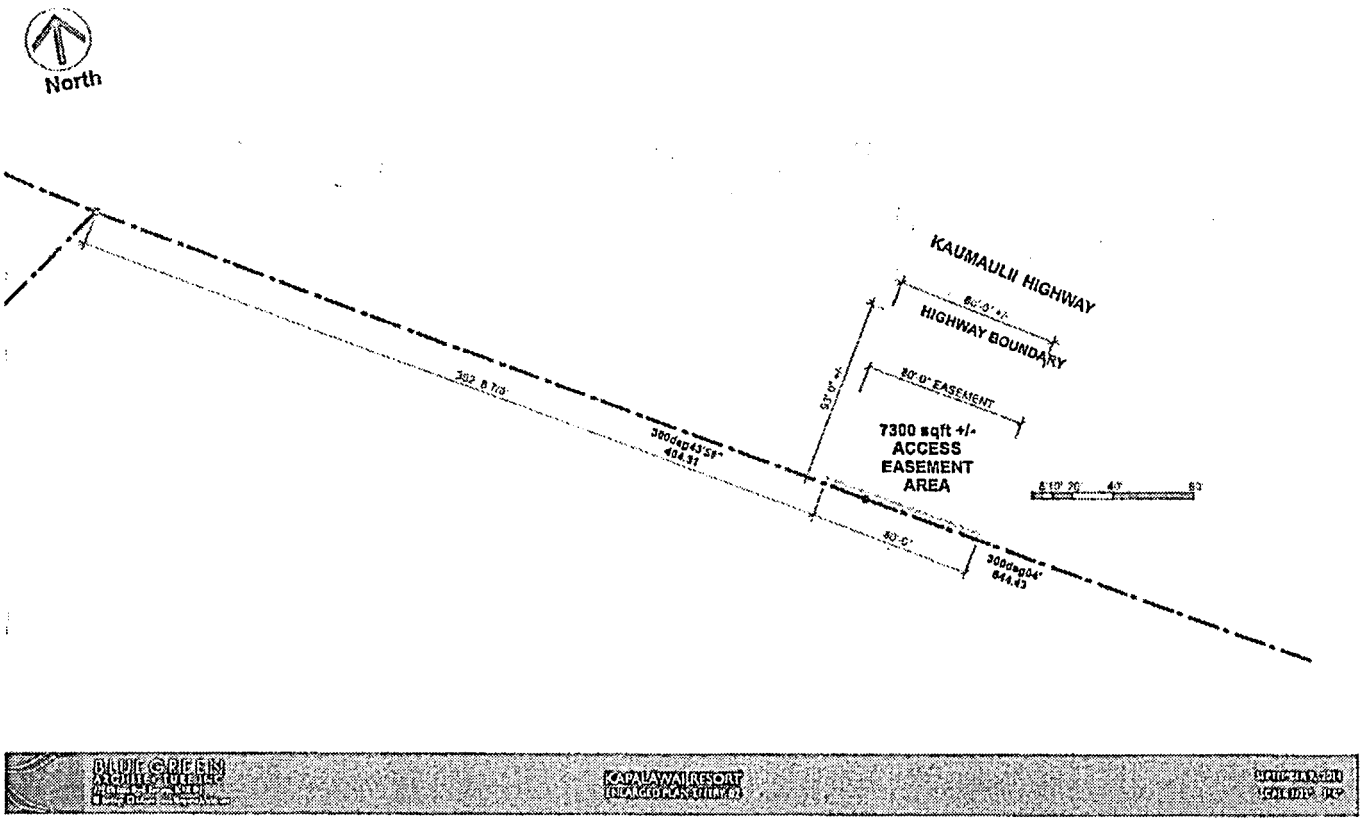

ENTRANCE A.
LANDSCAPE AREA
ENTRANCE B.
KAPALAWAI RESORT
STEPAN

**EXHIBIT "E"**

North




ENTRANCE A.


North
KAUMAULII HIGHWAY
HIGHWAY BOUNDARY
80'-0" EASEMENT
7300 sqft +/-
ACCESS
EASEMENT
AREA
300deg04'
644.43
80'-0"

ENTRANCE 'B'

DAVID Y. IGE
GOVERNOR OF HAWAII

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

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON
DEPUTY DIRECTOR - WATER

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

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

November 13, 2015

DECLARATION OF EXEMPTION FROM THE PREPARATION OF AN ENVIRONMENTAL ASSESSMENT UNDER THE AUTHORITY OF CHAPTER 343, HRS AND CHAPTER 11-200 HAR, FOR RIGHT-OF-ENTRY PERMIT TO ROBINSON FAMILY PARTNERS FOR ACCESS PURPOSES UNDER PSF NO. 14KD-169

The following permitted activities are found to be exempted from preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR:

Project Title:
Amend Prior Board Action of July 10, 2015, item D-3, Sale of Old Government Road Remnant to Robinson Family Partners. The purpose of the amendment is to include the issuance of a right-of-entry permit to Robinson Family Partners, its consultants, contractors, and persons acting on its behalf, for site visit and survey purposes.

PSF Number: 14KD-169

Project Description:
Applicant is the owner of parcel (4) 1-7-005:006 (Parcel 6) as staff has confirmed by County of Kauai Real Property Tax Assessment website. Other abutting property to the subject remnant parcel includes parcel (4) 1-7-005:001 (Parcel 1), which is also owned by the applicant and is the planned future site of the Kapalawai Resort.

When the Kauai Belt Road project was completed, a portion of the new Kaumualii Highway dissected applicant's property, Parcel 6, and the adjoining property, Tax Map Key: (4) 1-7-005:002. This created an access situation for Parcel 1, which is separated from Kaumualii Highway by the highway remnant. See Exhibit D. Access to the planned Kapalwai Resort will need to cross the highway remnant.

Applicant Robinson Family Partners proposes to purchase the old government highway remnant and consolidate it into Parcel 6. Applicant requests the issuance of a right-of-entry permit to Robinson Family Partners, its consultants, contractors, and persons acting on its behalf, for site visit and survey purposes. No construction or site work will be permitted under the right-of-entry.

The applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

**EXHIBIT B**

Exemption Determination:
After reviewing HAR § 11-200-(8), DLNR has concluded that the activities under this permit would have minimal or no significant effect on the environment and that issuance of the permit is categorically exempt from the requirement to prepare an environmental assessment.

According to the Exemption List for the Department of Land and Natural Resources, as Reviewed approved by the Environmental Council on June 5, 2015, Exemption Class No.1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing [HAR § 11-200-8(a)(46)]".

Conclusion:
It is recommended that the Board declare that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

Suzanne Case
Board of Land and Natural Resources

11/2/15
Date

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

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|---|---|
| In the Matter of the Petition of | DOCKET NO. A00-731 |
| DESTINATION VILLAGES KAUAI, A LIMITED LIABILITY COMPANY | FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER |
| To Amend The Agricultural Land Use Boundary Into the Urban Land Use District For Approximately 153.696 Acres Of Land At Makaweli, island of Kaua`i, State of Hawai`i, TMK 1-7-05: por. 1 | |

LAND USE COMMISSION
STATE OF HAWAII
2001 APR -6 A 7:29

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

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| In the Matter of the Petition of<br><br>DESTINATION VILLAGES KAUAI, A LIMITED LIABILITY COMPANY<br><br>To Amend The Agricultural Land Use Boundary Into the Urban Land Use District For Approximately 153.696 Acres Of Land At Makaweli, island of Kaua`i, State of Hawai`i, TMK 1-7-05: por. 1 | DOCKET NO. A00-731<br><br>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER |

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

DESTINATION VILLAGES KAUAI, A LIMITED LIABILITY COMPANY ("Petitioner"), filed a Petition for Land Use District Boundary Amendment on April 10, 2000; a First Amendment to Petition for Land Use District Boundary Amendment on May 1, 2000; a Second Amendment to Petition for Land Use District Boundary Amendment on June 5, 2000; a Third Amendment to Petition for Land Use District Boundary Amendment on June 20, 2000; and a Fourth Amendment to Petition for Land Use District Boundary Amendment on September 5, 2000, pursuant to chapter 205, Hawai`i Revised Statutes ("HRS"), and chapter 15-15, Hawai`i Administrative Rules ("HAR"), to amend the Agricultural Land Use District Boundary into the Urban Land Use District for approximately 153.696 acres at Makaweli, island of Kaua`i, State

of Hawai`i, identified as TMK 1-7-05: por. 1 ("Property" or Petition Area") for the development of a resort and accessory uses.

The Land Use Commission ("Commission" or "LUC"), having heard and examined the testimony, evidence, and argument of the parties, both written and oral, presented during the hearing held on July 20 and 21, 2000; September 14 and 15, 2000; and November 2, 2000, and having reviewed the Stipulated Proposed Findings of Fact, Conclusion of Law, Decision and Order, and the record herein, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. Petitioner filed a Petition for Land Use District Boundary Amendment on April 10, 2000; a First Amendment to Petition for Land Use District Boundary Amendment on May 1, 2000; a Second Amendment to Petition for Land Use District Boundary Amendment on June 5, 2000; a Third Amendment to Petition for Land Use District Boundary Amendment on June 20, 2000; and a Fourth Amendment to Petition for Land Use District Boundary Amendment on September 5, 2000 (collectively "Petition"), to amend the Agricultural Land Use Boundary into the Urban Land Use District for approximately 153.696 acres at

Makaweli, island of Kaua`i, State of Hawai`i, identified as TMK No. 1-7-05: por. 1.

2. Petitioner is a Hawai`i company, and its business address is 4439 Via Abrigada, Santa Barbara, California, 93110.

3. On May 31, 2000, the Office of Planning, State of Hawai`i ("Office of Planning" or "OP"), filed an Office Of Planning's Statement Of Position In Support Of The Petition, recommending approval of the Petition with conditions. On July 6, 2000, the OP filed the Office Of Planning's Testimony In Support Of The Petition, recommending approval of the Petition with conditions.

4. On June 5, 2000, the County of Kaua`i Planning Department ("Kaua`i Planning Department" or "PD") filed a Statement Of Position Of The Kauai County Planning Department In Support Of The Petition, recommending approval of the Petition, with conditions. On June 21, 2000, the PD filed the Testimony Of The Kauai County Planning Department In Support Of The Petition, recommending approval of the Petition with conditions.

5. On June 29, 2000, a pre-hearing conference was conducted in Conference Room 405 of the Leiopapa A Kamehameha Building, 235 South Beretania Street, Honolulu, Hawai`i, with representatives of Petitioner, the OP, and the PD present. A Stipulated Prehearing Order was entered into by and between all of the parties and filed with the LUC on July 26, 2000.

6. On June 30, 2000, Joseph Punilei Manini, Sr., filed a Petition for Intervention with the LUC. On July 13, 2000, Mr. Manini filed a letter requesting that his Petition for Intervention be withdrawn. On July 20, 2000, Mr. Manini's request for intervention and request for withdrawal were heard by the LUC with Mr. Manini and the parties being present at the hearing held in Koloa, Kaua`i, Hawai`i. Without objection from the parties, the LUC voted, on July 20, 2000, to grant Mr. Manini's request to withdraw his Petition for Intervention. The LUC filed the Order Granting Request To Withdraw Petition For Intervention on August 22, 2000.

7. On July 20, 2000, the LUC made a site visit to the Property.

8. On July 20, 2000, and July 21, 2000, the LUC conducted a hearing on the Petition in Koloa, Kaua`i, Hawai`i, pursuant to a notice published in Midweek Hawaii State And County Public Notices on May 15, 2000.

9. Entering appearances at the July 20, 2000, and July 21, 2000, hearings were Michael J. Belles, Esq., and Scott Ezer for Petitioner; Sanjay Bhatt, Esq., and Keith Nitta for the PD; and Ann Ogata-Deal, Esq., Abe Mitsuda, and Lorene Maki for the OP.

10. On July 20, 2000, the LUC entered the following into evidence:

Memorandum dated May 12, 2000, from Linnel T. Nishioka, Deputy Director of the Commission on Water Resource Management.

Letter dated June 23, 2000, from Don Hibbard, Administrator of the State Historic Preservation Division ("SHPD").

Request to Intervene dated June 28, 2000, from Joseph Punilei Manini, Sr.

Request to Withdraw Intervention dated July 12, 2000, from Joseph Punilei Manini, Sr., and request to be a public witness.

Facsimile letter dated July 14, 2000, from Bruce Pleas requesting to testify.

Facsimile letter dated July 17, 2000, from Carol A. Furtado requesting to testify.

Facsimile letter dated July 18, 2000, from Vida N. Mossman and Monica A. Davis requesting to testify.

Facsimile testimony dated July 18, 2000, from Mark Nellis, President of the West Kaua`i Business & Professional Association.

Letter received on July 19, 2000, from Toni Looney.

Letter received on July 20, 2000, from John Isobe, Coordinator of the Kaua`i Rural Development Project.

Testimony received on July 20, 2000, from Carol A. Furtado.

Approximately 157 facsimile letters in opposition to the resort.

Testimony received on July 20, 2000, from Vida Kilauano Mossman.

Testimony received on July 20, 2000, from Monica Anohea Davis.

Testimony dated July 20, 2000, from David Walker.

Testimony dated July 20, 2000, from Mamo P. Cummings, President of the Kaua`i Chamber of Commerce.

Testimony dated July 20, 2000, from Owen Moe, President of the West Kauai Community Development Corporation.

Testimony dated July 19, 2000, from Linda Faye' Collins, President of the Kikiaola Land Company, Ltd.

Testimony dated July 20, 2000, from Kris Nakata, Executive Director of the Kauai Economic Development Board.

Testimony dated July 20, 2000, from Pam Parker, Ready to Learn Coordinator of the Kauai Economic Development Board.

11. On July 20, 2000, the following persons appeared and testified as public witnesses:

Joseph Punilei Manini, Sr.
Bruce Pleas
Carol A. Furtado
Ian Emberson
Beryl Blaich
Charles Okamoto
Vida N. Mossman
Monica Anohea Davis (by Vida Mossman)
Mark Nellis
Paul Matsunaga
Tsutomu Kojiri
Randall Uyehara
Juan Villalobas
Douglas Aviguatero
Jerry Lagazo
Cayetano Gerado
Lissa Dunford
Angie Chinen
James Pacopac
Cheryl Lovell-Obatake
Rob Swigart
Kaleo Ho'okano
David Walker
Sandra Makuaole

12. On July 21, 2000, the LUC entered the following into evidence:

Letter from Judy Dalton, Chair of the Sierra Club, Kaua`i Group of the Hawai`i Chapter.

Letter dated July 20, 2000, from Rachel Watarai.

Memo dated July 3, 2000, from the Kaua`i Historic Preservation Review Commission to the Planning Commission received from Bruce Pleas on July 21, 2000.

13. On July 21, 2000, the following persons appeared and testified as public witnesses:

Bill Blackburn (for John Isobe)
Bruce Pleas
Ross Barker
Alan Carveiro
James Bennett
Evelyn Baniaga
Clement Lum
Richard Lutao
Ron Kouchi
Charles Carveiro

14. On July 21, 2000, the hearing on the Petition was continued to September 14, 2000, and September 15, 2000.

15. On September 14, 2000, and September 15, 2000, the LUC continued its hearing on the Petition. Entering appearances were Michael J. Belles, Esq., and Scott Ezer for Petitioner; Laurel Loo, Esq., and Keith Nitta for the PD; and Ann Ogata-Deal, Esq., Abe Mitsuda, and Lorene Maki for the OP.

16. On September 14, 2000, the LUC entered the following into evidence:

Facsimile testimony dated July 18, 2000, from E. Kalani Flores.

Letter received on July 24, 2000, from Jim Kitamura.

Letter received on July 24, 2000, from Rob Swigart.

Letter dated July 20, 2000, from Richard S. Morris.

Letter received on August 1, 2000, from Barbara Guthrie.

Letter received on August 8, 2000, from Raymond, Jaclyn, and Cody Mierta.

Letter received on August 25, 2000, from Blair Goldberg.

Letter dated July 20, 2000, from Ken D. Bray.

Letter received on September 12, 2000, from Bruce Pleas.

Letter dated September 13, 2000, from Laure Dillon.

Approximately 95 facsimile letters in opposition to the resort.

17. On September 14, 2000, the following persons appeared and testified as public witnesses:

Joseph Punilei Manini, Sr.
Sunny Greer
Judy Naumu-Steward
Bruce Pleas
Don Heacock
Butch Kekahu
Cheryl Lovell-Obatake

18. On September 15, 2000, the hearing on the Petition was continued to November 2, 2000.

19. On November 2, 2000, the LUC continued its hearing on the Petition. Entering appearances were Michael J. Belles, Esq., and Scott Ezer for Petitioner; Laurel Loo, Esq.,

and Keith Nitta for the PD; and Ann Ogata-Deal, Esq., Abe Mitsuda, and Lorene Maki for the OP.

20. On November 2, 2000, the LUC entered the following into evidence:

Copy of September 6, 2000, written testimony from Joseph Punilei Manini, Sr., to the Kaua`i County Council.

Facsimile letter dated September 13, 2000, from Emily Allgaier.

Facsimile letter dated September 13, 2000, from Jeff Fishman.

Letter from Bruce Pleas on October 30, 2000, with 3 videotapes.

Letter dated November 1, 2000, from Puanani Rogers of Ho`okipa Network.

21. On November 2, 2000, the following persons appeared and testified as public witnesses:

Joseph Punilei Manini, Sr.
Bruce Pleas
Cheryl Lovell-Obatake
Puanani Rogers

22. On November 2, 2000, at the conclusion of the testimony, the LUC closed the hearing.

DESCRIPTION OF THE PROPERTY

23. The Property is located at Makaweli, island of Kaua`i, State of Hawai`i, containing a total area of approximately 153.696 acres, and more particularly identified by TMK 1-7-05: por. 1. The total area of parcel 1 is 166.026 acres. There is a strip of land mauka of the shoreline that is

within the State Land Use Conservation District. This strip of land will remain in the State Land Use Conservation District and is not included as part of the Petition Area.

24. The Property is located adjacent to Kaumuali`i Highway. The town of Waimea (population: 1,840) is located about ½ mile to the northwest. The town of Hanapepe (population: 1,400) is located about 2 miles to the southeast. The town of Kekaha (population: 3,500) is located about 4 miles to the northwest.

25. An ancient Hawaiian fishpond, approximately 6.5 acres in size, is located in the central portion of the Property.

26. The now vacant former residence of the Robinson Family, constructed in 1897, is the primary building located on the Property. Other buildings and structures accessory to the main house, which are contemporary to the main house, include a dwelling (former guesthouse), a carriage house, and employee's quarters (now used as an office building by Robinson Family Partners). The former guesthouse is currently occupied. In addition, eight plantation-era houses are located in the northwest corner of the Property, between the entry drive and the former Robinson Family residence. These homes were constructed for employees of the Robinson Family. Currently,

five of the plantation-era dwellings are still occupied. The Property was, until recently, used for the grazing of bulls.

27. The Property is owned by Robinson Family Partners; Gay & Robinson, Inc.; and Bruce Robinson ("Owners").

28. Petitioner has an option agreement with the Owners to develop the Property and has been authorized by the Owners to submit this Petition.

29. Kaumuali`i Highway is the main roadway serving the region.

30. The Property is generally flat and characterized by gentle slopes from the direction of Kaumuali`i Highway towards the ocean, ranging from approximately 4 percent at the highway to approximately 1 percent at the shoreline. Elevations on the Property range from about 44 feet above mean sea level ("AMSL") in the center of the Property at Kaumuali`i Highway to about 5 feet AMSL in the southern makai corner of the Property. The area between the Mohaikana Street and A`akukui Stream is generally flat, with elevations averaging approximately 7 feet to 8 feet AMSL.

31. The Property is located on the leeward side of Kaua`i, and as such the Property is located in a generally dry region that receives the least amount of rainfall on the island, averaging an annual rainfall rate of approximately 21 inches.

32. The Property consists of seven soil types:

Beaches (Bs)
Fill land (Fd)
Jaucas loamy fine sand (JfB)
Kekaha silty loam (KoA)
Makaweli silty clay loam (MgC)
Makaweli stony silty clay loam (MhC)
Nonopahu stony clay (NoC)

The three soil types that comprise over 80 percent of the Property are Fill land, Jaucas loamy fine sand, and Makaweli silty clay loam.

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| Fill land (Fd) | This land type consists mostly of areas filled with bagasse and slurry from sugar mills. A few areas are filled with material from dredging and from soil excavations. Generally, these materials are dumped and spread over marshed, low-lying areas along the coastal flats, coral sand, coral limestone, or areas shallow to bedrock. |
| Jaucas loamy fine sand (JfB) | The Jaucas series consists of excessively drained, calcareous soils that occur as narrow strips on coastal plains adjacent to the ocean. They developed in wind and water-deposited sand from coral and seashells. The loamy fine sand soil of this series has slopes of 0 to 8 percent. In terms of agricultural capability, these soils are classified as "IVs," which have severe limitations because of stoniness, shallowness, unfavorable texture, or low water-holding capacity. They are well drained to excessively drained and are more than 20 inches deep. |
| Makaweli silty clay loam (MgC) | The Makaweli series consists of well-drained soils on uplands on the island of Kaua`i. These soils developed in material weathered from basic igneous rock. This silty clay loam has slopes |

of 6 to 12 percent. Runoff is medium, and the erosion hazard is moderate. In terms of agricultural potential, if irrigated, these soils are classified as "IIIe," which are subject to severe erosion if they are cultivated and not protected. In most places, the soils are more than 20 inches deep.

33. The Land Study Bureau "Detailed Land Classification for the Island of Kauai" classifies the Property into two main categories: D and E, indicating poor to very poor suitability for agricultural use.

34. The State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) system which was developed to determine the relative agricultural importance of specific property identifies approximately 70 percent of the Property as "Other." The remaining 30 percent of the Property is identified as "Prime," and approximately half of the area designated as "Prime" consists of the compound defined by the main house, the accessory buildings, and the employee housing.

35. According to the flood insurance rate maps prepared by the Federal Emergency Management Association Federal Insurance Flood Map ("FEMA Maps"), portions of the Property are located in "AE", "VE," and "X" zones. In addition, the 100-year floodplain is based on the FEMA Maps, where areas designated "AE" and "VE" are subject to inundation. Both of these areas fall within "special flood hazard areas inundated by the 100-

year flood." Both zones also have base flood elevations determined. An area along the makai portion of the Property is within the AE zone, with a base flood elevation of 11 feet AMSL. A portion of the Property is affected by the AE zone, with base flood elevations of 9 feet AMSL. Another portion of the Property is affected by the VE zone, a coastal flood with wave velocity (tsunami). Base flood elevations in the area have been determined to be 11 feet AMSL. A band mauka of the AE zone has been designated "Zone X" which indicates an area which is affected by the 100-year flood but has flood depths of less than one foot.

PROPOSAL FOR RECLASSIFICATION

36. Petitioner proposes to develop a resort and accessory uses on the Property ("Project"). The Project includes 250 visitor units (or cottages) that are dispersed throughout the Property, resulting in an overall density of approximately 1.6 units per acre. Approximately 164 of the units will be free-standing, and 86 units will be constructed as 43 duplex units. The units will be setback and raised above grade (to comply with flood hazard requirements) utilizing post and beam construction. Average separation distance between units will be about 40 feet. Each of the single-story cottages will be about 400 square feet in size with a 200-square-foot

deck. No cooking facilities, phones, or televisions will be provided for the units.

A main pedestrian arterial, which will meet the Americans with Disabilities Act requirements, will connect cottages with adjacent parking areas and activity centers. The walkways will function as the principal means of circulation within the Property for resort guests. Vehicular access will be restricted to registration, parking areas, and restaurants.

One of the focal points for the Project will be the Robinson Family residence. The building footprint for the residence is approximately 17,000 square feet and includes an interior courtyard and wrap-around lanais on the exterior of the building and facing the interior courtyard. Original drawings for the residence (completed in 1897) included approximately 5,591 square feet in floor area for a variety of rooms, including: kitchen, pantry, bakery, milk room, store room, guest chambers, china room, dining room, library, sewing room, bedrooms, sitting room, bathrooms, and library. A 1,200-square-foot wing was later added to the eastern side of the house and included three bedrooms and one bathroom, resulting in a total floor area for the house of about 6,791 square feet.

The overall plan for the residence is to develop the main house and attached structures as a greeting space and as a museum, administration, and meeting room area. Some

renovations, including demolition of interior walls, are proposed on the interior to provide three meeting rooms, a lounge, and men's and women's restrooms. Part of a wall that had been moved out to the lanai edge on the eastside of the building will be returned to its original location. The library, sitting room, dining room, pantry, china room, and linen room, as well as the original portion of the kitchen building, will be used in their current layout as museum spaces and displays of furniture and other items currently in the house. Other areas of the house are also being considered for inclusion in the museum.

It is intended that guests will enter the Property via the existing driveway off Kaumuali`i Highway (which will be for entry purposes only). The driveway extends for about 2,000 feet and is bordered by low (3-foot) walls on either side. Guests will arrive near the current Robinson Family Partners' office building.

Amenities provided at the Project will include:

- Two restaurants
- Snackbar
- Luau grounds
- Public/Passive recreation area
- Museum (in the former family residence)
- Bar/Lounge (in the former family residence)
- Three swimming pools
- Fitness center/beach club
- Sport courts (tennis, basketball, volleyball, badminton)
- Amphitheater
- Public parking, restroom, showers and access

A second focal point for the Project will be the renovation, preservation, and maintenance of the 6.5-acre fishpond located in the central portion of the Property. Silt and noxious vegetation will be removed from the pond, re-establishing the open water character of the pond. Native Hawaiian customary and traditional rights relating to the fishpond will be provided.

A minimum of 465 parking spaces will be provided onsite in four parking areas. Parking will be available for guests, employees, and members of the public wishing to enjoy the beach fronting the Property. Both restaurants will be open to the public for dining.

37. In connection with the issue of housing impacts created by this Project and the corresponding need to develop low, low-moderate, and gap-group housing, Petitioner's consultant, Mikiko Corporation, prepared a report entitled "Market Assessment For Rental Housing In The Waimea District, Island Of Kauai," for the County of Kaua`i, and based upon the assessment, Petitioner agrees to continue to work with the County to develop such housing as may be required by the County in the pending zoning amendment process.

38. The total cost of the Project is estimated to be $35 million to $45 million.

39. Petitioner estimates that once all permits are obtained, the development timetable for the entire Project will be approximately 12 to 18 months.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

40. Petitioner's financial statement, including the Quarterly Report Under Sections 13 Or 15(d) Of The Securities Exchange Act Of 1934 for the quarter ending September 30, 1999, of Excel Legacy Corporation, reflected a total of $246 million in assets and $167 million in equity. Petitioner presented further testimony to the effect that the third quarter statement of Excel Legacy Corporation would demonstrate gross assets of approximately $1 billion and net assets of approximately $200 to $400 million.

41. Petitioner intends to finance the development of the Property from internally generated funds for all costs necessary to obtain permit approvals and thereafter to secure necessary funding through conventional real estate loan financing.

STATE AND COUNTY PLANS AND PROGRAMS

42. The Property is currently within the State Land Use Agricultural District, as reflected on the Land Use District Boundaries Map, K-5, Hanapepe.

43. The County General Plan designation for the Property was amended from Agriculture and Open to Resort on October 9, 2000.

44. The Property is zoned Agriculture and Open pursuant to the Comprehensive Zoning Ordinance of the County of Kaua`i. Petitioner has filed a petition for a zoning amendment with the County of Kaua`i seeking to reclassify the Petition Area from Agriculture and Open zoning classifications to the RR-10 Resort District. The Project is under the density requirements for the zoning district, and all accessory uses are also permitted. The rezoning cannot receive final approval, however, until this land use district boundary amendment is approved by the LUC.

45. A portion of the Property is located within the Special Management Area.

NEED FOR THE PROPOSED DEVELOPMENT

46. Petitioner's market consultant, Mikiko Corporation, prepared a study entitled "Market Assessment For Kapalawai Resort," dated May 21, 1999, to analyze the market support for the Project in terms of target guest markets, average achieved room rates, and achieved occupancy rates.

47. The Project is planned as an upscale but low-key, self-contained retreat in a garden setting located on the oceanfront. Centered on the historic Robinson Family estate,

the Project will also draw on a previously private kama`aina heritage.

48. The shoreline frontage offers approximately one mile of white, sandy beach with areas for swimming, fishing, long walks, and shell hunting.

49. The island of Kaua`i is emerging from years of depressed economic indicators following Hurricane Iniki. The visitor industry remains the major source of income and employment for the island.

50. The Project is expected to benefit from Kaua`i's established image and visitor profile in that Kaua`i has tended to attract relatively high income, high occupational status visitors, who are more likely than the average visitor to find the Project desirable. Thus, the Project's upscale market orientation is supported by 1990 cluster averages of westbound travelers to the island which found that Kaua`i tends to be perceived as romantic, scenic, quaint and relaxing, which are the feelings that the Project seeks to promote.

51. The Project is expected to appeal predominately to vacationers, including families, couples, and those traveling for weddings and honeymoons. In addition, with its Waimea District location, the Project could also attract government, business, or corporate traffic related to the high technology and military installations in the region. Finally, the

development concept for the Project appears to build on Kaua`i's existing image and appeal to visitors, and to be compatible with the statewide focus on the westbound market segment as a source of near-term growth. Eastbound and other international markets are seen as promising and long-term market segments.

ECONOMIC IMPACTS

52. Petitioner's consultant, Mikiko Corporation, prepared a study entitled "Economic And Fiscal Impact Assessment For Kapalawai Resort," dated July 22, 1999, to analyze the economic and fiscal impacts within the State of Hawai`i and the County of Kaua`i. The Project could be expected to impact the State and County economies by: (1) attracting visitors who would make new expenditures; (2) generating construction activity, which would support expenditures for goods and services; and (3) creating and supporting jobs and business enterprises in its ongoing operations. The new jobs would, in turn, generate additional personal income in the County and throughout the State.

53. The Project, upon completion, is estimated to result in direct visitor expenditures of $17.8 million in 2002, increasing to approximately $21.2 million by 2004 in 1998 dollars. Including the indirect and induced multiplier effects within the State, visitors attracted to the Project could

account for over $36 million in new annual visitor expenditures by the time the Project is stabilized.

54. Petitioner estimates a minimum construction budget of $33 million, and perhaps as much as $40 - $45 million to develop the Project.

55. The development of the Project is estimated to require about 280 person-years of labor, with direct personal income amounting to approximately $15.7 million. Including the direct, indirect, and induced impacts, the Project's development could support approximately $30.2 million in wage, salaried, and proprietary incomes for Hawai`i residents.

56. In addition to the development and construction-related positions, the Project could support approximately 200 full-time equivalent ("FTE") positions and employment opportunities in management, sales and marketing, registration/reservation, human resources, food service, maintenance and engineering, housekeeping, landscaping, and related activities. The majority of the positions would be located onsite. Based on economic multipliers derived from the State's 1992 Input-Output Study (dated December 1998), the total employment impacts of the Project, including its direct and induced jobs, could represent about 320 FTE positions throughout the State. Direct wages and salaries paid to those employed at the Project could approximate $5.3 million in 1998 dollars.

Including personal income associated with the indirect and induced positions, the Project could generate approximately $12.3 million per year in ongoing payroll within the State.

57. The projected population on the Property, based on 250 cottages and an anticipated stabilized occupancy level of 75 percent, could average approximately 365 visitors per day. On average, the Project could also have approximately 240 construction workers onsite on any given day during development and approximately 143 operational employees after opening.

58. Additional County real property tax revenues resulting from the Project are anticipated to be approximately $420,000 annually in net new property tax revenues by 2003. In addition to real property taxes, the County is allocated a share of the transient accommodation taxes ("TAT") collected by the State (currently 6.5 percent), which could represent approximately $50,000 by 2003, and coupled together with miscellaneous tax sources, the County could net total new taxes approximating $480,000 per year by 2004 in 1998 dollars.

59. Additional operating revenues to the State, including the general excise tax, and the State's share of the TAT tax resulting from the Project could approximate $1.3 million in 2004 in 1998 dollars.

60. Additional County and State operating expenditures resulting from the Project are anticipated to be

$420,000 and $560,000, respectively, by the time of Project stabilization in 2004 in 1998 dollars. Thus, the County's operating revenues from the Project are anticipated to exceed its operating expenses in 2004 by approximately $60,000 in 1998 dollars, and the State's operating revenues from the Project are anticipated to exceed its operating expenses in 2004 by approximately $760,000 in 1998 dollars.

SOCIAL IMPACTS

61. Petitioner's consultant, Earthplan, prepared a study entitled "Issues Analysis," dated February 2000, to analyze community issues and social impacts relating to the Project. The majority of the residents of the Westside community of Kaua`i believed the Project: (1) was compatible with the rural nature of the region; (2) provided essential economic opportunities; (3) provided for the preservation and restoration of cultural and historic resources; and (4) provided improved public access to cultural, historic, and recreational resources on the Property and adjoining lands.

62. The most common community problem cited by residents was the declining economy and lack of jobs since Hurricane Iniki and, most recently, the termination of sugar operations.

63. Because of the historically exclusive use of the Property, the proposed Project would increase public access to

the shoreline and recreational resources, both on the Property and on the lands abutting the Project.

64. The Project's proposed restoration and maintenance of the onsite structures and the fishpond would contribute to preserving the culture and history of the Westside community.

65. Petitioner has worked with the community and sought community input in developing the Project. Petitioner will continue to work with the Westside community to mitigate or resolve any problems that may be created by the Project.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

66. Since the Property has been owned by the Robinson Family, the Property has never been used for commercial agriculture. The Robinson Family did use an approximately 3.5-acre area near the main house to raise fruits and vegetables for personal consumption. They also used other areas of the Property to raise livestock such as cattle, pigs, goats, chickens, and fish (in the fishpond). As recently as 2000, portions of the Property were used as pasturage for about 20 bulls. However, these animals have since been removed. Therefore, the development of the Project as a resort will have no impact on agricultural production on Kaua`i. Although the Property is designated "Agricultural" at various levels of State

and County land use designations, it has never supported agricultural use, except for the personal consumption of the family. The 3.5-acre "garden" will continue to be maintained, but the balance of the Property will not be used for agricultural activities.

67. The Gay & Robinson, Inc. ("G & R"), sugar plantation is the only remaining sugar plantation on the island of Kaua`i, and the additional income stream to be derived form the development of the Project is essential to subsidize the continuation of the G & R sugar plantation. Since 1994, G & R has invested in excess of $7 million in capital improvements for the sugar plantation operations. Despite having the highest yields of sugar in the world, sugar prices are at a twenty-year low.

Flora

68. Petitioner's consultant, Char & Associates, conducted a botanical survey of the Property in March 1999. The vegetation on the Property is dominated by introduced or alien plants. Portions of the Property have been used for employee housing, stables, corrals, pasturage, fruit orchards, and vegetable gardens. Today, the majority of the Property is covered by scrub vegetation, and has been used for grazing cattle over many decades. Wetland vegetation is found along the two streams (Mahaikona and A`akukui) which cross the Property.

A marshy area exists on the western side of the Property. This area was created by the flow of sugar irrigation runoff and pump discharges from mauka areas via a man-made ditch. A narrow band of coastal vegetation is found behind the white sand beach on the makai side of the Property. The former residence, employee housing area, and other actively maintained areas near the northwest corner of the Property were not included in the botanical survey because they were not expected to harbor remnant native plant-dominated communities.

69. Scrub vegetation type is basically open to closed canopy kiawe (Prosopis pallida) scrub forest with shrubs such as lantana (Lantana camara), hairy abutilon (Abutilon grandifolium), koa haole (Leucaena leucocephala), and patches of Guinea grass (Panicum maximum) and buffelgrass (Cenchrus ciliaris). Much of the area covered by scrub vegetation and identified as having "Fill land" as a soil type, supports patches of grasses and mostly weedy annual species. Scattered about are large old trees of kiawe, 'opiuma (Pithecellobium dulce), and monkeypod (Samanea saman). Commonly observed plants include swollen fingergrass (Chloris barbata), buffelgrass, guinea grass, spiny amaranth (Amaranthus spinosus), lion's ear (Leonotis nepetifolia), 'aheahea (Chenopodium murale), coffee senna (Senna occidentalis), and cocklebur (Xanthium strumarium). Golden crown-beard (Verbesina encelioides), a member of the

daisy family with large yellow flowers and up to two feet tall, is locally abundant. Along the makai perimeter of the Property, there is dense brand of kiawe and 'opiuma trees. In this area, there are scattered groves of coconut (Cocos nucifera) and date (Phoenix sylvestris) palms, and small stands of milo trees (Thespesia populnea). Lantana and wild basil (Ocimum gratissimum) shrubs are locally common under the trees. In the area between the two streams, the scrub vegetation consists of rather dense stands of 'opiuma trees, 6 to 20 feet tall and two to three feet in diameter. Bermuda grass, or manienie (Cynodon dactylon), and buffelgrass form extensive patches on the sand substrate. Shrubs of 'ilima (Sida fallax), a native species with orange flowers, is also common. Along the western portion of the Property is an area with many surface stones. This area supports a closed canopy kiawe forest with Guinea grass understory. Along the mauka portion of the Property, the scrub vegetation, in places, is composed of koa haole thickets 12 to 15 feet tall, with a ground cover of dense Guinea grass clumps up to three feet tall. There are also areas with open kiawe and Guinea grass scrub. These areas often have a few large trees of mango (Mangifera indica), Java plum (Syzygium cumini), Chinese banyan (Ficus microcarpa), monkeypod, royal palm (Roystonea sp.), and many large thickets of bougainvillea. There is also a large patch of spineless or cochineal cactus (Opuntia

cochenillifera) near the dirt road that accesses the employee's housing area.

70. Wetland vegetation is located near the banks of Mahaikona and A`akukui streams which are well defined with no low lying overflow areas. The top of the stream banks support scrub vegetation. Along the bottom banks, next to the water's edge, there are mats of California grass (Brachiaria mutica) and shrubs of Indian Pluchea (Pluchea indica). Wetland vegetation is denser and more varied along A`akukui Stream, especially in the area behind the beach. There are dense mats of California grass and thickets of India Pluchea, as well as clumps of bulrush, or kaluha (Schoenoplectus californicus), up to 7 feet tall, umbrella plant (Cyperus alternifolius), and Napier grass (Pennisetum purpureum). Further upstream, honohono (Commelina diffusa) is locally common. A grove of coconut trees lines the perimeter of the fishpond. Along the north side of the pond, there are dense thickets of purple and rose-red (Bougainvillea glabra) bougainvillea. Bulrush, 3 to 12 feet tall, has filled in much of the pond. A few open water areas are found mostly along the north side of the pond. These patches of open water support California grass along their margins and floating aquatics such as water hyacinth (Eichornia crassipes) and duckweed (Lemna aequinoctialis). The drainage canal which runs from the pond to the beach is covered by dense floating mats of

water hyacinth and water lettuce (Pistia stratiotes). A low lying area in the western portion of the Project site where discharge water from the fields mauka of the highway has been directed, supports dense clumps of umbrella plant, 2 to 4 feet tall, and standing water 6 inches to one foot deep. Job's tears (Coix lachryma-jobi) and primrose willow, or kamole (Ludwigia octovalvis), are locally abundant. Along the northern half of the low lying area are low, open grassy patches of Bermuda grass with scattered plants of primrose willow, false daisy (Eclipta prostrata), green kyllinga (Kyllinga brevifolia), honohono, and jungle rice (Echinochloa colona). A few mats of the aquatic azolla fern (Azolla filiculoides) are found in areas with small pools of water. There are a few large trees in and around this lowlying area, some of which have died due to the water-logged soils and anaerobic conditions.

71. A narrow band of coastal vegetation is composed primarily of pohuehue, or beach morning glory vine (Ipomoea pes-caprae), Bermuda grass, and 'aki'aki, or beach dropseed grass (Sporobolus virginicus). Scattered are low, windswept clumps of koa haole shrubs and trees of kiawe, 'opiuma, and milo. Also, a long-spined algarroba, or mesquite species (Prosopis juliflora), has become established in the coastal vegetation. This sprawling large shrub to medium-sized tree has thick spines up to two inches long. Several large plants had numerous clusters

of pale yellowish brown pods. A number of saplings were observed inland of the coastal vegetation.

72. None of the plants inventoried on the Property is a threatened or endangered species, nor is any plant a species of concern. All of the plants identified on the Property can be found in similar environmental habitats throughout the Hawaiian Islands. In this context, there will be no significant impacts to native vegetative habitats resulting from development of the proposed Project. This includes the man-made marshy area on the Waimea side of the Property that has been created by allowing irrigation runoff water and filter discharges to collect on the ground. The water source which created this habitat will soon be eliminated when a mauka detention basin is completed. Once this water flow is discontinued, wetland vegetation is expected to die back and be replaced by scrub vegetation. Other areas of the Property will benefit from development because irrigation water will be made available that will be able to support more plant life. This will also help to prevent soil erosion caused by the wind. To the greatest extent possible, native plants will be used to landscape the Property. From a botanical perspective, the presence of large numbers of the long-spined mesquite species (Prosopis juliflora) on the coastal area of the Property are a primary concern. To date, the plants have only been known from O`ahu at Sand Island and vicinity. If not

eradicated, the plants could form large, impenetrable, spiny thickets in low land, dry habitats throughout Kaua`i.

73. Eradication of individual Prospis juliflora plants will be coordinated with the State Department of Agriculture.

Fauna

74. Petitioner's consultant, Philip Bruner, conducted an avifauna and feral mammal survey of the Property in March 1999. No native land birds were recorded during the survey. Given the location, elevation, and type of habitats available at the Property, the absence of native land birds was not unexpected. The short-eared Owl, or Pueo (Asio flammeus sandwichensis), forages in agricultural fields and pastures as well as in upland forested habitat and is fairly common on Kaua`i. Although this species was not recorded during the present survey, it could forage in the area. Migratory shorebirds winter in Hawai`i between the months of August through May. Some juveniles will stay over the summer months as well. Three species of migratory shorebirds were recorded during the survey. These were the Pacific Golden-Plover (Pluvialis fulva), the Ruddy Turnstone (Arenaria interpres), and the Wandering Tattler (Heteroscelus incanus). None of these species are listed as endangered or threatened. Six individuals of the endangered Common Moorhen (Gallinula chloropus) were

observed near open streams and along the edges of the fishpond and the man-made marsh habitat. A pair of Hawaiian Duck, or Koloa (Anas wyvilliana), was flushed from A`akukui Stream. Koloa are endangered but are still relatively common on Kaua`i. A total of four Black-crowned Night Herons (Nycticorax nycticorax) were observed. This species is the only native waterbird that is not endangered. A total of 17 species of exotic birds were recorded during the course of the field survey. The more common of these species include: the Red Junglefowl (Gallus gallus), the Spotted Dove (Streptopelia chinensis), the Zebra Dove (Geopelia striata), the Northern Cardinal (Cardinalis cardinalis), the Red-crested Cardinal (Paroaria coronata), and the House Finch (Carpodacus mexicanus). The endemic and endangered Hawaiian Hoary Bat (Lasiurus cinereus semotus) is frequently seen on Kaua`i. This species is known to roost solitarily in trees and forages for insect using echolocation. They use a variety of habitats, including native forest, ranchlands, ponds and bays, as well as urban areas. Three bats were observed foraging for flying insects offshore of the Property, and one bat was observed flying back and forth over the man-made marsh. Evidence presented was not sufficient for the Commission to determine whether the proposed project would have an impact on the bats. Several feral cats were seen on the Property, and feral dog and pig tracks were also

observed. Rats and mice undoubtedly occur on the Property but were not seen.

75. The Property has been significantly altered by introduced vegetation and ranching activities. Although there are several wetland type habitats on the Property, most are overgrown with emergent vegetation. This restricts their access to water birds. If these areas were opened up by removal of vegetation, they would provide better habitat for water birds. A complete removal of vegetation in the fishpond would not be attractive to native water birds because they require some cover (in the form of emergent vegetation) to avoid predators or as a place to retreat when disturbed. The marsh area on the Waimea side of the Property, created by the sugar irrigation runoff and pump discharges, will lose its source of water in the near future as a detention basin being built by G&R is completed mauka of Kaumuali`i Highway. This will cause the area to dry up and lose its wetland characteristics. However, the loss of this area will not be significant because of the presence of the fishpond and other habitats associated with the Mahaikona and A`akukui Streams.

76. Some vegetation will be retained in the fishpond, particularly the vegetation on the small island in the center of the fishpond. The advantage of focusing vegetation on the island would be that the island would provide cover and nesting

opportunities for some species that would be protected from cats and other predators.

Archaeological and Historic Resources

77. Petitioner's consultant, Cultural Surveys Hawaii, prepared an archaeological inventory survey for the Property. This report has been accepted by the SHPD. In addition, interviews with knowledgeable individuals were conducted for the purpose of identifying and evaluating historic properties in conjunction with a study on cultural impacts. Within the Property, six sites were identified and recorded with the SHPD. Three of these were single feature sites, and three were multiple feature sites.

78. Site #50-30-9-762 consists of a series of rock walls and a terrace located in the northwest section of the Property, situated in and around the plantation-era homes. Two of the walls line the main driveway. Another wall continues makai as the western Property boundary. There are several wall segments in the plantation camp area that partition house lots. The terrace is mauka of the houses in the camp area.

79. Site #50-30-9-763 is a large oval platform measuring 155 feet long, north to south, by 73 feet wide east to west. This feature consists of pahoehoe cobbles and boulders of varying diameter (2" to 3.2'). The surface of the platform is relatively even with five distinguishing characteristics: (1) a

ridge down the middle; (2) and (3) two paved depressions; (4) a mound; and (5) a square pit. Large boulders are found around the perimeter of the site with small boulders and cobbles found mainly on the upper surface. There are several kiawe trees growing within the site's perimeter and some deadfall trees over the surface. The configuration of the platform and the pattern of boulder placement suggests that this structure has clearly been modified or altered, or entirely constructed during the historic period as a mound of cleared rocks. Testimonies given by individuals familiar with the Property describe the platform as a clearing pile. However, it does possess some other characteristics that suggest portions of the rock platform may be of indigenous construction and use.

80. Site #50-30-9-764 is described as the main house complex and is composed of 14 separate structures, each identified as a feature of the site. They include the main house, the guest house, servants quarters, the carriage house, the saddle house, the plant house, and eight employee dwellings. This site is situated in the northern quadrant of the Property and is fenced, protecting the grounds from the cattle pasture which encompasses the rest of the Property. The grounds are maintained and several structures are in use today; others are in disrepair.

81. Site #50-30-9-765, the Kapalawai Fishpond, is a 6.5-acre inland fishpond. According to the testimony of Dr. Kikuchi, it was probably discovered and used by the maka`ainana sometime after 1100 A.D. The ali`i may have taken control of this pond by the 1500s. Its ownership passed to Victoria Kamamalu after the 1848 Mahele. It then passed to the Robinson Family in 1865. They have restricted access to the pond. It is both a historical site and a cultural resource, and is discussed in detail in the Cultural Resource section of these Findings of Fact.

82. Site #50-30-9-766 is a mortared stone and brick structure commonly referred to as a "Portuguese Oven." Immigrants from Portugal introduced this type of wood-fired outdoor oven to Hawai`i. This structure is clearly of historic origin and is in very good condition.

83. Site #50-30-9-792 consists of two features. The first feature is a subsurface cultural layer that contains the remains of prehistoric habitation and other activities. The layer contains traditional Hawaiian food remains, including mammal and fish bone and marine shell, charcoal from combustion features, and artifacts such as basalt flakes and volcanic glass. The site also contains numerous intrusive features that extend from the cultural layer into the underlying, culturally sterile, beach sand. These features are the result of Hawaiian

excavations for many purposes, including hearths, earth-ovens, and structural supports such as post holes. This feature was located and documented during the backhoe subsurface testing of the Property. The second feature contains what is most likely a prehistoric human burial and is associated with the cultural layer at the first feature mentioned hereinabove. Based on the general context of the burial (an unmarked burial in coastal sand deposits, with no apparent historic artifacts in association within what is most likely a prehistoric cultural deposit), it is more likely that the burial is pre-historic/early historic native Hawaiian. After observation and recordation, the trench was backfilled. Appropriate State and Historic Preservation officials (Burials Program and Kaua`i archaeologist) were notified of the burial find.

84. Most of the structural historic sites identified on the Property will be retained and efforts will be made to restore them. Buildings in this category include: the former Robinson Family residence, the former guest house, the former servants quarters (current offices for Robinson Family Partners), the former carriage house/garage, and the former plant house. The eight employees houses will continue to be used as housing for employees of the development or G&R, continuing the historical use of the structures. Alteration will be limited to general repairs and maintenance whenever

possible, with replacement construction occurring only when necessary when buildings cannot be rehabilitated. The structures being retained have been surveyed to determine their condition and identify required repairs. All repairs will be implemented to match original material and design to the greatest extent possible, so the exterior appearance of these buildings will remain intact.

85. The three other historic sites, the Portuguese Oven, the platform, and a series of rock walls and terrace will be preserved as-is and integrated into the site design of the Project.

86. The recently discovered cultural layer is recommended for preservation for future archaeological research. The preservation plan will outline the short-term and long-term preservation measures that will safeguard the feature from damage during Project construction and subsequent land use. Similarly, the human burial is recommended for preservation in place within the combination archaeological and burial preserve area. The preservation of the burial will require the preparation of a burial treatment plan. As a previously recorded burial site (so designated because it was found during inventory survey investigations), the mitigation and treatment of these skeletal remains fall under the jurisdiction of the Kaua`i Island Burial Council who must approve all mitigation

and/or treatment measures. The request for preservation in place must be presented to the Burial Council in the form of the burial treatment plan. The requirements for a burial treatment plan are clearly outlined in chapter 13-300, HAR, "Rules of Practice and Procedure Relating to Burial Sites and Human Remains." Both the preservation plan and the burial treatment plan will be written, approved by SHPD (preservation plan) and the Kaua`i Island Burial Council (burial treatment plan), and implemented before development of the Property can begin.

87. A mitigation plan will be prepared and implemented for all historic properties identified on the Property. This plan will include interim mitigation measures to protect historic properties during construction and development relating activities. In addition, a long-term preservation plan and interpretive plan will be prepared.

88. Subsurface testing results indicate that two sites or feature types will potentially be found during ground disturbance: human-burials and subsurface prehistoric cultural layers. These sites/feature types are much more likely to be found in the Property's sand deposits along the coast. Accordingly, there will be archaeological monitoring for all portions of the Property containing sand deposits. Before construction begins, a monitoring plan will be written, approved by SHPD, and implemented. The monitoring plan will include

provisions for the documentation of inadvertently discovered prehistoric cultural deposits. Documentation of features will include plotting their location on the overall Project map, profile drawings, descriptions of their stratigraphic context, descriptions of the feature's contents, and, if possible, samples for radiocarbon dating analysis. The monitoring plan will contain provisions for the analysis of these samples, if they are encountered. If available, this information would provide a better understanding of the prehistoric coastal occupation in the region.

Groundwater Resources/Hydrogeology

89. The fishpond found on the Property is spring fed. Although it is now almost half-filled with silt and is heavily overgrown by vegetation, there are at least two discrete springs that are identified by water quality and temperature contrasts. By these same indications, there are also other springs in the pond which are more difficult to specifically locate. One of the two identifiable springs is at the inland end of the pond. Its water is relatively warm (72.0°F), has a notably high silica concentration, and has a salinity as low as many sources of drinking water. This water is likely to be discharging from the Koloa formation, possibly at its seaward end. As this water moves across the pond, its salinity becomes slightly elevated and there is some dilution of its silica concentration. The

second identifiable spring is in a hydraulically separate arm of the pond that is closer to the shoreline. Water issuing from the bottom of this makai portion of the pond is much colder (67.5°F), has only about half the silica concentration, and is lower in nitrogen and phosphorus than the first spring. The temperature and silica differences suggest that the two identifiable springs are discharging from different aquifiers. Water from the makai spring may be derived from the older Makaweli volcanics at depth and its nutrient levels may be altered by passage through the coastal sediments into the pond. Based on the analysis of three recorded levels of water variation in the pond, there is a continuous mauka-makai movement of water through the pond. The discharge rate for this movement is estimated to be about 1.8 million gallons per day ("MGD"). These measurements approximate the net discharge rate of springs that feed the larger portion of the pond. This flow combines with spring flow in the makai portion of the pond and discharges through a beach berm at the seaward end of the makai pond. Despite the significant magnitude of this flow rate, no leakage through the berm is visible or detectable as a change in nearshore salinity, even at low tide.

90. The current state of the fishpond is characterized by siltation and increased vegetation that covers most open water. Although there is approximately 1.8 MGD of

water flowing through the fishpond on a daily basis, many areas of the fishpond suffer stagnation. The implementation of the Project will remove most of the silt and vegetation during restoration and may include drawing between 360,000 gallons per day ("gpd") and 660,000 gpd for onsite irrigation. There would be a beneficial impact associated with drawing water for irrigation use in the form of better overall water quality within the fishpond. Increased withdrawal would result in increased turnover (decreased residence time), with a resultant decrease in the presence of algae and phytoplankton. As a result, turbidity would be reduced. The water level in the fishpond could drop slightly with increased withdrawal but would ultimately reach equilibrium balancing input and throughput. This withdrawal will be supervised by the pond management committee (See C of L 20(b)).

Recreational Resources

91. The West Kaua`i community includes some of the most diverse and spectacular recreation resources in Hawai`i. There are a number of federal, state, and county facilities that offer Kaua`i residents and visitors the opportunity to boat, fish, hike, swim, surf, picnic, camp, snorkel, and otherwise enjoy the outdoors. These facilities include:

| Federal Facilities | State Facilities | County Facilities |
|---|---|---|
| Nohili Point | Polihale State Park | Salt Pond Beach Park |
| Kinikini | Waimea Canyon State Park | Lucy Wright Beach Park |
| Major's Bay | Koke`e State Park | Kekaha Beach Park |
| | Na Pali Coast State Park | Hanapepe Beach Park |
| | Port Allen Small Boat Harbor | |
| | Kikiaola Small Boat Harbor | |

92. The addition of about 365 persons per day (Project guests present on an average day) to the defacto population of the Waimea District will add to the demand on recreational resources. However, 365 people represent only a 3.9 percent increase above the 1995 resident population of 9,220 for the Waimea District and a 0.5 percent increase to the defacto population of 69,900 for the entire island. Many of the recreational facilities in the Waimea District, including Waimea Canyon State Park, Koke`e State Park, Na Pali Coast State Park, and Polihale State Park attract users from all over Kaua`i, including visitors. In this context, the increased demand resulting from potential guests from the Project will be marginal. This is particularly evident when examining the area of many of these facilities. For example, Koke`e State Park and Waimea Canyon State Park are 4,345 acres and 1,866 acres in size, respectively, and offer numerous hiking, picnicking, hunting, and camping opportunities.

93. The Project will offer some recreational amenities to guests, thereby minimizing offsite impacts. These activities include tennis, swimming, beachcombing, and walking. Therefore, some recreational demand for guests of the Project

will be met on the Property. As a result, overall impact to any single offsite recreational resource is not expected to be significant. The Project will also provide onsite recreational opportunities for Kaua`i residents in the form of increased shoreline access to pursue activities such as fishing, diving, beachcombing, and picnicking, in addition to surfing. As a result, there will be a beneficial impact on recreational opportunities for Kaua`i residents.

94. At the present time, there is an informal agreement between the Robinson Family and the County of Kaua`i that allows beachgoers access to the shoreline on the southern side of the Project in the vicinity of A`akukui Stream. This access is primarily for surfers who want to surf at Pakalas. Other shoreline access in the region is provided at various federal, state, and county beach facilities from Hanapepe to Polihale.

95. Petitioner has proposed that the current access to the Pakalas surf break be improved. In addition, Petitioner has proposed various public facilities, including a parking area, restroom, shower, and a formal pedestrian footpath to the shoreline. Additional access will be available from parking areas within the Project where some parking spaces will be reserved for public use. In this context, access to the shoreline will be improved.

Scenic Resources

96. The physical ambience of West Kaua`i is characterized by its rural nature, dominated by open space and the presence of sugarcane. Sugarcane has been a dominant visual condition in West Kaua`i for many decades. Recently, other agricultural crops have been introduced in the region, most notably coffee on former sugar lands near `Ele`ele and corn in Makaweli. The dominant colors of the region are influenced by the bright blues of sky and ocean, the vibrant greens of agricultural fields, and the reds and browns of the soil. Development in the region is decidedly low-rise in nature and plantation-era in style, including the two main towns of Hanapepe and Waimea.

97. Driving along Kaumuali`i Highway in either direction, there are periodic views of the ocean and the mountains, depending on topography and vegetation immediately adjacent to the highway. The Project has approximately one mile of frontage along Kaumuali`i Highway. Views into the Project are transitory at the southern end of the Property near the bridge that spans the A`akukui Stream, and near a secondary dirt access road about a quarter-mile north of A`akukui Stream. At no time is the shoreline visible from the highway. Otherwise, views toward the Property are interrupted by dense, tall thickets of bougainvillea and other trees. After passing the

Property traveling in a northwesterly direction, vistas toward the ocean are restored as agricultural fields once again provide a clearer view of the shoreline areas.

98. The interior of the Project is not currently visible from Kaumuali`i Highway because of the dense vegetation on the mauka portion of the Property. Consequently, development of the Project will not be visible from the highway.

99. The existing entry drive into the Property will be formalized for the Project, thereby undergoing some modification, including the installation of a left-turn storage lane on the Waimea-bound side of Kaumuali`i Highway and a right-turn deceleration lane on the Hanapepe-bound side of the highway. In addition, a new exit drive for the Project will be created about 500 feet on the Hanapepe side of the entry drive. Appropriate signage and landscaping will be incorporated for both the entry and exit drives to the Project. These improvements will be kept in character with the region, and signage will be indirectly illuminated.

Cultural Resources

100. Petitioner's consultant, Cultural Surveys Hawaii, prepared a native Hawaiian traditional customs and practices impact assessment for the Project which has been reviewed by the SHPD. The purpose of the impact assessment was to consider the effect the proposed development may have on native Hawaiians as

it pertains to their traditions and customs which are protected by law under the Hawai`i State Constitution, Article XII, Section 7.

101. Notwithstanding

(a) The absence of any record of coastal trails and Land Commission awards of native tenant kuleana parcels within the Property's boundaries,

(b) Archeological evidence and oral histories which reflect very little Hawaiian activity at the Property other than in connection with the Kapalawai Fishpond, and suggest that Hawaiian settlements in the ahupua`a of Makaweli of which the Property is a part were concentrated further west and north of the Property in the Waimea-Makaweli-Mokuone river valleys where water and food were more abundant; however, there is evidence of prior human habitation by the maka`ainana in the pond area in the form of fire ash deposits carbon dated to approximately 1100 A.D.

Also, after the pond passed into the hands of the ali`i after 1500 A.D., maka`ainana were permitted some access to

use the Property for gathering and other cultural purposes prior to the Sinclair-Robinson Family's acquisition of the Property in 1865.

102. Exclusions in an 1857 lease between the guardians of Princess Victoria Kamamalu who was then the owner and a group of 120 people from Makaweli and Waimea suggest that at least as of then, native Hawaiians were allowed access to practice traditional gathering on the Property and in the waters offshore from the Property. The 1857 lease expressly exempted as kapu (protected/tabooed) the orange trees at Waikea, the large trees of Maha'iha'i, the fort, the Po'alima taro fields, the small and large ponds in Kekupua, the kapu fish ('o'opu), and firewood - if it was for sale for personal and monetary gain. Presumably, any other resource, including firewood, pili grass for thatching, hau for cordage, plants for medicinal use, pond harvesting, and marine resources in the offshore waters not subject to a specific kapu, could be gathered, as long as the resource was gathered for personal use and not sold.

103. Any gathering or other traditional or customary uses to which the Property may have been put by native Hawaiians prior to the Sinclair-Robinson Family's acquisition of the Property 135+ years ago appears to have been discontinued when the Property was purchased by Mrs. Sinclair in 1865. There is also no evidence of traditional customs and practices presently

being exercised on the Property. This reflects the geographic location of the parcel, as well as the nature of the land tenure. The Property is located on the flat pasture lands of Makaweli near the coast. There is no abundant source of surface water other than the fishpond. Because the Property was used by the Sinclair-Robinson Family as a ranch, farm and dairy, and because the family preferred complete privacy regarding all of their lands, it was not possible for outsiders to go onto the Property unless they had been invited or had received permission to do so.

104. In addition to being a historical site, the Kapalawai Fishpond is one of the Property's cultural resources. The fishpond predates the Sinclair-Robinson Family's acquisition of the Property from Princess Kamamalu. It was built and maintained for fish farming and to provide a home and watery realm for a legendary mo`o wahine that was known to sit on a pohaku (rock) near the pond's edge. Traditionally, mo`o were revered and worshipped. The presence of a mo`o in a pond contributed to the productivity of the pond, as well as to the health and welfare of the people in the pond's vicinity.

105. The 6.5-acre fishpond is fed by underground springs. It is a pu`uone type inland fishpond. Pu`uone ponds are a very common type of pond in the coastal zone of the major islands in the Hawaiian chain. On Kaua`i, this is the type of

pond most frequently used as a fishpond. Pu`uone ponds are created by the formation of a barrier sand berm that isolates the pond from the sea. Most have freshwater spring sources, a feature which converts them into an almost freshwater pool termed lokowai.

106. The fishpond is surrounded by a perimeter wall constructed of pahoehoe cobbles and boulders up to 2.5 feet in diameter which has since been rendered discontinuous by cattle disturbances, vegetation covering it, and fallen trees. A 19 feet wide and 352 feet long wall of the same material transects the width of the pond at its makai end, dividing the pond into two unequal parts.

107. Over the years, a number of extensive modifications have been made to the pond. A gate at the southern end is made of concrete. At the mauka terminus of the pond, a corrugated metal pump house was built on a concrete slag to house a combustion engine pump attached to a 6-inch cast iron pipe. Water was pumped from the pond for use on the rest of the Property.

108. Because of large deposits of accumulated silt and dense concentrations of vegetation throughout, the pond is presently incapable of supporting the fish farming purpose for which it was apparently built. The pohaku associated with the pond's mo`o wahine legend also could not be found because of the

overgrowth of vegetation and the debris in and around the pond. Nevertheless, the fishpond at Kapalawai is pristine and can be revitalized.

109. Petitioner has made a commitment to the community and the Sinclair-Robinson Family to fully restore, maintain, and operate the Kapalawai Fishpond as a Hawaiian fishpond. The fishpond will be restored to an appearance similar to that of the late 19th century and the first half of the 20th century, for the life of the proposed Project. The fishpond's restoration will proceed generally as Dr. Kikuchi described. Consistent with traditional and cultural practices, the whole pond on the periphery should be cleaned. Then the stone lining around the whole pond should be restored and the makaha should be cleaned. The bulrush should be cut back, leaving some areas as habitat for native birds. Small sections, about 5 to 10 feet at a time, should be cleaned and the rubbish should be taken out, dried, and composted, later to be mixed with the sandy soil to allow planting of trees. There should be no burning and the slow process of cleaning the wall and cleaning the pond 10 feet at a time will allow the flow of fresh water to flush out the portion that is being cleaned.

110. Once the fishpond is physically restored, it will be stocked with fish. Since the fishpond is located inland, fish stock such as mullet would have to be cultivated by

constantly bringing juvenile mullet from sources such as other ponds or rivers. Mullet do not spawn in a fishpond. Papio, barracuda, eels and other predator fish, which traditionally inhabit fishponds like Kapalawai Fishpond, must also be controlled.

111. Petitioner is committed to maintaining and operating the restored Kapalawai Fishpond as a historical and cultural resource consistent with the traditional processes Dr. Kikuchi described, and other experts and literature in the field recommend. Petitioner's maintenance and operation plan for the fishpond will include procedures for sharing fish harvested from the pond. The plan will also include provisions to train a caretaker and others, preferably from Kaua`i's West Side, to maintain and operate the restored fishpond.

112. Petitioner has also committed to allowing the public access to the Kapalawai Fishpond to observe the traditional and cultural restoration process that Dr. Kikuchi described and which Petitioner has committed to use to restore the pond. This will be the first time on Kaua`i where the process used to restore a fishpond will be based on traditional practices. When the fishpond at Kapalawai is restored, it will be the only fishpond on the entire island of Kaua`i open to the public.

Coastal/Aquatic Resources

113. Petitioner's consultant, Marine Research Consultants, conducted a marine assessment of the nearshore area fronting the Project. A narrow sand beach stretches along the length of the Property boundary for about 5,200 feet. The nearshore marine environment along the southern end of the Property from near A`akukui Stream to the Makaweli Landing consists of a shallow, gently sloping plain of fine-grained red mud. Near the shoreline, the mud grades into a mix of mud and sand. The mud zone extends uninterrupted form near the shoreline to a distance of approximately 1 kilometer offshore. Within this area, there is virtually no exposed solid bottom, and as such, there is no reef development. It is apparent that Hoanuanu Bay receives (or has received) substantial quantities of terrigenous sediment during periods of runoff. It also appears that the typography (shape) of the bay is such that sediments are retained within the coastal indentation, and are not rapidly flushed from the area. As a result, there is a substantial permanent depositional zone of mud within the bight of Hoanuanu Bay at the southern end of the Property. The nearshore coastal waters fronting the Property are designated Class "A" waters. It is the objective of Class A waters that their use for recreational purposes and aesthetic enjoyment be protected by the State Department of Health ("DOH").

114. From the point where A`akukui Stream crosses the shoreline northward, the nearshore area is made up of two zones: an inner reef flat and an outer reef front that are separated by a shallow reef crest. Long-period swells become breaking waves on reaching the reef crest. Bottom composition of the reef flat consists of muddy sand and coral rubble; maximum water depth on the reef flat is approximately 2 meters ("m"). Because of the shallow depth, high terrigenous sediment content, and vigorous water motion from wave energy, water clarity on the reef flat is highly turbid. However, living colonies of corals were observed on the roof flat, predominately lobate hemispherical heads of Porites lobata and sturdy, branching colonies of Pocillopora meandrina.

115. Seaward of the reef crest, the bottom slopes gradually downward with distance offshore. The underwater physiographic structure in the nearshore zone consists of a platform of lithified reefal limestone. While areas of the platform are relatively flat, other regions are characterized by substantial vertical relief in the form of deep grooves and undercut ledges in what appears to be ancient coral reef platform. Vertical relief of the reef structures is generally not more than 1 m. Grooves and channels in the reef platform are generally filled with coarse sand and rubble. The surfaces of the reef platforms are heavily pitted, probably as a result

of bioerosion, resulting in an extremely friable (breakable) upper surface. A ubiquitous feature of the reef platform is a veneer of red mud sediment that appears to be bound to the limestone surface within a short layer of algal turf. The thickness of the muddy layer decreases with distance northward and offshore. The predominant biota on the inner reef platform are flat encrustations of several species of stony corals and calcareous algae.

116. The entire area offshore of the proposed Project is exposed to long-period swells generated by storms in the north Pacific during the winter months and the south Pacific in the summer months. As a result of the physical forces associated with winter waves, the nearshore areas off the Property are subjected to extreme stress from wave impact and scouring of sediment from wave action. As in many locations in the Hawaiian Islands, the composition of coral reef communities is structured primarily in response to physical forces of breaking waves. In addition, the high loading and accumulation of terrigenous sediment in the areas offshore of the Property appear to be a major factor in affecting biotic composition of the reef communities.

117. The predominant taxon of macrobenthos (bottom-dwellers) throughout the reef off the Kapalawai area are Sclerctinian (reef-building) corals and benthic macroalgae.

Reef coral occurrence did not occur in the area off Mahaikona Stream owing to deposition of substantial reservoirs of red mud. To the north of the stream bed, the mud bottom decreased, grading into a reef platform composed of pitted limestone. On the reef platform, living coral abundance was relatively consistent along the northern portion of the Property. Coral abundance also peaked within a zone approximately 5-100 m seaward of the reef crest in the region of the high relief limestone platform. With distance seaward, bottom topography flattened to a relatively featureless platform with low coral abundance.

118. Results of qualitative line transects conducted in type typical reef zones provide an estimate of coral community structure. In total, eight species of "stony" corals were encountered on transects. Total coral cover was substantially higher on the shallower transects (30-32 percent) compared to the deeper transects (2-3 percent). The dominant species on the two north transects and the deep southern transect was Porites lobata, which accounted for about 37 percent of total coral cover. The other dominant species, especially on the shallow southern transect, was an encrusting coral identified as Leptoseris spp. This coral is generally not found in abundance in shallow water on Hawaiian reefs and is usually limited to deeper water. The anomalously high abundance

of the species is likely a result of the consistently high sediment loads in the nearshore waters. Other coral species encountered on transects included several forms of the genera Montipora (M. verrucosa and M. patula) and Pocillopora (P. meandrina and P. damicornis). The growth form of most of the corals that were present in the study area consisted of flat encrustations or low sturdy lobate structures. Branching and vertically plated species were observed primarily on the sides of channel cuts.

119. The other dominant group of macro invertebrates generally found on Hawaiian reefs are the sea urchins (Class Echinoidea). However, on the reefs surveyed off the Property, urchins were very rare. The only urchin that was observed was Echinometra matheai, which are small urchins that are generally found within interstitial spaces bored into the limestone substrata. Several Crown-of-thorns starfish (Acanthaster plancii) were observed on the reef. Nearby bleached skeletons of colonies of Pocillopora meandrina suggested that the starfish have been feeding on these corals. Numerous sponge were also observed under ledges and in interstitial spaces. Several spiny lobsters (Panulirus spp.) were also observed under ledges.

120. Frondose benthic algae were common throughout the nearshore region. In addition, encrusting red calcareous algae (Porolithon spp., Peysonellia rubra, Hydrolithon spp.) were

common on exposed limestone surfaces throughout the study area. Dominant species of frondose algae observed on the reef included the genera Dictyopteris, Dictyota, Sargassum, and Turbinaria, and the red alga, Amansia, Asparagopsis, Corallina, Laurencia, Liagora, Martensia, and Plocamium. All of these plants occurred commonly on the limestone platform.

121. In general, the reef fish community off the Property was limited in numbers of both species and individuals. However, reef fish community structure was largely determined by the topography and composition of the benthos. On the outer flat reef platform, fish abundance was substantially lower than on the inner zones characterized by high vertical relief which affords shelter to fish. The most abundant fish throughout the survey area was the blue-lined snapper (ta'ape, Lutjanus kasmira). Most of the other fish observed were juvenile fish belonging mostly to the families Pomacentridae (damselfish), Acanthuridae (surgeonfish), with representatives from the families Labridae (wrasses), Mullidae (goatfish) and Chaetodontidae (butterfly fish). The complex habitat created by the eroded limestone reef provided limited shelter for small fish. Overall, fish community structure off the Property is poor when compared to assemblages found in relatively undisturbed Hawaiian reef environments. The lack of an abundant fish community suggests that either the area has been subjected

to substantial amounts of fishing pressure or the environmental conditions (e.g., suspended and deposited terrigenous sediments) result in a sub-optimal setting for fish.

122. Three species of marine animals that occur in Hawaiian waters have been declared threatened or endangered by federal jurisdiction. The threatened green sea turtle (Chelonia mydas) occurs commonly throughout the island chain and is known to feed on selected species of macroalgae. The endangered hawksbill turtle (Eretmochelys imbricata) also occurs but is considered rare compared to the green turtle. Several green sea turtles were sighted on the surface and underwater during the surveys off the Property. Many of the turtles sighted underwater were either swimming slowly near the bottom or resting within crevices or under ledges in the reef. Populations of the endangered humpback whale (Megaptera novaeangliae) are known to winter in the Hawaiian Islands from December to April. Hawaiian monk seals (Monachus schauinslandi) also occur occasionally in waters off the high islands. No monk seals were observed during the surveys off the Property.

123. Because there is no plan for work on the shoreline or in the nearshore region, there is no potential for activities that might affect the health or behavior of turtles (or any other protected species). Potential changes in water quality that might occur as a result of construction would be

undetectable, and hence would not affect turtle behavior. The shoreline bordering the Property is sand, and it is possible that turtles could haul ashore. While it has not been documented that the area serves as a turtle nesting ground, such activities are potentially possible. The beach also presents the possibility as a haul out area for monk seals. Transplanted seals have been documented to frequent many areas in the high islands. As such, human intervention to endangered species populations has resulted in increasing the potential for interactions between humans and the endangered species. As a result, it appears that the Property has the same potential for monk seal habitation as any other beach locale on Kaua`i.

124. The marine environment off the Property appears to have been subjected to substantial sediment stresses for a sufficient period of time (many decades) to have influenced community structure. Such stresses are much more destructive than the small temporary changes that could result from construction of the proposed development activity. If some unexpected event related to development activities does occur, the resulting alterations to marine community structure would be reversible and recovery rapid once the stress factor is mitigated. Tolerance to such changes appears to already be part of the physiological range of the community.

125. In order to ensure that land use activities do not alter behavior of green sea turtles or monk seals that haul out, the Project lighting in areas near the shoreline will be designed so as not to illuminate the beach strand. In addition, employees of the Project and its guests will be educated about possible interaction with these animals and appropriate human behavior for that interaction. For employees, this information could be included in training sessions, materials, and handouts. For guests, information, in the form of brochures, could be placed in all cottages, and signage in strategic locations on the Property may also be appropriate.

ENVIRONMENTAL QUALITY

Noise

126. The existing noise environment of this coastal Property is influenced by the sounds of ocean waves and the wind rustling vegetation. In most locations on the Property, traffic noise from Kaumuali`i Highway is not discernible. The cottages are proposed to be set back from the highway at distances ranging from about 400 feet to about 2,500 feet.

127. Short-term impacts of the development of the Project will involve grubbing, grading, some excavation, and the construction of infrastructure, cottages, restaurants, and other accessory facilities. Actual noise profiles generated by these activities will depend on the construction methods employed

during each phase of the Project. Typical noise levels of construction equipment will range from less than 60 dBA for pumps and vibrators to almost 100 dBA for jack hammers and rock drills. Earthmoving equipment, such as bulldozers and diesel powered trucks, will probably be the loudest equipment used during construction. The closest sensitive receptor is several hundred feet from the nearest point of construction activity, and there is a heavy growth of vegetation separating the areas. Therefore, sound from construction operations will be greatly attenuated before reaching any nearby dwellings. In addition, agricultural activity in the vicinity already includes the operation of heavy equipment and trucks. Therefore, noise impacts attributable to the construction period are expected to be minimal and of a temporary nature.

128. Long-term operational period impacts of the development will include potential noise sources attributable to the operation of the Project and would involve the following activities: use of lawnmowers and other landscape maintenance tools; pumps associated with the wastewater treatment plant and irrigation systems; and arrival and departure of supply, guest, and employee vehicles. Typical A-weighted noise levels at a 50-foot distance for the landscape equipment range from 74 dBA for a lawnmower to 82 dBA for a chainsaw. The nearest noise sensitive areas would be residences located several hundred feet

away. Due to the distance of separation, these noises should not be objectionable. The pumps for the wastewater treatment plant and the irrigation system will be located within buildings, which will limit their impact. In addition, there are no sensitive receptors in the immediate vicinity. Therefore, no significant offsite noise impacts are anticipated related to onsite mechanical equipment.

129. In order to mitigate the impacts of noise, Petitioner proposes that all construction vehicles must meet Title II, Administrative Rules of the DOH, chapter 42, Vehicular Noise Control. In addition, all construction activities must meet the provisions of Title II, Administrative Rules of the DOH, chapter 46, Community Noise Control.

Air Quality

130. The existing regional and local climatology significantly affect the air quality of a given location. Wind, temperature, atmospheric turbulence, mixing height, and rainfall all influence air quality. Present air quality in the vicinity of the Property is affected by air pollutants from natural, vehicular, and agricultural sources. Natural sources of air pollution which may affect the area but cannot be quantified accurately include the ocean (sea spray), plants (aero-allergens), and wind blown dust. In the case of the Property, wind blown dust could originate from agricultural fields

adjacent (mauka and Waimea side) to the Property. This particular pollutant would be affected by seasonal variations in factors affecting soil cover and moisture content (temperature, rainfall, wind speed and direction, and harvest schedule). Wind blown dust could also originate from within the Property. Kaumuali`i Highway, which borders the Property, is the region's major arterial roadway and, as a result, is the source of exhaust from motor vehicles. Agricultural operations in the area also affect air quality with the operation of the sugar mill at Kaumakani, approximately one mile east of the Property.

131. Short-term impacts on air quality associated with the proposed Project will result from construction activity, including construction vehicle emissions and particulate emissions connected with clearing, grubbing, and other site preparation work, and construction equipment and workers traveling to and from the Property. Factors favoring good air quality in the vicinity of the Property include good exposure to tradewinds and ample open space. Moreover, vehicular traffic flow along the section of Kaumuali`i Highway fronting the Property is relatively smooth, further enhancing air quality. Factors contributing to less favorable air quality include low annual rainfall (about 21 inches), which creates dusty conditions, and good exposure to tradewinds.

132. Long-term operational impacts on air quality that could result from the operation of the Project are increased vehicle emissions due to increases in traffic volume and fugitive dust from disturbance of dry exposed soil. After construction of the resort is completed, use of the proposed facilities will result in increased motor vehicle traffic on nearby roadways (from about 6 percent to 20 percent, depending on day and time of day). This could potentially cause long-term impacts on ambient air quality in the Project vicinity. The use of electric-powered vehicles by the Project will reduce onsite emissions. Increases in vehicular emissions will probably not have a significant impact in the vicinity of the Project because traffic flow is smooth and normal wind patterns prevent the accumulation of emissions. In addition, the elimination of lead-based gasoline has eliminated this source of motor vehicle-created pollution.

133. In order to mitigate the short-term impacts on air quality during construction of the Project, compliance with State of Hawai`i Air Pollution Control Regulations (Title II, chapter 60.1, HAR,) will ensure reduction of fugitive dust related to construction activities. Reasonable precautions, or best management practices ("BMPs"), would include: use of water on exposed soil (twice daily, if necessary); covering all moving, openbody trucks transporting materials which may result

in fugitive dust; use of wind screens to prevent migration of fugitive dust, as appropriate; prompt removal of earth or other materials which have been temporarily stockpiled; and limiting the land area exposed by construction.

Water Quality

134. Petitioner's consultant, Marine Research Consultants, performed water sampling on various locations fronting the Property. Water quality constituents that were measured included the specific criteria designated for open coastal waters in chapter 11-54, Section 06 (Open Coastal Waters) of the State of Hawai`i, DOH Water Quality Standards. An assessment to determine compliance with DOH standards was also done.

135. Water quality is strongly influenced by terrigenous sediment in the nearshore ocean. This sediment appears to originate from runoff from upland drainage basins and maintains a long residence time within the shoreline fronting the Property. Hence, even if delivery of sediment is halted, it appears that the material presently on the bottom would remain in the system for an extended period of time. Water quality in the nearshore zone reflects high levels of suspended sediment that appears to be a consistent characteristic of the area regardless of season and weather.

136. A surface layer of low salinity, high nutrient groundwater occurs in the nearshore area as a result of an efflux of groundwater. However, owing to rapid mixing and the high level of suspended material in the nearshore zone, there is little response to the input of high nutrient water in terms of benthic algal growth. Plans for the Project specify usage of an onsite wastewater treatment system that will result in effluent (reclaimed water) for use as an irrigation source on the Property. As a result, none of the wastewater generated by the Project will be discharged directly to the ocean. It is anticipated that this method of wastewater disposal will have no impact on the marine environment for several reasons. In light of the observed substantial input of dissolved inorganic nutrients to the nearshore ocean as a result of existing groundwater fluxes that reflect current and past land uses, the small augmentation to groundwater from the proposed disposal of wastewater is likely to be undetectable or very small. In addition, the unrestricted circulation of the offshore zone by tidal and wind-driven currents, eddies, and wave action promotes rapid dilution of water exchange. While the residence time of deposited sediment appears relatively long, the residence time of a parcel of water fronting the development is probably on the order of hours to day, so long-term buildup of any dissolved constituent is unlikely.

137. While the planned Project may result in a temporary increase in exposed soil during the construction that could reach the ocean through runoff, it is likely that such an increase would be essentially undetectable when compared to the existing situation. The increased impervious surfaces that will result from the construction of roadways on the Property may actually reduce sediment delivery to the ocean as the roadways will replace lands otherwise subject to erosion.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highway and Roadway Facilities

138. Petitioner's consultant, Wilbur Smith Associates, prepared a report analyzing traffic conditions in the region and the anticipated impacts associated with the Project and identifying any roadway improvements that may be needed because of the Project.

139. During construction of the Project, there will be an increase in the number of trucks and other construction vehicles, including employees, that will be entering and exiting the Property. Vehicles making left turns into the Property from Kaumuali`i Highway may cause traffic to temporarily back up behind them. This potential impact should be minimized because direction of travel will be counter to peak directional flow and the duration of disruption would be temporary for the construction period. In an effort to minimize traffic

disruptions during the morning and afternoon peak hours, the start and finish times for work crews during the construction period should be timed to avoid these periods. Likewise, delivery of materials and heavy equipment should also be timed to avoid morning and afternoon peak hours.

140. Personnel will be stationed at the exit points to the Property during periods of high volume of deliveries and arrival of heavy equipment to assist in the direction of traffic.

141. The Project is estimated to increase the peak hour volumes on Kaumuali`i Highway just to the east of the Property by 8 percent during the weekday peak hours and by 20 percent on a Saturday with special events at the Property. To the west, the Project traffic would add an estimated 6 percent increase to the weekday peak hour volumes and 18 percent to the Saturday peak hour volumes on Kaumuali`i Highway near the Property.

142. The left-turn movements into and out of the Project driveway connections to Kaumuali`i Highway are forecast to operate at very acceptable conditions for each of the peak hour periods. The vehicles turning left from the mauka-bound exit driveway would operate at Level of Service ("LOS") C during each period. The left-turn movement from westbound Kaumuali`i Highway would operate at LOS A with the forecast volumes. Based

on the forecast peak hour volumes and traffic conditions, STOP sign controls would be appropriate for the exit driveway.

143. Because of the vehicular speeds along this section of Kaumuali`i Highway, a left-turn lane will be provided for the vehicles waiting to turn left from westbound Kaumuali`i Highway into the Project entrance driveway. This would reduce the potential for accidents, as well as delays to through traffic. The length of the left-turn storage lane should be sufficient to accommodate at least 3 or 4 waiting vehicles, or a minimum of 100 feet in length. Separate left and right-turn lanes are recommended for the exit driveway at the intersection with Kaumuali`i Highway to minimize any delay to vehicles turning right from the driveway. A right-turn deceleration lane is recommended on eastbound Kaumuali`i Highway at the entrance driveway for the Project for safety purposes and to minimize delays to through traffic. The left-turn storage lane will be constructed as soon after final permit approvals as is practicable. This action will also mitigate stacking of vehicles making left turns into the Property during employee arrivals.

144. During the hearing for this docket, Petitioner indicated that discussions had taken place with representatives of the State Department of Transportation ("DOT") and the PD concerning facilities to support public access to the ocean in

the vicinity of A`akukui Stream. Included in these discussions was consideration of an additional driveway access to Kaumuali`i Highway for the public facilities near A`akukui Stream. Should this driveway access be included as part of the Project, appropriate improvements to Kaumuali`i Highway may be required by the DOT. The costs of such improvements would be assumed by Petitioner.

Water Service

145. Water service from the Kaua`i Department of Water ("DOW") is not available for the Project. DOW's Waimea system ends at the Waimea River, 0.5 miles west of the Project. Even if water transmission lines were extended to the Project, the DOW system does not have source capacity to serve the Project. DOW's system serving the Hanapepe area ends four miles to the east of the Project.

146. A dual, private potable/irrigation water system is proposed for the Project. Both systems will be privately developed and operated. The choice to develop a dual (potable and irrigation) water system will take advantage of the supply potential of the spring-fed fishpond. Drawing water from this pond will augment its natural turnover rate, improving its water clarity while providing irrigation supply. It also allows elements of the potable system to be downsized accordingly.

147. Based on use rates in accord with DOW standards, it is estimated the year-round average potable water use to be approximately 0.12 MGD. Peak seasonal use could be about 50 percent higher, or approximately 0.18 MGD.

148. Based on available data, irrigation application rates in the summertime may be as high as 10,200 gallons per acre per day. Year-round irrigation use for the Project is estimated to be 0.36 MGD. In the summer months, the rate could be as high as 0.66 MGD.

Wastewater Disposal

149. Petitioner's consultant, Wagner Engineering Services, prepared a civil engineering report which included a discussion of wastewater demands. The County of Kaua`i operates a wastewater treatment plant ("WWTP") in Waimea, about one mile from the Project. The service area for this WWTP stops at the Waimea River, about 0.5 miles from the Project. The design flow for this facility is 0.3 MGD. The WWTP is presently operating at capacity, and there are no plans to include the Project in its service area. As a result, a private WWTP will be constructed onsite to handle all wastewater generated by the proposed Project. The proposed wastewater collection system includes the following elements: 14,600 linear feet of gravity sewer main, 15,500 feet of sewer laterals, 4,200 linear feet of force main, 44 sewer manholes, 4 sewage pumping stations, and 1

wastewater treatment plant. Three of the pumping stations will be located in the makai portion of the Property in order to receive flows from the cottages and other proposed facilities in that area. These pumping stations will lift wastewater to a main pumping station, which will lift and transmit wastewater to the WWTP. Proper design, operation, and maintenance of the pumping stations will assist in controlling odor problems. In order to prepare for the possibility of unforeseen odor problems, the stations will be designed to accommodate the addition of odor scrubbers, biofilters, or other appropriate odor-inhibiting appurtenances.

150. The WWTP must also be capable of accommodating peak diurnal flows from the Project. According to the County of Kaua`i's Maximum Rate of Flow Chart, a peaking factor of 5.0 should be applied to the peak season flow of 0.1020 MGD for a peak flow of 0.51 MGD.

151. Estimates for wastewater flow must also include infiltration. A common limit for an acceptable level of infiltration in a sewer system is approximately 500 gpd per inch-mile of pipe. This results in an estimated infiltration rate of about 20,000 gpd, or 0.02 MGD. The WWTP must therefore be sized for an average flow of approximately 0.12 MGD and a peak flow of 0.53 MGD.

152. The WWTP produces a solid product (sludge or biosolids) and a liquid product (effluent) for disposal or reuse. The biosolids can be safely disposed at the County of Kaua`i's Kekaha Municipal Landfill, as the County does with the biosolids from its own wastewater treatment plants. The biosolids must pass a "Paint Filter Test" at the landfill to ensure that it is sufficiently dewatered prior to disposal. The biosolids can also be used in a small onsite composting operation. Combined with green waste generated from landscaping maintenance operations on the Project, compost could then be reused for the Project's landscaping.

153. Traditional options for disposal of effluent include ocean outfall, injection well, rapid infiltration and irrigation. The best possible use of the effluent (especially on the Westside of Kaua`i where weather is hot and dry and water is a precious resource) is to recycle it as irrigation water. Irrigation will be the method of choice at the Project.

154. The use of reclaimed water will be accomplished in adherence with the DOH's Guidelines for the Treatment and Use of Reclaimed Water. If the effluent is treated to the R-1 level, it may be used to spray irrigate the Project with few restrictions, whereas R-2 quality effluent could be used for drip irrigation.

Drainage

155. Petitioner's consultant, Wagner Engineering Services, prepared a civil engineering report for the Project, which included the examination of drainage conditions for the Property to demonstrate that three offsite drainage basins are tributary to the Property. According to the United States Geological Survey Map, Hanapepe Quadrangle, they are, from west to east, the Nonopahu Ridge drainage basin (830 acres), the Waipao Valley drainage basis (4,617 acres), and the A`akukui Valley drainage basin (3,107 acres). All three drainage courses drain under Kaumuali`i Highway to the Property.

Nonopahu Ridge Drainage Basin. During the 100-year storm event, the Nonopahu Ridge drainage basin generates a peak flow of 1,578 cubic feet per second ("cfs"). Storm water from the drainage basin sheetflows makai and is also collected in a man-made ditch found in the G&R Akia field system. Two existing 36-inch culverts convey runoff under Kaumuali`i Highway and into a man-made ditch on the western side of the Property. These culverts do not have the capacity to accommodate the 100-year storm event, so the highway will be overtopped during the 100-year event.

Waipao Valley Drainage Basin. During the 100-year storm event, the Waipao Valley drainage basin generates a peak flow of 5,491 cfs. The watercourse for the drainage basin is

conveyed under an overpass on Kaumuali`i Highway, and then into a well-defined rock wall reinforced drainage channel (Mahaikona Stream) all the way to the ocean. The existing watercourse is approximately 36 feet wide, three to four feet deep, and clear of flow obstructions. During the 100-year storm event, the watercourse will overtop its banks.

A`akukui Valley Drainage Basin. During the 100-year storm event, this drainage basin generates a peak flow of 3,794 cfs. The drainage basin watercourse (A`akukui Stream) is conveyed under an overpass on Kaumuali`i Highway all the way to the ocean. The existing watercourse is approximately twelve feet wide, two to three feet deep, and overgrown in places. During the 100-year storm event, it is predicted that the watercourse will overtop its existing banks.

156. Aside from the three existing watercourses which traverse the Property, the remainder of the Property slopes from the highway to the ocean at approximately 4 percent immediately makai of the highway to approximately 1 percent at the shoreline. Sheet flow of the runoff to the ocean tends to minimize erosive effects on the Property. Peak flow runoff for a 100-year storm event is approximately 310 cfs, which comprises about 2.7 percent of the total 11,173 cfs generated within the tributary drainage basins (including the Property) that reach the Property. Makai of the highway, the ditch continues and

conveys runoff (the sugarcane irrigation filter discharge) to an area on the Property used as a settling basin by the plantation. G&R is presently constructing a new retention basin mauka of the highway within the Nonopahu Ridge drainage basin for the collection of irrigation filter discharge and storm water runoff. After settling, collection water will be pumped mauka for reuse. The retention basin will eliminate the irrigation discharge and most storm water runoff from the Nonopahu Ridge System from reaching the Property.

157. The most significant change to the topography of the Project involves the expansion of an existing drainage course on the Waimea side of the Property. This drainage course is a man-made ditch which stretches from the sugar fields above Kaumuali`i Highway, under the highway, and then makai on the Property whereupon it empties into the Property. The ditch primarily conveys overflow irrigation water and irrigation pump discharge. The proposed drainage plan requires that the existing drainage ditch be improved as a six-foot deep trapezoidal grass channel, with a bottom width of 30 feet and an overall top width of 54 feet, along a length of about 2,300 feet. The new channel will route runoff through the west portion of the site and outlet into a retention basin mauka of the shoreline, which will allow for sediment collection and controlled release. This grass channel will accommodate the

100-year storm with two feet of freeboard. In general, the overall topography of the Property will not be changed, and existing drainage courses will continue to be utilized. As a result, there will be no significant impacts to topography.

158. Drainage systems are proposed in certain areas to control storm water runoff for access roads and parking areas. Peak flow runoff for a 100-year storm event from the overall Property will increase from about 310 cfs in an undeveloped condition to about 589 cfs in a developed condition. The increase of 279 cfs for the 100-year storm event is insignificant (2.5 percent) when compared to the total peak offsite flow of 10,863 cfs from the three mauka watersheds which are tributary to the Property. Therefore, impacts to near coastal water quality will not be significant.

159. A second drainway will consist of a storm drain system that will drain the western portion of the main parking lot. This storm drain system will empty into the above-referenced drainway. A third storm drain system for the eastern portion of the main parking lot, the roadway to the main restaurant, and its parking lot will outlet to an open lawn area downstream of the fishpond. The fourth storm drain system for the parking area and roadway on the eastern portion of the Property will outlet into Mahaikona Stream. The remainder of

the site shall be graded to approximate the existing condition to promote sheetflow runoff from the Property.

160. Proper and regular maintenance of the existing streambeds and the proposed grass-lined channel is essential to ensure maximum flood protection for the Project. Maintenance of A`akukui Stream, which is currently overgrown in some places, will significantly improve its capacity. Also, inclusion of BMPs in the design of the drainage system will reduce the potential for sediments and other pollutants to reach the ocean and onsite streams. These BMPs include: grass channels, filter strips, and bioretention areas. Other more direct options, such as sand filters, will also be considered. Selection of final BMPs, which could include a combination of those listed, will be made at the time of detailed Project design.

Solid Waste Disposal

161. The County of Kaua`i's only municipal solid waste landfill is located in Kekaha, approximately seven miles to the northwest. The capacity and lifespan of the landfill were severely shortened after receiving waste and debris generated by Hurricane Iniki in 1992. At present, the landfill has approximately 5-1/2 years of capacity remaining. Based upon other resorts in Hawai`i, a development the size of the Project can be expected to generate 70 to 90 cubic yards ("cy") of waste per week.

162. According to the provisions of Article 7 (Landfills) of the Kaua`i County Code, the following materials are not allowed at the Kekaha Landfill from non-residential sources: corrugated cardboard, ferrous and non-ferrous metal objects, loads with more than 20 percent green waste, and liquid waste. As a result, the Project will implement an aggressive recycling program to minimize its impact on the County's diminishing landfill capacity.

163. Garden Island Disposal is the only commercial solid waste hauler on Kaua`i. Garden Island Disposal has contracted with the County of Kaua`i to handle recycling of the above-referenced materials. The key to any successful recycling program is maintaining a clean, uncontaminated waste stream. The Project should be able to recycle about 15 percent of its solid waste. In addition, the following items may also be diverted from the landfill: (1) Plastic - currently only number 2 plastics are recyclable on Kaua`i. Though not a significant portion of the waste stream, recycling of plastic fits in well as part of a larger recycling program and may grow to include other types of plastic in the future; (2) Food waste - restaurant food waste can be composted onsite and reused in Project landscaping; and (3) Green waste - the volume of green waste generated from landscape maintenance can be significant. The green waste can be composted onsite or delivered to the

Kekaha Landfill where the County of Kaua`i already has a green waste program in operation, provided the volume of green waste does not exceed 20 percent of any individual load.

164. Liquid wastes (other than wastewater) will be collected by a vendor and shipped off-island for recycling. In addition, the County of Kaua`i is currently evaluating proposals from private entities to handle large portions of the island's solid waste to avoid its placement in landfills.

Schools

165. The approximate number of individuals anticipated to move to Kaua`i from other islands due to employment opportunities created by the Project would be 14 dependent in-migrants for the construction phase and 10 dependent in-migrants for the operations phase. This factor, coupled together with Petitioner's commitment to seek employees from the Westside community and the island of Kaua`i, is not anticipated to have a significant impact on schools in the Westside community and the island of Kaua`i.

Police, Fire, and Emergency Services

166. The Waimea District (Hanapepe-Polihale/Koke`e) currently has one beat officer on patrol at any time. There are three nine-hour shifts (6 a.m. - 3 p.m., etc.), so there is some overlap between the patrol officers. One sergeant oversees four officers from Koloa to Polihale and provides backup to the beat

officers during the evening and late night shifts. During the day shift, the district commander takes care of administrative matters at the Waimea Substation and provides additional backup response to the beat officer and sergeant. Existing police manning and facilities are adequate to service current conditions. There are problems in the district with car break-ins in isolated areas. Increased traffic in the region could result in more traffic accidents. Having onsite security personnel would reduce impact to police services. In general, impacts to police services are not anticipated to be significant based on experience with other facilities in Koloa and Po`ipu, provided the Project provides onsite security.

167. Fire protection services are provided by Station 6 in Hanapepe and Station 7 in Waimea. Either or both stations would respond to structural fires on the Property. Only Station 7 would respond to brush fires unless additional backup was required. Each station has a 5-man crew. Response time from Waimea to the Project would be about 3 minutes; from Hanapepe, about 6 minutes. Petitioner will provide a private fire protection system consisting of storage tanks, lines, stand pipes, and access roads (to the cottages), so that existing fire protection equipment and manning could be sufficient to serve the Project.

168. Emergency services on Kaua`i are contracted by the State to American Medical Response. The Waimea unit serves the Property. Its service area runs from Polihale and Koke`e in the west to near Kalaheo in the east. It is an advanced life support unit with one paramedic and one emergency medical technician. The unit usually transports patients to Kaua`i Veterans Memorial Hospital, Waimea. Severe trauma and isolated orthopedic cases are transported to Wilcox Hospital in Lihu`e or to Honolulu. The Waimea unit responds to about 280 calls per year, or 31 calls per 1,000 population. This is the lowest incident rate on Kaua`i. The average response time of 10.5 minutes is considered excellent. If backup response is needed (e.g., the unit is already on a call), the Po`ipu unit will respond. The Fire Department co-responds on all calls. The Project would not require the addition of staff or equipment to the Waimea unit.

Electricity, Telephone, and Cable Services

169. Electric, telephone, and cable television service from Kauai Electric, GTE Hawaiian Tel, and Garden Isle Telecommunications, respectively, are readily available from overhead lines on Kaumuali`i Highway. Utility services will be brought underground from one or more of the several utility poles fronting the Property on Kaumuali`i Highway and looped through the Project to serve the various buildings within the

Project. High voltage primary electric service will be extended to several points within the Property and transformed for service to all facilities. The individual cottages are to be serviced with power only and telephone and cable service will be extended to common areas such as the restaurants, tennis facilities, the administrative facilities, and other guest services.

COMMITMENT OF STATE FUNDS AND RESOURCES

170. State and county operating revenues from the Project are anticipated to exceed their operating expenditures by $760,000 and $60,000 (in 1998 dollars), respectively, in 2004. Petitioner will assume complete responsibility for funding and construction of onsite and offsite infrastructural improvements, including potable/non-potable water and wastewater.

CONFORMANCE TO THE URBAN DISTRICT STANDARDS

171. Pursuant to section 205-17(2), HRS, and section 15-15-77(b)(2), HAR, reclassification of the Property conforms with the Urban District standards set forth in section 15-15-18, HAR, as amended, for determining the boundaries of the Urban District:

a. The Property is in proximity to existing urban areas which contain "city-like" concentrations of people, structures, streets, and urban levels of service. The Property

is in proximity to and in between Waimea Town, Makaweli, and Pakala Camp, which were designated in the Urban District when the State Land Use Districts were first adopted.

b. The Property is in proximity to various centers of trading and employment, including Waimea Town, Hanapepe Town, and Kekaha Town.

c. The Property is, or, upon the completion of necessary offsite and onsite infrastructure, will be adequately serviced by parks, wastewater, solid waste disposal, schools, drainage, water, transportation systems, private utilities, and police, fire, and emergency services.

d. The Property consists of satisfactory topography, drainage, and soil conditions; is reasonably free from the danger of flood, tsunami, seismic hazards, and unstable soil conditions; and is not affected by other adverse environmental conditions that would render it unsuitable for the proposed Project.

e. The Property is in an appropriate area for new urban concentration and has been classified Resort in the Kaua`i County General Plan.

f. The Property is in proximity to an existing commercial and residential community and will not contribute toward unreasonable scattered spot urban development. Petitioner will develop or arrange for all additional

infrastructure required to service the proposed Project, and public infrastructure and support services will not be unreasonably burdened by or require unreasonable investment as a result of the proposed Project.

g. The Property does not consist of lands having a slope of 20 percent or more.

CONFORMANCE WITH GOALS, OBJECTIVES, AND POLICIES OF THE HAWAI`I STATE PLAN; RELATIONSHIP WITH APPLICABLE PROPERTY GUIDELINES AND FUNCTIONAL PLANS

172. Pursuant to section 205-17(1), HRS, and section 15-15-77(b)(1), HAR, the reclassification of the Property generally conforms to the Hawai`i State Plan, chapter 226, HRS, as amended, with respect to the following objectives and policies:

a. Section 226-6 Objectives and policies for the economy-in general

Section 226-6(a)(2) A steadily growing and diversified economic base that is not overly dependent on a few industries, and includes the development and expansion of industries on the neighbor islands.

Section 226-6(b)(1) Expand Hawai`i's national and international marketing, communication, and organizational ties, to increase the State's capacity to adjust to and capitalize upon economic changes and opportunities occurring outside the State.

Section 226-6(b)(2) Promote Hawai`i as an attractive market for environmentally and socially sound investment activities that benefit Hawai`i's people.

Section 226-6(b)(3) Seek broader outlets for new or expanded Hawai`i business investments.

Section 226-6(b)(4) Expand existing markets and penetrate new markets for Hawai`i's products and services.

Section 226-6(b)(10) Stimulate the development and expansion of economic activities which will benefit areas with substantial or expected economic problems.

The proposed Project represents a type of visitor industry product that is unique in Hawai`i. The Project will emphasize the historic nature of the Property and will encourage guests to leave the Property to experience other cultural and recreational experiences on Kaua`i in general, and Kaua`i's Westside in particular. The Project will attract guests who presently comprise a segment of the travel market that is not highly recruited in Hawai`i, the eco-tourist. Eco-tourism is a term that can be applied to a wide variety of travelers, including adventure-travel, cultural-travel, and agricultural tourism. These travelers are more interested in understanding the intrinsic values that define communities (such as: history, music, art, and food) rather than being pre-occupied solely with the physical attributes of an area. Traditionally, tourism in Hawai`i has relied heavily on its natural beauty. In addition to broadening the market base for visitors to Hawai`i, the demographics of this type of tourist show them to be more educated, more affluent, and more environmentally aware. In addition, the operating philosophy of Petitioner is to create business opportunities for other entrepreneurs who are

interested in providing services to the Project. Frequently, these services are provided by the resort. Allowing local companies to provide these services allows more profits to remain in the local community.

b. Section 226-11 Objectives and policies for the physical environment - land-based, shoreline, and marine resources.

Section 226-11(a)(1) Prudent use of Hawai`i's land-based, shoreline, and marine resources.

Section 226-11(a)(2) Effective protection of Hawaii's unique and fragile environmental resources.

Section 226-11(b)(1) Exercise an overall conservation ethic in the use of Hawai`i's natural resources.

Section 226-11(b)(2) Ensure compatibility between land-based and water-based activities and natural resources and ecological systems.

Section 226-11(b)(3) Take into account the physical attributes of areas when planning and designing activities and facilities.

Section 226-11(b)(4) Manage natural resources and environs to encourage their beneficial and multiple use without generating costly or irreparable environmental damage.

Section 226-11(b)(8) Pursue compatible relationship among activities, facilities, and natural resources.

An existing historic fishpond will be protected and improved. The grounds of the Property, which have deteriorated and been neglected for decades, will be managed once again. To the greatest extent possible, the majority of the Property will be left in open space and natural landscaping. The emphasis on individual cottages will allow more landscaping to create a

natural feel to the Project. The restriction of roadways and the development of a pedestrian network will also limit environmental impact and foster pedestrian activities within the Property.

c. Section 226-12 Objective and policies for the physical environment - scenic, natural beauty, and historic resources.

Section 226-12(a) Enhancement of Hawai`i's scenic assets, natural beauty, and multi-cultural/historical resources.

Section 226-12(b)(1) Promote the preservation and restoration of significant natural and historic resources.

Section 226-12(b)(3) Promote the preservation of views and vistas to enhance the visual and aesthetic enjoyment of mountains, ocean, scenic landscapes and other natural features.

Section 226-12(b)(5) Encourage the design of developments and activities that complement the natural beauty of the islands.

The preservation and enhancement of an existing historic fishpond on the Property is an integral element of the Project. In addition to the preservation of the fishpond, other historic resources play an important role in the overall character of the Project. The master plan for the Project includes retaining and restoring the former Robinson Family residence, renovating its interior and exterior, and using a significant portion of the building as a museum dedicated to the history of the Property and the Robinson Family. The overall design of the Project will enhance the aesthetic enjoyment of

the Property and will not interrupt views of the ocean. The Property is currently shielded from view along Kaumuali`i Highway by existing vegetation. Thus, due to the low-rise nature of the Project, future development of the Property will not be visible from the highway.

d. Section 226-13 Objectives and policies for the physical environmental - land, air, and water quality.

Section 226-13(a)(1) Maintenance and pursuit of improved quality in Hawai`i's land, air, and water resources.

Section 226-13(a)(2) Greater public awareness and appreciation of Hawai`i's environmental resources.

Section 226-13(b)(2) Promote the proper management of Hawai`i's land and water resources.

Section 226-13(b)(5) Reduce the threat to life and property from erosion, flooding, tsunamis, hurricanes, earthquakes, volcanic eruptions, and other natural or man-induced hazards and disasters.

Section 226-13(b)(6) Encourage design and construction practices that enhance the physical qualities of Hawai`i's communities.

Section 226-13(b)(8) Foster recognition of the importance and value of the land, air, and water resources to Hawai`i's people, their cultures and visitors.

The Project will respect the natural aesthetics of the Property, the region, and the island. This is evident with the emphasis the Project design places on pedestrian experience. The Project will allow for the retention of large trees. In terms of coastal views, the Property is not presently visible from Kaumuali`i Highway because of dense vegetation fronting the

highway. Recycling wastewater, clearing the fishpond and using some of its spring water for irrigation, limiting paved surfaces, and returning to active landscape management and irrigation are intended to restore sensitive, ongoing land stewardship to the Property. The built environment will recognize constraints of the natural environment with adherence to regulations pertaining to flood hazards. The use of boardwalks and other walkways will enhance the preservation of vegetation on the Property, minimizing the trampling of vegetation on pathways or the construction of impervious surfaces. Similarly, automobiles will be parked after registration, and the main mode of onsite transport by guests will be pedestrian.

e. Section 226-15 Objectives and policies for facility systems - solid and liquid waste.

Section 226-15(a)(1) Maintenance of basic public health and sanitation standards relating to treatment and disposal of solid and liquid wastes.

Section 226-15(b)(2) Promote re-use and recycling to reduce solid and liquid waste and employ a conservation ethic.

Re-use and recycling will be incorporated into the Project design and management. These include recycling wastewater, composting green waste, and crushing and recycling glass containers.

f. Section 226-16 Objective and policies for facility systems - water

Section 226-16(a) Provision of water to adequately accommodate domestic, agricultural, commercial, industrial, recreational, and other needs within resource capacities.

Section 226-16(b)(3) Reclaim and encourage the productive use of runoff water and wastewater discharges.

Wastewater from the resort facilities will be collected, treated using an onsite wastewater treatment plant, and reclaimed as irrigation water elsewhere on the Property.

173. Pursuant to section 205-17(1), HRS, and section 15-15-77(b)(1), HAR, the reclassification of the Property generally conforms to the Recreational and Tourism Functional Plans.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

174. The reclassification of the Property generally conforms to the Coastal Zone Management Program, chapter 205A, HRS, in the areas of recreational resources, historical/cultural resources, scenic and open space resources, coastal ecosystems, economic uses, coastal hazards, managing development, public participation, beach protection, and marine resources.

CONFORMANCE WITH THE COUNTY OF KAUA`I GENERAL PLAN

175. The reclassification of the Property generally conforms with the County of Kaua`i General Plan. The General Plan designation of the Property was amended from Agricultural and Open to Resort on October 9, 2000.

INCREMENTAL DISTRICTING

176. The Project is intended to be completed in its entirety within three years from the Commission's decision without phasing.

RULING ON PROPOSED FINDINGS OF FACT

Any of the stipulated proposed findings of fact submitted by Petitioner and the other parties to this proceeding not already ruled upon by the Commission by adoption herein or rejected by clearly contrary findings of fact herein are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusions of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

Pursuant to chapter 205, HRS, and the Commission Rules under chapter 15-15, HAR, and upon consideration of the Commission decision-making criteria under section 205-17, HRS, this Commission finds upon the clear preponderance of the evidence that the reclassification of the Property, consisting of approximately 153.696 acres of land at Makaweli, island of Kaua`i, State of Hawai`i, identified as TMK 1-7-05: por. 1, from the State Land Use Agricultural District into the State Land Use

Urban District, is reasonable, not violative of section 205-2, HRS, and is consistent with the policies and criteria established pursuant to section 205-16 and 205-17, HRS.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Property, which is the subject of this Docket No. A00-731 filed by Destination Villages Kauai, a limited liability company, consisting of approximately 153.696 acres of land at Makaweli, island of Kaua`i, State of Hawai`i, identified as Tax Map Key 1-7-05: por. 1, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, is hereby reclassified from the State Land Use Agricultural District to the State Land Use Urban District, and the State land use district boundaries are hereby amended accordingly, subject to the following conditions:

1. Petitioner shall provide affordable housing opportunities for residents of the State of Hawai`i to include employees of the proposed resort in accordance with applicable affordable housing requirements of the County of Kaua`i. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and the County of Kaua`i.

2. Petitioner shall design and construct drainage improvements requirements as a result of the development of the

Property to the satisfaction of the Department of Health and the Commission on Water Resource Management of the State Department of Land and Natural Resources.

3. Petitioner shall conduct proper and regular maintenance of the existing streambeds and the proposed grass-lined channel which is essential to ensure maximum flood protection for the project as may be required by the County Department of Public Works. In addition, Petitioner shall institute Best Management Practices in the design of the drainage system to reduce the potential for sediments and other pollutants to reach the ocean and on-site streams as may be required by the County of Kaua`i and/or the State of Hawai`i.

4. Petitioner shall locate all building construction mauka of the Hurricane Iniki inundation line and shall mitigate flood hazards as shown on Petitioner's Exhibit No. 32 to the satisfaction of appropriate Federal, State and County agencies.

5. Petitioner shall provide adequate water source facilities and improvements to accommodate the proposed Project. Water source facilities and improvements shall be coordinated and approved by the Commission on Water Resource Management of the State Department of Land and Natural Resources.

6. Petitioner shall provide adequate wastewater treatment, transmission and disposal facilities as determined by the State Department of Health.

7. Petitioner shall fund and construct adequate civil defense measures as determined by the State of Hawai`i Department of Defense, Office of Civil Defense.

8. To ensure that the proposed land uses will not adversely impact endangered species and environmentally sensitive areas such as wetlands, ponds or streams, the Petitioner shall consult with the appropriate Federal and State agencies whenever, in the course of developing the proposed Project, it reasonably appears that an endangered specie or sensitive area may be affected by a particular development activity.

9. Should any previously unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, Petitioner shall stop work in the immediate vicinity and the State Historic Preservation Division of the Department of Land and Natural Resources (SHPD) shall be notified immediately. The significance of these finds shall then be determined and approved by the SHPD. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to their satisfaction.

10. Petitioner shall follow the State Department of Land and Natural Resources, State Historic Preservation Division

(SHPD) recommendations for mitigation of impacts resulting from the development and for archaeological data recovery and preservation. An archaeological data recovery plan (scope of work) must be approved by the SHPD. That plan must then be successfully executed (to be verified in writing by SHPD) prior to any grading, clearing, grubbing or other land alteration in these areas. A preservation plan must also be approved by SHPD. This plan, or minimally its interim protection plan phase, must be successfully executed (to be verified in writing by SHPD) prior to any grading, clearing, grubbing or other land alteration in these areas.

11. Petitioner shall implement efficient soil erosion and dust control measures during and after the development process to the satisfaction of the State Department of Health.

12. Petitioner shall participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed development in designs and schedules accepted and determined by the State Department of Transportation (DOT). Agreement between the Petitioner and the DOT as to the level of funding and participation shall be obtained prior to the Petitioner acquiring County zoning or prior to building permits if county zoning is not required.

13. Petitioner, where feasible, shall use indigenous and water conserving plants and turf and incorporate the same into common area landscape planting.

14. Petitioner shall notify all prospective buyers of property of the potential odor, noise and dust pollution resulting from surrounding agricultural uses.

15. Building setback lines shall be established during the Zoning Amendment and SMA Permit approval process to ensure proper siting of the proposed buildings and structures to mitigate any adverse visual and/or environmental impacts.

16. Petitioner shall provide public pedestrian access to the shoreline and shall develop the public restroom facilities, vehicular access to Kaumuali`i Highway and shower and parking facilities substantially as represented by the Petitioner and as shown on Petitioner's Exhibit 53. The public facilities shall be built and maintained by Petitioner, with twenty-four hour security. The duration and term of the public access to the shoreline and to the public facilities shall be coterminous with the term of Petitioner's Lease with the landowner.

17. Petitioner shall dedicate a public easement to the State of Hawai`i for 99 years adequate and reasonable with respect to beach and surfing ingress and egress and shall develop public restroom and shower facilities, vehicular access

to Kaumuali`i Highway and public parking facilities as described by the Petitioner and as shown on Petitioner's Exhibit 53. The public facilities shall be built and maintained by Petitioner, with twenty-four hour security. It is the LUC's intent that the duration and term of the public access to the shoreline and to the public facilities shall be coterminous with the term of Petitioner's Lease with the landowner. The facility shall be developed in consultation with the appropriate state and county agencies and the surfing community.

18. Petitioner shall provide public pedestrian access from the Project's proposed parking facility to the rock platform substantially as represented by the Petitioner and as shown on Petitioner's Exhibit 55. No structures or buildings shall be constructed closer than fifty (50) feet from the rock platform. The duration and term of the public access shall be coterminous with the term of Petitioner's Lease with the landowner.

19. Relying on its earlier decision in Public Access Shoreline Hawaii v. Hawaii County Planning Commission, 79 Haw. 425, 903 P.2d 1246 (1995), the Supreme Court in Ka Pa'akai o Ka'aina v. Land Use Commission, 94 Haw. 31, 46, 7 P.3d 1068, 1083 (2000), declared that "to the extent feasible when granting a petition for reclassification of district boundaries," this Commission must "protect the reasonable exercise of customarily

and traditionally exercised rights of native Hawaiians." To satisfy that obligation, "[s]pecific considerations regarding the extent of customary and traditional practices and the impairment and feasible protection of those uses must first be made before a petition for a land use boundary change is granted." Id., 94 Haw. At 52, 7 P.3d at 1089. The Commission's findings of fact and conclusions of law in land use boundary change proceedings must therefore specify "(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; and (3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist." Id.

20. There is some evidence of native Hawaiians' entry onto the Property to gather and otherwise use it to exercise traditional and customary Hawaiian rights prior to the 1800s, particularly with respect to the fishpond. Native Hawaiian maka`ainana activity appears to have occurred only with the permission of the parcel's ali`i owners, after acquisition of the Property by Victoria Kamamalu. Accordingly and consistent with Petitioner's expressed willingness and commitment to

restore, maintain, and operate the Kapalawai Fishpond as a Hawaiian fishpond, the Kapalawai Fishpond shall be restored, maintained, and operated in the manner consistent with traditional and customary Hawaiian practices as provided in P.A.S.H., supra., which the Commission finds to exist in the pond. Petitioner shall utilize recognized ancient Hawaiians pond experts such as Dr. Kikuchi and Professor Marion Kelly from the University of Hawaii, for guidance and assistance in the effort.

(a) Restoration shall proceed pursuant to a mitigation plan the Petitioner prepares and submits to the SHPD for review and approval prior to commencement of any restoration activity, and in accordance with the traditional and customary method described by Dr. Kikuchi, see Finding of Fact 109. Restoration shall be done deliberately and with sensitivity to the preservation of the fishpond and any marine and bird life at the site. Because large heavy-equipment could adversely affect the extant pond walls if the full weight of the vehicle is brought to bear on the wall, Petitioner shall make every effort to avoid using such equipment in the

pond's restoration. The pohaku on which the fishpond's legendary mo`o wahine is said to have sat will be retrieved from the debris, and it shall be re-placed and preserved in the place at its legendary location before restoration work begins. The public shall have access to the Kapalawai Fishpond to observe its restoration by traditional and cultural native Hawaiian means.

(b) Petitioner shall establish a management plan for the maintenance and operation of the fishpond which is consistent with traditional and customary historic Hawaiian practices. It shall include provisions for sharing fish harvested from the fishpond, for educating the fishpond's caretakers and Petitioner's staff about Hawaiian fishponds and the Kapalawai Fishpond in particular, and for training fishpond caretakers in the traditional and customary Hawaiian practices for the maintenance and operation of the fishpond. The management plan shall also include provisions for a fishpond management entity composed of a representative from the

Petitioner and a representative from the West Kaua`i Hawaiian community to be selected by the Hawaiian community. This entity shall manage all aspects of the pond's use and utilization as a natural resource including harvesting, water use, and visitor access. This entity shall be responsible for the resolution of any disputes which may arise as to the management and operation of the Kapalawai Fishpond in accordance with traditional and customary Hawaiian practices. The selection of the management committee shall take place no later than six months after the approval of the SMA permit. In addition, the plan shall include a process for the two members of the management entity to select a third member to overcome any stalemate. It is the intent of the Commission that as far as possible, Petitioner select individuals living in the West Kaua`i community who are familiar with the area and have a love for the 'aina to maintain and operate the Kapalawai fishpond. The management plan shall remain in effect for the

duration of the original term of the Petitioner's lease with the landowner. The Hawaiian gathering rights on the pond shall not be affected by the expiration or termination of the lease. It shall be a further condition of the Commission that Petitioner shall report back to the Commission within one year from the approval of the SMA permit on the understanding that the Commission reserves the power and authority to amend the condition herein to better operate the management committee.

(c) Further, no Project building or structure shall be constructed closer than one hundred (100) feet from the fishpond. Every effort shall also be made to prevent the contamination of the fishpond during the construction and operation of the Project due to water and waste runoff, the operation of pumps or other machinery in the area, and human access and habitation.

21. Petitioner acknowledges and agrees that it has no vested interest or right to develop the Petition Area, as reclassified, until Petitioner has substantially complied with

the representations it made to the Commission. Petitioner waives any claims for liability against the State arising from any reversion of the Petition Area.

22. Petitioner shall develop the Petition Area in substantial compliance with the representations made by the Petitioner to the Commission, including but not limited to the representation that the Project shall be limited to a 250 visitor unit density with existing and accessory uses, as proposed in its Petition. Failure to do so for any reason, including economic feasibility, may result in the imposition of fines as provided by law, removal of improvements by Petitioner at Petitioner's own expense, reversion of the Petition Area to its former condition by Petitioner at Petitioner's own expense, reversion of the Petition Area to its former classification, or a change to a more appropriate classification, or any other legal remedies.

23. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to the development of the Property. The decision herein, including the conditions imposed on Petitioner, shall be binding on Petitioner's successors and assigns according to law.

24. Petitioner shall timely provide, without any prior notice, annual reports to the Commission, the Office of

Planning, and the County of Kaua`i Planning Department, in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

25. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

26. Within seven days of the issuance of Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances, a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

27. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawai`i Administrative Rules.

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 8th day of March 2001. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

LAND USE COMMISSION
STATE OF HAWAI`I

By _____
MERLE A. K. KELAI
Chairperson and Commissioner

By _____
LAWRENCE N.C. ING
Vice Chairperson and Commissioner

By (opposed)
P. ROY CATALANI
Commissioner

By (excused)
BRUCE A. COPPA
Commissioner

By _____
PRAVIN DESAI
Commissioner

By _____
ISAAC FIESTA, JR.
Commissioner

By (opposed)
M. CASEY JARMAN
Commissioner

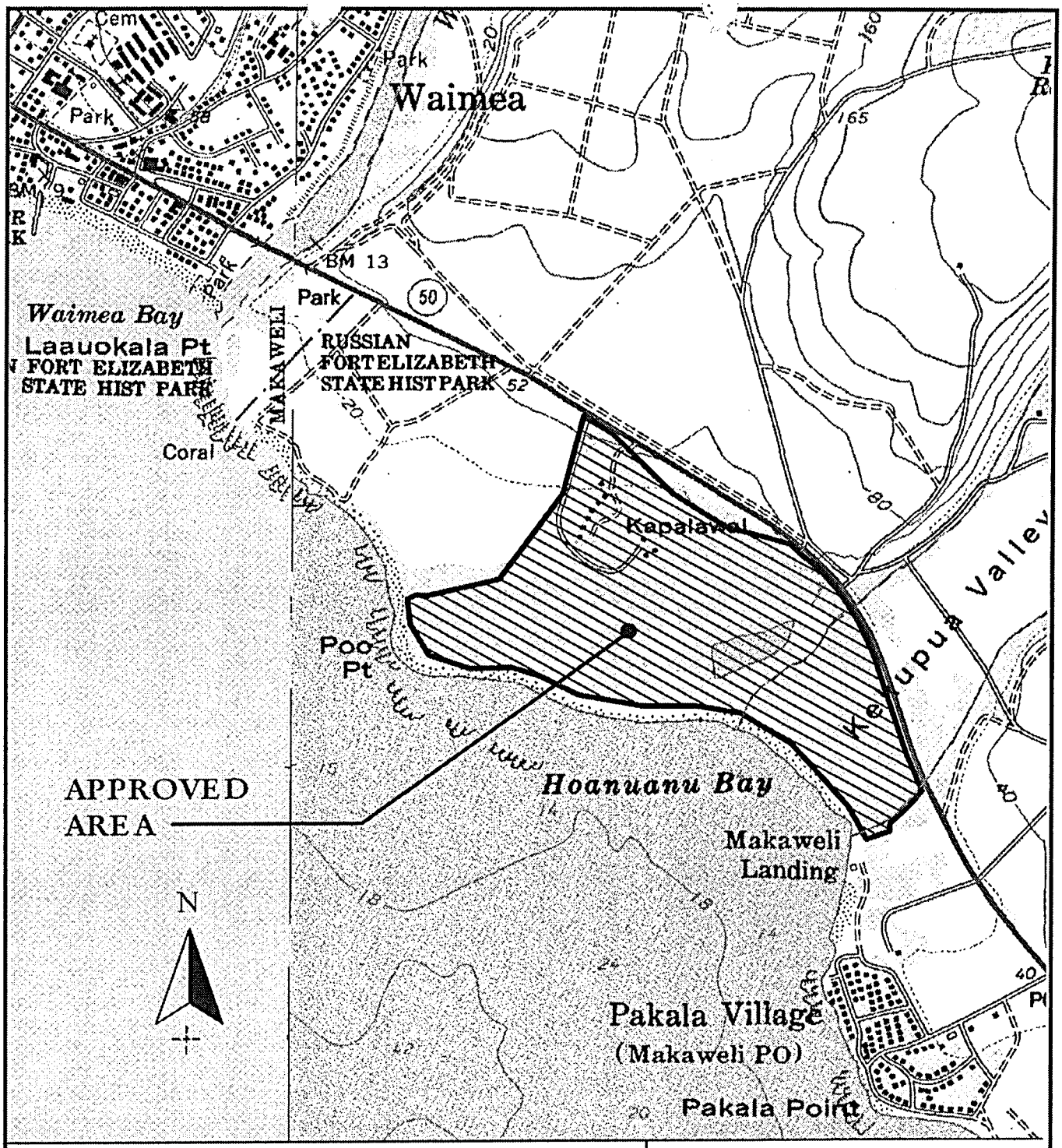
By
STANLEY ROEHRIG
Commissioner

By
PETER YUKIMURA
Commissioner

Filed and effective on
April 6, 2001

Certified by:

Acting Executive Officer

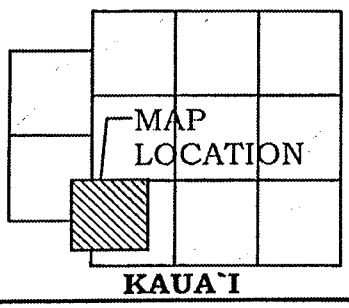



**A00-731 DESTINATION VILLAGES KAUAI, a Limited Liability Company**

LOCATION MAP

Tax Map Key: 1-7-05: por. 1
Makaweli, Island of Kaua`i,
State of Hawai`i

EXHIBIT "A"



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

| | | |
|---|---|---|
| In the Matter of the Petition of | ) | DOCKET NO. A00-731 |
| | ) | |
| DESTINATION VILLAGES KAUAI, A LIMITED LIABILITY COMPANY | ) | CERTIFICATE OF SERVICE |
| | ) | |
| To Amend The Agricultural Land Use Boundary Into the Urban Land Use District For Approximately 153.696 Acres Of Land At Makaweli, island of Kaua`i, State of Hawai`i, TMK 1-7-05: por. 1 | ) | |

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

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DATED: Honolulu, Hawaii, this 6th day of April 2001.

Bert Saruwatari

BERT SARUWATARI
Acting Executive Officer

KAUA'I PLANNING COMMISSION
REGULAR MEETING
**March 12, 2024**

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Donna Apisa at 9:01 a.m. - Webcast Link: https://www.kauai.gov/Webcast-Meetings

The following Commissioners were present:

Mr. Gerald Ako
Ms. Donna Apisa
Ms. Helen Cox
Mr. Francis DeGracia
Ms. Glenda Nogami Streufert
Mr. Jerry Ornellas
Ms. Lori Otsuka

Excused or Absent

The following staff members were present: Planning Department – Director Ka'aina Hull, Deputy Director Jodi Sayegusa, Staff Planner Dale Cua, Romio Idica, Planning Secretary Shanlee Jimenez; Office of the County Attorney – Deputy County Attorney Laura Barzilai, Office of Boards and Commissions – Support Clerk Lisa Oyama.

Discussion of the meeting, in effect, ensued:

## CALL TO ORDER

Chair Donna Apisa: Commissioners, commissioners, we're ready. We call the Commission meeting to order. Thank you.

## ROLL CALL

Planning Director Ka'aina Hull: Good morning, Madam Chair, members of the Commission. First order of business is roll call. Commissioner Ako?

Commissioner Gerald Ako: Here.

Mr. Hull: Commissioner Cox?

Commissioner Helen Cox: Here.

Mr. Hull: Commissioner DeGracia?

Commissioner Francis DeGracia: Here.

Mr. Hull: Commissioner Ornellas?

Commissioner Jerry Ornellas: Here.

Mr. Hull: Commissioner Otsuka?

Commissioner Lori Otsuka: Here.

Mr. Hull: Commissioner Streufert?

Commissioner Glenda Nogami Streufert: Here.

Mr. Hull: Chair Apisa?

Chair Donna Apisa: Here.

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

**APPROVAL OF AGENDA**

Mr. Hull: Next up we have the approval of the agenda. The department doesn't have any recommended changes to the agenda.

Mr. DeGracia: I move to approve the agenda as is.

Ms. Streufert: Second.

Chair Apisa: All in favor. Aye (unanimous voice vote). Agenda is approved. 7:0.

**MINUTES OF THE MEETING(S) OF THE PLANNING COMMISSION**

Mr. Hull: Next we have the Minutes of the Meeting of the Planning Commission for the following meeting minutes, October 10th, 2023, October 24th, 2023, November 14th, 2023 December 12, 2023, and January 9th, 2024.

Chair Apisa: Could we have a motion to approve the minutes?

Ms. Cox: I move we approve the minutes.

Ms. Streufert: Second.

Chair Apisa: Are the minutes for all of the mentioned meeting? All in favor. Aye (unanimous voice vote). Any opposed. Motion carries. 7:0.

**RECEIPT OF ITEMS FOR THE RECORD**

Mr. Hull: Next, we have Receipt of Items for the Record. The department did not receive any additional advance items for Receipt of the Record prior to the posting the agenda, however, subsequent to the posting the agenda, a number of communications and submittals were turned

into the Planning Department to transmit to the Planning Commission. As we've kind of pointed out several months ago, there was a complaint against the Planning Commission concerning how the agenda was being handled with the Office of Information Practices. The OIP has eventually got back to us, stating that the transmittal all of these communications to the Planning Commission prior to the commencement of the meeting could violate Sunshine Law and recommended against the practice of doing so. So, in such we have to hold all these communications until the actual meeting in the morning of, for which the Planning Commissioners you have a packet about that thick, which you did not get to see in advance. The members of the public that would like to see that, it is available at the Planning Department window, but at this time we're looking at taking a 45-minute recess so the Planning Commissioners and those members of the public that want to see it, can review these submittals prior to one over the actual agenda items.

Chair Apisa: Thank you. We will recess to review these items.

The Commission recessed this portion of the meeting at 9:04 a.m.
The Commission reconvened this portion of the meeting at 9:45 a.m.

Chair Apisa: Meeting will reconvene. We're right on schedule 9:45. So, good morning to everyone. Thank you for coming.

**HEARINGS AND PUBLIC COMMENT (None)**

Mr. Hull: We have no additional, that was Receipt of Items for the Record. We have no Hearings, no further agency hearings.

**CONSENT CALENDAR (None)**

Mr. Hull: Nothing else on the consent calendar.

**GENERAL BUSINES MATTERS**

Mr. Hull: So, we move directly into Agenda Item H. The first two agenda items, one item H.1., is a contested case hearing as well as H.2., is a potential contested case hearing. So, I'll be stepping down and handing over the clerking responsibilities to Laura Barzilai. Thank you all.

Chair Apisa: Thank you, Ka'aina. Good morning, everyone, and thank you for coming. I'd like to read a statement before we begin. As we've done in the past, I would like to now make a statement about public decorum. Mahalo for all public participants. Your presence and participation are valuable to the Commission, please be reminded that in the spirit of Aloha, respectful communication and proper decorum are necessary to maintain an orderly meeting. Public statements or remarks of aggression, threats of violence, profanity or personal comments about the Commissioners or the department staff which disrupt this commissions meeting may result in the speakers removal from the meeting. Please note Planning Commission rule 1-2-20G, Any person or persons who willfully disrupt the meeting or hearing to prevent and compromise the conduct of the meeting may be removed from the room. Please respect others when they are speaking and maintain decorum when providing your own testimony and as a reminder, everyone speaking has three minutes to speak. Everyone has the same three minutes. Please be

mindful and respectful of this also. Mahalo for your cooperation during this meeting and thank you again for being here.

Deputy County Attorney Laura Barzilai: Thank you, Chair. I'd like to read a statement about the Planning Commission. Based upon recent public comment, it may be beneficial to the public for the Commission to provide this statement regarding the appointment and authority of the Planning Commissioners. Pursuant to requirements of the County Charter, the Commission is made-up of members with knowledge and awareness of environmental, business, and organized labor concerns by way of the persons, education, training, occupation or experience. Each of these seven Commissioners are volunteers. Appointed by the Mayor and approved by the County Council. Each bring their experience from a different area of community life, such as labor union management, a former chancellor of higher education, professional agriculture, business, and real estate. The Commissioners are not paid for their dedicated public service during the term on the Commission. They deserve respect and courtesy as they do their jobs here, just as they show respect and courtesy to all participants and the public, again, pursuant to charter, each may serve a maximum of two consecutive three-year terms but may return to the Commission after at least a one-year break. Commissioners comply with the County Code of Ethics and diligently recuse themselves if there is an indication of personal interest. They don't make decisions on any matters where they might have a direct personal financial gain or have direct business personal, or employment interest. These recusals have happened many times at Planning Commission and will continue going forward. In the spirit of Aloha, out of courtesy and respect, any questions or comments regarding the subject matter of this statement should be directed to the Planning Department via e-mail and not directly to or at the individual volunteer Commissioners. Thank you for your attention, understanding, and courtesy at this morning's meeting, we can proceed now. Chair, if you'd like to read the item into the record.

Chair Apisa: General Business Mater Item Number H.1.

> In the Matter of Petitions to Appeal Planning Director's Determination in Regard To The Applications of Try Slow, LLC Shoreline Setback Applications and Determinations, SSD-2023-45, SSD-2023-46, SSD-2023-47, and SSD-2023-48, Received on July 24, 2023, The Hale Makai Cottages, located at 4400 Oneone Road, Hanalei, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 5-8-008:034, containing 39,000.00 square feet.

a. Petition for Appeal submitted by Petitioners on July 24, 2023.
b. Petitioners Malama Kua'aina and Caren Diamond's Prehearing Statement.
c. Applicant Try Slow, LLC's Prehearing Statement.
d. Respondent Planning Department of the County of Kaua'i's Prehearing Statement.
e. Conditional Settlement Agreement.
f. Stipulation and Order to Vacate Pending Hearing Dates in Contemplation of Dismissal approved by Hearing Officer Harlan Kimura on February 9, 2024.
g. Stipulation, Recommendation, and Order Approving Withdrawal of Appeal.

Ms. Barzilai: First, we'll call for public testimony. We have two people signed up the first is Steve Sedgwick.

Chair Apisa: Good morning.

Ms. Barzilai: Thank you, Sir. You have three minutes to speak. Please state your name for the record.

Mr. Steve Sedgwick: My name is Steve Sedgwick. Good morning, Madam Chair, Mr. Hull, who's not here, and Commissioners. I'm here today, my wife, who shared a testimonial via the process of hopefully you've read it. Robin Yasuoka Sedgwick is not here because of health reasons, but I wanted to share with you some very, very important information that you may have not been able to consider in the past. I've lived at the house either part time or full time for 23 years and to me, my position is I want to support Ms. Diamond's efforts to block this development. Everything that Ms. Diamond has shared with you regarding the last time the state of the easements or the shoreline was surveyed nearly 45 years ago, all the issues that she's brought up are real, they're absolutely real, and for me it's not about another easement. I do believe that the public should have easements, but this is about common sense. This area that we're talking about Anchorage Point, it's a marine sanctuary. We have monk seals that haven't been born on this beach in 35 years. We have shearwaters that are nesting in the vegetation in front of the (inaudible) in front of the (inaudible) in front of the cottages, we have endangered species that no one is brought a voice to this Commission and today not only do I want to share about everybody has a responsibility to protect these endangered species and it's very, very pristine area of Kaua'i. In addition, I want to talk a little bit about some of the public safety issues, I wanted to share with you about the easement. I know about the history of the property, I've been there during the whole 25 years of litigation, but there were some real settlements with the county back in 2008 that moved parking back onto Oneone Road for the cottages. Today, my only access, my only access is through a little tiny dirt road that I could barely get my car into now and nobody has recognized that the responsibility of parking in such a little tiny dirt area is no different than what we see at Tunnels Beach. I just, I'm just shocked that we would even consider allowing a public easement when 56 seconds, 56 seconds to the west and 56 seconds to the east are current public easements. Now the reef, again, we're talking about a sanctuary, a marine sanctuary here. The coral reef is finally, finally, after years of being dead, it's now rejuvenating. We've got a terrible, terrible, dangerous beach. I know Caren has saved people off this beach.

Ms. Barzilai: I'm sorry, Madam Chair, three minutes.

Chair Apisa: Three minutes. Can you wrap it up?

Mr. Sedgwick: Wow, I can wrap it up. In addition, there are Hawaiian artifacts that are being discovered in front of my house. In 2018, we had a hurricane that ripped out the sand and we're finding Hawaiian artifacts in front of the house at Anchorage Point, thousands of them. So, I had hoped that you would reconsider and give it some time. Let's get the DNLR out there. Let's get Shoreline management out there. Let's get the lifeguards to talk about how dangerous the beach is. Let's get the Fire Department out there to look out at how this road is not, this road cannot handle.

Chair Apisa: If we can wrap it up.

Mr. Sedgwick: Thank you very much.

Chair Apisa: Don't mean to cut you off, but we have to give equal time.

Mr. Sedgwick: Got it.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you. Next testifier, Laurel Loo.

Ms. Laurel Loo: Thank you. Thank you, Madam Chair, Commissioners, Mr. Hull, Ms. Barzilai for your time to this and thank you to the Commissioners for your volunteerism. My name is Laurel Loo. I'm an attorney for the Sedgwick's, and I'm here to raise some issues of concern. Mr. Sedgwick is a person, Mr. and Mrs. Sedgwick are the people the most directly affected by this proposed pathway because it will block their ingress and egress into their property, they have not been consulted about this until yesterday, when Mr. Sedgwick met with Try Slow, yesterday evening. So, we should have been brought in months ago. Because of our concerns about the blocking of his access, we are requesting that Try Slow consult with the Fire Department and emergency responders about the reasonableness of this access. Another concern we have are liability concerns about the dangerous rip currents in front of this proposed pathway, Mr. Sedgwick informs me that this year alone there have been three to four drownings in the general area alone because of a riptide that is present there, which most local fishermen know about. The county's liability and directing people down this pathway into a dangerous beach needs to be considered. There needs to be a conscious decision by the county on whether to place lifeguards or warning signs, and I don't believe any of that has occurred. I do not believe that First Responders have been consulted about this proposal. So, along with Mr. and Mrs. Sedgwick's environmental concerns, I think it's reasonable to halt things for a few weeks so that the county can bring into the conversation people like the Sedgwick's, whose access will be blocked to their property and First Responders, not to mention, as Mr. Sedgwick has pointed out, environmental agencies that can take a look at the artifacts and the endangered species that are on the beach, most notably monk seal, which was found and is there now, a baby monk seal. Thank you and we're available for any questions.

Ms. Barzilai: Is there anyone else who would like to testify on this item? Please approach and state your name for the record you have three minutes to testify. Thank you. Did you folks want to come forward? I don't think there any more testifiers, Madam Chair. I think we're supposed to hear from parties right now. If the parties can approach to make statements and arguments. You can read your statement now, Chair.

Chair Apisa: While the parties are coming forward, we will now consider item H.1. on our agenda. The Conditional Settlement Agreement and the Contested Case on the Malama Kua'aina versus Try Slow LLC, and the Planning Department. At this time, we would like to take comments from the parties, starting with the applicant Try Slow then petitioner Malama Kua'aina, followed by the department. Please limit your comments to 10 minutes or less. Thank you.

Mr. Ian Jung: Okay, good morning, Chair and members of the Commission, Ian Jung, on behalf of the applicant, Try Slow LLC and with me is Mr. Arreguin, who's the principal for Try Slow LLC. First, I want to just bring the Commission back around to how we got here. So, as some of

you may have recalled, we filed a shoreline setback determination application which was then timely appealed by Ms. Diamond and Kua'aina, Malama Kua'aina and that matter was referred to the hearings officer for which we started the contested case as a part of the hearings on the matter, as the course of the contested cases went, we met with Ms. Diamond and her representatives and found a solution to try and resolve some of the issues that were raised in the general case itself, I mean, I don't want to claim any misrepresentation here, but my client has been speaking with Mr. Sedgwick for about a month now about this matter, and I spoke with Ms. Loo about this on Friday, so they've had at least a weekend to discuss this and come to us with any of their concerns. They did meet yesterday to discuss some of these concerns, but I think what they're forgetting is that this is private property, that is abut Oneone Road, which is a part of the old Wainiha Hui Subdivision. There are certain spurs that were created as a part of the subdivision application and this one lot is a public County Road that delivers right into the property for which the proposed access will be. It seems like this access is the primary issue and whether or not there's any environmental issues to it. The HR is 520, Chapter 520 allows for landowners to provide public recreational use through their respective properties. So, state law allows for this type of access to be granted and it inoculates from a liability standpoint, the owners to do this type of access. So, with Ms. Diamond and I, we went out there to try and identify where would be a good location to create this proposed access and it's not an easement. There already is an old existing easement on the property. It's a nonexclusive easement that takes it to an old triangulation station for the US Geological Service, so this is just overlaid on top of that to provide folks in the neighborhood or the general public to have pedestrian access only. And we tried to offer Mr. Sedgwick and Ms. Loo the potential to put up certain signage and Ms. Diamond was willing to work with me on coming up with signage to limit parking similar to what goes on down in certain turn off roads and tunnels to encourage people not to try and park on this little spur road that drops down into the beach access area. So, we're still willing to do that. And the claim of environmental impacts, it actually encourages good environment where you can have access to a beach resource and Ms. Diamond, I think will speak to some of the points that historical access where people had used this particular area to get down to the beach. I think what was failed to mention on the Eastern boundary line of Mr. Sedgwick's property is a six-foot rock wall which will at least contain the right of passage that people will get to the beach from meandering over onto his property. So, there is a defined boundary where people will be able to walk and go through this proposed new declaration of recreational use area to get onto the beach without impacting Mr. Sedgwick's property. With that, I'll leave it there, but it you know, we started this contested case and this particular matter, I mean Mr. Sedgwick's a little late to the game, you have a right to appeal within 30 days of the notice of the applications. He did not (inaudible), did not appeal. So, he lacks standing to now come in and try and assert a delay in this matter where we're just having the appeals with John. Thank you.

Chair Apisa: Thank you.

Ms. Caren Diamond: Good morning, commissioners. Caren Diamond, I'm here today from Malama Kua'aina and for myself. This is one of those win-win settlement agreements where the community really benefits the access here was a traditional beach access that has been there since the 1947 Wainiha partition decree that and in the 1993 Na Ala Hele Beach Access Report, they cited this beach access as being a community beach access. It is, there's a state easement that it follows along and so in 2004, the current landowner that is different than this landowner now put a wall up and blocked the beach access, and ever since 2004 beach access there has been

blocked. In 2006, the Kaua'i County Open Space Commission put it on their priority list to restore our lost beach accesses and this beach access was listed in that list to the community has long wanted this beach access to be back and in this settlement agreement, Mr. Arreguin should be applauded because the community gets its beach access back and it restores beach access both to and along the shoreline, which is what coastal zone management is all about, and our public trust rights to use our beaches and get to them, and so I urge your support of this agreement, which restores our public access both to and along the beach and is a win-win for everybody. So thank you.

Chair Apisa: Thank you.

Deputy County Attorney Chris Donahoe: Good morning, Chair. Deputy County Attorney Chris Donahoe on behalf of the department. Is it on? I'll talk louder then. How this matter started was four separate shoreline setbacks determinations that were made for proposed repairs. The county, when the county first got involved with this there was intervention with by Ms. Diamond and there was quite a distance between the parties, and parties made great efforts to include myself in trying to come up with a resolution. Went halfway through a contested case hearing and the county is satisfied with the terms set forth in the settlement agreement that address the concerns of both Ms. Diamond as well as the owner. For the county's responsibilities, the one clause that's the mostly irrelevant, is the county (inaudible) process on a timely basis the withdrawal of the appeals and also the building permit applications because at the end of the day, the county stands by its determinations in this settlement agreement will allow those repairs based on those (inaudible) settlement determinations to go forward. To do agree that the settlement agreement is clear, that the five-foot-wide access is a pedestrian access, and I did go through some of the concerns that Mr. Sedgwick and his wife had put forward in written testimony. And although I understand the concerns, it also seems that the property that he's discussing 4411 operates as an active TVR. So, it's rented out, so it's number 5134 is, so there's concerns about traffic, public access, beach congestion, I heard monk seals, a Hawaiian artifacts, marine sanctuary damage, but if it's being rented out to other persons and families who are noisy can cause the same amount of beach damage, the dangerousness to the surf, then those concerns also are put upon Mr. Sedgwick because he's renting a the property out and it's interesting cause in the ad under the VRBO for to rent out the property, the guests are promised...offers a once in a lifetime vacation experience, providing contemporary luxury and private beach setting so, it would seem that it's more about the additional access, not so much that does Mr. Jung's client have the right, which under 5, under the DRUE public can access it, that's and limit the liability and so that's what was done here and it's reasonable under the circumstances given how far apart these parties were and it was included the pre hearing statements for each of you to review to see how far apart they were and so this, the department stands by its determinations that originally made and stands by and supports this settlement agreement. The one proviso and I'm sorry, Chair under the stipulation and order to vacate pending hearing dates in the order approving withdrawal of appeal and the conditional settlement. It was accidentally put that under it was the wrong chair, so we would need to change the name to Apisa, so we apologize.

Chair Apisa: I've been called worse.

Mr. Donahoe: That's all. Thank you. Thank you.

Chair Apisa: Commissioners, are there any questions to the parties?

Ms. Streufert: Yes, if I could. One of the issues, and that's of more concern to me than all the other ones, is that this is going to block egress and ingress into the Sedgwick's property, which means that there could be a problem with Fire department or with Emergency Management or, I'm sorry, Emergency Services, which could include fire trucks, which tend to be wider, and ambulances and that kind of thing. Can you address that? Is that a valid concern and how is that going to be addressed?

Mr. Jung: Yeah, I had, again, as discussed, I had discussed this matter with Ms. Loo on Friday and we thought of concepts to put up no parking signs in certain areas, kind of like what occurs in Tunnel, and then my client actually and met with Mr. Sedgwick to discuss that. Ms. Diamond and I had also discussed what kind of community signs we should think about creating or putting up there, so people won't park through there. It is a county road, so we can't technically put up any signs in the county road unless we get approval from the Engineering Division, but one of the thoughts is, you know, we could identify it as a residential access and that parking shall be outside this area and we can work with the Engineering Division to maybe vegetate it a little further and identify a beach path only versus any parking where people with park in there. So, two lots up, as Mr. Sedgwick had identified, there are two accesses kind of that split this two lots up on Alealea Road there's an access point that is used, but from my understanding I spoke to Mr. Graham about this because he has a lot of knowledge in dealing with the Wainiha Hui partition action. Those accesses were developed for sort of the residential community of that area. A lot of the tourists that I understand don't use this particular beach because it's kind of wind swept and kind of off the area, which people always refer to as Tunnels. So, it's not like it's a heavily used beach and during our hearing, one of the concerns that was raised for people who come off that secondary access or that primary access and Ms. Diamond raises is, if there's a large swell event and there's a run up on water and people are walking the beach, then there can be an egress point from the beach to get out of that area from where, and I don't know the Hawaiian name, but whatever is referred to as Anchorage Point, but from that point to get out of the way of harm. So, in actually, my opinion, and I was born and raised on Kaua'i and did a lot of water activities. It helps the situation where you can, if you're walking the beach and need to egress out very quickly you can go up that access, versus having to go further down towards Hanalei Colony.

Ms. Streufert: But those are for visitors. I'm looking at the residents who are living there. Is that going to be a problem for them? Is that a safety issue, that's my concern.

Mr. Jung: Yeah, well, it would fall, it's a county road. So, my client and I we don't have any control over what kind of signage puts up, but we can work together on putting respective signage on our respective properties to request consideration for the neighbors, but it's just like any other road where someone may park and block your driveway you just put up signs, please don't block this driveway and it happens all the time, right. And this, and I agree with you the way this was originally designed, you got to think about when it was done in 1960, they didn't have turnarounds, they didn't have fire, like large fire trucks that we need to turn around and I think one of the issues now is fire or the trash truck. I heard there was a complaint that they have to drag, the vacation renters have to drag their trash cans all the way up to Alealea Road out of Oneone Road because there was no turn around and it was designed at a time when you didn't

have street standards like we have now. So, I think it's just going to take some coordination and there is a complaint process that roads division takes that if someone's blocking a driveway or if there is people are parking, you can call and they'll request folders or whatever things people put to have those removed. So, it doesn't block driveway access. But at the end of day, we're willing to work through them. You know and come up with some certain signage.

Chair Apisa: So, for clarity, if I could just ask a question, I guess for clarity. What I'm hearing is that it is a county road and so emergency vehicles do have access provided there's no cars illegally parked on the side of the road.

Mr. Jung: Correct?

Chair Apisa: Thank you. Any other questions? Commissioner Streufert, did that...

Mr. Ako: Madam Chair, I think I have questions probably for Mr. Sedgwick. I'm trying to figure out whether the appeal is to determine, is regarding the shoreline determination setback or whether the appeal is about the agreement that was just settled.

Mr. Sedgwick: I support Ms. Diamond's in her assessment of why (inaudible)...

Chair Apisa: Speak into the microphone.

Unknown Woman: You have to state your name, Sir.

Mr. Sedgwick: My name is Steve Sedgwick with Robin Sedgwick Yasuoka. We support Ms. Diamond in her assessment that the shoreline needs to move these cottages back 60 feet. What I am opposing today is I just, just on Wednesday afternoon I was able to get a copy of the settlement agreement, so I'm here today mainly opposing what I read 72 hours ago. I had to read 600 pages, be able to digest it and be able to put a opposition to the settlement agreement. So, I've had no time in spite of what these guys are saying. They misled me about everything that's going on here today. My first view of it was literally last Wednesday at 4:00. And I wish I would have been consulted. I wish I had been able to provide some input, but I was denied and quite frankly I was lied to by Try Slow and I think they need to go slower. I think they need to try it slower. I know that I've done subdivisions down there where it took me 10 years to do it right. And I met with Chris, and I said you've got a subdivision, you need to disclose to the Commissioners what you're doing with these three lots. Put it forward, put everything on the table and do it right. We're going to be back here a year from now. We'll be fighting about the same. And that's why I highly recommend that we get a map, let's see what their provision is. Let's look at the parking, get the Fire Department down there to recognize it. I also see what's gone down in Po'ipū, I have a house in Po'ipū and it's ruined, it is absolutely a mess.

Mr. Ako: So, at the end of the day, say today, your desire would be that we rescind the agreement that has been achieved between Try Slow and Ms. Diamond?

Mr. Sedgwick: Based upon new information that's being put forth on the sanctuary of the endangered species, the artifacts that have been identified that are over 1000 years old and that have just been discovered in the last couple of years, I would call on Hawaiian Community to obsoletely support this denial of the approval, rescind it based upon new information.

Mr. Ako: Yeah, so your issue is not with the shoreline determination set back.

Mr. Sedgwick: I am 100% in favor of Ms. Diamond's efforts to deny any permit for anything until it's done right. It's got to be done right.

Mr. Ako: Okay. Thank you.

Mr. Sedgwick: Thank you.

Ms. Barzilai: Any other questions, Chair?

Chair Apisa: Do the Commissioners have any other questions?

Ms. Streufert: Could I ask our attorney, what was the process to get to this agreement?

Mr. Donahoe: So initially it was set up for contested case and the issue was an appeal. Oh, I'm sorry, Deputy County Attorney Chris Donahoe. The process was once the determinations were made and the determinations were made to exempt and consider the proposals repairs to all four colleges, Ms. Diamond appealed, stating that the main issue was the location of Cottage 4 and whether they should have been exempted or not. So, that was initially how it, how it came to pass. We went through several days of hearing where one of the other issues was the what the terms of the 2008 settlement agreement stated, and then the 2018 settlement agreement stated and how those settlement agreements categorize the four cottages so...

Ms. Streufert: (Inaudible) and there's an issue about the (inaudible).

Mr. Donahoe: An issue about vegetation. So, one of the, oh, I'm sorry.

Ms. Streufert: The wall, and also the wall.

Mr. Donahoe: Yes.

Ms. Streufert: As I recall.

Mr. Donahoe: Yeah. So, some of the testimony that had come out and again we didn't finish the contested case hearing. Some of the testimony that had come out was what had been planted at the time before the 2008 agreement and then 2018 and since then and so the issue became, was it new vegetation or had it just been growing there? But then, so one of the concerns was can there be a resolution to cut back some of that vegetation that would assuade Ms. Diamond's concerns and as well as property owners, and so that was part of the negotiations that went into this was, and also how do we reclassify these four cottages now, so the language that was in controversy from the 2008 settlement agreement and the 2018 settlement agreement. We start from this point forward going forth. This is how they're category is now. This is how the vegetation is now and moving forward this is what's being negotiated, so that was negotiated mostly between the parties through multiple site visits to determine what was a reasonable compromise. And so, the reasonable compromise was to approve the exemptions and consider them as repairs to allow those repairs once the building permits are submitted, but also address the concerns of the vegetation and the access to the beach.

Ms. Streufert: Thank you.

Ms. Cox: My question is also to you is, at what point and what are the requirements and also what actually happened as far as notifying the neighbors? Is there any...

Mr. Hull: Ka'aina Hull on behalf of the Planning Department. Just to take a step back, there's no new proposal being proposed in this. I think a lot of times you're like, oh, something's being proposed, a new development is being proposed here, what is being proposed was repairs to existing structures, and so when the repair proposals came in, our coastal planner has to review them to determine is this repair like exceeding a certain threshold and necessitates a shoreline setback survey to be done. Ultimately, the department determined no, it's just repairs, and no survey is necessary. Ms. Diamond appealed that, that possibly they may need a survey and through that process and I think kudos to both parties, Ms. Diamond used the process to leverage public access. Public access for the public to access the beach. The property in this situation we see time and time again the property owner instead of saying no, I'm going to exert my legal rights to keep the public off of my property and from the beach has come to the table and said no, I'm in agreement we should provide the public with access to the speech so, that's what's so hard and so there was no public notification process on whether or not this owner was doing repairs or not.

Ms. Cox: And Ka'aina if in a contested case and possible settlement and at any point during that, is there a, does anything trigger informing anybody else?

Mr. Hull: Not for the shoreline setback determination process.

Ms. Cox: Thank you.

Ms. Streufert: That road of egress and ingress it is actually a county road, is that correct?

Mr. Hull: That's county road.

Ms. Streufert: Okay.

Mr. Hull: Sorry, and I think to our attorneys point, yes, public accessing this beach, (inaudible) or not there's environmental concerns, but I have to say that the opposition to the public access and the beach from a commercial entity that legally does but rents to vacation rental customers in this area to access that beach, I find a little hard to, quite honestly swallow.

Chair Apisa: I'm sorry. What was that? Find it hard. I didn't hear your last words.

Mr. Hull: I just find it a little hard to swallow.

Chair Apisa: Oh, swallow. Thank you. I have a question for the county attorney, so there was no public notice to put this in the newspaper. Is that correct? There was no requirement.

Mr. Donahoe: No, there was no requirements.

Chair Apisa: But I know this was not our first agenda item on this subject. So, I know that it has been on a previous agenda, but...

Mr. Jung: Yeah...Mr. Donahoe, if I can respond to that. So, I think let me layout the process and I think that would help the Commissioners and the notice requirements that are set forth. So, the shoreline setback determination process requires an application to be submitted to the Planning Director, which then gets assigned within his office, and then as a part of the assignment, they intake the application and the shoreline planner will then put out a sheet that shows which applications are up for review and then have them determined. So, at that point that sheet then gets attached to the Planning Commission agenda, which some of you probably have seen before, and then once that agenda goes not noticed, it gets noticed in the normal Planning Commission Agenda protocol and the way the Planning Commission rules allow for individuals or interested individuals to go then appeal any shoreline setback determination. So, then they have 30 days after the public notice that's posted on the Planning Commission meeting agenda to file an appeal. That appeal was filed and then when the appeal is filed, you get generated a contested case notice, which also gets put up for public review. So, it's not like any notice wasn't done, there's notice, if Mr. Sedgwick was paying attention to what was going on and bear in mind this is a very simple repair of four existing homes that sit on the property and no expansion, no subdivision, no red flags that normally would trigger any full Planning Commission review, it's just repairs based on a standard that's set forth in the ordinance. And so, there were, there was notice that was put out. Ms. Diamond knows what to look for and filed her appeal. And we worked through it. So, for them to come in now saying I have a right, yeah you had a right, but you missed that, right, you missed the timeliness of that right. And I think by taking additional testimony like this, we're kind of reopening the contested case. So, I think the matter before the Planning Commission now is whether or not the petitioner is allowed to withdraw her appeals versus flush out all these issues.

Chair Apisa: In other words, accept the agreement of the resolution and that was reached.

Mr. Jung: Correct.

Ms. Barzilai: It's an approval of the settlement, Chair.

Chair Apisa: Approval of the settlement.

Ms. Barzilai: At this point, it appears that Mr. Sedgwick's option would be to go back to the hearing officer in order to receive permission to intervene somehow in that matter, because the appeal has already been withdrawn. So, it's before you for approval in that regard. So, your options now are to ask additional questions for more clarification. We could enter executive session if you wish to discuss the legal issues or if you're ready to act, we can do that, and you can call for a motion, Chair we can have discussion on the record.

Chair Apisa: Commissioners, are you ready to make a motion, or would you like to go into executive session?

Mr. Ornellas: I just have one quick question before we get this (inaudible). (Inaudible) stated that there are two beach accesses in the vicinity and both of them are less than an minute away. I was

just curious, is that a minute drive or is it a minute walk? You don't have a map showing all the accesses?

Ms. Diamond: There's only one beach access nearby and it's called Path G, and it is next to the lot next door on the other side to the west of it and to the east Hanalei Colony Resort is, and so there is quite a bit of people walking from Hanalei Colony Resort past this that will benefit from having the increase safety of increased lateral access.

Mr. Ornellas: Given the history of tsunamis in that area (inaudible).

Commission Support Clerk: Lisa Oyama: Commissioner Ornellas, your microphone please.

Chair Apisa: Maybe pull it closer.

Mr. Ornellas: Is it on now?

Ms. Barzilai: Commissioner, look for the red button. When the red light is on, your mic is on.

Mr. Ornellas: It was on.

Ms. Cox: You just have to speak louder.

Chair Apisa: Maybe pull it closer to you.

Mr. Ornellas: (Inaudible) no further questions.

Chair Apisa: There was the talk about this wall. I'm just curious that the wall is on Sedgwick's property or whose property is the wall on?

Ms. Diamond: There's actually there's a wall that runs lateral that's on Mr. Sedgwick's property. The wall that blocks the beach access at current is on Try Slow's property.

Chair Apisa: Alright, thank you. Any other questions?

Mr. Ako: I have a question. So, before us right now is the option of whether we accept the agreement or we reject the agreement that has come out between Try Slow and Ms. Diamond?

Ms. Barzilai: Whether the Commission approves the settlement and allows for the withdrawal of the appeal.

Mr. Ako: Right. Arguments regarding, I guess the issues that are bringing up by Mr. Sedgwick right now that needs to be petitioned before the Commission or before somebody to have legal standings.

Ms. Barzilai: Before the hearing officer who has now allowed for the withdrawal of the appeal he has signed that withdrawal at this point, so it would have to be reopened within the contested case and you would have to defer this item and you have to allow for Mr. Sedgwick to appear before the hearing officer. If you choose today to not approve the conditional settlement.

Mr. Ako: Got it. Thank you.

Ms. Barzilai: Thank you.

Ms. Cox: I am too. Go ahead.

Chair Apisa: Please, please.

Ms. Otsuka: I move to accept the conditional settlement agreement.

Chair Apisa: Louder. No, just your voice is soft.

Ms. Otsuka: I move to accept the settlement agreement.

Ms. Cox: I...

Chair Apisa: Is that sufficient?

Ms. Barzilai: Would that include also the withdrawal of the appeal?

Chair Apisa: Including the withdrawal...

Ms. Otsuka: Including the withdrawal of the appeal.

Ms. Barzilai: That's sufficient.

Chair Apisa: Alright. Thank you.

Ms. Cox: I second the motion.

Chair Apisa: We have a motion on the floor and a second. Is there any discussion? We'll take A roll call, please.

Ms. Barzilai: Motion to approve settlement and withdrawal appeal. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: Unanimous. Motion carries. 7:0.

Chair Apisa: Motion carried.

Ms. Otsuka: I just want to say thank you for working together and settling this is. It's really nice.

Chair Apisa: Yeah. It's very nice to see the settlement. Thank you.

Mr. Jung: Thank you.

Ms. Otsuka: Thank you.

Ms. Cox: Thank you.

Mr. Donahoe: I'm sorry. One more thing, Commissioners. Deputy County Attorney, Chris Donahoe, again. There was also, because technically, the contested case hearings were still pending, so, we did submit a stipulation order to vacate those in contemplation of this. I don't know if a separate motion is necessary.

Ms. Barzilai: We can do a motion to approve stipulation.

Ms. Otsuka: Is it a separate motion?

Ms. Streufert: To do what?

Ms. Barzilai: I think we handled the substance of it, but would you prefer...

Chair Apisa: Yeah.

Mr. Donahoe: Just (inaudible) cause there's three separate documents.

Ms. Barzilai: Okay. So, before you, Commissioners, you have stipulation recommendation and order approving withdrawal of appeal, do I have...Chair, would you like to entertain a motion to approve stipulation?

Chair Apisa: Yes, I would like to entertain the motion to with approve...

Ms. Barzilai: Approve the stipulation recommendations and approving withdrawal.

Ms. Cox: So moved.

Chair Apisa: Okay, we have a motion on the floor. Thank you. Do we have a second?

Ms. Otsuka: Second.

Chair Apisa: Any discussion on that to close this matter?

Ms. Barzilai: I'll take a second roll call vote, Madam Chair. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: Motion carries, Chair. 7:0. The item is concluded and perhaps you'd like to ask for a recess.

Chair Apisa: Before we go into our next Item H., regarding Coco Palms, we will take a 10-minute recess.

The Commission recessed this portion of the meeting at 10:33 a.m.
The Commission reconvened this portion of the meeting at 10:47 a.m.

Chair Apisa: With Item No. H.2., General Business Matters.

In the Matter of the Petition of Friends of Maha'ulepu to revoke Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1

and Special Management Area Use Permit SMA(U)-2015-6 issued to Coco Palms Hui, LLC for use at Wailua, Kaua'i ,Tax Map Keys 4-1-003: 004 (por.), 005; 007, 011, and 017 and 4-1-005: 014 and 017.

a. Petitioner Friends of Maha'ulepu's Petition for Revocation of Permits Issued to Coco Palms Hui, LLC.
b. Petitioner Friends of Maha'ulepu's Supplement to Petition to Revoke Permits Issued to Coco Palms Hui, LLC.
c. Petitioner Friends of Maha'ulepu's Memorandum in Opposition to RP21 LLC and Coco Palms Hui LLC's Petition for Intervention and Reply to Opposition to Petitioner's Supplement to Petition.
d. RP21 LLC and Coco Palms Hui LLC's (1) Petition for Intervention; and (2) Memorandum in opposition to Petitioner Friends of Maha'ulepu's Petition for Revocation of Permits issued to Coco Palms Hui, LLC.
e. RP21 Coco Palms LLC and Coco Palms Hui LLC's Opposition to Petitioner Friends of Maha'ulepu's Supplement to Petition for Revocation of Permits Issued to Coco Palms Hui, LLC.
f. Director's Report Pertaining to this Matter.
g. Supplement #1 to Director's Report.

Ms. Barzilai: And Chair, we also had an item that came in yesterday as testimony, which is RP21's Reply to Petitioner Friends of Maha'ulepu's Memorandum in Opposition to RP21 Coco Palms LLC and Coco Palms Hui LLC's Petition for Intervention and Reply to Opposition to Petitioner's Supplement to Petition with declarations attached, and we'll begin with public testimony, we have many people signed up, starting with Jennifer Cole. If you'd like to approach, you have three minutes to testify. Jennifer? We can wait on Jennifer. We have Haunani Rossi, please. Ms. Rossi, please state your name for the record, you have three minutes to testify.

Ms. Haunani Rossi: Good morning, Commissioners. My name is Haunani Rossi. I am a native Hawaiian, born and raised in Hawai'i. I reside in the Wailua Houselots Subdivision and own a parcel of land along with my family on Koki Road behind the Coco Palms Hotel. It has been 32 years since Hurricane Iniki destroyed the Coco Palms Hotel and we have all witnessed developer after developer and their grand promises to restore the Coco Palms Hotel to its former glory. As a landowner, I was upset to witness the illegal dumping on Koki Road of coconut trees and green waste on state land by RP21 Coco Palms LLC in unmarked dump trucks daily in the year 2023. I understand that the hotel's demolition management plan required that all green waste and trees be taken to heart and soul in Moloa'a, this was not done and the land on Koki Road still has not been cleaned up. Unfortunately, native birds, especially the Koloa duck, have not visited the area since the dumping occurred over 10 months ago. What we have all, I simply support or I strongly support the petition to revoke the various permits held by the owners and developers of Coco Palms. Not only are the permits out of date, the developer and owners has not acted on the permits in the time granted to them. Now is the time for your board to show support for the community and revoke all permits. As what we have all witnessed on Kaua'i with the rebuilding of the Alekoko Fishpond restoration in October of 2023 with over 2000 volunteers, children, teens, adults, kupuna, visitors coming out in one day. Why can't we do the same for the Coco Palms Hotel? The group the I Ola Wailua Nui's vision for the land is not just landscaping, but a

clear vision for sustainability, cultural and traditional practices. It's time for the people to malama the 'aina of Wailua, one of significant history. Mahalo.

Ms. Barzilai: Next person is Gabriela Taylor. Please state your name for the record, you have three minutes.

Ms. Gabriela Taylor: Good morning, commissioners. I'm Gabriella Taylor. As a 50-year resident of Kaua'i, I'm testifying against the rebuilding of the Coco Palms Hotel. It's shocking to see that the request for the revival of Coco Palms has now returned and being considered. Since the Kaua'i public strongly rejected it several years ago for reasons that are still, are even more pronounced now, considering it the large increase in both tourism and tourist as well as population in their vehicles. Kaua'i is the small island that deserves protection for its beautiful nature, which is being harmed by vehicle pollution as well as roads and destruction, rebuilding of Coco Palms Hotel years ago that has not changed. Why should this already crowded area be impinged upon since it was rejected by the public already? Please do not cater to the proposed builder, rather listen to the people who live here and help us protect our beautiful island.

Chair Apisa: Thank you.

Ms. Taylor: You're welcome.

Ms. Barzilai: Thank you, Ms. Taylor. Next person...

Chair Apisa: If we could...

Ms. Barzilai: If we could please...

Chair Apisa: Refrain from...

Ms. Barzilai: In order to move this along.

Chair Apisa: Yes.

Ms. Barzilai: Thank you so much.

Chair Apisa: This is for public testimony, please. Thank you. The next testifier.

Ms. Barzilai: Jo Amsterdam. Good morning. Please state your name for the record.

Ms. Jo Amsterdam: Good morning, everybody. Jo Amsterdam here. I've only been here for a little over 20 years. I recognize that I woke up this morning in the occupied Country of Hawai'i, but since we're here at this time, I'd like to ask that we consider some of the facts that have come out over the years, many, many years that we've been trying to stop the rebuilding of the huge pile of opala that was the Coco Palms Resort. We have a serious traffic problem already this will exacerbate the situation hugely. The area is an extreme, sacred place. It's the most, maybe sacred place in all the islands of Hawai'i. The Kings and Queens are buried there, etcetera, so please let's reconsider the whole idea of a resort renewal and let's resurrect the place as a, as an area of respect and consideration of the culture that we all are enjoying living here. Let's allow the

people that are the actual lineal descendants, decide how the area is used in the future so that we all can get an education about the beautiful culture that the occupation is working hard to destroy. Mahalo nui.
Chair Apisa: Thank you. Again, please refrain from responses.

Ms. Barzilai: Next testifier Elizabeth Okinaka. Sorry, Chair. Please state your name for the record.

Ms. Elizabeth Okinaka: Aloha Commission, my name is Elizabeth Okinaka. For the record, today I would like to state that I am in strong support of the revocation of these permits. The SMA permits are required, and the 3403 exemption is no longer valid for this property. There is no way for them to even apply for an SMA permit. They have not had control of this land for over 5 years, and they do not have the 75% ownership that is required for an SMA permit. They also do not have control of the state lands and RP's that some of these permits were granted on. Therefore, there is a no valid EIS for this project and the new SMA requires an environmental review and assessment. There is also no valid Ka Pa'akai Analysis on file for this project. There is illegal grading and grubbing that is happening on site as we speak. Carpenters Union, Layton, and the contractor should be ashamed of themselves for operating illegally, not only here, but on multiple sites with heavy machinery. Time to take pride in the work that you guys are doing and that means acting in good faith and not illegally on sites where they have no permits to operating these machines. The developer is supposed to have a 20-foot buffer near this historic fishpond. The previous site designated for the public parking is a lease that this developer no longer holds. Instead, they are now proposing public parking near the fishpond. This not only violates the buffer, but it is also violating numerous conditions pertaining to the US Fish and Wildlife, there are four conditions relating to US Fish and Wildlife, and critically endangered seabirds on this property, critical habitat for these species was never established. No proof of consultation with US Fish and Wildlife was ever sought. There should be a critical take permit on file with US Fish and Wildlife, plus a critical take or critical habitat plan for these species that live on that property. Traffic, we see that there was a $93,000 payment that was made. I'd like to know, I see no proof of that ever being paid, where it went, and that it actually contributed to that project in the Wailua Road widening. There is archaeological and cultural and spiritual significance to this site. This is an extremely culturally significant and sensitive area and there is no denying this. This is a literal cemetery. Bottom line, these permits should have never been issued because they are using ceded lands that they have no right to use. Permits are flawed and that justifies revocation. They should have to start this entire process again. The underlying permits were issued on an illegal basis. Permits on ceded lands they have no right to. The Planning Commission, you are public trustees and it is your permit and you guys need to deal with this issue and not brush off these issues onto SHPD. If the county and the Planning Commission wants to gain more public respect, you guys need to start doing what is right and this is a prime example of a site...

Ms. Barzilai: Three minutes, Chair.

Ms. Okinaka: ...that should be preserved for future generations. Revoke these permits.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you, Ms. Okinaka. Next testifier Bridget Hammerquist.

Ms. Bridget Hammerquist: Good morning, Chair Apisa, Commissioners. My name is Bridget Hammerquist, and I was born in Hilo, and I've lived, my family home has been on Kaua'i since I was 16. Ua Mau ke Ea o ka 'Āina i ka Pono o Kaua'i. The life of our land is preserved in righteousness. Today as a personal individual, I ask for righteousness for the Wailua historic site that was once part of a resort. That resort came to an end in 1992 with hurricane. It was in bad repair even before that date, and what Ms. Okinaka just said, is in our petition to revoke, first and foremost the land is in a special management area, an SMA permit is required under the county's rules, 1.4A, in order to get an SMA permit, the developer has to have at least 75% ownership of the fee simple land and they have to have a lease right to the state lands for not less than five years at the time of their application. Through the many developers that have been on the site, and especially for the current developers, they do not qualify that document that Ms. Barzilai mentioned that was rushed in as an 11th hour Hail Mary yesterday, has attached to it a proposed draft lease from a deputy AG at the state, that (inaudible) to provide what may become a lease to the current developer that in and of itself is clearly evidence that they do not have one and have not had one. In fact, I Ola Wailua Nui, who wants to restore the site to its historic beauty preservation, putting up signage to teach people who come there, what used to be there in the way of the royalty, a wonderful YouTube video made by Randy Whitman is on YouTube, available for the history of the Wailua River and its surrounding properties, and people can take that into consideration. But at this time, revocation is absolutely called for. There's also never been a Ka Pa'akai Analysis a law that passed and has been effective in the State of Hawai'i since 2000. This is clearly a large development. They never went to the neighboring owners. When our petition was filed it was supported by eight people who live in the immediate area of the proposed resort restorations...

Ms. Barzilai: Three minutes.

Ms. Hammerquist: ...and those people are (inaudible) more of them are kānaka maoli than Mr. Trask suggested.

Chair Apisa: Thank you.

Ms. Hammerquist: We do just have one Hawaiian representative and I thank you very much for your time, but please, let's do something like for our land, our shoreline depends on your doing that. Mahalo nui and I'll reserve the rest of my comments for our petition.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you, Guy Holt.

Mr. Guy Holt: Aloha.

Ms. Barzilai: Please state your name, Sir.

Mr. Holt: My name is Guy (inaudible) Mark Holt, and I'm here on Kaua'i. I've been here for almost 30 years now, all my family is from here. My mom's from the Big Island, Ka'ū. My dad's from here. Our ancestry goes back to the Kings and the Queens. So, I have 75% ali'i nui, and I

have 75% kahuna nui bloodline. I don't think anybody else in this room, maybe one other person might have it, but I think you folks need to go back to the beginning of time when Queen Lili'uokalani was held with a gun to her head by your people saying that they want to steal her land for whatever reason. So, guess what, Australia came here and wrapped the Admiral flag around her, took her out of the palace and brought her to Washington DC, where she wrote the pink letter. I think all of you need to get educated on the pink letter and who owns this property and who doesn't. And that's all I have to say. Thank you.

Chair Apisa: Thank you.

Ms. Barzilai: Next we have Ali'i Hepa.

Mr. Ali'i Hepa: Aloha, guys. Good morning. My name is Charles Kamuela Kekaihakuloa, I'm a descendant, Hepa, I'm a descendant of Queen Deborah Kapule. Her son, her only child. Her only child had a daughter. This is my great grandma, Wahine Ko'olau, which is my grandma, my dad's mom's mom. Basically, you guys all heard throughout testimony time and time again, and I gave each and every one of you an affidavit of heirship, a copy of my affidavit of heirship that is notarized and certified by the land court. Judges know who owns this property, I have full access in this property and claim into the Coco Palms area, including the fishpond and my family. Wailuanuiaho'āno, that crew that was spoken upon that want to preserve the land, did not come up to me or any of my family for any authority or question or any asking of permission with respect upon the lands, the lands is actually there in Coco Palms is ran by my family and is in paper, black and white in copies that I served each and every one of you and put you guys all on notice one time and you guys have those copies. My family, the Ka'iu bloodline, the true heir of Queen Deborah Kapule, we are very upset, we're very bothered by this, and we're about to take individuals to court of land (inaudible) and we're going to start suing people, branches, individuals, chairs, enough is enough. I ain't going to sit around no more longer to go through any of this, me and my family. By law and by courts of higher courts, we recognize and this the issue and this topic right now as we speak the Bureau, the FBI is known of what's going on. We ain't playing. It's time to play ball if we have to again. There's only two types of people is going to go hell in this world. I know where I'm going for doing righteous and good work. The two people is going to go hell is bribery of judges because all they do is play the act of God. Second is attorneys, because all they do is lie. Lies after lies. Please cancel this today, I repeat, cancel all their permit. They're doing illegal scraping right now as we speak, there's video proofs of illegal dumping in Koki Road, there's videos. I have multiple videos, I'm willing to share with you guys. And there's no permits to do what they're doing. They're scraping, soil scraping, they're doing all kinds of stuff there. There's burials there, that's being bothered till today, of my ancestors. So, is it legal for them to dig up my bones? Can I dig up people's families' bones that is working on site? Can I go take their kupuna's bones and return it when they return mines first? This is enough. This is madness. This is not the kuleana of anybody that is sitting here today or you guys kuleana. This is the kuleana on royal decrees. The Palapala Sila Nui lies in my hands. That's true titleship to the land and true titleship of what I showed and shared with you guys, the copies that you guys have.

Ms. Barzilai: Three minutes, Chair.

Mr. Hepa: So, please guys, you guys heard the people. You heard me.

Chair Apisa: Thank you.

Mr. Hepa: Thank you.

Ms. Barzilai: Joell Edwards.

Ms. Joell Edwards: Good morning. Good morning, Commissioners. My name is Joell Edwards. I'm a small business owner and community leader from Wainiha. First, I want to acknowledge with profound respect and gratitude the lands of the Kaua'i people where I have the honor to live, work and learn every day. I strongly support the petition to revoke and oppose any hotel development at the Coco Palms for the following reasons: the Coconut Grove is ceded state land. Developers do not have the appropriate legal authority to enter or perform work in the grove. The developer had been planning to situate parking stalls on parcels they do not have lease to. The new proposed parking is on private fee simple parcel and is in violation of the required 20-foot buffer zone from the fishponds, which are on a national historical registry. Also, guidance was never sought on the issues that the US Fish and Wildlife cited. There are four conditions relating to mitigating effects to the endangered sea birds that have been documented on the property. The permit required the developer to consult with US Fish and Wildlife, and there's no evidence that this has occurred. As a small business owner who works with our county agencies, I am held and also hold myself to follow all regulations and I would implore that large developers be held at the same level. Thank you.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you, LeeAnne Spencer. Please state your name for the record.

Ms. LeeAnne Spencer: Aloha kakahiaka. My name is LeeAnne Spencer, and I've only lived on Kaua'i for a little over 11 years as a full-time resident. There are a lot of local Hawaiian people who are going to talk to you about the fact that this is sacred land and should not be developed, and frankly in my opinion, that should speak for itself, that should be enough of a reason, but since it is not, I would ask you to consider the following possibilities as well. I look at this from a business and economic risk liability perspective. You are, let's just assume that this hotel is approved, and it gets built and we are down the road, and they are having constant flooding and drainage problems. Do we really think that they are going to absorb this themselves and just go, oh, this is our cost of doing business? No, they are going to come back against the county for allowing them to build in a drainage zone. They're going to sue us, and this is going to be an ongoing liability that is easily foreseen that I think the same thing could potentially happen with traffic. They, as my understanding, they're not planning to build a pedestrian overpass. So, how do we think that these people are going to get to the beach, they're going to be walking in traffic, there's going to be accidents, there's going to be liability. Do we really think that the hotel is going to just absorb this and say, oh, it's our problem, it's our cost of doing business. No, they are going to come back against the county and they're going to sue us. So, you are asking for future liability ongoing forever if you approve this project. And I also would submit that these people clearly have not been following the rules so far. So, why do we think that they're going to follow the rules in the future? They're not. They're going to come back against the county. They're going to make it your ongoing problem for years and years and years to come. The only solution is to please revoke the permits now. There seem to be plenty of grounds to do so. They've not been

following the rules. They don't anticipate that they would follow the rules in the future, and you are literally saddling us with this liability. If in my business we have to do a business case risk reward if we're taking on future liability, what is the advantage to us, what is it that we're gaining? I personally have not seen that business case. I cannot imagine why the county would want to be saddled with this for decades to come, and the only solution is to please, please revoke this permit now. Mahalo.

Chair Apisa: Thank you.

Ms. Barzilai: Ruta Jordans. Please state your name for the record. You have three minutes.

Ms. Ruta Jordans: My name is Ruta Jordans, and having heard all the other speakers first, I have to say I've only lived on Kaua'i for six years and I've spent my whole life traveling, and I finally arrived here. I'm sorry it took me so long, but I've found a place where the people are bonded, they love. Everybody loves. If you live here, you love Kaua'i. I've not felt that any other place where I've lived, so all I want to say to you is that I strongly support the petition to revoke and oppose any hotel development. Thank you.

Chair Apisa: Thank you.

Ms. Barzilai: Mr. Rupert Rowe.

Mr. Rupert Rowe: My name is Rupert Rowe. I don't know what to say and how to say what I need to say because there is a problem. It's about time we take and put on our thinking cap as a lineal descendant of this area, we have watched the pain and suffering of the kānaka maoli. As we come here to talk to you folks, I don't want to be prejudice. Everyone that is not one kānaka is one malihini, regardless whether you lived in Hawai'i all your life. Okay, so now the kānakas are standing up for what's taking place throughout Hawai'i. Coco Palms, Kāne'iolouma Heiau and Punalu'u on the Big Island, these are things that when the people will stand, you folks will know the problem, try to listen to us and understand where we stay, not where you stay and how much money you will make in passing things that is not in the interest of the kānaka. I only speak to you because I'm 82 years old. Time is limited, do not pass this project. I don't know what else to say, so I'm gonna leave you with our word, the Queen said aloha, think before you do what you need to do for the right things that affects Hawai'i.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you, Sir. Terrie Hayes, please. Terrie Hayes.

Ms. Terrie Hayes: Aloha. Mahalo, Commissioners. Terrie Hayes for the record. Resident for over 20 years in the Po'ipū area. Founding member of Hui Malama o Kāne'iolouma. One of the authors, proud to say of the AHA Moku bill, missed you all at our County Council meeting that we were invited to give a presentation at, that was last Wednesday, March 6th. Please watch it online. There is a PowerPoint that is out to describe and explain to you what is actually going on and has gone on here in the state for many years. 2012, then Governor Abercrombie signed 288, Act 288 which became law. Now some say it's just a suggestion, it's not just a suggestion. This is what was found to be fact, and again Aha Moku developed and identified those in our culture which could preserve our culture. The focus of Aha Moku is to perpetuate and save our

resources. Why isn't anybody listening? But wait, you listen. Why aren't you doing something that's proactive? I woke up this morning and had the revelation, why should any of this have to do with politics? The administration prior to the current administration supported us. These are facts from the state that have been identified for some time. Again, Bridget mentioned the Ka Pa'akai Analysis 2000, this is 2024, Abercrombie 2012, this is 2024, so we're talking 24 years we're talking an additional 12 years. Aha Moku was established back in 2006, obviously from 6 to 12, was a long time to get to where we got to, but we fought hard for it. Resources are not just for the kānakas, but they have the knowledge. Resources are for all of us. You are, by not doing what this imposes you to do, it's not just a good idea, it's the law, right, smoking used to be, well, it's nothing, but now you can't. We all need to learn. We all need to really look at this. I have brought you brochures from Kāne'iolouma. I'm sure the ones for Wailua are being made in the process. These explain what is in Po'ipū, what it used to be. By the way, you approved this to be a drainage, the TMK. Now many of you might not have realized that that TMK was this. So, I'm going to leave these for you. I propose that you watch the County Council meeting. We are glad to come and give you our own private explanation of it all. Kāne'iolouma has a website. It has a place to donate. It explains the phases that we're in.

Ms. Barzilai: Three minutes.

Ms. Hayes: We have completed two of our phases. We are trying to do the rest of it, it's going to be a kahua. The only one that exists in Hawai'i with the makahiki grounds.

Chair Apisa: Thank you.

Ms. Hayes: You cannot use this for drainage no more than you can destroy Coco Palms land.

Chair Apisa: Thank you.

Ms. Hayes: Please do your research. Please folks. Tabling things you don't understand. Asking for more information like the gentleman said. Why are we digging this up?

Chair Apisa: Thank you for your testimony.

Ms. Hayes: We did this. We did this before the Land Use Commission years ago.

Chair Apisa: Okay, thank you.

Ms. Hayes: And the decision was made and nobody's abiding by it. This should not be an administrative issue.

Chair Apisa: Okay, thank you.

Ms. Hayes: That's how we got this far. The documents are here...

Chair Apisa: Okay.

Ms. Hayes: ...I'd be glad to copy them. I have more of these which are available.

Ms. Barzilai: Chair, (inaudible).

Ms. Hayes: ...we'd like you to look at them.

Ms. Hayes: I'll pass them out.

Chair Apisa: Thank you for your testimony.

Ms. Hayes: You're very welcome.

Ms. Barzilai: Noa Espirito. Noa Espirito. Is Noa here?

Unknown Woman from public audience: He is.

Ms. Barzilai: While we're waiting for Noa, may I have Mr. Hooser, please, Gary Hooser.

Mr. Gary Hooser: Good morning, Planning Commissioners. For the record, my name is Gary Hooser former Kaua'i County Council Member, Hawai'i State Senator, and Director of the Office of Environmental Quality Control, which administers Chapter 343 the EIS Law. I'm testifying today on my own behalf in strong support of the petition to revoke. I ask the Planning Commission whose responsibility is to represent the public interest, to direct the Planning Director to take the steps needing to revoke the existing permits and force county permitting laws and rules and require the owner developer to start over. I ask that the county with your leadership start enforcing the law. All the things that we're raising now here at the table are raised by the community doing their homework. The county should be here enforcing those grading and grubbing ordinances, enforcing the permits. The existing permits are flawed. The underlying permits are flawed. They were granted under false pretenses and misrepresentations. I choose my words very carefully. I know my facts. I've done this before. The developers and owners are lying to you, to the county and to the public. The prior developers have lied to you, the county, and the public. And there's too many lies and misrepresentations to list here today. There's no question that the Coconut Grove is an integral part of the resort's overall plan. They've got maps and graphics and planning documents associated with the hotel permits, show and feature the Coconut Grove that its uses. However, the developers have no ground lease granting the right to use these lands, they may have a draft lease, they may have a proposed lease, they may have a lease under discussion with the Board of Land and Natural Resources has not approved any lease and they're not allowed to use these lands until that, but yet the permits were granted, the county permits were granted based on them having this permission and they don't have it. I have a letter for the Kaua'i District Land Office, reinforcing what I just said. The BLR has not approved the lease. The county also granted permits to the resort development based on the misrepresentation that the developer owner had the legal right to use the state-owned crown lands adjacent to the few simple lands on the corner of Kuamo'o and Kūhiō Highway. The permit says they're supposed to put hotel parking there, 40 or 50 units, and they're supposed to use that for permanent ingress and egress. They do not have control of this property. They can't put the parking there and they can't use it for ingress and egress, yet the permits for granted for that purpose. Now, the ingress and egresses all have to be on the north side. One ingress and egress and that should be reevaluated. There's no question about that. There may be, these are major changes to the approved plans.

Ms. Barzilai: Three minutes.

Mr. Hooser: Traffic impacts have not been evaluated. And the 20-foot buffer zone from the fishponds prevents the required parking stalls from being placed there.

Chair Apisa: If you could wrap it up for, it's been three minutes.

Mr. Hooser: The county also granted under false representation that they would provide affordable housing. They're not doing that. They also said they were going to dispose of the land in Moloa'a, they're not doing that. In summary, I personally witnessed the illegal grading and grubbing...

Ms. Barzilai: Three minutes, 30 seconds.

Mr. Hooser: Okay. I personally witnessed it. There's no archaeological observers, there's no permits. In summary, the process under which these permits were granted is inherently flawed. The county permits were issued based on numerous and ongoing misrepresentations by the current developer owner and by the (inaudible) owner, it is absolutely clear that they have no legal right to use the Coconut Grove nor the adjacent state lands.

Chair Apisa: Okay. Thank you.

Mr. Hooser: Thank you.

Ms. Barzilai: Noa Espirito, do you want to come up? Noa? Thank you. Please state your name for the record. You have 3 minutes.

Mr. Noa Mau-Espirito: Hi. My name is Noa Mau-Espirito. RP21 Coco Palms LLC did not grub and grade, they were removing trash and dump cars from Koki Road, as I am a witness and was one of the men working with them, removing, and towing the cars out of Koki Road. RP21 Coco Palms LLC has also been working with me and other lineal cultural descendants in restoring the ancient waterways, fishponds and taro patches within Kaumuali'i's Land Commission award located on Koki Road in the back. The violation accusations has prevented the cleanup of the trash and dumped cars and since the violation accusations has begun we have to stop the removal of the dump cars and the trash, and since we have to stop, more cars have been dumped in the back of Koki road. Get ice boxes, get washers, dryers, get cars. The place is getting worse right now as we speak because we had to stop cleaning in the back by Koki Road. Me and other lineal and cultural descendants were looking forward to restoring the kalo patches once the cleanup of the Koki Road was supposed to be finished but was interrupted by the violation accusations. So, you know, I'm down there at Wailua and I'm telling you guys right now, nobody else since I've been there in 2016 had put the effort to clean up the place of all the dumped cars, and these dump cars is rubbish. Been there since 1992. So, I feel like it's everybody's fault for the mess back there right now that we got to deal with, it's the state's fault, the county's fault, everybody had neglected that problem back there, and now me and RP21 stay trying to check for cleanup all the mess and somebody had to come in with these accusation charges and we had to stop cleaning out. As soon as we was finished cleaning out those cars and trash we're supposed to start doing the lo'i's back there already, but these false accusation charges of grubbing and grading had prevent us from finishing the job, moving out the cars, the trash so we could start restoring the

lo'i's back there, that is, also what everybody stay bringing up, cultural historic property this that, this that, the 13 lo'i's that we're working with them for restore is recorded as that historical property as a lo'i, so...what I would say is these guys we had plans for finish restoring the taro patches once we finish yanking out all the cars and trash from the place where these accusations was fabricated. Which I believe these guys have a warranty deed for, and people only mentioning crown lands...

Ms. Barzilai: Three minutes.

Mr. Mau-Espirito: ...as also kuleana lands down there too, not only crown lands, only the Coconut Grove is crown lands down there.

Chair Apisa: Okay. Thank you very much for your testimony.

Mr. Mau-Espirito: Thank you.

Ms. Barzilai: Jordan Loudon.

Ms. Jordan Loudon: Hi, good morning. Jordan Loudon for the record. Thank you, Commissioners and Chair for your time and for listening to all of us today. I'm writing on behalf of the agenda item and I'm in strong support of Friends of Maha'ulepu Petition to Revoke the permits. On behalf of many of concerned residents and lineal descendants of Wailua, the proliferation of the Coco Palms Resort was a combination of many factors. In 1953, there was one reputable hotel on island with 69 rooms. The certain, the future of the sugar industry was uncertain. Gus Guslander saw that there was an opportunity in the outer island market for tourism and then Grace Guslander showed up and everyone knew that it was her work and her vision that created the magic of Coco Palms, as noted in the David Penhallow book Grace Herself, inquired with a longtime friend and former Coco Palms employee, Gladys Brandt, that wondering if Bishop Estate or Kamehameha Schools had ever considered purchasing the lands at Coco Palms and turning it into an educational and spiritual site for Hawaiians on Kaua'i. The author goes on to say that Grace never lost the notion that the Wailua area was the most sacred spot for Hawaiians, and all of Hawai'i. The window of opportunity for the restoration of the Coco Palms Hotel is closed. The factors that came together to allow the success of the Coco Palms Hotel can never and will never be replicated. There are far more than 69 hotel rooms on this island. The tourism industry has long had a grip on the outer islands and Grace Busher will not be there learning the names of the employees, children and family members and buying Christmas gifts for each and every one of them. She cannot, as a ghost, the operation will flounder, whether from constant staffing shortages, natural disasters or more than likely a combination of those two. Thank you for your time and consideration. This is the third time that a petition to revoke these permits has been in front of a Commission such as you guys. The third time, third time to charm, right? Don't they say that? The communities one is clear, we don't want a hotel where there used to be one for three or so decades. This community is looking towards the future that for centuries the history of...can I start the sentence over? How about this? The history that for centuries predicated a hotel operation is the future we look to. We ask that you hear us, the community members not outside influences who for too long have seen this place as a cash cow. Will milk the cow until it's gone, and when the milk is gone, they'll take their money to the next pasture, please revoke these permits today. Thank you.

Chair Apisa: Thank you.

Ms. Barzilai: Keisha Kilar.

Ms. Keisha Kilar: Aloha. I'm Keisha Kilar. I'm kānaka maoli, descendant and last surviving era of Lot Keku'iapoiwa, my great-great-great tūtū man and just one question for everybody here, you guys obviously heard the pleads, you know, and from the people and the kānakas. You guys want to be a part of the solution or keep being a part of the (profanity) corruption. Excuse my language. Kala mai, you know...

Ms. Barzilai: No profanity, please Keisha.

Ms. Kilar: Yes, kala mai, speaking from my heart, you know. Not with like. Now we just call. For palms, you know, everywhere in Hawai'i you guys not you guys, but the state. The illegal occupancy and the occupiers of our state has failed miserably for our people. Nobody's hearing us and what you guys have to realize is we are the heart of Hawai'i. If our people decide not to go to work and pay our taxes anymore. Guess what? Every single one of you lose your job in the office. By Constitution the people does have the right to choose who they want to govern and you guys need to open your guys eyes as simple as that. There shouldn't have to be any explanation. You know, you guys need to see it in your hearts, you know, find the compassion for our people. Lahaina, you guys treating them like they are separate state, not you guys, again, but you guys know exactly who, the same people that has been lying to you guys and lying to each and every one of us. You know, we need to find solutions and there...it's as simple as just listening. Listening to us, the people who have allodial, the actual allodial titles to all this lands, not all the sugar companies, but like braddah Hepa said, we are watching, and we will sue anybody who is affiliated with the illegal State and foreign entities of Hawai'i. If it was up to me, I'd shut the whole Hawai'i down, to save my people. Lahaina, that is sad. You guys all know how sad that is. Talk about developing, and you guys cannot even rebuild nobody's homes down there, nobody's, and that is a shame. You just keep trying to take every little thing we have left of our kūpunas, and our people, our culture, not yours. It's a shame.

Ms. Barzilai: Three minutes, Madam Chair.

Chair Apisa: Thank you for your testimony.

Ms. Kilar: Mahalo nui.

Ms. Barzilai: Ellen Ebata. Ellen? Is Jennifer Cole here? Is there anyone else who would like to testify on this matter? Please state your name for the record. You have three minutes.

Unknown woman from public audience: Okay. Hi, how's it going everybody? I'm not going to demonize the Planning Department.

Ms. Barzilai: We need your name, please.

Chair Apisa: We need your name for the record.

Ms. Mel Kaye: Mel Kaye.

Chair Apisa: Thank you.

Ms. Kaye: I'm not going to demonize the Planning Commission developers, the Planning Department, because we all know in this world money talks and you know what walks. So, I'd just like to throw a little bit of common sense into the equation and not get emotional. What are you guys going to do about the traffic, and the sewage, and at what point this is place going to turn into O'ahu? Everybody wants to come here because it's nice and country and then they decide they want to build a house, and there's so much development all over this island and I don't know if you guys have to get back and forth to work during rush hour, and if you've seen the line of cars from the homesteads to Olohena in the morning or how many traffic fatalities this year, three already. I can't tell you how many times I driven by that intersection of Coco Palms where Brick Oven used to be and there is like an accident. Why, too many cars, poor planning, poor infrastructure, and of course, that's why Lahaina got burnt to a crisp, because everybody was just in on the take, money, money, money. Okay, and it doesn't matter whether you're a kānaka or not, because there are kanakas out there that are like, yeah, we want our hotel back and we want to make money too. So, it's the haves and the haves nots and it's the people that care and the people that don't care. And I know that the county is being threatened with lawsuits by the developers, and they have money for days, or years, eons. Layton Construction, where are they from, Utah? Wonder what religion they belong to, but I believe, probably maybe the Bible it says for it is the love of money that is the root of all evil, and what I see that is happening here on this island is evil, and greed.

Ms. Barzilai: Three minutes.

Chair Apisa: Thank you for your testimony.

Ms. Kaye: You are welcome. I don't know if it's going to make a difference.

Chair Apisa: Thank you.

Ms. Barzilai: Is there anyone else would like to testify? Hi, please state your name for the record.

Ms. Kamali'i Haumea-Thronas: Aloha, my name is Kamali'i Haumea-Thronas. I'm 21 years old. A lot younger than a lot of people here, but I'm native Hawaiian. I already submitted online testimony through e-mail where I went into detail, so I wanted to keep this short. Thank you, Commissioners, Chair, for being here, listening to us, but I wanted to reiterate what was mentioned by some others who chose to testify today in relation to specifically, the revocation of permits that were awarded to Coco Palms LLC. My position is in strong support of the revocation permits claimed by Coco Palms LLC and to please consider requiring them to go through the proper protocol in terms of assessment, environmental assessment, and in obtaining new permits by starting the process over again. The illegal dumping also, I just want to mention the Aunty Haunani Rossi mentioned was cleared green waste and did not have to do with anything about the cars or the trash that was mentioned that was dumped on Koki Road. Knowing that you are as respectable Commissioners honor and serve the law and proper systems, I know that you will all seriously consider and go through the motion of revoking the permits. Mahalo.

Chair Apisa: Thank you for your testimony.

Ms. Felicia Cowden: Aloha, I'm Council Member Felicia Cowden and I really, my heart goes out to all of you volunteers. I appreciate the work that you're doing. I also go through pages and pages and pages of the documents, and the concerns and I look and I make the comparisons between them. I've followed this for about since about 20, probably 13 or 14 pretty closely and I've seen the changes and there are nuances everywhere. You guys have 6 inches in front of you of paperwork, so I don't want to go through every one of these different 25 elements. Most recently it seems like the shoreline set back at the Sea Shell restaurant is surfacing as maybe has has expired. What I have watched that you have watched because I've been in here when you've had it and even in Council, we've had the developer offer a price to sell the property. To you, to us, we understand, I was at the credit bid when at the foreclosure and we understand that really this is a distressed asset with a great history, certainly a history prior to the hotel, and people trying to get their money out, the county doesn't want to have the responsibility, the liability of this property, and neither does the state. So, it's a complex problem and it's difficult and so, it's a game of hot potato. But what really strikes me the most profoundly is just how threatening we are with our floods with Kuamo'o Road crumbling, with the ocean coming up close to the highway, to the flooding and the water in the garage. We can't get that sewage pump station to stop smelling really dismally and awful. There are so many things that are working against this property. And what I feel like I have watched since probably 2006 is one developer after another, works hard, maybe they have a vision, but they move it forward enough that they get more permits or more entitlements, so then when they sell it to the next unsuspecting investor buyer that they get stuck with what's going on next and now, and at the Council, we had all of us but one vote towards even eminent domain. I've worked on a lot of different possibilities, I don't want to punish RP21, it's not about that. So, I could just, it seems like it's time that we need to move past what's happening and I have like pages and pages, probably 7 pages of documentation I've written this thick, to the Board of Land and Natural Resource that I sent. I don't want to tire you with it, but we have to look at the big picture. I feel like half the population lives north of the Wailua River, half the population lives South. We have gained 45,000 more...

Ms. Barzilai: It's three minutes.

Ms. Cowden: Okay.

Ms. Barzilai: Sorry.

Ms. Cowden: ...residents, and this is a critical nexus when we build this, or half built this. We threatened this the health in hazard mitigation. Thank you.

Chair Apisa: One question just to clarify, are you speaking individually or for the Council?

Ms. Cowden: Can I speak as both? I'm certainly as a Council person who has responsibility for our hazard mitigation. We don't have any place to put people that would be having problems if this area breaks or has a more difficult area, certainly as a citizen I can speak as both I think, but as a Council member, Committee Chair for Public Safety, I worry about the public's safety. I think any of us could look at what kind of challenges we have with the flooding and the sea rise and everything else right in that spot, when we harden and complicate the area right next to it, that's a problem.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you. Anybody else would like to testify? We do not take repeat testimony, but would anybody else like to come up? Hi, Sir, please state your name for the record.

Mr. Kane Turalde: Aloha. My name is Kane Turalde, and I'm here on behalf of the people, yeah, and what we're here for, for you guys to revoke the lease and everything that's going on over. In back of the time during the time of the Hawaiian Kingdom and the Kingdom of Hawai'i, their lands was stolen. So, these lands, our families still have the correct documents, the Palapala Sila Nui, the Palapala Ho'okō, and also the Palapala, the Palai Palapala, verifying that they do own the lands, but during the time of the provisional Government of America, they were all evicted and the land was stolen. I played music at Coco Palms, I've seen how this place go, I seen when it flooded. I played music at the bar, Sunken Bar, the place flooded when we had a big flood. So, you know for you guys to hear everybody come up here to testify, you guys got to open your eyes and listen your ears because Uncle Rupert he's one of my kūpunas, Aunty Nani is another of my kūpunas. When they speak, I have to also speak for them and what they speak about because these lands are crown lands. My uncle Val Ako, he was, he actually built Coco Palms. He took me down there and he showed me the area where he used to make salt, 1953, and this area is a sacred area. So, I live in Waimea, to come from Waimea, I will go to help Noa them restore the lo'i's because I'm also a taro grower and a salt maker. Everything was passed down to me, by my kūpunas of the Kingdom of Hawai'i and the Hawaiian Kingdom. So, being here, speaking to each and every one of you over here, like I said, you guys gotta open your eyes and listen your ears good from what the people are saying over here because we do have jurisdiction over the lands and we do have the correct papers to educate all of you to see. DLNR on O'ahu, they heard it from me. Some of you may have been, you know, listening in. So, we're here for a reason for you guys to revoke the lease and for these people to stop what they're doing and we can reopen the lo'i's and we can also reopen the fishponds to raise fish, to even feed your families for the future of Kaua'i. Mahalo nui loa.

Chair Apisa: Thank you.

Mr. Turalde: Aloha.

Chair Apisa: Mahalo.

Ms. Barzilai: Mahalo, Sir. Anybody else would like to testify?

Mr. Micah Bukoski: Aloha, good morning. Micah Bukoski with I Ola Wailuanui. I don't have a lot to say. There's been a lot said and I just would hope that you guys take all that into account. There was a lot of really good things put forward here. At the very beginning one of the main things was the spirit of aloha, right, we're asking and looking for respects coming from the place of the spirit of aloha. Allowing things to go as they are, allowing these things to continue without revoking these permits is not in the spirit of aloha. There is no aloha there, at least if we're going to do it, let's do it right. I'm in strong, strong support of revoking these permits enough is enough. I mean, you guys have seen it. We've all, many people have been here for years, if not born and raised. I'm born raised from Kaua'i and seeing this island change throughout my lifetime has been pretty crazy. I'm imagining that this is going to be one of those moments that we look back

on that my kids look back on 20-30 years. I don't want my own keiki, my own children to be sitting here in this position once again looking back at this, still fighting more development, still trying to build. I think if some things are allowed to continue to go as they are now, this is going to be one of those moments. We look back on 20-30 years wondering why, why did we do that. So, in the spirit of aloha, do what's right, enough is enough. Mahalo.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you very much everyone. If there's no other testimony, we will be taking a lunch break now and then hearing from the parties.

Chair Apisa: Is there any other persons to testify?

Ms. Barzilai: Please state your name for the record.

Ms. Puanani Rogers: Aloha mai ka kou. For the record, my name is Puanani Rogers. I'm a kānaka 'ōiwi kūpuna and I reside in the ahupua'a of Keālia all my 84 years of life. Thank you for this opportunity, again, and you know we been back here many, many times. This isn't the first and I hope it is the last, but it doesn't seem to be that way. Mahalo for sharing your mana'o about what the duties of you people are, sitting here in these seats and I do cling on the word that you said about respect, and respect is two ways. I would respect you if you respect us and I'm talking about the respect of listening, understanding and deeply, deeply considering all the things that we're saying, all the testimonies of everybody that is here today, I support every single one of them because how can we stop speaking when we know we have the truth. There is harm being done on the 'aina there. It has been going on for too long, we're very, very tired, very, very disappointed, and very, very sad. I mean, can you see our pain when we speak of our 'aina and how we respect it and it's our lives. It keeps us alive the 'aina. It's our waiwai, it's our wealth. So, respect that. Respect what we say about our 'aina. It's spiritual, maybe that's what's wrong. You folks don't understand the spiritual part about this movement. It is a spiritual movement because we are led by spirits. The spirits of our kūpuna, living and dead. And I do invoke their spirits to be here with us today so they can witness what is going on. So, respect us if you would expect us to respect all of you. And I don't mean it personally, I just mean it as a whole and what I've experienced from speaking to you many, many times before and not see any results of what we have been seeing all these years and everybody's ignoring the elephant in the room, which is this developer cannot yet show us clear title of the land. He does not own it.

Ms. Barzilai: Three minutes.

Ms. Rogers: I want to see his clear title, please and I behoove all of you to do your homework and remember the oath that you took when you took this seat, which was to protect our 'aina...

Ms. Barzilai: Three minutes, ten seconds, Chair.

Ms. Rogers: ...and to find out who owns the land first before you can even make decisions on it.

Chair Apisa: Thank you for your testimony. Thank you.

Ms. Rogers: Thank you, Donna Apisa.

Chair Apisa: Thank you.

Ms. Rogers: And please, I support the petitions, of course, I support anything that benefits our people. That's another thing. Each time you make a decision, make sure that it benefits us. Mahalo. Mahalo ke Akua.

Ms. Barzilai: Thank you. We will reconvene at 12:45.

The Commission recessed this portion of the meeting at 11:54 a.m.
The Commission reconvened this portion of the meeting at 12:47 p.m.

Chair Apisa: The meeting will reconvene. We are on Agenda Item H.2.

In the Matter of the Petition of Friends of Māhā'ulepū to revoke Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1 and Special Management Area Use Permit SMA(U)-2015-6 issued to Coco Palms Hui, LLC for use at Wailua, Kaua'i ,Tax Map Keys 4-1-003: 004 (por.), 005; 007, 011, and 017 and 4-1-005: 014 and 017.

a. Petitioner Friends of Māhā'ulepū's Petition for Revocation of Permits Issued to Coco Palms Hui, LLC.
b. Petitioner Friends of Māhā'ulepū's Supplement to Petition to Revoke Permits Issued to Coco Palms Hui, LLC.
c. Petitioner Friends of Māhā'ulepū's Memorandum in Opposition to RP21 LLC and Coco Palms Hui LLC's Petition for Intervention and Reply to Opposition to Petitioner's Supplement to Petition.
d. RP21 LLC and Coco Palms Hui LLC's (1) Petition for Intervention; and (2) Memorandum in opposition to Petitioner Friends of Māhā'ulepū's Petition for Revocation of Permits issued to Coco Palms Hui, LLC.
e. RP21 Coco Palms LLC and Coco Palms Hui LLC's Opposition to Petitioner Friends of Māhā'ulepū's Supplement to Petition for Revocation of Permits Issued to Coco Palms Hui, LLC.
f. Director's Report Pertaining to this Matter.
g. Supplement #1 to Director's Report.

Chair Apisa: We will now consider Friends of Māhā'ulepū's Petition for Revocation of Permits Issued to Coco Palms Hui along with RP21 and Coco Palms Hui's Opposition to the Petition, and Petition to Intervene, and the Planning Department's Director's Report on this matter. We will start with arguments and statements on the intervention and the revocation from Friends, followed by RP21 Coco Palms and Coco Palms Hui, and finally the Department. Each will have 10 minutes to present, then three-minute rebuttal. Then questions from the Commissioners Friends of Māhā'ulepū you may proceed.

Ms. Barzilai: So, parties and their Council can please come forward. We have 3 tables. So, Chair, the Petitioners can start with their presentation.

Chair Apisa: Yes. Petitioners, you have 10 minutes for your presentation.

Ms. Hammerquist: Thank you, Commissioners, Commission Chair Apisa, and the rest of all of you. Thank you. I would start by saying this is not difficult sometimes it's difficult for you, but I think today we've presented something in our petition and in our supplement to our petition that actually point out a violation of basic county ordinance and I'm referring to the Shoreline Management Area or Special Management Area Permit. In section 1.4 A, of that permit it requires an applicant for an SMA permit, have at least 75% control of fee simple land, if that's involved. If their development intends to involve state lands, whether lease or RP, they have to have no less then have, they have to have exercised no less than five years control of that land. They have to have been a lessee for at least five years. That's the way it reads. Even if it were interpreted that they have to have a lease that goes forward for a period of greater than five years, which they may want to argue, I don't think it does. They haven't had that either. They don't have a lease yet and what they brought before you in that 50-page filing yesterday, was a draft prepared by someone in the AG's office, no indication that the Land Board has approved it or had anything to do with it. The Coco Palms issue is scheduled to be on the agenda at the end of March, before the Board of Land Natural Resources. It has not been heard, but what is really important and is in Exhibit 27, is the fact that as of December 31st 2023, the revocable permits that were held, not by Coco Palms Hui ever, but by Coco Palms Ventures LLC were terminated and they were, and they were terminated because Coco Palms Ventures has been absent from the state. Their DCCA license was terminated December 4th, 2017. Taxes were unpaid on the lands, the state and fee lands for six years, the state lands were not finally paid, the back taxes were not paid until June of last year, and there were voluntarily paid by the current developers, now anyone can go in and pay anyone's taxes. The county will take the tax payment. It's just like you can go to a bank and put money in somebody's account. If you have the account number, but it doesn't mean that they were current, it doesn't mean that they complied with the law. They have never had a lease. The last lease was not even with Coco Palms Ventures. They never got the lease assignment approved by the Land Board and the Land Board meeting, if you read the Minutes from April 14th, 2023, Director Chang made it clear to Mr. DeCoursey and Mr. (Inaudible) that in order for a lease to exist for anyone on state land it has to be a lease approved by the Land Board. If it has, if there's an assignment to be had, Director Chang pointed out that the assignment has to be brought before the board for approval because it is state land and that never happened, with Coco Palms Ventures LLC or anyone thereafter. Coco Palms Hui followed Coco Palms Ventures with the operators, initially, Chad Waters and Tyler Green. They were foreclosed on in 2019 by Reef Capital for nonpayment of their loan and there was a sale, foreclosure sale and thereafter RP21, which was created in the state in 2021, February 2021. They were on site and Coco Palms Hui was on site in with new management and the management that took over Coco Palms Hui, the people that Chad Waters and Tyler Green started, that group was operating during the foreclosure, but in all that time, in all that time, the taxes weren't paid, and the RP's, she made it very clear, April 2023, April 14th are not assignable. They can't be transferred. And so, in December of this past year, December 31st, the RP's were terminated, they were still in the name of Coco Palms Ventures LLC. So, what rights does Coco Palms Hui and RP21 have with regard to the state land as of this moment in time, none. The fact that they submitted a draft proposed supposedly AG approved lease form is of no consequence. If the board decides to grant the application of I Ola Wailuanui, and I have one of their representatives seated to my right, Mr. Gary Hooser, and their application has been submitted for both lease land and the revocable permit land. I think we also have Terry Tico in the audience, who's the attorney for I Ola Wailuanui that filed those applications. If the state

decides to give it to the people of Kaua'i and allow this nonprofit group to restore the historic significance of that site, that draft you got yesterday at the 11th hour goes right in a wastebasket. Because it means nothing, and it has no effect. But more importantly, is our county's code under the Special Management Area permitting, it says that an individual whose development will impact or utilize or rely on state lands must be able to establish they have had five years of control of those lands through a valid lease and that can't be done and has never been done by this group. And I think that sometimes our county is so concerned about being sued by developers, they don't necessarily go through the steps necessary to comply with our own laws when you read the Director's Report I think it's really significant that he said, well, they haven't done some things, you know, they really are in violation of some things, but it's not really ripe yet. Right? When will it be ripe? I'll go through a few of those things. First the permits were illegally issued because they are using a Special Management Area and it goes all the way to the Coconut Grove especially, you can look at the state map for the SMA area this SMA line and they've never qualified for an SMA permit, but then if you consider any of many of the other things, just their building permits and this was in the, this was a problem for Michael Dahilig, in September, on September 11th, 2018, when he filed his second petition to revoke against this same developers the Chad Waters, Tyler Green, Coco Palms Hui, that their permit files have applications but no contents and we recently got a large production of documents from the building division and we asked them for everything they had with regard to the permit files for this developer and they produce the documents and I asked for them up to and through the date of date of production and the date of production was February 7th, 2024. When the documents were produced, there are a lot of permit files and there are a lot of applications, but the last renewal for the application we could find was in June of 23 that expired December 31st of 23 because you have six months after you apply and that's under the building code 12-2.1 and 2.2, which addresses permitting and the time to perfect the permit after it's approved and he had a problem with the fact that none of the files have blueprints or any real plans. They have an application, they still do that, they just have an application, and they have an application initial application and they have an application for extension, but the documents that say how they're going to build things, the blueprints, they aren't there. So, it's they're shy of that. They haven't performed a Ka Pa'akai Analysis ever and our county has been enforcing the Ka Pa'akai Analysis for other developments and other individuals that are building on property where it would be called for and they've been enforcing it since 2021 and this developer has done nothing about a Ka Pa'akai Analysis, which further supports the petition to revoke. They don't qualify to develop this property, relying on state lands or on the primary property. They haven't... Ka Pa'akai's even for their property, it's a sizable development. It's supposed to be done, and it's site specific. And when the executive director for the AHA Moku Advisory Committee testified last Wednesday before the County Council, she said all over the state it is a requirement and has been law since 2000, so they've not complied with that, they've gotten permits illegally without meeting the SMA requirements.

Ms. Barzilai: Chair, it's 10 minutes, but it's at your discretion if you'd like to have Ms. Hammerquist (inaudible).

Chair Apisa: Are you nearing, it's been 10 minutes. Are you nearing...

Ms. Hammerquist: Yes. And most importantly, on the seashore, we have a lot of endangered birds. We have a lot of seabirds. They've not done anything to seek US Fish and Wildlife

Council and there we could find no documents to that effect and the sea level rise is real. It comes up right almost to the road, and that land that they want to develop is actually state land and County Beach Park, because the state owns below the high watermark. And I think it's important, ladies and gentlemen, that Condition 20, which was in the permit in 2015, required them to give an easement to continue the bike path on the makai side of the road to assist with that process, they were supposed to give the county an easement. That condition was dropped altogether in 2018. Why? Probably because they can't give an easement for what they don't own. That's State and County Beach Park. Finally, I think it's really telling that there's a sewer problem, a traffic problem, a high-water table, and this would just be a poor location and if we have a developer that has not met conditions and our director says they have, oh yeah, there's conditions they haven't met. This is many years, many years after that permit was given to them, there is no excuse and time for revocation is now. Thank you.

Chair Apisa: Thank you.

Mr. Mauna Kea Trask (not speaking directly into microphone): Just for the record, I think Mr. Hooser is here on behalf I Ola Wailuanui, I think he's here for the (inaudible)...I don't think he should be here.

Ms. Hammerquist: Actually, he is a member of Friends of Māhā'ulepū, Mr. Trask.

Ms. Barzilai: We were curious about that. Mr. Hooser, are you a member of Friends of Māhā'ulepū?

Mr. Trask: Because he wasn't, and he wasn't one of the (inaudible).

Ms. Barzilai: Did you put in a declaration in support of this matter?

Mr. Trask: He did not.

Ms. Barzilai: He did...

Mr. Trask: Did he?

Ms. Barzilai: ...put in a dec., but he didn't indicate if he's a member of this group.

Mr. Trask: I didn't see it in the (inaudible).

Ms. Barzilai: He is.

Mr. Hooser: May I speak?

Ms. Barzilai: Yes, Sir.

Mr. Hooser: Thank you. I'm here in support of Friends of Māhā'ulepū, I'm here representing myself. I'm on the Advisory Board of I Ola Wailuanui, but I do not represent I Ola Wailuanui. I'm here to support the speaker, Bridget and if Mr. Trask doesn't want me here supporting the speaker of my left, then I guess we can, we can debate that. I'm not sure what the harm is caused

by me sitting here. I wasn't planning on speaking, but if I make him nervous or uncomfortable, then we can have that discussion and this board here to rule on that. Thank you.

Mr. Trask: I'm sorry. Just for the record, it's just a matter of decorum, I think. I just was understanding this was for parties. It doesn't seem like Mr. Hooser, by his own admission, is a party, that's all.

Ms. Hammerquist: I didn't represent that he was, Mr. Trask. But he hasn't said anything and I'm blind, so he offered to sit next to me and assist if I needed it. I'm sorry.

Ms. Barzilai: In general, if Ms. Hammerquist needs the physical assistance, it would be fine for Mr. Hooser to support her, but customarily at Council table, we only have parties to the matter, so this would be at the discretion of the Chair.

Chair Apisa: Well, it seems that I mean, I've seen in the past one person accomplish her, so I don't really know that you needed Gary, but I mean, I don't think any harm is done, but a matter of protocol. I don't know do you object to just excusing yourself? I mean you're still in the room. You're hearing everything that said, you're not going to speak. Is it a problem if you not be at the table?

Mr. Hooser: (Inaudible).

Ms. Hammerquist: No, I think you should stay. I think it's good if you stay, but you don't have to. (Inaudible).

Mr. Hooser: She prefers to let me stay.

Ms. Barzilai: Thank you. So, you're staying as a friend and for physical support of Ms. Hammerquist. Thank you very much, but you're not appearing as a party and you don't intend to speak on behalf of Friends because you're not a member.

Mr. Hooser: No, no.

Ms. Hammerquist: And he wasn't represented as a party.

Chair Apisa: Okay. All right. Thank you for clarifying that. Thank you.

Mr. Hooser: Thank you.

Ms. Hammerquist: Thank you.

Ms. Barzilai: I think we were having the applicant make his presentation, make the presentation right now. Mr. Trask is your client here?

Mr. Trask: I'm here on behalf of my client.

Chair Apisa: All right. Thank you. If you would proceed with your presentation, you have 10-minutes.

Mr. Trask: Thank you very much.

Chair Apisa: Thank you.

Mr. Trask: So, there's a lot of confusion about this. So, first off as...

Chair Apisa: Thank you. I'm sorry. Please proceed.

Mr. Trask: Okay. So, let's see. It is Friends of Māhā'ulepū's burden of proved production and persuasion to bring forth specific and articulable facts to prove the allegations against RP21 and Coco Palms Hui. Simply put, they failed to do so. What they've done is imposed rhetorical questions and presented you absence of evidence as evidence of absence, which is not true. In our responsive (inaudible) we provided you with every document to show that we do have site control. You know the last night or I'm sorry Monday what was provided to you, was a copy of the preliminary approved and signed off consent to quick claim and assignment of a lease, and this is not the RP's, okay, this is for the coconut grove. Those were approved in May 2018. I've provided you with the minutes and the agenda from that BLNR hearing, and that's their Exhibit 6. So, the reason why is because the paperwork was held up. I don't know why, we didn't have control over it, you didn't have control over it and it's not your kuleana. It's literally not your land. These are failed arguments that did not persuade the BLNR and they're improper before you today, but nonetheless we provided you the Commissioners deed, right, we provide you the consent and those documents are being signed now. The issues about not paying taxes again that was all raised in false allegations in a notice of default of lease. We've addressed all that before the land division. Coco Palms Hui was assigned the lease in 2018, that's a fact. There's evidence to prove it. Moving on, what we have here is general anti development sentiment, which is prolific on Kaua'i now, but what happens when that development is itself on the State and National Historic Register? What do you do then? We submit that, like any other historic property, the Constitution of the State of Hawai'i recognizes the value of conserving and developing the historic cultural property within the state for the public good. It doesn't matter what the historic property is, it doesn't matter if you like it. History is very contentious nowadays, some people don't like certain statutes, other people do. The point is, is this reason this hotel is on the Historic State and National Register because it plays an important part of history. And what that part was, was in the mid-20th century, if you look at, and this, this is a surprising to me as anyone else because I originally started off my career in, in my worldview like Noa, that you heard today. All right, but if you read Kalani Flores' research on Coco Palms, if you read the preservation plan, if you read the litany of documents that I have read for this development you would know, that Aunty Adelaide chose to drove Roberts bus in this area and research Hawaiian history and culture because all of a sudden that generation got interested in again, this is the mid-20th century Hawaiians, my grandfather, right, that level, they largely forwent their culture, right, but it was Coco Palms that brought it back and that is what is in the State and National Historic Register, this historic function, our domestic hotel resort and its architectural classification is modern movement, Tiki Polynesia. Its development and use embodies the exuberance of Hawai'i's mid-century Polynesian and Tiki experience with combined educating resort guests about ancient traditions while providing them with a Polynesian tiki cultural vacation. Alright times have changed, but that was the most authentic presentation of native Hawaiian culture at the time. And right now, RP21 and Coco Palms Hui LLC, are devoted and dedicated to bringing to, to build on that and bring an authentic one. And

we're working with Noa Mau-Espirito to do it. If anyone person is responsible for stopping this development 2016, it's Noa. The fact that he was here today and put his credibility on the line and admitted that RP21, and you have this in the recent filing that I submitted. We paid thousands of dollars to clean up that backlot on conservation land, the alleged illegal grading, grubbing never happened, but that's not your kuleana either, that's conservation line. The director will tell you that's out of your jurisdiction. None of these people were complaining when homeless were grading that area. None of these people were complaining when the cars were piling up, 70 to 80 vehicles, white goods, Noa's down there, regulating for real. The fact that Noa showed up made me convinced that this was a good project. So, you can feel good about what you're doing today because you're actually preserving history. This is not a new development. In fact, this is the oldest hotel. This is the one hotel that got it right. This is the one hotel that everybody copied ever since. Going through it, obviously. We are the land owners and permittees. We have standing to intervene into these proceedings today. The parking condition, the preservation plan, if you would actually read it, if one would actually read it, provides that an interim buffers during construction renovation, that's we're doing right now, you put an orange fence around the edge of the of the lagoon, thereafter, the long term preservation is a 20 foot buffer, but you still can build what's inside it as long as your SHPD consultant approval. What we did was we provided a, we asked the department for preliminary parking plan to say, did we need those RP's in order to satisfy those conditions? Their conclusion was long as you do 399 stalls, it's fine. We have 560, that's 161 more than we need. We want to provide as much as possible, but in any event we can accommodate it, and this idea that, oh, because it's RP's you can't show five years, it's an RP, it's only good for one year, that's not the issue, the issue is that these (inaudible) state parcels are also within the Coco Palms Resort Historic District. They are also on the State and National Historic Register. This is what these properties are for. We stay within the building footprint; we follow the approved plans and that's what it is. We're not here to ask for permits. We're here to present existing permits. Everyone's contesting the credibility of my client, my client's moving forward, they spent millions of dollars on this development within the past year. The beach loop, Shell Restaurant that's the condition imposed by the county. Everyone uses it for parking. Construction commenced, we provided you Exhibit 14, Exhibit 21, approval. We did the wall cladding in Building 11, it's done. Public parking stalls, again those will be provided. Free of cost, right. The TIR, of course, that can be updated. It was always planned to be updated because when it was permitted, everyone thought the four lane on Kūhiō Highway improvement will be done in 2018, it didn't. Now that we do have a four lane traffic is better and we will update the TIR, as required, that's not failure to comply with the permit. We can't comply with it before it's done. We will comply with that condition. The housing agreement, you have the housing agreement. If we can't provide those housing (inaudible) lots, we provide the housing elsewhere, subsequent designated areas. Those will be provided; they have to be provided. The demolition was, it was satisfied in 2017, as clearly stated by the permit. We talked about vested rights in (inaudible), not because that we don't have to comply with these conditions, it's because the government cannot revoke someone's permits just because community changes its mind, or more specifically, a small portion of the community changes its mind. That's the issue, okay. These are property rights. They're permits, they're legally issued, they're valid. You can't take them away now. Illegal grading, rubbing didn't happen. Fish and Wildlife Service, again, newly raised argument. We're not complaining. We address it. You have it. You have the (inaudible) plan. You have a copy of emails that went back and forth between Hui and FWS back in 2016. Simply put, look, ultimately, I really want the Petitioners to

understand that we're not here to make enemies, okay we want to work with them. I've been reaching out to I Ola Wailuanui since May 2nd, 2023 when I got hired. We want to work this out because everything they want to do; we are going to do as well. We'd love to fold them in, the only difference is that we'll pay for it. We're working with Noa Mau, the idea for this area is a hotel develops within the footprint and does it the right way. Thereafter, a few look mauka, it's like how it used to be before the guinea grass, before the haole koa, even before the rice paddies, kalo all the way up to ʻŌpaekaʻa, just like Hanalei, that's what it was. That's what it should be. We need to work together now. This is Coco Palms it's only appropriate that it is the funding mechanism to bring this back and do it the right way more authentic, just like Grace Guslander did, she worked with...

Ms. Barzilai: Ten minutes.

Mr. Trask: ...the locals. That's what we want to do. Just let us do it. Let us finish the job. Mahalo.

Chair Apisa: Thank you. Right on the dot, 10 minutes. Have you finished your presentation?

Mr. Trask: Subject to rebuttal.

Chair Apisa: Alright, thank you. Yes, go ahead. The department, your turn, please.

Deputy County Attorney Chris Donahoe: Thank you, Chair. Deputy County Attorney Chris Donahoe on behalf of the department. Thank you, commissioners. I just wanted to cover two major issues, one is more of an illegal analysis, so I'm going to focus more on that, which is the standing issue by the petitioners to bring the revocation action, and then two is the alleged failure of the developer to perform certain specific conditions as alleged in the petition. Preliminarily which I think the commission needs to be made aware of is, Mr. Trask was correct in in the sense that this matter involves approved entitlements and vested rights, and so the potential of revocation of those permits from the county's perspective could expose it to significant liability. So, I just wanted to make the commission aware of that. With regard to the alleged violations in the petition, I'll defer and submit under the recommendations and that were made in the both Director's Reports in January 2024 and also March 5th, 2024, which both come to the conclusion of recommending denial of the revocation of the permits and based on a that either, a) there's compliance and there wasn't enough basis for failure for the developer to fail to conform to what the specific conditions that are laid out. I don't want to reiterate the reasons given but I submit on those reasons. Regarding the standing issue, the petitioners cite three cases in support of the reason to support why they have standing to bring this to action. The Akau case, the Kahoma case, and the Maui Electric case, and I just wanted to differentiate distinguish some of those cases and I'm getting into some of the facts because I think it's important because there's some certain aspects that differentiate the cases from this matter. The Akau case is factually different, it was a class action to (inaudible) right away along public trail, so I don't want to spend a lot of time in that. The Kahoma case, it was a situation where an environmental group challenged an original SMA permit and they brought action to appeal the denial of that. Here, we have already approved existing permits and it's a petition to revoke based on the failure to perform under those conditions. The environmental group in Kahoma was held to have standing. However, the members who brought, the court made it very clear that the members who were able to have

standing were adjacent to the project and therefore that it would diminish the use and enjoyment of their property because it was adjacent. In reviewing the declaration submitted by the petitioners, they'll list the addresses and if you look up the addresses, there's everything from the three minute drive, .5 miles, .6 miles, .7 miles all the way up to Ms. Johnson, I believe said somewhere in Kapa'a and you heard testifiers from around the island today, so I think that differentiates when it comes to the issue of standing in the Kahoma. The Maui Electric case really clarifies it, that was the 2017 case. It was where the Maui Electric sought approval of a power purchase agreement and then the approval was challenged by the Sierra Club asserting certain environmental causes, environmental objections to why those permits should not be made in effect. So, the court found that they did not have to a certain injury that's different in kind from any injury to the general public, but they must still meet a three-part standing test, which is, one, they have to, the petitioner had to have suffered an actual or threatened injury. Two, the injury must be fairly traceable to the defendants' actions, and three, a favorable decision would likely provide relief for that injury. So, in the Maui Electric case, the Supreme Court found that they did have standing under a clean and healthful environment, which is what the petitioners are alleging in their petition and the court reviewed supporting affidavits to make those findings. However, the submitted affidavits differ from that case to this case, and I'm going to tell you why, one, it demonstrated a threatened injury to the right to a clean health environment, very specifically from the effect of greenhouse gases, and then two, it explained there were very detailed and specific in explaining the potential effects to those members of the permit itself, in that case, it was burning coal. And in fact, one of the submitted affiants said that she had to close her windows to run air filters inside and therefore they said that they found standing because it was a threatened injury caused by that plant that was fairly traceable to the actions of the descendant, which was the plant that was doing it to its members, so you look at standing in this matter, the Planning Commission has to determine, based on the declarations and the testimony, does an actual or threatened injury that's fairly traceable to RP21's alleged failure to perform under the specific conditions in the petition exist. Now that you heard the testimony, you've read the declarations, they share passionate concerns, but they seem to be arguing instead that it's compliance with the conditions and not noncompliance with conditions, that's their alleged injury. It appears to be opposing any development of Coco Palms at all. The testimony of the declarations raised concerns regarding traffic, beach crowds, wastewater, seabird, tsunami, evacuation issues, disruptions, historical cultural sites, flooding, but just like in the affidavits submitted to Maui Electric, where was the testimony specifically to detail how an actual injury was to a certain member or the group to the condition specific, specifically alleged in the petition, and I think that that's where an issue was raised here with regard to standing, you know, most testimony didn't even reference any specific condition. It just basically was against the development. So, it seems to raise a question if noncompliance wasn't an issue and RP21 and Hui was in compliance, would there still have been an action, and it appears that would have been because it appears that unlike Maui Electric, it's a general concern, if we don't want this development, in fact one testifier today said, we don't want a hotel and so the petitioners, they're asserting certain of the similar concerns set forth in Kahoma, but the court in that case found it was an original SMA permit, and that's when these issues could have been raised. There were public hearings prior to the approval of the initial permits in March 15, 2015. The Planning Department initiated revocation proceedings in 2016 and 2018 and 2020, where this information could have been brought forward, but it wasn't. So, it's...and you know the 2000, December 31, 2018 conditions that are at issue here those were amended and approved after a hearing. That's

when it should have been set forth. That's where I would agree with the whole ruling in Kahoma that there was injury in fact, but I think there's an issue as far standing goes with, are the petitioners alleging an actual or threatening injury, and is that based, is it fairly traceable to the actions of R21, not in general to the development, but specifically to the conditions and the allegations as to each specific condition and with...so, in conclusion if the commission finds that their standing wasn't established, we request that the petition be denied with regard to the alleged failure to perform certain conditions based on the Director's Reports and the supplement report, we request the Planning Department deny the petition and that's based on there's no reasonable cause to believe that there's been a failure to perform the specific conditions as alleged in the petition, and so with that I'm finished. I'll take questions if you have any. Thank you, commission.

Chair Apisa: Thank you.

Ms. Barzilai: We have rebuttal. If you like, Madam Chair.

Chair Apisa: Yes, a three-minute rebuttal for each party, please. Starting with Ms. Hammerquist.

Ms. Hammerquist: Thank you, Commissioner. First, I'd like to start by saying, Mr. Trask really does stretch the truth, if this body watches the April 14th, 2023, meeting before Director Dawn Chang, she confronted Mr. DeCoursey at that time, he said he had an assignment in his safe from Coco Palms Ventures, which we've never seen, and it did not get produced in a recent DLNR production, but she said to him, Mr. DeCoursey, no matter what's in your safe in Utah, you acknowledge that this board has the authority and the lease provides that we must approve an assignment for it to be valid, and he agreed, and he said it has never been before you. They do not have a lease. They did not have a lease in Coco Palm Ventures and Coco Palms Hui followed. There was no lease perfected in 2018 and that's an easy thing to get Director Chang to confirm. The (inaudible) issue is on the calendar for the BLNR board at the end of this month. The RP issuance is also on the calendar. It has not been done. They have neither lease nor RP and I do take strong exception to Mr. Trask continually saying Coco Palms Hui has had a lease since 2018 because that is not true. With regard to standing, four of the petitioners who filed suit happened to be Hawaiian. I think it's rather racist to Mr. Trask to suggest they need to be Hawaiian. They are close to the project and while the County Attorney, Mr. Donahoe, raises the fact that in the case he discussed Kahoma, they were closer, they were adjacent. I think that's a way conservative interpretation of that court decision. These people did articulate an actual injury. They lost 75 coconut palms that RP21 took down and that is why there is a pending action at the DLNR Office of OCCL, Office of Conservation and Coastal Land Management filed a complaint that Director Chang signed, and they are still under that complaint and it has not been resolved. So, to say that there's no actual injury is false. We do raise a right to a clean and healthful environment, and we do say one thing that has never been addressed is if the SMA Permit Law County Code Section 1.4a has not been met, then the permits issued are by definition unlawful, and they are not going forward with their condition permit development, as Mr. Dahilig found in 2018. There is no action that we could find taken by the commission in 2020, but what we did find interesting was in 2015 the developer had a requirement to widen the road out of Apana, widen the road of Haleilio and sidewalk them both. In 2018, that condition was altered, and it was stated that in 2017 a payment of $93,000 that all that work supposedly bought them the right to rely on the county doing the work. That I think, must have been, should have

been brought before the board and acted upon, and that is a violation of a condition. Also, the fact that 2017 says the demolition was satisfied, the demolition wasn't begun until the end of this, last year, in December of 23, so there is no question that there are conditioned violations. There's no question they have never met a Ka Pa'akai Analysis, they do not have legal permits under our own County Code, the SMA 1.4, and they've not met the building codes, 12 2.1...

Ms. Barzilai: We've reached four minutes.

Ms. Hammerquist: ...and 2.2.

Ms. Barzilai: The same courtesy will be provided to the other Council.

Ms. Hammerquist: Thank you.

Ms. Barzilai: Thank you.

Ms. Hammerquist: Appreciate it. I do appreciate it and thank you for listening. Please look at the Board of Land and Natural Resource minutes from April of 2023, it's real clear, Mr. DeCoursey admitted, that they don't have a lease.

Chair Apisa: Okay. Thank you. We've now extended the rebuttal to four minutes.

Mr. Trask: Thank you. I'm not going to disparage the petitioners. I'm going to politely characterize them as confused. All right because the reason what happened, what actually happened in April 14, 2023, cause I did watch it because I wasn't there.

Ms. Hammerquist: I was.

Mr. Trask: Was that Mr. DeCoursey said, he had an assignment of lease that was predicated from PR2, Prudential, a Prudential Lending Entity to Coco Palms Ventures that was entered into between private parties subject to the consent of BLNR, if any of you have ever worked with the state, have had a lease with them or done anything with them, you know that it takes them time because the DLNR is the largest, most underfunded state agency in the state. Things take time. If you look in this own record, it took Grace Guslander years to get the final documents for her, for the lease. The point remains unchanged. We have the lease. You have the minutes from the May 2018 meeting where they did approve it and Ms. Allison Neustein at the January 12th, 2024 BLNR meeting told them the lease was approved in 2015, you have it, the preliminary approval paperwork is in. You have a copy of that. That's a done issue. We're not talking about RP's. They're conflating the RP's, which are annual, okay with the lease, which is 45 years or something, 65 years, extends till about 2045. As far as the RP's right now, you also know what the current recommendation for land division is, give it to RP21 because we have the means and the ability and the commitment to provide, not only satisfies historic use because remember these state lands are part of the historic district. They too need to be put to historic use or you have to delist them. That's why they're leaving that out of the conversation. If you're not going to make this a hotel, you're delisting historic property. That's it. All right. So, then what you need to do is and that current would be the recommendation is to give it long term easement to RP21 and lease. Open bid. So, that's what we're doing. We're going to provide the parking, we're going to provide the education opportunities. We're working with the Coco Palms Cultural Advisory

Committee, which is mandated to be created by this county during the 2015 permitting process, it was done. I'm sorry, I am not a racist, but when you establish standing, you talk about traditional customary practices, you have to establish that your native hawaiian, which means you have to show that you're descended from the lineal descendants of the Aboriginal peoples who occupied the state before 1778. That's not a racial class. That's a political class. I said this numerous times before this body. If you look at, and talk about credibility, this is very important. For the record, I'm handing a copy of the Exhibit 31 to Petitioners. Permission to approach.

Mr. Donahoe (not speaking directly into microphone): (Inaudible), Mr. Trask (inaudible) provide (inaudible).

Ms. Barzilai: Mr. Trask, do you have any extra copies for members of the public who would like to look, and can you please describe the exhibit for the record?

Mr. Trask: So, this is a copy.

Chair Apisa: Before we continue, this is just, again, a matter of protocol, but just again purely protocol, but could the three of you kind of be on your own table so that that there's it just it just? Kind of looks encroaching. If you could, guys, or Gary, if you could scoot or go on the other side or yeah. Thank you. Yeah. I mean technically that there, there is a reason that there are two tables there and it just, I think it's just a matter of protocol. Thank you.

Mr. Trask: All right, so as an offer approved, one of the issues raised by one of the declarants, Ms. Rossi, was that she was a kalo farmer and she said it today at the table. She said she has a kuleana lot up Koki Road and that's where she did it.

Ms. Rossi: Mauna Kea, I own the property.

Mr. Trask: Yes, she does. And so, in our reply, in our opposition, we've concluded pictures from that property that I took showing that there's no kalo there. I'm not trying to invalidate Ms. Rossi, I'm just trying to say that they are saying, what they are, the evidence they're providing to you is not credible because there's evidence contrary to it that directly contradicts it. In their subsequent opposition reply, they included pictures of a beautiful little Hawaiian girl standing by a big kalo plant and they said we do farm, it's just fallow. So, I couldn't, I couldn't think, well, but I felt terrible. So, I thought I made a mistake, and I couldn't figure out how to look at that until I thought this morning, hey, the County of Kaua'i Real Property Tax Division has a pictometry function on every single lot in this county, and if you go look at it, you can look at GIS aerial photographs going back to 2008. So, I did that because I wanted to correct the record if I was wrong. However, according to government records, GIS photography shows from November 2008 to and until October 28, 2021, her kuleana lot was entirely foul, there's no kalo on it. So, all I'm saying is that this is indicative of the petition. I'm not calling anyone anything, but they need to bring to you specific, articulable, and credible facts to sustain their burdens of proof and production and persuasion.

Ms. Barzilai: Mr. Trask, you're well over six minutes at this point. Thank you very much.

Mr. Trask: Sorry. Just let me close up. To prove by preponderance of evidence that our permit should be revoked. They haven't done so, and this is direct evidence of it. Thank you.

Chair Apisa: Thank you, and county, your rebuttal, please.

Mr. Donahoe: Deputy County, Chris Donahoe. I will save these four minutes (inaudible).

Chair Apisa: Okay.

Mr. Donahoe: Thank you. Thank you, commission.

Ms. Hammerquist: Commissioners? Can we allow Ms. Rossi, since this was raised in rebuttal and it really didn't rebutted in our directive, and we allow her, did we allow her to respond?

Ms. Barzilai: Chair, I think it would be at your discretion if the Commissioners want to ask questions directly of Ms. Rossi. But I think at this phase we're moving on to questions from the Commissioners.

Chair Apisa: I would agree with that. I think we could ask questions. At this point, Commissioners we're open to questions from the Commissioners of the three parties present at the table.

Mr. DeGracia: Not a question, but at this point since I feel it's prudent. Could we have Ms. Rossi explain what she sees, according to her kuleana or her property, and whether or not she's raising or growing kalo on the property.

Ms. Rossi: For the record, thank you, Haunani Rossi. My family and I do own this parcel. We own it outright. We pay taxes on it. We do farm it for only family consumption. And we all know that there are times where kalo is fallow. We do deal with guinea grass and we are not allowed to grub and grade, so a lot of it is done by hand with a sickle. I understand that Mauna Kea Trask took pictures of my property back in December, but when was the last time he was there? We are back growing. So, we don't always have huli on a regular basis, but we do farm it for family consumption only, not commercial. My testimony today was basically about Koki Road and the fact that we have to drive that daily to see our farm. And the grubbing and grading that they did do back in 2023, they didn't clean it. It's still there. I have pictures. I stopped those truck drivers and asked them what they were doing, and they were dumping coconut trees and green waste there. Now if I were to do that on my property, I would be fined. And how dare he say that the Land Board has a lot on their plate. Yes, they do, but they had no problem telling him to stop the grading and grubbing or they would be fined $15,000 a day. Have they cleaned it up? No. Thank you.

Mr. DeGracia: Ms. Rossi, one follow up question.

Ms. Rossi: Yes.

Mr. DeGracia: According to your understanding with the permits, are you growing kalo on your property being affected by the actions of the applicant, and any condition on the permit is affecting you from growing kalo?

Ms. Rossi: No. The only thing that I think it would affect all of us that have property there, is the fact that back in 2020/21, 2021 there was flooding there and we have to evacuate an 80 plus year

old woman and a family of three due to all that water that came through there and that, I believe was in March of 2021. So, our concern as property owners if that land is not cleared, then we've got a problem. But with all the grading and grubbing and the coconut trees and the concrete that's left there, that's going to create a problem should we get water runoff coming down. So, I don't know how they can say they're good stewards of the land when that's still there.

Mr. DeGracia: Thank you, Ms. Rossi.

Ms. Rossi: Thank you.

Chair Apisa: Other questions from the Commissioners?

Mr. Ako: Madam Chair if I can follow up on that. So, right now you are growing kalo on the land.

Ms. Rossi: Yes.

Mr. Ako: So, there is kalo on there?

Ms. Rossi: There is.

Mr. Ako: How long does it, I don't know how this thing works. How long does it take to grow kalo?

Ms. Rossi: I believe it takes about nine months.

Mr. Ako: About nine months.

Ms. Rossi: But we have different varieties that we grow and again it's for family consumption.

Mr. Ako: Family consumption.

Ms. Rossi: Yes.

Mr. Ako: When was the last time you made a harvest or whatever?

Ms. Rossi: Probably in November of last year, October of last year. I have to ask my husband, but he just started planting within the last two to three weeks. So, there is some growing now.

Mr. Ako: So, there's some growing. Which you have not harvested yet.

Ms. Rossi: No.

Mr. Ako: Prior to that, when was the last time you had a harvest of kalo?

Ms. Rossi: Oh gosh. I can't...

Mr. Ako: I mean are we talking a year? I mean if it takes nine months...

Ms. Rossi: Yeah.

Mr. Ako: A year or longer?

Ms. Rossi: No. No. Less than that.

Mr. Ako: I should say maybe when was the last time that you had kalo growing on that property prior to November of 23?

Ms. Rossi: I would say probably October, November of last year.

Mr. Ako: Right. Prior to that.

Ms. Rossi: I don't know. You'd have to talk to my husband. He's the one that does that.

Mr. Ako: So, that probably takes place where the land you said is fallow.

Ms. Rossi: Fallow, yeah. And then again, it's getting the huli too.

Mr. Ako: Okay. So, it's not like it's a yearly thing that goes on growing your kalo.

Unknown Woman from audience: It is a yearly thing.

Chair Apisa: If we can have the people at the table speak, please, thank you.

Ms. Rossi: It is a yearly thing, you know, as far as planting and then harvesting, but we have different types of kalo growing, so they mature at different times too.

Mr. Ako: So how...

Ms. Rossi: So, it's dry land.

Mr. Ako: Yes, when we growing the kalo, how big an area are we using? This size or that size.

Ms. Rossi: Maybe a little bigger than this area.

Mr. Ako: Bigger than this area?

Ms. Rossi: Yeah, and we have it spread out in different parts of this parcel cause we have different varieties.

Mr. Ako: So, if I look at these pictures here, I know they're not real. Would I be able to tell if there's kalo on this property? In these photos.

Ms. Rossi: No. I don't know when he took this, but no.

Ms. Otsuka: On the bottom left is the dates.

Ms. Rossi: It's kind of hard to see on this.

Mr. Ako: Yeah, okay. That's okay. The property that own, is this within the, this isn't within the lease of what we're talking...

Ms. Rossi: No. No.

Mr. Ako: ...about for Coco Palms, right. This is just your separate and apart, but just...

Ms. Rossi: Hmm...

Mr. Ako: ...I don't know if I want to say adjacent but close by.

Ms. Rossi: Yeah.

Ms. Hammerquist: It is adjacent, isn't it?

Ms. Rossi: It's adjacent to the state.

Mr. Ako: To the state land.

Mr. Trask: It's about three lots down.

Mr. Ako: Yeah. Thank you.

Chair Apisa: Are there questions, Commissioners?

Mr. Ornellas: I have a question. So, is there a source of water to that, I'm assuming it's a kuleana lot, is that correct?

Ms. Rossi: No, it's not a kuleana lot.

Mr. Ornellas: Is there a source of water?

Ms. Rossi: No, my husband has to truck it in.

Mr. Ornellas: Okay. Thank you.

Ms. Streufert: I think there was a question about the leases and if I'm reading Exhibit 18, where Friends of Māhā'ulepū submitted, it says that General Lease 4878 does not expire until August 17, 2048.

Ms. Hammerquist: That's true.

Ms. Streufert: And cannot be arbitrarily canceled. So, does that not seem like there is a lease?

Ms. Hammerquist: There is the lease, but it's never been signed with approval by the board to either of the developers that have, from Ventures on, none of them have had approval from the landlord to be the leaseholders. So, the state is the holder of the lease land, as Dawn Chang told us all in April, I was there personally at that meeting, and Mr. DeCoursey assured her they have never brought it to the board for approval. So, they're not valid leaseholders unless the board

approves the assignment, but I would like to ask if we may, for Mr. Hooser to read an e-mail on that exact subject from the Land Board Agent, Alison Neustein. So, can he read it to you?

Mr. Trask: We'd object.

Ms. Hammerquist: So, you'll know the status of the lease.

Mr. Trask: No. We'd Object.

Ms. Hammerquist: Well, that doesn't mean it can't be read.

Ms. Barzilai: (Inaudible) on record for (inaudible).

Ms. Streufert: Can I just continue on this? The next paragraph says that the hotel itself is being constructed on private property.

Ms. Hammerquist: The primary portion of the hotel is being constructed on leased, on fee simple land, but they're constructing the wedding chapel, their plan is to construct the wedding chapel in the Coconut Grove that's leased land. Their plan is to park cars on the...

Ms. Streufert: I'm just trying to establish...

Ms. Hammerquist: Sure.

Ms. Streufert: ...that according to this there is a general lease that goes until 2048.

Ms. Hammerquist: And that was held by an entity that's no longer in existence. So, it has to be effectively modified, the Land Board is the only entity that can do it. Other parties can't run around and put their name on the lease. That doesn't work. So, the lease with Amfac was effectively assigned and there is Land Board record of that, but the entity that had the assignment predated Coco Palms Ventures LLC., and they're no longer in an existing entity so, there's a non-entity that was the last approved holder of the lease that expires in 2048. So, that's a matter that the Land Board has to take on, and they did the same with the RP's, and then they voted, they were terminated as of the end of December last year.

Ms. Barzilai: That satisfy your question?

Mr. Hooser: You know, Mrs. Hammerquist has (inaudible)...

Chair Apisa: I'm sorry.

Mr. Trask: Objection.

Mr. Hooser: (Inaudible) she's blind.

Chair Apisa: No.

Mr. Hooser: She is not able...

Chair Apisa: No, no.

Mr. Hooser: She is not able to read on her own.

Chair Apisa: Alright, but...

Mr. Hooser: I believe the rules allow assistance for her to read something.

Chair Apisa: There's another party there that would be able to read it.

Mr. Hooser: Okay. Can the other party read it?

Ms. Barzilai: If it's the (inaudible).

Mr. Hooser: I just find it appalling that you will not let someone read something...

Ms. Barzilai: Is it in response to a question?

Ms. Hammerquist: Yes, the lease question. It's from the Land Board on the lease.

Mr. Trask: No.

Ms. Hammerquist: Yes.

Mr. Trask: We haven't seen this, we haven't seen this reported e-mail. We don't know what time it is. Again, this was the reason why I raised this; Mr. Hooser is represented, has been in the past, the treasurer of I Ola Wailuanui. He has a vested interest in this, he's not a party. He said he wanted to sit here to hold Ms. Hammerquist hand. Now he wants to testify. Now he wants to present exhibits.

Ms. Hammerquist: No, no, no, no.

Mr. Trask: It's not the issue.

(Multiple people speaking at once)

Ms. Hammerquist: This is an e-mail that we got from the Land Division, I just can't read it.

(Multiple people speaking at once)

Mr. Hooser: That paragraph...

(Multiple people speaking at once)

Mr. Trask: We'd object. This is beyond decorum. We're supposed to be here on this...issue.

Ms. Hammerquist: No, this directly answers your question about the lease and it will offer truth to your deliberation.

Ms. Barzilai: It would (inaudible).

Ms. Hammerquist: It's not. It is (inaudible).

Mr. Trask: We would ask for copies of it before so we can understand what it is.

Ms. Hammerquist: It'll be read out loud and I'll be happy to hand you the phone and you can read it yourself too, Mr. Trask.

Chair Apisa: I would like to continue on with questions from the Commissioners.

Mr. Trask: Thank you.

Ms. Streufert: I was just questioning the statement that Friends of Māhā'ulepū submitted which was Exhibit 18, on the 2048, or the lease until 2048. That's what I wanted to...

Ms. Hammerquist: And this addresses that.

Ms. Streufert: Oh okay. If anyone else has questions. I'll come back to mine later.

Mr. Ako: Since we on the leases, Madam Chair. Can I ask?

Chair Apisa: Yes.

Mr. Ako: I think for me, what gets real confusing is the fact that we hear these Coco Palms names all over the place, right. I think as I understand it, and please I'm just trying to figure this out for my own understanding to move forward, right. As I understand the initial permits were issued or assigned to Coco Palms Hui, which was a Hawai'i LLC at that time, which I kind of referred to as Coco Palms Hui, Hawai'i. They foreclosed on their property and from there, the lease was, the permit for the lease was then assigned to Coco Palms Ventures.

Mr. Trask: No.

Chair Apisa: No.

Mr. Ako: No?

Mr. Trask: No.

Chair Apisa: No. Coco Palm Ventures preceded, and they're out of the picture. Coco Palms Hui was right before the current owners.

Mr. Trask: Correct.

Mr. Ako: Was right before the current owners. So where does Prudential and...so Coco Palms Ventures, doesn't even come into this?

Mr. Trask: No.

Ms. Hammerquist: They were their state license was terminated by DCCA in 12.

Mr. Ako: Right, but they never had the leases or the assignments.

Ms. Hammerquist: No. Their name was never approved by the Land Board to be on the lease. The last approved assignment by the Land Board was done for a developer before Coco Palms Ventures.

Mr. Trask: Yeah.

Ms. Hammerquist: ...and they supposedly made an assignment to Coco Palms Ventures, but they never got it perfected by the board.

Mr. Ako: Right so, but it did go to Coco Palms Ventures. The question is whether it was officially assigned to them or not.

Mr. Trask: If I can...

Ms. Hammerquist: No, it was not (inaudible).

Mr. Trask: I actually know the history.

Mr. Ako: Okay.

Mr. Trask: So, what it is was...

Mr. Ako: Help me please.

Mr. Trask: Coco Palms Ventures own the property. Okay, this is way before the instant permits.

Mr. Ako: Okay.

Mr. Trask: So, we're talking Coco Palms Ventures had it, I think, on or about the early 2000's. So, they were the holders of the property under I think 2006 permits when the subprime mortgage collapse happened. So, then Prudential 2, PR2 was the lending entity that foreclosed on them. Okay, nothing was moving at that time. What had happened was when Prudential...

Mr. Ako: They foreclosed on Coco Palms Ventures.

Mr. Trask: Ventures. What happened was when that...

Mr. Ako: How did Coco Palms Ventures get it?

Mr. Trask: They got it before.

Ms. Barzilai: They were the original permit holders, Commissioner, prior to Coco Palms Hui...

Mr. Ako: Coco Palms Ventures was the initial...

Ms. Barzilai: It's a completely unrelated entity.

Mr. Trask: Completely unrelated entity.

Ms. Hammerquist: But they never had a lease with the state.

Mr. Trask: Okay, wait. Hold on.

Ms. Barzilai: I think one thing that would be beneficial is to understand that this issue, if I understand it correctly, is limited to the intervention of your client, Hui, correct?

Mr. Trask: Correct.

Ms. Barzilai: We're not talking about the merits of the petition here.

Mr. Trask: No.

Ms. Barzilai: So, we're spending a lot of time on this issue, and I think it's fruitful, but we should probably move forward.

Mr. Trask: Just really quick though. I can explain it quickly. So, first it was Ventures as a private entity, Ventures, then got foreclosed on Prudential, Prudential had Ventures sign, an assignment to Prudential as first assignor, when then Hui bought it at foreclosure from Prudential, there was another assignment from Prudential to Hui as second assignor, all subject to the consent of the BLNR, because obviously none of this is good until the BLNR consents. So, when that went up and that was affected 2016, when that went up before the BLNR, and you have the agenda and the minutes, 2018 it was approved. And if you look at that preliminary approved assignment and consent letter, which was turned in, and this is Exhibit 27, if you...

Ms. Streufert: (Inaudible) I'm sorry, whose exhibit?

Mr. Trask: Our exhibit.

Ms. Streufert: Yours.

Mr. Trask: 27. If you read the text of it, it says whereas such and such consensus assignments have happened, affected as of 2016, so they actually roll it back to the private consent which is the document that Mr. DeCoursey was referring to as having the consent deeds in a safe. Okay, so it is complex, but again, we're talking about standing. We clearly have standing and none of this is within land use or zoning questions.

Ms. Streufert: Could I ask a question? Are we looking at standing of the...I don't even know the names, what to call you guys anymore. RP21 and FOM.

(Multiple people speaking at once)

Chair Apisa: Friends? No, we're looking at (inaudible).

Ms. Cox: Which one are we looking at?

(Multiple people speaking at once)

Ms. Barzilai: I think we're getting confused right now, we're talking about the right of Hui to intervene. You have several things before you.

Ms. Streufert: The right of Hui.

Ms. Barzilai: You have whether RP21 Coco Palms can intervene, whether Hui can intervene, and then you have the standing and the petition that you have to address.

Ms. Streufert: So, we're talking about...

Ms. Barzilai: Your question should broadly consider all of those things.

Ms. Streufert: So, we're just talking about whether RP21 has standing.

Ms. Cox: has standing.

Ms. Barzilai: Whether Coco Palms Hui LLC has the right to intervene in this matter.

Ms. Streufert: And who is Coco Palms LLC?

Mr. Trask: So, I represent...

Ms. Streufert: Versus RP21.

Mr. Trask: I represent Hui and RP21.

Ms. Streufert: So, it's one in the same or is it different?

Mr. Trask: No, there's two different entities, but they're both my clients because they both come under Reef Capital.

Ms. Streufert: So, the standing is for both, or for one, or for...

Mr. Trask: Well, for both because...

Ms. Barzilai: Both parties have moved to intervene.

Mr. Trask: Yeah, they (inaudible) because Hui's is the lessee because during the last mortgage foreclosure there was a springing management agreement that's when Mrs. Hammerquist talked about somebody else took over, so after Chad Waters and Tyler Green, who didn't deliver on the promises we took over and we did.

Ms. Streufert: Okay, so, it's RP21 and Coco Palms Hui, and whether they have standing, and that's all we're talking about right now.

Mr. Ako: I don't know, is it?

Chair Apisa: No.

Ms. Cox: That's a good question.

Chair Apisa: I think it's also if the other party has standing.

Ms. Streufert: No, but we can only do one at a time, right?

Ms. Barzilai: At this particular point, Commissioner, your questions can cover all subject matter, particularly the petition and the standing issues, so that you can be prepared either to make a decision on the record or enter executive session, that should be your focus at this time.

Ms. Hammerquist: And Madam Chair, in order to get a full record and really air the things that should be aired, like the Land Boards letter to us, advising that there is no proof lease and in existence, and one has to be prepared and approved by the Land Board in order to get that stuff before us. Could we please request a contested case? This is a complicated issue and if you believe it's appropriate, we would be more than happy to appear before an administrative law judge and let him peel the layers of this onion because there's quite a few, there were at least three entities amongst whom assignments of the state lease were made before Coco Palms Ventures ever appeared on the scene in 2006. Those were approved by the board. Nothing has been approved by the Land Board, and as Ms. Chang said, the Land Board owns the state land, they are responsible for it and they have to approve any assignment and that has not happened from Coco Palms Ventures forward. So, there's nobody that has had a valid lease or valid control of the lease since 2006, and that's our problem with the illegal issue of the permits in both 2015 and 2018, and I think it is something to put before an administrative law judge, it's really complicated, I agree with that.

Mr. Ako: Now, just for clarification in my mind, again, before we get to an evidentiary hearing, we need to decide on standings first, to see whether the petition can actually be accepted by this Commission, and if it is accepted by this Commission, then we need to rule on whether there's a failure to perform or not, and then if it's yes, there is a failure to perform, then the question is whether that is handled here at the Commission or goes over to hearings office.

Ms. Hammerquist: Okay.

Mr. Ako: Is that correct?

Ms. Barzilai: That's correct.

Mr. Ako: So, first in my mind, I'm trying to figure out, I need to decide on standings first.

Ms. Streufert: For who? That's the question.

Mr. Ako: For the three of them. All three parties.

Ms. Hammerquist: And there are declarants. There are declarations in for eight people, for at least three of them refer to the current activity disrupting their traditional and customary practices and their rights, both at the ocean, at the seashell area, as well as their right to all of

them to a helpful environment with the destruction of 75 coconut palms and the grading without permits on the property.

Chair Apisa: If we could please move on to questions from the Commissioners. I appreciate that, but if you could just stick with questions from the Commissioners here and we need to move on. Thank you.

Ms. Hammerquist: Thank you.

Mr. Ornellas: Mr. Trask, backing up a little bit. When is Coco Palms Hui getting a BLNR Chairs signature on the agreement (inaudible)?

Mr. Trask: So, the process is they've again, it was approved in 2018. We have the documents right now. They've been routed to, they've been signed off by the Prudential entity. So, first Prudential signs off, then they sent it to RP21 in Utah to sign off and RP21 sends it back to me, I'll walk it over to Alison and it's signed. If you look at Exhibit 27, it's already signed by Deputy AG Colin Lau. The last person to sign is going to be Dawn Chang, but it's already preliminary approved. That's not a proposed lease or consent to assignment or amendment. That's the approved thing that gets signed by the attorney. That's what got sent to us. As I told you in my declaration, it got sent to me on or about, or we picked it up on about February 29th, it's immediately been sent. So, all of this again, this was raised as part of the BLNR accusations against my client for failure to perform in the lease. Those weren't founded. If the DLNR didn't find those credible, it's not within your jurisdiction. It's already being signed. It's already been approved. They talk about we haven't had it for five years, we've had it for six, 2018, May.

Mr. Ornellas: What is the status of the tax clearances for...

Mr. Trask: Done.

Mr. Ornellas: ...Coco Palms Hui?

Mr. Trask: Paid last year, immediately cleared up. It was before the next, the May meeting, so, it was after the 14th, between the 14th and August, whatever that was done, all the defaults with this the lease, done.

Mr. Ako: So, Mr. Trask, right now are we still, we're still waiting on Dawn Chang's signature. If she never signs it...

Mr. Trask: No, the Board already approved.

Mr. Ako: Right.

Mr. Trask: So, she assigns, she needs to sign it to effectuate the finality of it.

Mr. Ako: Right. If she never signs it, what happens?

Mr. Trask: I don't think she can not sign it.

Mr. Ako: She hasn't signed it yet.

Ms. Hammerquist: That's (inaudible).

Mr. Trask: That's true, but it was approved in May.

Ms. Hammerquist: That's really not true.

Chair Apisa: No disruptions, please. Thank you.

Mr. Trask: I kindly request you look at Exhibit 6. Exhibit 6 is the minutes from May 25th, 2018. The motion was to approve the amendment and the consents. It was approved unanimously, so the board has spoken. The Chair effectuates the will of the board, just like if you guys make a decision today, in all due respect, Ms. Apisa cannot deny to sign that order.

Ms. Hammerquist: Can I please respond to that?

Mr. Ako: No, no.

Ms. Hammerquist: Mr. Tsuji, Russell Tsuji testified that it was never perfected because they never came in with proof of their tax payments.

Mr. DeGracia: Commissioners, may I interject real quick?

Ms. Barzilai: Yes, please.

Mr. DeGracia: I just have a concern is everything we're discussing at this point in time talking about the petition and whether or not failure to perform and, is it is everything pointing toward whether or not that applicant has failure to perform on conditions because I'm getting a little lost in this conversation and I guess I need to kind of find the direction and as far as us coming up with actual decision making.

Chair Apisa: Thank you very much. You know, again, stay focused on the parties having each, having a standing and then performing. So, if we could stay on track of what we're here for today.

Ms. Barzilai: Madam Chair, if the Commission is ready for executive session, we could terminate the questions and move toward that as well.

Chair Apisa: Do you have any other questions before we go to executive session?

Mr. Ako: Can we come back to questions after executive session?

Chair Apisa: Well, do you have more questions now?

Mr. Ako: Yes.

Chair Apisa: Okay, go ahead.

Ms. Streufert: But is it about standing, or are we talking about the...

Ms. Barzilai: You may ask questions on any subject related to all of these documents.

Ms. Streufert: Anything?

Ms. Barzilai: Yes.

Ms. Otsuka: Mr. Trask?

Mr. Trask: Yes.

Ms. Otsuka: You mentioned in one of these documents that the 2015 TIAR can be updated. So, and I understand it can be, but is there a more definite word that it will be done? And is there a deadline or no deadline?

Mr. Trask: So, we have to I believe it's well within one year of occupancy. There's a deadline and when I say it can be updated, the declaration of Mr. Day confirms we will update it. It's a required Commission, I mean condition. However, the allegation in the petition was that it cannot be updated. And functionally I'm saying, of course it can. It should. It was anticipated to be and that is why it's a condition to update it.

Ms. Otsuka: (Inaudible) I understand why you said (inaudible). Thank you.

Mr. Trask: Thank you.

Mr. Ako: Madam Chair, at this point I'm going to ask if we can go into executive session.

Chair Apisa: Okay. Were there any other questions, I think...

Mr. DeGracia: Actually, I have one question for Ms. Hammerquist.

Ms. Hammerquist: Yes.

Mr. DeGracia: For me to better understand standing and I believe your organization has members who have, you know, some declarations in your petition. Could you tell me a little bit about your organization and how it's tied into...because my understanding, Māhā'ulepū is located on the South Shore.

Ms. Hammerquist: Yes.

Mr. DeGracia: And you're involved in a project that is on another part of the island. Just help me understand the types.

Ms. Hammerquist: Yes, we actually have a by-law and a statement of purpose and after we were successful in stopping an industrial dairy 6/10 of a mile up slope from Māhā'ulepū Beach, we got into the issue of water and we were asked to assist on the east side with Wai'ale'ale and we formed Kia'i Wai, we were Co-founders of Kia'i Wai o Wai'ale'ale and we went before the Land Board for four years and finally got flow restored in Wai'ale'ale and the KIUC withdrew from

their RP 7340. So we work on the environment all over Kaua'i and that is what our mission statement says that we are dedicated because we have members from as far away as Hā'ena, Hanalei, and Kapa'a, and Hanamā'ulu, we're all over the island because our work is environmental primarily, and it is to keep a clean and healthful environment with recognition that our shoreline, our ocean, and our 'aina need protection and overdevelopment is costing the state, it's beauty and it's safety and it's clean water because of the coastal overgrowth. So, we don't just limit ourselves to the South Shore, although you're correct that's where we began, but there was an issue about water, they were going to give the dairy 3,000,000 gallons a day, so we looked into where it was to come from and it turns out the Kōloa ditch was to bring it from Wai'ale'ale. So, we've done quite a few projects now at Lawa'i to restore water flow there, we have that diversion significantly modified with the help and cooperation of (inaudible), and they credit us for that work and that's the west of us. So, we don't just limit ourselves to the South Shore.

Chair Apisa: Okay. Thank you. Now, do we have more questions that we can stay on track here?

Ms. Streufert: One more question for...

Mr. Ako: I think I'd like to go into executive session to figure out what the procedures we going be using to move forward from here. Not that we don't have any more questions.

Ms. Barzilai: We should probably...

Ms. Streufert: If we can have questions after the executive session that would be very helpful.

Mr. Ako: Yes.

Ms. Otsuka: Yes.

Ms. Barzilai: You'll need those in your decision making. I can't see why not. You can also exit and enter again if you had to, but I think if there are questions that will assist you in your decision making right now you should ask them.

Chair Apisa: Are there questions that...

Mr. Ako: Can I ask if we can, first ask questions regarding standards and after that portion of the question is done, which may go over and interlock with questions regarding failure to perform. So, we can kind of...

Ms. Barzilai: Commissioner Ako, did you want to ask questions of Miss Rossi or any of the declarants?

Mr. Ako: Yeah...

Ms. Barzilai: I think we only have Ms. Rossi here.

Mr. Ako: I think we're done with Ms. Rossi already; she's done.

Ms. Barzilai: Are the petitioners offering any of your other declarants that were attached to your petition?

Ms. Hammerquist: They signed sworn...

Ms. Barzilai: Claimed injury.

Ms. Hammerquist: They signed sworn declarations about their individual injuries with regard to this project, so I don't...

Ms. Barzilai: That's what the Commissioners have to rely upon right now and there's no one else here to take questions.

Ms. Hammerquist: That's right, none of the others could make it today because of work and other obligations. Yes.

Ms. Barzilai: Thank you.

Chair Apisa: All right, now we have more questions on standing.

Ms. Streufert: I will wait until after we have our executive session, as long as we can ask questions after the executive session.

Ms. Cox: I have a question but it's not on standing, so if we're only asking standing...

Ms. Barzilai: I would ask now, Commissioner.

Ms. Cox: Okay, one of the conditions that is alleged to be violated is the demolition Condition #17 and I just need clarification I guess just both from the department and from Mr. Trask about what is has, I mean I know that it says it's complete, but when you look at the building that's on the highway, it certainly doesn't look complete and also I question the pillars, the cement pillars that have been exposed to salt and water and so forth and there's rebar in there that I would think would rust and so I'm just wondering, I just need clarification, cause it certainly doesn't seem like it.

Chair Apisa: I think the county is going to answer that.

Mr. Hull: Yeah, and that's a good question, Commissioner, thanks. I know that (inaudible) create a lot of confusion, that the applicants just substantially complete the demolition work described in the existing demolition permits for the property by March 31st, 2017. So, that's not referencing the overall demolition permits we're talking about today, that they have secured to knock down other structures. In 2016, not once, not twice, but three times, the department attempted to revoke the subject permits and what came out of the first revocation proceedings was the agreement that the applicant would demolish certain buildings that had asbestos in it and go through asbestos with abatement. So, they say subject promises are talking about those asbestos abatement buildings and those buildings were brought down, the asbestos abated from outside. So, those subject permits are complete.

Ms. Cox: Okay. And so, Condition #17 was only referring to that demolition.

Mr. Hull: Correct.

Ms. Hammerquist: But it does provide vertical structures by June 30 of 21.

Chair Apisa: Commissioner Streufert, if you have a question.

Ms. Streufert: One of the issues that has come up consistently by several people is the Seashell Restaurant and Mr. Trask, I think in your, in one of these, and I can't tell you exactly where at this point that it is no longer or maybe it's in our, maybe it's in the Director's Report, that there, the Seashell Restaurant is not going to be built because the permits have lapsed. So, if it's not, if it doesn't come to...

Mr. Hull: I'll correct that, and I think we made that in our report that the building permits had lapsed, technically that the phrases that I should use, have been put on hold. There was never a shoreline determination made by our department and I want to be clear here though that pursuant to the Iniki Ordinance, whether we agree to it or not, and I'm a huge proponent of applying the Shoreline Setback Ordinance, we worked on drafting much of it, but under the Iniki Ordinance it exempted using these newer laws to make that analysis, however, it doesn't exempt the fact that determinations need to be made concerning where the shoreline is and so we put those building products on hold to determine whether or not a survey is necessary required for the establishment of that public interface with the Seashell Restaurant area.

Mr. Trask: Yes, and we just found that out, I think (inaudible) put the stop on it February 5th, so when I saw that in the report I immediately called Ka'aina and just asked him about it, got clarity on it and obviously we'll work with the department to, I think to allay their concerns, but if you look, and this is on RP21s exhibits. This is Exhibit 19 and 20 respectively. That Seashell Restaurant is built about 15 feet up on the hill and I believe it was where Guslanders old house, where, what's that guy? He was a famous singer from New Jersey...

Chair Apisa: Oh, Larry?

Mr. Trask: Frank Sinatra. That's the location, the old Sinatra house. So, it's covered in rip rap and boulders. I walked it the other day. I grew up over there, used to surf Horners all the time. It's well mauka of the shoreline. I have no problem aligning their concerns, and there's photos, if you look at the Exhibit 19 showing it from the 60s, you can see those nice little cars parked in that very shuttle turnaround. So, I'm sure it'll be fine.

Ms. Hammerquist: We took pictures just recently. That's part of the Exhibit 9, our declaration. We have current pictures of where the water comes.

Ms. Streufert: I move that we go into executive session.

Ms. Barzilai: We'll have to read the notices first. Thank you.

**EXECUTIVE SESSION**

Pursuant to Hawaii Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session is for the Commission to consult with the County's legal counsel regarding powers, duties, privileges, and/or liabilities of the Planning Commission and as they relate to the following matters:

Ms. Barzilai: H.2. Madam Chair if you could read the specific notice.

Chair Apisa: Yes. Under executive session Agenda M.2.

> In the Matter of the Petition of Friends of Māhā'ulepū To revoke Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1 and Special Management Area Use Permit SMA(U)-2015-6 issued to Coco Palms Hui, LLC for use at Wailua, Kaua'i ,Tax Map Keys 4-1-003: 004 (por.), 005, 007, 011, and 017 and 4-1-005: 014 and 017.

Chair Apisa: May I have a motion to enter executive session?

Ms. Streufert: I so move.

Mr. Ornellas: Second.

Chair Apisa: We have a motion to go into executive session. I Think we can...

Ms. Otsuka: Jerry seconded.

Chair Apisa: Yeah, we have a second.

Mr. Ornellas: Second.

Ms. Barzilai: Thank you, Chair. We'll take a roll call, Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: Motion carries. 7:0. We'll enter executive session. Thank you. We should be about 45 minutes to an hour.

The Commission recessed this portion of the meeting at 2:16 p.m.
The Commission entered into Executive Session at 2:29 p.m.
The Commission ended Executive Session at 3:52 p.m.
The Commission reconvened the meeting at 4:03 p.m.

Ms. Barzilai: You can reconvene, Chair.

Chair Apisa: The meeting is reconvened.

Ms. Barzilai: This is a mandatory statement under Sunshine Law, pursuant to SB 1513, enacted as Act 19, 2023: Relating to Public Agency Meetings, a board is required to report a summary of its discussion, or any final actions taken during an executive session, after reconvening to the public portion of the meeting. The Commission has concluded its executive session on item H.2. The item involved the discussion for the purpose stated on the agenda, disclosure of the discussion would defeat the purpose of convening the executive session which was held pursuant to HRS Section 92-5a4, the Commission's right to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities. No final action was taken during the executive session and this final discussion and action will now commence. We have an issue that was raised where Ms. Alison Neustein, who works for the DLNR, came here on her own volition and was brought in as a resource for the Commission to explain the DLNR process. I have been informed by Elizabeth Okinaka that she has made a complaint to OIP based on us inviting Ms. Neustein in because the public was not informed of the subject matter. With that regard, we would like Ms. Neustein to please explain what it is that she told the Commission and to answer the question that was posed to her by Mrs. Hammerquist.

Ms. Alison Neustein: Alison Neustein, DLNR Land Division, District Land Agent. I came in today, I wasn't requested to come here by any party. I came upon, on my own volition. No one asked or insinuated I should be here. I came to answer questions as it related to BLNR process and transferring of leases and easements and how the BLNR and Board of Natural Resources handles that. I believe Ms. Bridget has a question regarding tax clearances and has a relate to the transfer of our leases. The Land Board approved, I believe it was either 2016 or 2018, the assignment of these leases at the time one of the reasons that the paperwork was never fully consummated was because of a lack of tax clearances. After years had gone by because it fell through the cracks, once it was brought to my attention in the position I'm in, I issued a notice of default relating to one of the leases on the coconut palm property, the Coconut Grove and that

issue was resolved as far as the tax clearances and any other defaults that were listed at that time. If there's any other questions from anyone else regarding tax clearance issues or any other procedures, I'm more than happy to answer.

Ms. Barzilai: Would the Commissioners like clarification on anything that was discussed when Ms. Neustein came in as a resource before the Commission? Is there anything else that has to be clarified? Does that fairly summarize Ms. Neustein's comments to the Commission? You may ask that question, Chair.

Chair Apisa: Could you clarify that there is a lease and it's just a matter of getting a signatures and what the holdup was in getting those signatures.

Ms. Neustein: So, when it was initially Land Board approved, the property I believe was either going through a sale, there's was a change of owner, whether it's through the foreclosure process or the sale, I can't recall at this time without the paperwork. My predecessor at that time felt we should hold off on finishing the process of the paperwork. It was already drafted by our Attorney Generals, the assignment docs for these leases. He didn't have it signed because we knew that it was going to be a new entity coming in, so we held back, which then cause there to be a lack of tax clearances. Since then, once again, whatever transpired since that board approval till now, I can't really account for I haven't been with the agency that long and I've only been in my position for over a little over a year, but once I issued a notice of default relating to that lease, which included a lack of tax clearances, they provided those tax clearances and cleared up any of the other defaults that would have prevented a transfer of the lease.

Chair Apisa: And so, in other words, the lease is been transferred and the board has approved it, it's just a matter of getting the entity and everybody's signatures on it.

Ms. Neustein: Correct.

Chair Apisa: Thank you.

Mr. Ako: May I ask a question, Madam Chair? So, pretty much we're looking at the final signature of pretty much the Chair. Has the Chair ever not signed a document like this after it has gone through board approval or is there any reason why for this one that you would not sign?

Ms. Neustein: Not that I'm aware of, if they're in good standing, which once again they have to provide the tax clearances, they have to be in good standing with DCCA. I'm trying to think of another procedural issues that would prevent it from occurring at this time. I can't think of any.

Mr. Ako: Thank you.

Ms. Neustein: You're welcome.

Chair Apisa: Any other questions? And we really appreciate your volunteering to come down here and staying so long, so, thank you.

Ms. Neustein: Of course, no problem. Does anyone else have any questions?

Ms. Hammerquist: May I make a statement please?

Ms. Barzilai: Chair?

Chair Apisa: Is this...

Ms. Hammerquist: This is according to the Chair, and according to Mr. Tsuji, the party to which the discussion was about an assignment was the former Coco Palms Hui, Chad Waters and Tyler Green, it was not any of the entities that are currently before you. It was not RP21, and it was not the current Coco Palms Hui that foreclosed on the former Coco Palms Hui. They're not the same owners, they're not the same people. The taxes went unpaid for six years, so when we were before the Land Board in April of this year, Ms. Neustein had suggested to the board that they consider giving the lease and the RP's to the current owners and developers, the board acknowledge that there'd also been an application from the I Ola Wailuanui and Ms. Chang actually put on the record that it appeared the Land Board assumed the board would deliver it to RP21 and Coco Palms Hui, and she said that assumption is not accurate, we have to make a decision and we'll make a decision and the matter was initially continued into January and then into March and now was Ms. Neustein has told me it will probably be on an April agenda, but the board did make it clear, as did the various members of the Land Board that they will make a determination of whether or not to grant the lease to the applicant I Ola Wailuanui or to the applicants RP21 and Coco Palms Hui. It is not a done deal and all it takes to understand that is to read the minutes from the April 14th, 2023 meeting and the minutes from the December 15, 2023, meeting when they further clarified that the state will consider both applicants equally, and in fact I think Alison will acknowledge that Director Chang asked her to work with both applicants equally and present both applications to the board for their deliberation and approval, correct Allison?

Ms. Neustein: Relating to the two RP areas we already had a disposition granted by the Land Board on one of the RP areas. The other two RP areas I am going to be presenting options to the board for a direct lease to I Ola Wailuanui, as well as RP21, and yes, the Land Board will decide on the two RP area, one of them is attached to the Shell Restaurant for your reference and the other one is off of Kuamo'o Road, which is like a parking lot right now.

Ms. Hammerquist: And the third disposition was to I Ola Wailuanui and RP21 and Coco Palms Hui, jointly, correct?

Ms. Neustein: Not jointly. They were each granted access easements, which we're still having to clean up and address one of the access easements.

Chair Apisa: yeah, I don't want this to be a debate here.

Ms. Hammerquist: No, no. I'm not debating. I do feel it's important...

Ms. Barzilai: Commissioners. Excuse me, Madam Chair.

Ms. Hammerquist: ... (inaudible) record of the fact that we believe there's a Chapter 29092 violation.

Chair Apisa: Okay. Okay. Thank you.

Ms. Hammerquist: Ms. Neustein was not on the agenda and she said she came to speak to Chris Donahoe, so, someone called her. She didn't just drop out of the sky, so this...

Ms. Neustein: I came to speak to Chris Donahoe.

Chair Apisa: Okay, thank you.

Ms. Barzilai: The meeting is broadcast on webcast, Chair, and Ms. Neustein came in as a resource at the request of the Commission. Is the Commission satisfied that what Ms. Neustein has stated now summarizes what she discussed in executive session?

Chair Apisa: Yes, I am satisfied and I think that was the purpose of you staying to clarify on record. So, I think, are we ready to dismiss...thank you very, very much. I really appreciate your coming down and sticking around to make it on record.

Ms. Neustein: Thank you everybody. No problem. Thank you.

Ms. Hammerquist: We would just offer that it's not an accurate record. The board has made it clear that they will be considering both applicants for the next time this is heard.

Chair Apisa: Thank you. Thank you.

Ms. Barzilai: Chair, first order of business would be to decide upon the interventions. If the Commission would like to discuss and then prepare a motion.

Chair Apisa: Okay. So, our first matter of business here is the intervener status of RP.

Mr. DeGracia: Commissioners, I'll start it off. I guess looking at the status of them, for me it's clear that they have intervener status, RP21 that we're starting off with, right.

Chair Apisa: Is the Commission in agreement with this?

Ms. Barzilai: We need a motion, Madam Chair, either a motion to admit RP21 Coco Palms as an intervener or motion to deny them as an intervenor.

Chair Apisa: I would entertain a motion, please.

Mr. DeGracia: I move to allow RP21 as an intervener on this agenda item.

Chair Apisa: Second?

Ms. Cox: Second.

Chair Apisa: Is there any discussion? I'll take a roll call please.

Ms. Barzilai: Motion to admit RP21 Coco Palms is intervener. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: Motion carries. 7:0. The next order of business, would be whether Coco Palms Hui LLC shall be admitted as an intervener.

Chair Apisa: Are we ready for...I would entertain a motion if we're ready to make a motion.

Ms. Streufert: It's been a little difficult to determine what's RP21 and Coco Palms Hui (inaudible) because we have one attorney who's representing both of them, but looking at the requirements for intervener status, I move that Coco Palms Hui be allowed in as an intervener.

Chair Apisa: A second?

Mr. Ako: I second that.

Chair Apisa: Any discussion? Roll call vote, please.

Ms. Barzilai: Motion on the floor is to admit Coco Palms Hui LLC as an intervener. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Nay.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: Motion carries. 6:1. Next order of business is whether the Commission will issue an order to show cause and refer Friends petition to a hearings officer. If you would like to have discussion on that, Madam Chair.

Chair Apisa: Any discussion on that?

Ms. Cox: I have a couple of questions for Friends. One is, your petition alleges that there's a harm to the clear and healthful environment. Can you relate that to one of the conditions that you're saying is being violated? Thank you.

Ms. Hammerquist: Yes, there's 4 conditions that deal with the endangered seabirds, and they were directed to seek guidance from US Fish and Wildlife, and we can't find any record of that. The other is the fishpond is supposed to be preserved and kept in good order. There's no indication that either US Fish and Wildlife or SHPD have signed off on the new plan moving the cars and parking around the fishpond, as Mr. Trask suggested, that they could get, they could get permission to park them within the 20 foot buffer, we've not seen anything to suggest that the only paperwork we have said there must be a 20 foot buffer as part of the preservation plan. In addition, there's sea level rise that has occurred over this 30-year interval of non-development, non restoration and it's very real. They had to run pumps 24/7 in the parking garage of the old hotel, Val Ako and his son Ivan, who filed a declaration, worked on those pumps and know that the ocean came in then and took the oil and salt water and everything that was in the parking lot put it in the channel, deep channel ditch behind the hotel, went back to the river under Kuamo'o Road and out to sea. So, that's also an issue of contamination, current contamination of the shoreline and the ocean for the public and the members who are living in that area and who rely on a clean and healthful beach and ocean. I'm sure there are others. I think I mentioned earlier the felling of the coconut trees, which they are still under a notice of violation that has not been, they've not been relieved of with the Office of Coastal Land Management for Conservation of Coastal Land Management. I think that's a violation of the public's right to a clean and healthful

environment as well, and the fact that they're all piled on Koki Road and not being taken to the waste, the actual landfill that they're...Layton Construction agreed to take them to, and they've been sitting there since March of last year. So, they've been there now a year and that is a violation of a clean and healthful environment. It's not safe to have them all there. I don't believe there isn't any more cars. We've had several drone photographs taken of the property. I don't think that's a problem, but I think their use of heavy equipment without grubbing and grading permit is a violation and the we have documents from Public Works indicating they've never applied for one and they've never been given one. We know clearly Patrick Manning's article in the Garden Island admitted to widening the road, they graded the dirt road behind the hotel that is grading, and we filed pictures in our petition and our supplement to support the fact that grading has occurred, so those are all violations of the right to a clean and healthful environment that I can think of at the present time.

Ms. Cox: Thank you.

Mr. Trask: Am I allowed to respond to clarify those points?

Ms. Cox: It's up to the Chair.

Chair Apisa: I'm sorry. What was that?

Mr. Trask: I was asking if I may be allowed to respond to those points, real briefly.

Chair Apisa: Yes, I think that would be valuable.

Mr. Trask: Thank you. So, with regard to the endangered species' condition, that's Condition 28, I believe.

Ms. Hammerquist: There's four of them. The (inaudible).

Mr. Trask: And so, we did provide in Exhibit 30, two emails from 2016 between Hui and Fish and Wildlife and also you have a copy of the complete and updated October 2023 (inaudible), Avian Resources Assessment at Coco Palms Hotel and Training module. That was all done in consultation over time, over at the Fish and Wildlife as well as written guidance for the fishpond, again we are not proposing to change the parking at this time, that's a contingency plan. That is not in the plan. We are confident what we should get because we are providing public service on the Kuamo'o parcel and that's the primary aim, however, these are state lands, as was said in the application period in 2015, nothing's assured that was always understood. So, we wanted to make sure that we can still go forward, we can. With regard to sea level rise and that's an island wide problem. And with the coconut trees and the grading, those are both on lease land and the only reason why we can't we remove the remaining portion of the greenways on Koki Road is because we had a stop work order from OCCL, we literally can't do it. And then the grading, there was no grading, it was, we did widen the road and that was within the lease land and that would have been, that was dealt with, as Ms. Neustein said, under the alleged notice of default. That's all. Thank you.

Ms. Streufert: Can I ask the County Attorney? When you were identifying the criteria from Maui Electric, which was a Sierra Club case and you said that there were three criteria that need to be or that they had met.

Mr. Donahoe: Yes.

Ms. Streufert: Could you elaborate on those? Could you list those three, please?

Mr. Donahoe: Sure. So, under that Maui Electric Company case and just for the record, the site is 141, Hawaii 249, 2017 case. The court found that the Sierra Club, the environmental petitioners because one of the allegations that one of the petitioners reasons to grant standing was that they didn't have to assert any injury different, distinguishable from the public, and the court in Maui Electric agreed that they don't have to assert an injury that's different (inaudible) kind from any injury to the public generally, but they must still met the three-part test, which is, 1). The petitioner must have suffered an actual or threatened injury. 2). The injury must be fairly traceable to the defendants' actions, and 3). A favorable decision would likely provide relief for the plaintiffs' injury.

Ms. Streufert: Thank you.

Mr. Donahoe: You're welcome. Thank you, Commissioner.

Chair Apisa: Do we have any further questions from the Commissioners?

Mr. Ako: I have a question.

Chair Apisa: Okay.

Mr. Ako: Ms. Hammerquist, I know you mentioned about your mission statement being island wide, and yet I think when I look at your website, although there is no mention about a mission statement, there is a statement in there several times regarding...

Ms. Hammerquist: Preservation of the environment of Kaua'i.

Mr. Ako: I'm sorry.

Ms. Hammerquist: We do have that on the website.

Mr. Ako: I'm sorry, here it is. Yeah, that the Friends of Māhā'ulepū is comprised of a group of concerned citizens, local and beyond, who are contributing their time and talents to protect the natural beauty of this pristine coastal valley, and I know it's mentioned in there more than one time and it seems like it's a mission statement cause it kind of, it stands out there by itself. How does that fit in with the other mission statement that you had mentioned earlier?

Ms. Hammerquist: I think you'll also find Mr. Ako, on the website that we talked in terms of our goal to work toward the preservation of the environment of the island because we expanded years ago, and we've not limited ourselves to a particular valley. We're on record working on restoration of Wai'ale'ale, working on restoration of flow at the Lawa'i Stream, we've done

several projects. We've worked with the Land Use Commission on the Hokua Place, we appeared, we intervened in that proceeding and were able to bring before the board sufficient, to the Land Use Commission sufficient consideration, but the developer withdrew their application, so, that was over in, at the bypass in Kapa'a, so we've never limited in the last six years, we've not limited ourselves to any particular location. We are working on the environment of Kaua'i and have a record of that.

Mr. Ako: Yeah, and is that all on your website?

Ms. Hammerquist: Yes, there is. Those are all on your website. Yes, Sir.

Mr. Ako: Oh, okay. Sorry I missed it, (inaudible).

Ms. Hammerquist: That's okay. It's okay. It's a lot on that website.

Mr. Ako: Also, regarding...let me take this back. After this we'll hit the issues about failure to perform.

Chair Apisa: Well, first I'm going to ask for your position on the standing.

Mr. Ako: On the standing, okay. Okay, I'll hold off on this question.

Chair Apisa: Okay. If there are no further questions, Commissioners, I need to ask what is your position of Friends of Māhā'ulepū standing in accordance with the law? Do you want to discuss this? The position of the Friends of Māhā'ulepū standing in accordance with the law.

Ms. Barzilai: Chair, in order to send it out to OFC you have to find standing to grant (inaudible).

Chair Apisa: We have to find standing.

Ms. Barzilai: You can find standing and still deny the petition, but in order to issue the OFC you have to find standing, so that's why we (inaudible) to determine the position of the Commissioners, standing so that you can make the proper motion.

Chair Apisa: Are you at the position that the Friends has standing in accordance with the law?

Ms. Streufert: I'll start with this, I asked the County Attorney for the clarification of the three tests, if you will, and I don't see, I'm not clear that Friends of Māhā'ulepū have actually met the standards for each one of the three. I can see it for one, one is a possible but the third that whatever decision or whatever decision we do today will have the capability of correcting it, I don't see that as happening. So, on the basis of that, I'm not sure, and so I'm putting this out on the table for discussion because you can convince me one way or the other as to how, what you're thinking.

Chair Apisa: I'm somewhat sharing your position, I agree, so don't, I thank you for putting it out there, but I'd like to hear from others.

Ms. Cox: I actually, find that the third if you were actually doing 1, 2, 3, I actually see the third standard, which is that there could be resolution that I actually see that that does meet it. That was one of the reasons why I asked about that clean and healthful environment, because a number of those things, if they were, if we ended up granting the petition there would be a resolution. So, for me, all three meet the standard.

Ms. Barzilai: Just to clarify on the record, Chair, the clean and healthful environment standard is to allow the due process right for us to be participating in this proceeding right now, but the party still has to demonstrate standing. The standing test of is separate from the allegation of clean and healthful environment. I just want to clarify that.

Ms. Cox: But isn't, but based on what the clean and healthful environment concerns are, if they could be resolved through the petition, doesn't that go to the three categories of standing?

Ms. Barzilai: The way that I'm reading the case that Mr. Donahoe is talking about the first two prongs of that test still have to be met that there's an actual or threatened injury that is fairly traceable to the defendants actions or inactions, which today we're talking about the failure to perform that's alleged in the petition. That's what you're deciding now. I know it's a lot legal analysis, but you have to reach the standing issue so that you know whether to issue the order to show cause.

Chair Apisa: So, there will have to have been (inaudible) plaintiff would have to have had actually suffered an actual...

Ms. Barzilai: Or threatened (inaudible).

Chair Apisa: ...or threatened injury and there would be traceable to the defendants actions and only then would we be able to do something about it.

Ms. Cox: Right.

Ms. Streufert: Does that go back to the failure or failure to perform or not?

Chair Apisa: No, I think this is just not under that's another issue. Does anyone else have any comments about this?

Mr. Ako: I will share that on the issue of standing for Friends, I'm not real clear, and I'll be honest, I'm not clear about the kalo issue that we have there and how often kalo is growing there. I looked at the mission statements in my mind and there's two different mission statements going on. However, you know you do have represented and advocated I guess for issues, I guess now, as you mentioned not only on the south side so, I'm not clear on it I will say that because of courts being so liberal on allowing the standings, I would vote for yes to allow them to be, to have standings on this case here.

Chair Apisa: I'm open to discussion on it. I see that, I recall that it was several lots away and that they are still growing kalo on the property, but again please everyone.

Ms. Barzilai: I would prefer that we have a consensus of the Commission or at least the majority to know.

Chair Apisa: We need to hear from all the Commissioners to get a consensus.

Ms. Barzilai: We might want to move if it's not possible to...

Chair Apisa: Well, let's see if we can...

Mr. DeGracia: I'd just like to, you know, state that I'm not totally convinced. I am looking at the rules and it says, who are directly and immediately affected that's clearly distinguishable by the general public. I've heard a lot of stuff that brought up today. I've even asked if there's any conditions on there that had affected items within the declaration or within the petition, and from what I've gathered, I'm at the point where I don't really feel that they have clear standing. I hear a lot of, I hear the intent of their organization, I hear the sentiment of the community, but if I had to trip it so that I'm just looking at the rules and what was presented before me today, I'm not 100% convinced.

Chair Apisa: That was well stated, I mean I also I hear the sentiments and that, so I want to acknowledge that.

Mr. Ornellas: So, the definition of harm is relatively broad as pointed out by our County Attorney. I'm leaning towards them having standing. The issue of the merit of the petition is another question.

Ms. Barzilai: That would be a reasonable cause to believe that there is a current failure to perform. If you do not find that there's a failure to perform, you would have to deny the petition. That's the ultimate question that you need to decide so you can formulate your motion, a reasonable cause to believe that there is a current failure to perform as alleged in the petition. Based upon the allegations of the several conditions in the documents, if you do believe that there's a failure to perform, then you should issue the OSC and send it to the hearing officer. If you do not believe that there is a failure to perform, then you have to deny the petition.

Ms. Cox: So, we're no longer talking about standing because a minute ago I thought you wanted us to...

Ms. Barzilai: You need to reach standing if you're going to issue the OSC, you can deny standing and I'm sorry, if you deny standing you have to deny the petition, but if you deny standing, you cannot issue the OSC because you can't reach the merits of the petition.

Ms. Cox: Right, but we can, we can accept standing. We can approve standing and then discuss the merits of the petition. Can't we?

Ms. Barzilai: I'm not sure we came to a consensus; I think we moved on but...

Ms. Cox: No, we didn't. We didn't come to...I'm just saying, are we just moving on, we're no longer talking about standing because we didn't reach a consensus.

Ms. Barzilai: I would prefer, it would help me to have to allow you guys to make a motion, if you...

Mr. Ako: Could I make a motion on this then?

Ms. Barzilai: Yeah.

Mr. Ako: To understandings, is that appropriate right now?

Chair Apisa: Lori, do you have a comment?

Ms. Otsuka: All I'm thinking about is...

Ms. Barzilai: Well, I think we're going to have to go that route.

Ms. Otsuka: ...is personal injury.

Ms. Barzilai: I'm sorry, Commissioner.

Ms. Otsuka: It mentions direct personal injury and I agree with the fauna and the...and I agree with a lot of things they say and yet if it has to do with direct personal injury, I don't see a direct personal injury.

Ms. Hammerquist: Actual or threatened?

Ms. Streufert: And this is distinct from the general public.

Ms. Barzilai: It does not have to be distinct from the general public. The case law holds that it is the three-prong test that was cited by Mr. Donahoe. The rule has not caught up to the current state the case law. If you would like to make a motion, let's just go that route so we can reach the OSC or not.

Mr. Ako: Okay. I'd like to move that we allow the Friends of Māhā'ulepū to have standings and to accept their petition.

Ms. Barzilai: It's a motion to grant standing to Friends. Is there a second?

Ms. Cox: Second.

Chair Apisa: Is there any discussion? Definitely need a roll call.

Ms. Barzilai: Motion to grant standing to Friends of Māhā'ulepū. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Nay.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Nay.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: No.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Nay.

Ms. Barzilai: Motion fails. 3:4. There is no standing of this party. Therefore, the petition must be denied.

Unknown woman from audience: Who does have standing?

Ms. Barzilai: I think it's a matter for the courts to decide. Is there any final discussion before there is a motion to deny the order to show cause?

Ms. Streufert: Could I ask a question of the, of RP21 and Coco Palms Hui (inaudible)? Before we do that, I think one of the one of the problems that I have had with the status reports, is that it's very difficult to see whether anything has happened since the last status report because it's not very detailed. And so, we have to rely a lot on what people say and what we can see with our eyes, but we can't obviously go onto the property, so, it's what we can see from the road, which is not always complete. Is there any possibility that when the status report is presented in June that it be more detailed to indicate what has been done? The last status report to the current one, and make it very clear as to how that might affect any of the conditions that are listed in the permits.

Mr. Trask: Absolutely.

Ms. Streufert: I think it's also fair to say that although, we agree with the, or we support, or I support the department (inaudible) or the department's assessment of conditions and whether it has, whether you've met the conditions or at least you have not failed to perform. I think we're a little dismayed by the length of time it's taken to get anywhere on this, and it would be nice for us as well as for the community to see more progress to either get this thing going or to call it quits, whatever you want to do.

Mr. Trask: Commissioner Streufert, you will see tremendous progress. I guarantee it.

Chair Apisa: With the petition for standing denied, we need to follow up with a motion to deny the petition to revoke and then we cannot issue and OSC. I need a motion.

Ms. Barzilai: That is based on your finding that at this time there is not a reasonable cause to believe that there is (inaudible). You have denied standing and therefore, you have to deny the petition. Would anybody like to make a motion, Madam Chair?

Mr. DeGracia: I'll make the motion. It sounded like it was a little too (inaudible), so is the first part that the petition is denied because...

Ms. Barzilai: Motion to position for revocation is appropriate.

Chair Apisa: That's adequate.

Mr. DeGracia: Okay. Motion denied petition for revocation. I move.

Ms. Streufert: Second.

Chair Apisa: Any discussion?

Ms. Cox: Yes, I have a question. Are we really have no choice at this point, correct? I mean, don't we have to...

Ms. Barzilai: (Inaudible).

Ms. Cox: Yeah, don't I mean, you just said we have to deny it if there is no standing, and since our last vote was, there's no standing, we don't have a choice.

Chair Apisa: I think we just need a motion for the record.

Ms. Cox: Thank you. I just wanted to make sure that that's what we're doing.

Chair Apisa: Any other questions?

Mr. Ako: And I'd just like to clarify the fact that although we're going to be taking the motion to revoke that may not necessarily mean that there is a failure to perform though, although I think we may not even get into it, but just...

Chair Apisa: There is a petition to revoke the permits, we're denying that petition to revoke...

Ms. Barzilai: Commissioner...

Chair Apisa: (Inaudible) double negative.

Ms. Barzilai: If you found that there is no standing and you deny today, if you still believe that there is a failure to perform, you would have to bring your own Commissioners petition or you would have to request a petition from the department.

Chair Apisa: We're denying the petition to revoke it's to me like a double negative.

Mr. Ako: Yeah. Got it.

Ms. Barzilai: Motion to deny petition. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa? And I believe that Chair has a statement that she has prepared that she would like to read.

Chair Apisa: Okay, I and my statement is that the Commission has decided that petitioners have failed to show that the organization or its members have standing, as this is interpreted by the law. Petitioners have not alleged an injury to any member traceable to RP21's failure to perform under the several conditions alleged in the petition. Petitioners allege injury related to a hotel in general and complain of RP21 because they admittedly do not want a hotel at the current site, an issue that was decided by this Commission in 2015 without any intervention by a third party, including the petitioners, notwithstanding the Commission's decision at this time regarding the insufficiency of Friends standing because this matter is of great importance of significance to the public, the Commission will address the merits of the petition to revoke with an explanation on the record of why, in any case, the partition to revoke would be denied. Based upon filings, the exhibits of public testimony and the parties arguments, the Commission decides that the petitioners have failed to show that there is reasonable cause to believe that there is currently, that there currently is a failure to perform according to conditions imposed. Therefore, this Commission will not issue an order to show cause and set an evidentiary hearing on this petition and its opposition. The Commission is satisfied that applicant has either shown sufficient performance on the under the conditions alleged in the petition, or that the applicant is in the process of working towards reasonable compliance with all conditions. This does not preclude the Commission from addressing this matter at any time in the future, either through a Planning Department petitions for modification or of any other conditions, or on a separate motion or

petition of the Commission. The Commission understands the public's concern but does not at this time find the legal grounds to revoke the entitlements. The findings of fact and conclusion of law will be issued on this matter, which may be appealed to the courts. Thank you very much for your participation.

Mr. Trask: Mahalo, Chair.

Unknown woman from audience: You need to be ashamed of yourself.

Ms. Barzilai: Thank you. Next item please.

Unknown woman from audience: Shame, shame, shame, shame, shame.

Mr. Hull: Have some order. Thank you, Chair and members of the Commission, moving on to the next Agenda Item, H. General Business H.3.

> In the Matter of the Petition of Friends of Māhā'ulepū and Save Koloa for Declaratory Orders Interpreting Kaua'i Planning Commission Rules for Intervention as Applied to Community Members Without Actual Notice of Applications Pending Before the Commission.

Mr. DeGracia: Mr. Clerk, I'd like to let the Commission know that I will be recusing myself from this agenda item as I have recused myself on the intervention that happened on, I believe, December 12th.

Mr. Hull: Thank you, Commissioner.

Commissioner DeGracia recused himself from this portion of the meeting at 4:47 p.m.

Chair Apisa: And then you will be back for the planning, the Subdivision Report. Thank you.

Mr. Hull: Before we turn it over to the Petitioners who are here, we don't have anybody signed up to speak from the general public. Is there any member of the public that would like to speak on this agenda item?

Ms. Barzilai: Actually, Mr. Clerk, we did have a list.

Mr. Hull: Oh, sorry.

Ms. Barzilai: Thank you.

Mr. Hull: First, we have signed up for this agenda item is Jennifer Cole. Jennifer Cole? Next, we have up Gabriella Taylor. Gabriella Taylor?

Ms. Hammerquist: She had to leave.

Mr. Hull: Next, we have signed up Elizabeth Okinaka. (Inaudible). Next, we have our Bridget Hammerquist.

Ms. Hammerquist: I'm here for the petition.

Mr. Hull: And lastly, we have signed up Terrie Hayes. Terrie Hayes? Terrie Hayes.

Ms. Hammerquist: I think she just left.

Mr. Hull: Okay. Having no one else on the list, is there anyone who didn't sign up but would like to speak on this agenda item? If so, you may approach the vacant microphone. Seeing none, I'll turn it over to Petitioners, I'm looking at you Laura, if you have any other protocol procedures?

Ms. Barzilai: Chair has something that she'd like (inaudible).

Mr. Hull: Okay. Let me turn it to the Chair first.

Chair Apisa: We will now consider item H.3 on our agenda, Petitioners, Friends of Māhā'ulepū and Save Koloa's Petition for Declaratory orders, regarding Chapter 4 intervention. This petition asks the Commission to issue an order regarding the application of Chapter four of the Commission's Rules of Practice and procedure governing intervention. At this time, we would like to take comments from the petitioners and again I ask you, please limit your discussion to 10 minutes.

Ms. Barzilai: So, Ms. Hammerquist, will you be representing yourself with regard to this petition? Or would you like to defer for when your attorneys can be present? It's entirely up to you. If you feel that you want to make your comments on the petition, this petition is basically a discussion of legal issues, so you don't have an adversary here, you're not defending a position. If you would like to just present and you want the Commission to move forward, that's fine. If you feel more comfortable having your attorneys here, it's entirely up to you and I can suggest a motion to defer.

Ms. Okinaka: Would that be for following (inaudible) or...?

Ms. Barzilai: It's really up to the Department, I don't set the agenda.

Ms. Hammerquist: No, I think we're okay because it's pretty straightforward and I did not see a comment by the Director in response to this petition. I didn't see any opposition filed and it's pretty straightforward. Our point is that the agenda comes out six days before you meet and if it's an item that doesn't require prior publication 30 days before the meeting, and there are many of those that don't. The public can't possibly file a petition to intervene, assuming they believe they have actual harm or threatened harm and they can't file it because it's just numerically not possible because the rule currently requires that a petition to intervene be files seven days before you're hearing, and if we don't get the agenda until six days before the hearing, it's impossible to meet that seven-day requirements. So, we suggested that either the agenda notice come out earlier than seven days or the rule be changed to provide that petitions to intervene be filed five days before the hearing, something to give people a reasonable chance to file a petition once they've been notified of the agenda item. Hopefully I stated that in a way that was understandable.

Ms. Otsuka: Thank you.

Chair Apisa: Okay, thank you. Is there anything that the Department would like to add regarding this matter?

Ms. Otsuka: What is involved?

Mr. Hull: Yeah, Ms. Hammerquist is absolutely correct. The way that the rules are set up for intervention you need to file the six days, but that filing has happened prior to the agenda being posted, which in essence, if it's not a application of requires public notification of (inaudible) property owners or publications newspapers prior to the agenda being posted, technically, a potential intervener isn't aware of it and therefore can't file for it, so it's an issue that I know came up when the previous administration was drafting those rules. Which is why in the rule it also allows for the Planning Commission to waive that timeline for just cause brought, and the way I look at it is, you know if an intervener comes and says, this is a subdivision application or an amendment to a condition that didn't necessitate publication in the newspaper or notification of abutting property owners, there's that ability for the Planning Commission to waive that time requirement, which you know I'm neither here nor there. I think the rule could be amended, but in absence of a rule amendment, and I'll be honest, the department is looking at adjusting rules because there have been a fair amount of confusing situations because of the way the existing rules are structured. I have no problem restructuring or looking at proposing or restructuring those rules with you folks to Ms. Hammerquist's point, whether it's five or four days timeline, but the remedy in the current situation, at least my understanding is, is just it can be filed in less than six days and the Planning Commission has the authority within that rule to waive the six day timeline requirement for just cause and the lack of a publication that I generally would think is, but I would, I kind of defer to you folks and your attorney in the implementation of the specific rules. Because generally we, from my position standpoint generally we stand down, generally we stand down from a standing intervention standpoint like if the Commission feels like it then you know we're not objecting so.

Ms. Otsuka: So, it's per application that the Commission can waive it or?

Mr. Hull: Mm-hmm.

Ms. Otsuka: So, every application that comes forth or if someone is concerned about it, like...

Mr. Hull: No, so any...

Ms. Otsuka: At what point would we waive...

Mr. Hull: Any petition for intervention that could come after, right, so the agenda is posted, if it is a use permit or variance permit or shoreline setback application there's going to be either notification in the paper well in advance as well as notification to the abutting property owners, so those notifications have happened. I think when Ms. Hammerquist was talking, there are some applications that this Planning Commission reviews that don't necessitate notification of the papers or notification of abutting property owners prior to the agenda being published. So, what she's saying is, when the agenda gets posted, say for things like subdivisions, subdivisions aren't required to be noticed in the paper or notified the abutting property owners. So, some of these, a potential intervener is only going to know that it's on the agenda after that agenda has been posted, and so how would a potential intervenor get involved with this if the rule says you have

six days to submit your intervention petition and then she's right, except for the caveat which I think covers and you know, if there's a desire to initiate those rules on the next meeting, we absolutely can, but there is within, embedded within that rule right now the ability for the Commission to waive the six days.

Ms. Otsuka: So, just the Commission can make the decision? It doesn't have to go to council?

Mr. Hull: Yeah.

Ms. Cox: Hi. I actually think we should change the rule and the reason I think that is because I just had an experience myself, not with the Planning Commission or the Planning Department, but with testimony for the legislature and they tell you, you have to have testimony in 24 hours ahead and a couple of times I've just missed that deadline and I'm such a good rule fighter that I don't do it, even though again they have, they do say something about we will sometimes accept late testimony, but I'd rather have a rule that allow, that gives people the chance upfront, knowing that they have the information they need and the time they need rather than exception.

Ms. Streufert: I guess my question would be to Ms. Hammerquist, what would seem reasonable to you? Did you say five or four days?

Ms. Hammerquist: Yes, and I think, Mr. Hull will confirm that actually the intervention rule calls for seven days prior to the commissions meeting.

Mr. Hull: Correct.

Ms. Hammerquist: Correct?

Mr. Hull: Correct.

Ms. Hammerquist: Seven days.

Ms. Streufert: What would be reasonable to you?

Ms. Hammerquist: I think five of four would be reasonable because and even five is tough because you get the agenda it means you only get one day to do a petition to intervene, so, I would really appreciate four because I know we work as quickly as we can and that would be reasonable, but right now it says seven days before, so, it's never possible right now.

Ms. Streufert: I think right, I think we kind of recognize that and I'm looking for something that would...

Ms. Hammerquist: I think four days.

Ms. Streufert: Four days.

Ms. Hammerquist: If the rule would change to four days. Yes, Ma'am.

Ms. Streufert: Would that be something that the Department would consider to have it down to four days?

Mr. Hull: Definitely, we can look at that. I want to, there are much smarter and more proficient individuals in how the paperwork is spun up, so I definitely would look at it from a resource standpoint with the staff. Tentatively I can say, I don't have a problem with it, but let me go through that with staff, and I hear Commissioner Cox is saying, I would like this soon, so, getting a potential rule amendment before this body in the next few months will be one of our to do lists.

Ms. Streufert: And could be suggesting that we look at four days?

Mr. Hull: Absolutely.

Mr. Ako: Can we look at just one?

(Multiple Commissioners disagreeing)

Mr. Ako: You know like we had this morning. This guy came up with his, I guess he wanted to intervene, I guess in I'm my mind what he wanted to do it, he just wanted to bring in, make sure it comes in front of the Commission so...

Ms. Otsuka: That's too...we need to know.

Mr. Hull: Yeah, and (inaudible) I'm open to the whole idea, I get what Ms. Hammerquist's issues are. They're completely valid from the execution implementation of petitions and what have you and various parties involved. The serving of the positions to the parties that are involved. The serving of the petitions to the parties that are involved also is necessary. Let me go back to the staff and within two or three months we will have a proposal that we can vet out with you folks first. Any type of change to the administrative rules requires both action by the Commission and possibly it depends on how it's determined, but possibly the State Small Business Regulatory Review Board.

Mr. Ako: One more question, let's say whether it's five days, three days or one day that it is submitted to the department, do we as Commissioners get it, or do we get it on the day of the Commission hearing?

Mr. Hull: That will be an interesting aspect because of the fact that it was OIP that ruled on us that we cannot, there's was complaint on us transmitting the Commissioners communications, testimony being received after the agenda was posted. Now, much to the point of this discussion, testimony is not going to be posted until there's an agenda, and so we don't get much testimony prior to the agenda being published. So, there was a complaint made to OIP that we were submitting to you folks testimony that was being received after the agenda that was not publicly available, and we're saying we're going to be posting it online and it's going to be available at the meeting, but OIP didn't go down with a formal ruling, but (inaudible) told us you better change that policy and start holding that testimony and any communications subsequent to...holding off until the actual meeting, so that's that (inaudible) thing, so I think it's a perfectly valid question, Commissioner Ako, because of that issue, I can also say there's a bill at the state legislature, right now, trying to overcome this interpretation that OIP has on the transmittal communications to say we can still transmit communications within 48 hours to the Commissioners and two boards. So, it's a problem that I think a lot of boards are grappling with right now. Sorry, that's a long

winded way of saying, I don't have an answer for you yet, but we may have guidance from the state.

Mr. Ako: Cause to me you're not going to get it until the day of the meeting. It don't matter for me as a Commissioner...

Mr. Hull: Right.

Mr. Ako: But for you as a staff person, and I don't know what you do after you get. I don't know what you go through.

Ms. Otsuka: Yeah.

Mr. Ornellas: I felt bad this morning when we had to inform the crowd, the people here that there will be a 45-minute delay and I understand Ms. Hammerquist's concern, and I agree somewhat, but in all fairness, if can, is it enough timeline for us to review.

Ms. Otsuka: You mean like what we got this morning?

Mr. Ornellas: Yeah.

Ms. Otsuka: It's not fair to everyone.

Mr. Ornellas: The applicants.

Ms. Otsuka: The applicants, the intervener, yeah, it's not fair if we don't come...

Mr. Hull: I don't think it's fair to the Commissioners, I don't think it's fair to the people who wrote their testimony, and this was definitely conveyed to the Office of Information Practices when they essentially told us to rechange our policies of transmittals. It puts the Commissioners and the members of the public that drafted that at a somewhat of a net loss.

Ms. Otsuka: Disadvantage.

Mr. Ako: Chair, I have one more question. Ms. Hammerquist, you also mentioned about in the case of a preemptive petition to intervene with the commission, I'm not sur, but I don't even know what a preemptive petition to intervene is. What is that?

Ms. Hammerquist: Well, the in the case...I can give you an example that would maybe help in the case of Meridian Pacific, Mr. Pinkston's development on Kiahuna Plantation Drive, it was determined that the tentative subdivision approval was void because it went past many months past the one year and they didn't ask for an extension within one year, so, under the code, county code, the tentative subdivision approval is void if they don't request an extension, so we anticipate that they will file an application to have another tentative subdivision approval. They haven't done it yet to my knowledge, but we didn't want to be in a situation where we couldn't file in time with you, you know, for your consideration. So, we filed a petition to intervene when they do come forward with their application for tentative subdivision approval, and that's been determined one of the items the public can intervene on, so we've already filed the petition with

the Director's Office in anticipation of them making an application. So, that would be an example of a preemptive petition because it's not on an agenda yet, but we didn't want to have, you know, such an important filing not be accepted because the current rule says seven days before the Commission meets and we don't get the agenda until six days before the Commission meets.

Mr. Ako: Would you know if that's a common practice among other counties or other agencies?

Ms. Hammerquist: Are you asking me?

Mr. Ako: Yes, I'm sorry.

Ms. Hammerquist: Oh, I'm sorry. I don't see. I apologize. No, I've not really ever seen this before, where the filing time was by definition, before the public knew the item was on to be heard on that day. So, it kind of defeats, I mean what it does is it, it means that the public has to rely, every time.

Mr. Ako: No, I'm sorry.

Ms. Hammerquist: The Commission setting aside that rule and giving them, finding good cause for a late filing.

Mr. Ako: No, I wasn't really referring to the timing because I think I don't know, I'm hoping that we all agree that that don't work, yeah...

Ms. Hammerquist: Yeah, it's hard.

Mr. Ako: ...but if you're familiar with the practice of the preemptive petition filing among other agencies or other counties.

Ms. Hammerquist: No, I can't say that I am because I've not seen a rule like this before., Commissioner.

Mr. Ako: Okay, thank you very much.

Ms. Hammerquist: You're welcome.

Ms. Streufert: So, can we defer this until we until the department comes up with a rule or a suggestion for this?

Mr. Hull: We have no objections to that.

Ms. Streufert: No objection to the...

Mr. Hull: To a deferral.

Ms. Barzilai: I actually would interject that there are some legal issues that should probably be discussed here, so I...

Chair Apisa: I would like to call a short executive session.

Ms. Barzilai: ...suggest that we discuss in executive session.

Ms. Hammerquist: Can I offer, we don't object to the deferral either. We recognize the need to work on it.

Ms. Barzilai: I think that the petition goes beyond just a request for a clarification on that part of Rule 4., and I think that there are a couple of legal issues that the Commission might consider.

Ms. Cox: Okay.

Chair Apisa: Motion to go into executive session. It should not take very long.

Ms. Barzilai: It shouldn't take very long.

Ms. Otsuka: Motion to go into executive session.

Ms. Streufert: Second.

Ms. Barzilai: You can make a motion first and then I'll read the notice quickly.

Chair Apisa: All in favor? Aye (unanimous voice vote). 7:0.

Ms. Barzilai: We have to do it by roll call. I'm sorry.

Chair Apisa: We need a roll call.

Ms. Barzilai: Yes, we need a roll call. (Inaudible).

(Multiple people speaking at once)

Ms. Barzilai: Motion to enter into executive session on Petition for Declaratory Order. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: We'll enter a short executive session.

The Commission entered into Executive Session at 5:03 p.m.
The Commission ended Executive Session at 5:21 p.m.
The Commission reconvened the meeting at 5:23 p.m.

Chair Apisa: Thank you. We reconvene the general session. The Commission will grant the Petition for Declaratory Order and make the following findings, followed by written finding of fact and conclusion of law. The Commission recognizes a potential impossibility of filing a petition to intervene seven days prior to the commissions meeting if the petitioner's only means of discovering the sceptic matter is by way of a published agenda six days prior to the meeting. So, until Chapter 4 is amended, Petitions to Intervene may be filed no less than four days prior to the first agency hearing on the matter. The Commission acknowledges the definition of "good cause", as set forth in the common law of the State of Hawai'i in accordance with the law the Commission does not recognize a legal doctrine of "preemptive intervention". At this time, Commissioners, I made a motion to grant a Declaratory Order.

Ms. Streufert: I so move.

Ms. Cox: Second.

Chair Apisa: We have a motion on the floor. Is there any discussion? Roll call please.

Ms. Barzilai: Motion to grant...

Ms. Streufert: Could I say?

Ms. Barzilai: Yes, of course.

Ms. Streufert: I think it's, I want to thank Ms. Hammerquist for bringing up the issue because I think it's something that we need to correct and...

Ms. Hammerquist: Thank you.

Ms. Streufert: ...and we hope that this will be corrective to ensure that both the applicant, the petitioner, as well as the applicant, the petitioner for intervention, as well as the Planning Department has enough time to review it before it comes before commission.

Chair Apisa: Agreed. Thank you. It was clearly a deficiency. So, thank you.

Ms. Barzilai: The motion on the floor is to grant declaratory order. Is there a second and any discussion?

Ms. Cox: I already seconded. I seconded.

Ms. Barzilai: Thank you. Any (inaudible). Oh, we're at roll call.

Chair Apisa: We're at roll call.

Ms. Barzilai: Thank you. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. Hull: Absent.

Ms. Barzilai: Oh, he's not here, I'm sorry. Recused. Thank you. Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: Motion carries. Petition is granted. It will be followed by findings of fact and conclusion of law. Thank you, Ms. Hammerquist.

Ms. Hammerquist: Thank you, Madam Chair.

Mr. Hull: Let me call Francis back.

Commissioner DeGracia re-entered meeting at 5:26 p.m.

**COMMUNICATIONS** (None)

Mr. Hull: Moving on to the next agenda item. We have no Communications for this meeting. So, we go on to J. Committee Reports, and I'll turn it over to the Subdivision Committee chair, Mr. DeGracia.

**COMMITTEE REPORTS**

Mr. DeGracia: Alright, Commissioners Subdivision Committee met today on time at 8:30. Committee members, all members are present. Myself, Vice Chair Gerald Ako, and also Commissioner Ornellas. During the meeting we accepted minutes for November 14th, and January 9th, approved minutes, and then we also approved Preliminary Subdivision maps for two items. Voting was three on both and we had also approved request to terminate the subdivision application. So, that concludes my report.

Ms. Streufert: I move to accept the Subdivision Report.

Ms. Cox: Second. It's been moved and seconded.

Ms. Barzilai: Motion on the floor to accept the Subdivision Report.

Chair Apisa: All in favor of accepting the Subdivision Committee Report? Aye (unanimous voice vote). Motion passes. 7:0.

**UNFINISHED BUSINESS (For Action) (None)**

Mr. Hull: Following that, we have no further Unfinished Business.

**NEW BUSINESS (For Action) (None)**

Mr. Hull: We have no New Business. You folks have gone through Executive Session.

**ANNOUNCEMENTS**

Mr. Hull: For future meetings, we anticipate the next meeting being held in the second week of April, second Tuesday of April, sorry. There are few subdivision extension requests, I believe and I think we have one or two SMA permits on the horizon, yeah. And with that, we are ready for adjournment.

Chair Apisa: First, I would like to acknowledge our Mayor.

Mayor Derek Kawakami: Madam Chair, Do you want me to come up?

Chair Apisa: Yes, please. Thank you for coming.

Mayor Kawakami: Oh, Madam Chair and Commissioners, through the Planning Department I just came home from my office to say thank you very much for the work that you folks do as a voluntary Commission that dedicates a lot of time and a lot of your mana'o. Many of you folks have been apart of this community for generations. Our Planning Department surely wouldn't be

able to do the job that they do, and I wouldn't be able to do the job that I'm able to do without your tremendous commitment to our island, so thank you very much and that's all I came down here is just to say that we appreciate you folks, and you know I wouldn't want to do your job.

Chair Apisa: And likewise, thank you for doing your job.

Mayor Kawakami: I love my job.

Ms. Otsuka: Thank you.

Mr. Ornellas: Thank you.

Mr. Ako: Thank you.

Ms. Streufert: Thank you.

Ms. Cox: Thank you.

Chair Apisa: Motion to adjourn.

Ms. Otsuka: Motion to adjourn.

Ms. Cox: Second.

Chair Apisa: All in favor? Aye (unanimous voice vote). Meeting is adjourned. 7:0.

Chair Apisa adjourned the meeting at 5:30 p.m.

Respectfully submitted by:

Lisa Oyama

Lisa Oyama,
Commission Support Clerk

( ) Approved as circulated (date of meeting approved).

(X) Approved as amended. See minutes of March 12, 2024 meeting.

**KAUAI PLANNING COMMISSION**
**PUBLIC HEARING**

A continued public hearing of the Planning Commission of the County of Kauai was held on **April 24, 2001**, in the Lihue Civic Center, Mo'ikeha Building Meeting Room 2A-2B. Following Commissioners were present:

Mr. Robert Kaden, Chair
Dr. Ramon de la Peña
Mr. Jay Furfaro
Mr. Gary Heu
Mr. Randall Nishimura
Ms. Abigail Santos

**Absent & Excused**
Mr. Gary Baldwin

Chair, Robert Kaden opened the continued public hearing at **1:37 p.m.** and following are statements, in effect, of the proceedings:

**Zoning Amendment ZA-2000-2 = Destination Villages Kauai, LLC. (To Change from Open District (O) and Agriculture District (A) to Resort District (RR-10), Makaweli. Hearing continued 07/13/00, continued 10/26/00, continued 12/12/00, continued 01/11/01, continued 2/27/01, continued 3/27/01, continued 4/10/01.)**

Chair: We're going to accept testimony. My understanding is that the Land Use Commission (LUC) has issued a Decision and Order, is that right Dee?

Mr. Dee Crowell, Director Planning Department, County of Kauai:

[INAUDIBLE]

Chair: That would allow this change to Resort District to take place. And first thing I'm going to do is ask any representative of the applicant, Destination Villages Kauai, LLC to come forward if they have any statement for us. I see Mr. Belles, please state your name clearly, distinctly into the microphone.

Mr. Michael Belles, Attorney: Good afternoon Mr. Chairman, members of the Planning Commission for the record my name is Michael Belles representing Destination Villages Kauai. I'm going to continue where I left off back in January 27th a year ago, the year 2000 when we commenced the General Plan process, and I began by apologizing, apologizing because I knew this was going to be a lengthy process. And, even though it's a year and some months into it there's still a ways to go yet.

As most of you know with the possible exception of the two new Commissioners we did conclude the General Plan Amendment process. The General Plan was adopted unanimously by the Kauai County Council and the property was reclassified from Agriculture to the Urban Resort District.

Subsequently we filed for a Zoning Amendment to this property and that's what's currently pending before you. The reason we couldn't close the Zoning Amendment process earlier was that the County Attorney's Office had a pine that the Zoning Amendment process could not be closed until the Land Use Commission acted first. And, as you had indicated Mr. Chairman the Land Use Commission did act last month and the State Land Use Commission did approve a reclassification of the property from the Agricultural District to the Urban District. So, now we take up where we left off, albeit seven continuances later to close

the public hearing. And, in the past we have heard from many members of the general public about this project, about the benefits, about the fears of some people of the impacts that this project would have on the community. And, I wanted to stress that the reason that we did keep the hearing open was to allow the public an opportunity to discuss and debate the effect of the Land Use Commission Decision and Order. It is a 109 page Decision, rather lengthy, and I'm sure most of you had an opportunity to review it or at least be informed about the decision by the Planning Department staff.

The conditions that were imposed on the Land Use Commission approval are binding on the applicant. Many of these conditions reflect concerns that have been expressed earlier by some of you and by some members of the general public. Most notably, there's a condition that the developer cannot develop more than 250 units on this property without going back to the State Land Use Commission. And, that's irrespective of what the County does with it's zoning or with this General Plan Amendment. It did require that we create a 100 foot buffer around the existing ancient Hawaiian Fishpond on the property. It also required that we create a 50 foot buffer around the rock mound that's also been referred to as a Heiau by some people, and when I indicate that we have a buffer zone around these two locations. What that means is that we cannot construct any improvements within that buffer zone. So, these portions of the property are to be alone, no development other than landscaping.

In addition, the developer is required to put in a Comfort Station with public parking and overflow parking that will be made available to primarily the surfing community as well as members of the general public. And beyond that, those are the primary considerations that were taken at the Land Use Commission Level. Historically, these types of issues would have been taken up by you at the SMA level which is the next permit. Assuming we're successful in getting the Zoning Amendment that you would be taking issues of setback, buffer, protecting the most significant historical and environmental sites on the property. But, in some ways, I guess you could argue that it's either been preempted, or it's been usurped, or it's just been acted upon by the State. But these are issues that can still be dealt with by the Planning Commission, refined further and dealt with in a way that you feel is most appropriate. But those are at least the minimum standards that have been imposed on this project thus far.

With that I don't want to take up any more of the time by the Commission because I know you've been through many of these meetings, you've observed many of these meetings and have read much about it because it has been a well publicized project in the community. So, with that I'll conclude my introductory remarks and make myself available to answer questions that you may have.

Chair: Commissioners… thank you Mike. Commissioners any questions for Mr. Belles? [NONE] Mr. Belles could you refresh my memory, how many units are being planned? You said here that the State has said that in no case will there be more than 250!

Mr. Belles: Not more than 250 cottages.

Chair: And how many are planned presently?

Mr. Belles: Two-hundred Fifty.

Chair: Two-hundred Fifty! You mentioned buffer zones, I think that probably was in a reaction to some of the testimony by the public.

Mr. Belles: Exactly.

Chair: What would be the location of the comfort station and the

parking?

Mr. Belles: There are exhibits that were included as part of the Land Use Commission proceedings, and I believe either Mr. Nitta or Mr. Crowell or Ms. Loo [County Attorney] may have copies of those and can make it available to you. If they don't have copies I'll be more than happy to make them available to you.

Chair: Okay, what I actually was trying to accomplish is to sort of… you know people do end up watching the on TV…

Mr. Belles: Correct.

Chair: And it's sort of informing them exactly where that would be.

Mr. Belles: The State Land Use Commission was not so specific as to metes and bounds but they did provide a general locale or location for each one of these.

Chair: Are you familiar with where that general locale might be?

Mr. Belles: Well, if you're familiar with the six and a half acre fishpond, again it's simple to draw a 100 foot perimeter around it indicating that that would be a no-development zone.

Chair: Okay, I understand that I was thinking of specifically in this case the comfort station and the parking…

Mr. Belles: The comfort station and the parking would be, as you're looking at the… we have an exhibit, it would be much easier for me to refer to that, excuse me.

Chair: Sure, thank you.

Mr. Belles: [At the tackboard] Okay, as most of you are aware this is the general location map that had been discussed previously in both the General Plan Amendment process as well as the Zoning Amendment process. This is Kaumuali'i Highway, for orientation purposes, you have the Russian Fort to the North; you have Pakalas the primary surfing location located right here in this area; and the general area where the comfort station was to be located was in the upper corner around this area.

Chair: Okay.

Mr. Belles: And again it would be a restroom facility, shower facility, parking and overflow parking.

Chair: Thank you Mike, appreciate that.

Mr. Crowell: So all those facilities were spelled out… the location of those facilities were spelled out by the Land Use Commission?

Mr. Belles: What the Land Use Commission referenced were the exhibits that we had introduced during the course of the public hearings.

Mr. Crowell: So if at any time, say during… if this zoning gets approved during the SMA process the… say the Commission decided that maybe the comfort station closer to the ocean may be more appropriate, that would have to… that triggers return to the Land Use Commission to get that out of the conditions?

Mr. Belles: It did indicate, in the approximate location if there was a significant deviation from that, we'd probably have to have that discussion with the Land Use Commission staff in terms of whether or not it would be significant enough to warrant us taking it back to the State Land Use Commission.

Mr. Crowell: Thank you.

Chair: Commissioners, questions? [NONE]. Thank you Mike.

Mr. Belles: Thank you.

Chair: This is a public hearing and if there's any members of the public that would like to speak you're going to be welcome to. I was just wondering how many folks would like to speak today, can I see a show of hands. Just want to try and plan this, okay thank you, five. Okay.

I would hope that just in consideration of everybody that we would keep our comments directed towards the subject matter today if possible. Thank you for participating and please state your name for the record.

Mr. Joseph Punilei Manini, Sr.: Mr. Chairman. [Read testimony & Exhibits.]

[ATTACHMENT #1—Joseph Punilei Manini, Sr. Testimony]

I would like to show you, just read one short stuff over here concerning Queen Liliokalani. A lot of you have probably heard the song called "A nana pua" written by Queen Liliokalani, there's a portion of this song which explains the boundaries of Makaweli lands claimed by Gay & Robinson . It says…

A ole Kaeka pualema maluna o ka pepa akahaeneni oka hui hoo hui aina kua hewa eka pono se lau ok kanaka

That's the part of the song, now I'll explain the translation.

A ole Kaeka pualema
A ole means no more, there's no land boundary of Makaweli on the Pualema Ridge between Waimea River and Makaweli River.

And this is the paper she's talking about, the map where it shows, get the boundary.

Then the second verse.

Maluna o ka pepa akahaeneni
He's saying over there is the document of the enemy, claiming the lands by fraud. Then it says

Hoo hui aina
This is a family land, it's a hui land Hoo hui aina

Kua hewa eka pono se lau ok kanaka
We have it legally owned and sealed to this Kanaka.

When it's sealed to the Kanaka it's sealed in the International Lands it's not sealed in the State Lands, my Warranty Deed is sealed, Quite Claim Title.

Palapala Sila Nui Helu 5271 with 3 apanas and Kuleana Helu's 9903; 3021; 6674 and 2290 awarded by Kamehameha IV January 17, 1863. Before the Robinson Family Partners came to Kauai in 1865 as stated in the EIS, we got the lands already by that time. So they were two years too late and we have all the documents to prove it it's just a matter of we're saying to this Commission to back off because it's our property. And we can handle the rest just back off. Don't side with them because you're liable. Thank you for giving me the time to present this Mr. Chairman. And thank you Commissioners for being patient and listening even if maybe some of you don't want to hear what I had to present. But, I hope that the listening audience on the TV understand what I was saying, if they don't well they can call me up and find out about it. Thank you Mr. Chairman.

Chair: Okay, thank you. Commissioners do you have any

questions? [NONE] Thank you very much.

Dr. de la pena: Can I ask a question? Joe I'd like to ask you a question?

Mr. Manini: Okay.

Dr. de la pena: When was the first time that you brought out the fact that you claimed you own this land to the Robinson family?

Mr. Manini: Before I retired. Before I retired I talked to Bruce and Warren on the porch of the Pakala where we meet in the morning for work and that's the first time the Hawaiians started to claim the land. Before Kalahui was formed, I'm not sure what date but I say to Bruce and Warren "if there is a Hawaiian or Kanaka or whatever that comes before you and says he owns the land would you give up the property?" And he said, he took about two minutes before he answered the question but he did answer because I worked for him, for Warren he's the president. He said to me "Joe we have to protect what is our grandfathers got for us", and I said that's a good answer I agree with the answer and I said "then you don't mind if I'm the person that has to claim the land if I have to protect what my grandfathers got for me and we can shake hand after that. Because it's not we who treated each other it's from before us. As far as both of us we're not the ones to blame we're just defending what our grandfathers got us and got the family. So, that's why I have to present it. Don't think I'm happy because I'm present this because I worked for them for 47 years, we see each other every morning that we work and we get to be part of them and they be part of us because we work in one small gang with only about eight or nine people. And, so I get aloha for them, don't think that I feel hate for them or anything or hate for the attorneys or whatever they're doing, it has to be legal and I have to come here and present this because this is the last time I'll come to the meeting because the next time probably I'll be in International Court. We already talked about it so, we cannot do em in the Circuit Court because we already did it there and the Circuit Court already awarded us the land through the probate, we cannot do em in the State Court because they don't have jurisdiction, we cannot do em in the Federal Court because they don't have jurisdiction. It's too bad that we have to go all the way to Europe to do em in the International Court but if we have to we have to.

Dr. de la pena: One last question Joe. You look at your page 2…

Mr. Manini: My page 2?

Dr. de la pena: Yah, right there, the first paragraph there, this Joseph Puneli Manini shield that is you right?

Mr. Manini: Right.

Dr. de la pena: It says you purchased the property?

Mr. Manini: Pardon?

Dr. de la pena: It says you purchased the property/

Mr. Manini: Yes I did because…

Dr. de la pena: When was that?

Mr. Manini: If you look on page 4 and 5, it's on page 4 and 5, that's where the property was purchased and was recorded in the Bureau of Conveyances, and it was declared legal otherwise they wouldn't accept it.

Dr. de la pena: Is that December 7, 1999?

Mr. Manini: That's one of them, that was the Puni Estate.

Dr. de la pena: Is that when you bought the property?

Mr. Manini: Well I had to legally get the property from my ancestors because I'm protecting that rights, and so that I don't get clobbered from my cousins and nephews and everything I had to buy it legal so what the woman said from the Land Court, that works in the Conveyances that they only can contest the $100.00 if the thing was purchased, they cannot contest me because it's already purchased only what it was purchased for and it's legal. She told me it's legal in the Court, you can check with the Land Court it's legal otherwords…

Dr. de la pena: So you bought it in 1999 for $100?

Mr. Manini: I bought it for my ancestors, that's what it says here. It says that's your property it doesn't belong to anybody because it's ancestral property. This is the… you're talking about the Polynesian Triangle…

Dr. de la pena: No, okay.

Mr. Manini: It is the ancestral property, this is the national lands of my ancestors. I have the genealogy to prove that I am a Kanaka Maoli and I come from the 200 BC migration of which the 5464 BC migration is when Hawaii Law came. So, you get two migrations that came from South America that came to the Isles of the Sea, so it is legally purchased and it will pass in International Court as legal even if nobody wants to agree that it is. Because who's going to police it they say, who's going to enforce it? That's what the County Council told me, the Councilman that worked for the County when I presented it at the County Council meeting and they didn't give me a chance to present the thing like how you folks did. They gave me only three minutes and I couldn't even present it to them, they wanted to shut me up that's not the way to do it I know all of them.

Dr. de la pena: Okay, thank you, thank you Joe.

Mr. Manini: Okay.

Chair: Thank you Joe. Anybody else who would like to come forward? Please state you name for the record.

Mr. Ian Emberson: Good afternoon Mr. Chairman my name is Ian Emberson, I'm a resident of the Westside, and members of the Committee. For the record I'm in favor of the Kapalawai Resort . Many times I've come in front of this Planning Commission before but there are a few new members here and I just want to mention I'm a member of West Kauai Mainstreet Business Association (WKMBA) and I've had an opportunity to walk up and down that street in Waimea, interview each one of those businesses, ask them their opinions on this resort and what effect it will have on them. And, overwhelmingly everyone is being very positive, they all feel they need the jobs and it's sort of needed. There's not a lot of opportunity out there where people have to drive to Lihue or other places for jobs and it's something that everybody wants. So I'm just coming here to say those words. Any other questions?

Chair: Thank you Ian. Commissioners any questions? [NONE] Any other members of the public please come forward.

Mr. Mark Nellis, President West Kauai Business & Professional Association (KBPA): Good afternoon Commission Members my name is Mark Nellis, I'm the President of the West Kauai Business & Professional Association. I faxed over this morning my testimony for the Destination Villages Kapalawai Resort. [READ TESTIMONY]

[ATTACHMENT #2-Mark Nellis Testimony]

Chair: Thank you Mark. Commissioners any questions? Go ahead.

Mr. Nishimura: Mark.

Mr. Nellis: Yes.

Mr. Nishimura: In the one year plus since you… I saw a similar petition that was included with an application earlier?

Mr. Nellis: Not so much a petition as a list of our current membership.

Mr. Nishimura: Has the support changed any over the last year?

Mr. Nellis: No. Our organization has done many things to enhance and beautify the mainsteet corridor of Waimea in anticipation of the additional visitors that will be located nearby through the proposed through the Kapalawai Resort. And our membership in it's entirety support the resort because it will bring needed dollars into our community. Four jobs and the continuation of the many small business.

Mr. Nishimura: Thank you.

Chair: Thank you Mark. Any other questions for Mark? [NONE] Thank you, appreciate your time.

Mr. Nellis: Thank you.

Chair: Any other members of the public? Please step forward.

Mr. Bruce Pleas: For the record my name is Bruce Pleas. Thank you Commissioners for hearing us time and time again. It seems like we're getting down to the end of this process, at least this part of it.

I'd like to go through some figures and some stuff out of the General Plan. This is Section 4.2.3.1, this is your projected demand of visitor units for the island of Kauai. Under the highest scenario, I believe they adopted a lower scenario but I'll just go with the highest, scenario we have approximately 12,000 units maximum for the island of Kauai. On page… well Section 4.2.8 Policy, this is the supply of visitor units and location of resort development. The intent is that over the long-term the Westside should have about 5-10 percent of the island's total visitor units, okay this is again written in Section 5.4.2 Resort, it's a rural destination Kapalawai, Waimea area and should have limited it to 10 percent of the island's total number of visitor units.

The total number of visitor units proposed for 2020 are 12,050 at the high end, so 10 percent of that is 1,205 units. You are looking at a Zoning Amendment for RR-10 which is 20 units per acre. At that rate you can put 3,000 units at maximum load on this 150+ acres, that exceeds the General Plan Update's. I know Mr. Crowell has said you can have amendment on for 250 units, will be the limit. But still I look at it this way, we have 250 units a limit on this area, for some reason this area does not produce the money that the developer expected and he has to go ahead and re lease it somebody else. The person coming in may not want to go with the 250 limit because he knows he can't make money on it. So, he will come before the Planning Commission again and we'll go through this whole process but it'll be much easier because there's a RR-10 zoning on it. Dee's shaking his head and he'll explain it to me later. But I would much rather a see an RR-1 designation for this area which does limit the Developer to 300 units which is more than what he's asking for and may mean later on down the line that they'll have to come and go though a complete EIS to upgrade it. Now you'll have to remember I'm new at all this, I'm learning as I go along.

But, that's just one of the points that I see as is happened along the line you seeing with A&B, the selling point is that we can put more units in and a new person will lease it an hopefully make some money... make more money out of it.

In Section 5.3.1 this is policy for Open lands. The intend of Open designation is to preserve, maintain and improve an natural characteristic of non-urban land and in water areas. That, one, are significant value to the public as scenic or recreation resources; Number 4 is potentially susceptible to natural hazards such as flood, hurricane, tsunami, coastal erosion; and Number 5 is form of cultural, historic, or archaeological resources of significant public value.

In Section B it covers areas, Open areas, shall preserve wildlife habitat, beaches and archaeological resources. Open lands remain predominantly free of development involving buildings, paving and other construction. The reason I bring up this on Open lands is that we have some very important historical areas on this property, we have a beach area that is susceptible to erosion, we have an area that is almost completely in the tsunami zone and in a flood zone. And I believe to zone this area as a Resort area is going against what the General Plan policy has, this is an area that does qualify to be kept as Open and to be preserved as Open.

In Section 5.3.2.1 there's an area that covers... there's a section that covers coastal areas. Strips of shoreline land around the island are designated Open, some also lie within the State Conservation District. The intent is to reserve coastal bluffs, sandy beaches and other natural features, typically these strips range from 150 feet to 300 feet wide but some are substantially wider where warranted by topography or natural features of the site. Again, this applies to Kapalawai and I noticed the amount of setback they have is 150-300 feet. Now on Kapalawai we have an area that is lowlands, the archaeologist in his testimony to the to the State Land Use Commission stated that the Hawaiians didn't even build within 900 feet of the beach in this area, now they had a good reason they knew why, it was going to get washed away occasionally. And, so this is another Open area and this 150-300 feet wide where right now we're looking at from the State Land Use Commission buildings will not be built within the Hurricane Iniki inundation zone which in some points is only 30 feet back and that has fallen into the ocean in some areas.

In Section 6.5.4.1, still specifically with Kapalawai area. Lands at Kapalawai between Kaumuali'i Highway and the coast are recommended for redesignation to Resort provided that a shoreline buffer area be designated Open. Now we have presently, from what I believe, we have a 100 foot setback that's Open that the developer is proposing. But if we have a 100 foot setback for Open why is the State saying we can put units just, you know, in that area but beyond the inundation line from Iniki? We have a catch-22 here, which one's right? So that should be defined during this Zoning Amendment process where exactly can these units be put? Can they be put in the inundation zone which is only 30 feet back that is in the EIS, or are they at the 100 foot Conservation area, or should they be 150-300 feet back as presented in the General Plan... [TAPE CHANGE] ...Housing and Parks in this Zoning Amendment before I delve just a little bit into them or is that at a later date?

Chair: Is that a question for...?

Mr. Pleas: Yes that's for some of you who's in the knowledge besides me, I have no ideal

Chair: Well let's just speak directly to this change from Open District to Resort District.

Mr. Pleas: Okay.

Chair: And as this process continues I'm sure you'll have plenty of opportunity to discuss those other matters.

Mr. Pleas: Okay. Um, on the Zoning Amendment I would like to have the Commissioners look seriously of downgrading this to RR-1 which is sufficient for this area, it is actually more than what developers had. .

Now we'll get into what…, the developer has already mentioned this, this is your buffer zones around the fishpond, the Heiau, and the beach access. Could I post these up there?

Chair: Oh you want to put that up on the board?

Mr. Pleas: Yes because there was not an ample…

Chair: Sure. I think Bruce is going to need some help perhaps.

Mr. Pleas: We'll start out with the access to the Heiau. The Heiau as they said was a 50 foot setback, no buildings but can have landscaping. This is a rock platform or Heiau take your pick, it's undecided at this point but still is a historical area. Now, putting landscaping within 50 feet of a Heiau, now that's a good question. The other thing that's not been brought up, but this Heiau area is an area that has not been cleared, there's an area called a stone field around it. When we went with the Historical Preservation Review Commission, walking around that area Randy Wickman and Monte Hall and I we found what appeared to be a Hawaiian artifact laying on the ground, a large as… [INAUDIBLE] which was fairly good sized, it would have been on the end of a stick. Mr. Manini can supply some more information about why that area has not been cleared or whether it has been cleared. But, there is a large area around that should not be landscaped either.

On the fishpond you have a 100 foot buffer zone around it. We have an access on this map that shows where the public access will be, it's coming from an area that has 200 parking places and the public access goes to the tip of the fishpond. From the tip of that fishpond you will notice that there are no pathways around the fishpond, so public access… this is the tip of the fishpond and that is it.

The developer has expressed the intent that the locals and the visitors should mix so that we have a good ambiance to the place that seems would work out much better because the locals and the visitors would be able to swap stories and sit down there. If that's the case, then if you notice in the southwest corner of the fishpond is a passive recreation area with parking there. Now, if it's truly the intent of the developer to have the local people mix we have approximately 1-2 acre passive recreation are that would be perfect for the locals to mix with the visitors. It's also within walking distance of the restaurant. So, I feel this is not a good plan to have the locals park up on an end of the fishpond be able to hit one little place.when they could go down to the passive recreation area pickup plate lunch, sit down talk story with the visitors.

Now for the surfing access, we have an area now that we are accessing by parking on the main road and walking through a cow fence, a cow barrier and then we walk down to the beach. We have counted up to 125 cars there at peak times. The developers proposing 30 parking stalls with a overflow of 30, they've expressed the desire that they would put in as many overflow parking areas as possible, you know as was needed. It's a good idea but most of the surfers that I've talked to express the

opinion they would much rather continue to park on the road, continue to park down the way they always have and walk down the way they always have. This has been the way it's been since it's been open in 1970 and this is the way they'd like to keep it, it's the ambiance of the area to take your walk down there.

Also, I see some problems of having access only through the resort. If the parking is not allowed on the road, if we have to drive through the resort there are people that go there every morning one hour before sunrise. That means at this time of day there are people going down at 5 to 5:15 in the morning and you're going to have them drive through the resort. Now I ask how long that's going to last? Plus with the insufficient parking there you may have problems because people want to park out by the units. Another too, if you notice on the big picture the surfer, public beach access parking is approximately 300 feet from the units along the pathway. If you look on the big picture it's approximately 700-800 feet from those same units to their designated parking. Now, if you're staying at a resort and you have a parking spot 300 feet away from your unit and you have one 900 feet away from your unit where are you going to park? Visitors will park in the surfing area, surfers will be… will not have easy access they have the simple solution to this is to let the surfers park outside, walk through the same way we do.

Let's drop the speed limit, the developer can ask the State and I'm sure the surfers would support him to drop the speed limit on that road to 25-35 miles per hour so parking is legal. And, also for the safety of all the kids and everybody walking across. So, there are easy solutions to these that are just a different tact that could be addressed.

Chair: Bruce can I interject here for a second?

Mr. Pleas: Yes.

Chair: I just want to remind you that we are talking about the change from Open District to this Urban Resort and you've really gotten deep into the details of how the resort would if it all passed everything would be run so I think you're kind of jumping the gun. And also I'd want to remind you that your repeating yourself from the last meeting in several instances and I'd appreciate it if you'd really keep it to the point.

Mr. Pleas: Okay.

Chair: Because as you saw in our agenda we have some other public hearings that are coming up and I think in consideration of those folks let's try and be to the point. Thank you.

Mr. Pleas: Sure, okay. Pertaining to zoning, the archaeological study is incomplete. There are many areas that… this is why, this is before zoning, you need to identify the archaeological areas before you can zone it. I have some more Ground Penetrating Radar (GPR) information right now for you, I have contacted two separate companies. The cost of Ground Penetrating Radar is between $1200 and $1900 a day plus expenses. To do this area would take about two weeks to approximately a month depending upon what is found. That is an outlay of I figured double of what they quoted, I figured $4000 a day to do Ground Penetrating Radar. So, that's in a five day work week that's $20,000, on a month that's $80,000. Now the question I have is that how much is it going to cost? One, to stop your work when you find something; identify what you found, start your work again. I think a outlay of $80,000 at the beginning before the zoning is done to identify what is here to identify what can be zoned Resort, what needs to stay in Open is something to look at that the developer may want to do? This would be a good idea so that we can identify what is there. This area may not be a place for resort due to the fact that it could have immeasurable amount of archaeological and historical areas. An area that could be much better for Resort is the adjacent 65 acres which is

mentioned in the Zoning Amendment, this is an area that is currently under sugar cane, was under corn, and was under sugar cane before. This area was cleared in the 1940's, historically this area was a house that King Kamualii lived in. But this area can be GPR'd in two days once it's cleared because you can bring a car in and you can just whip right through it and see what's there.

This would be a much better area to put a Resort in, an initial resort for the Westside, because as I said before I'm not against resorts on the Westside I am against putting resorts on top of something that is so unique that you will in essence either destroy it or smother it. And you could put a resort between these two between the Russian Fort and Kapalawai and it'll be centrally located close to town and the visitors could go visit both sides. That's just a thought to throw out but my basic concern is that this place the Resort Zoning should not go through at the present level of RR-10, until we identify what is there, we know what is there and it is well within the means of a $30 million project to spend to send $80,000. I have the two companies right here, one of them is extremely interested in coming over and doing this and they're the cheaper one,, they wanted to send three people over here today if I paid for them. Since I can't pay for them I've contacted them and I'll be glad to give the developer their name and they're ready and raring to go. And there are archaeological areas there and as for the Zoning Amendment I don't really quite know what else there is to cover. I know for out of the County Council we were supposed to cover setbacks and all that but since we seem to be just sticking straight with zoning, I'll just leave it at that.

Chair: Thank you Bruce. Commissioners any questions? [NONE] Appreciate it. I see Cheryl.

Ms: Cheryl Lovell-Obatake: My name is Cheryl Lovell-Obatake. The reclassification of approximately 153.696 acres for the development of a resort and accessory uses, again I will say does not provide proper control.

As I have also indicated and testified at the Land Use Commission the EIS clearly identifies the precontact and historical background and I cited that last time that I was here of the precontact history; Kauai contact; population,;the Russian arrival; the Kauai Rebellion of 1824; the Maheli Settlement Patterned for Makaweli ahupua based on the Maheli claims; ranching on Kauai, Sugar, Rice; The Sinclair Robinson Gay legacy in the 1900's to Present.

Commissioners, you have heard that many testimonies of Mr. Joseph Manini and I am compelled to support his testimony. I am compelled for the fact that Hawaii was never annexed, we are still a Hawaiian Kingdom and of course many of us still have grief of how it's going to pull through is a question in everybody's mind and every Hawaiian heart. However though, I'd like to support Mr. Manini's testimony dated when he first started testifying on this application, the one that I have recently I found in my files is May 30, 2000 he wrote to Mayor Kusaka and to the Planning Commission. I'm familiar with the history of Waimea and of what has been testified by Mr. Manini of the Kamamalu Estate, Kamamalu Estate is around this... practically this entire island. I happen to live on Kamamalu's Estate, and what subdivided my families kuleana land was a railroad track, and of the provisional government and the Sugar Industry.

Again, I will support Mr. Manini's testimony. He speaks of the song Kaulanana Pua and he has an older version and I'm sure most of you and Mr. Furfaro knows of this song Kaulanana Pua and I will say it to you in English.

*Famous are the children of Hawaii Loyal to the land*
*The evil hearted messenger comes with a document of extortion and greed*
*Hawaii Island of Kiawi answers the bays of Peilani help*
*Kauai of Mano lends support*
*firmly united with the sands of Kakua hewa*
*Do not fix a signature to the paper of the enemy*
*With it sin of annexation and sale of the civil rights of the people .*
*We do not value the heaps of money of the government*
*We have enough with stones*
*The remarkable food of the land*
*We support Liliokalani until we gain the rights of the land*
*The story is to be told of the people who love the land.*

I quoted this and took it out from the Queen's Song Book. And it was the Kaumaha or the grief of the Royal Hawaiian Band as they experienced the history that was going on in the 1800's of the overthrow and annexation. Many Hawaiians-at-heart and many Hawaiians feel this grief.. Justice delayed is justice denied.

I've also bought a book, just this past Saturday, the author is Moki Kupihea, he's about four years older than I am, around 50ish and the book is called "Kahuna of Light." And what is so funny is that Andrew Bushnell a Professor of History, Kauai Community College writes, I quote of this book that he comments:

> "A unique insight into Hawaiian philosophy Kupihea's spiritual journey is both exciting and rewarding. Throughout this odyssey he makes clear not only a deep understanding of Hawaiian spiritual beliefs but also his aloha for the traditions of his ancestors and his determination that these traditions shall not die. He has provided us a distinctive voice that speaks not only to Hawaiians but to all peoples who's traditional beliefs are threatened."

And it's from Mr. Andrew Bushnell's comments. I would encourage you to read this book. I have a lot of cousins you know we come from the same line, my great-grandmother is mentioned in this book, Kalikonaumu Taniguchi, and all my cousins know who she is. And also the hunters of that area where Mr. Moki Kupihea has experienced the Waimea Valley through even ancient caves and Awai ditches and he talks about his ā makua, the spirit that lead him to write this book, and a true Hawaiian at heart.

Now that the Land Use Commission has approved the Zoning, I have some particular concerns and I might want to start out with Number 7 on the Civil Defense, there are 250 units. I don't know what the number is as far as guests on the Westside and residents on the Westside, but the question in my mind is are there shelters in case a titlewave occurs and is there some direction for these people to escape?

And, I'm concerned about the locals that may be displaced because of the additional tourists in that area, where are they going to go? Is everybody going to go up to Waimea Canyon in a rush? And I'm just hoping that there is a plan. As you know there's been so many catastrophic events around the world, fires; and earthquakes; and nations against nations. We must also think what are we going to do? And looking at this plan and where our people are going to escape.

Number 20, on the Decision and Order. No. 20 there is some evidence of native Hawaiian's entry to the… onto the property to gather, and otherwise use it to exercise traditional and customary Hawaiian Rights.

Mahalo, it's all I can say, mahalo. The Pashco Hanaeke Supreme Court Ruling is written in the documentation on 102. However though I'm concerned about the fishpond, I know I testified about restoring it in the ancient Hawaiian way and I

see it in here that all possible to eleviate all of those big equipment. However though, it says here petitioners shall utilize recognize ancient ancient Hawaiian's pond expert such as Dr. Kikuchi and Professor MariOn Kelly from the University of Hawaii for guidance and assistance in effort. I would like to suggest to this Commission, you know I love Kupunas and they're getting older, we need to have somebody younger, I would recommend Graden Buddy Keala who is a practitioner on the island of Molokai of a fishpond bigger than this one. He is the son Jolna Kealla, you may want to contact her to the Office of Hawaiian Affairs (OHA).

Then on page 104, the selection of the Management Committee shall take place no later than six months after approval of the SMA Permit. I'm hoping that this is being formulated, I do not live on the Westside but I would strongly recommend several people, like Mr. Joseph Manini, Sr.; also Mr. Moki Kupihea and he could probably lead you to others because he has spoken to a lot of Kupunas. If you get this book you'll know what I mean.

I'm having chicken skin over here. And Mahalo for your time.

Chair: Thank you Cheryl.. Commissioners any questions?

Dr. de la pena: Yah. Cheryl I just want to clarify what you mentioned, did you say that one time Kamamalu, is that Queen Victoria Kamamalu, she once owned practically the whole island of Kauai?

Ms. Lovell-Obatake: Well, you know the history has been written a long time, and Mr. Manini has repeated this before and others have repeated it. As you know, Princess Kamamalu was the granddaughter of Kamehameha, but anyway what had happened was in my documentation of where I live, I live on Kamamalu's land, Victoria Kamamalu, and what had happened was what separated part of our property was of a railroad track. I would encourage you, just want to be short, to read the history of Hawaii and the Provisional Government of the Rice family, the Wilcox family and what they engaged into in gathering all the Kamamalu Estate. And I don't want to go any further because… because, but there is history out there and the plantation evidently has separated a lot of kuleana lands and never reverted it back and I see the same thing happening here. Thank you.

Dr. de la pena: Okay, thank you.

Chair: Thank you.

Mr. Furfaro: One comment here please. Cheryl, so some of the positive aspects of the resort as you pointed out, the possibility of custodialship of the fishpond; the management of the Makaha or the Awai and some practitioners that perhaps are Kapuna that are kamaaina to that area, those are all things that you support?

Ms. Lovell-Obatake: Yes.

Mr. Furfaro: Thank you.

Ms. Lovell-Obatake: Thank you very much.

Chair: Thank you. Any other members of the public who haven't testified in this matter who would like to come forward? [NONE] Okay, if not we're going to… is there somebody that want…

Mr. Crowell: Kiahuna?

Chair: No. Okay. We're going to close this public hearing, we're not going to be taking any action today, and we'll be waiting for Planning Department Recommendations and Conditions.

The public hearing was closed at 2:50 p.m..

Respectfully submitted,

Catherine L. Iwai

CATHERINE L. IWAI
Commission Support Clerk

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PLANNING DEPARTMENT

RECEIVED
'00 MAR 31 P2:20
OFC. OF ENVIRONMENTAL
QUALITY CONTROL

March 31, 2000

Ms. Genevieve Salmonson, Director
Office of Environmental Quality Control
State Of Hawaii
State Office Tower, Room 702
235 South Beretania Street
Honolulu, HI, 96813

Dear Ms. Salmonson:

**Acceptance Notice for Kapalawai Resort**
**Tax Map Key (4) 1-7-05: portion of 1**
**Final Environmental Impact Statement (FEIS)**

We are notifying you of our acceptance of the FEIS for the proposed Kapalawai Resort, as satisfactorily fulfilling the requirements of Chapter 343, Hawaii Revised Statutes.

Pursuant to procedures contained in Section 11-200-23, Chapter 200, Title 11 ("Environmental Impact Statement Rules") of the Hawaii Administrative Rules, this Acceptance Notice should be published in the Environmental Notice. Attached please find the following items:

- FEIS Acceptance Evaluation
- Four copies of the FEIS
- Completed OEQC Publication Form
- EIS Distribution Cover letter to participants
- EIS Distribution list

If you have any questions, please contact Mr. Keith Nitta at (808) 241-6677.

Sincerely,

for Dee M. Crowell, Director
Planning Department

Attachments

C: Helber Hastert & Fee, Planners
Destination Villages Kauai, LLC

## ACCEPTANCE EVALUATION

## KAPALAWAI RESORT
## FINAL ENVIRONMENTAL IMPACT STATEMENT
## TAX MAP KEY (4) 1-7-05: POR. 1

### 1. PROPOSED ACTION

The 153.696-acre Kapalawai property is located in the *ahupua'a* of Makaweli, in the judicial district of Waimea, on the west side of the island of Kauai, Hawaii. The property is located on a gently sloped piece of land between the shoreline and Kaumualii Highway, the respective southern and northern boundaries of the project site. Aakukui Stream marks the eastern boundary of the property, while agricultural lands owned by Robinson Family Partners and leased to Pioneer Hi-Bred International, Inc., are located to the west. The town of Waimea (population: 1,840) is located about 1/2 mile to the northwest. The town of Hanapepe (population: 1,400) is located about 2 miles to the southeast (Figure 1). The largest town on the West Side of Kauai is Kekaha (population: 3,500, located about 4 miles northwest of the project site.

The applicant requests a General Plan Amendment, in addition to other County ad State land use approvals, to develop a resort and accessory facilities.

The 153.696-acre project site ("Kapalawai") is one of the former homesteads of the Robinson Family. The land comprising the property is among acreage of the Makaweli *ahupua'a* purchased in 1865 from Victoria Kamamalu, sister of King Kamehameha IV. The land is presently under the ownership of several entities, including Robinson Family Partners, Gay & Robinson, Inc., and Bruce Robinson. The residence at Kapalawai was constructed c. 1897, and was designed by Honolulu architects C.B. Ripley and Arthur Reynolds for Aubrey Robinson. The house was occupied continuously by family members until 1988. Since that time, the house has been vacant, although an auxiliary building adjacent to the residence has been used as an office for Robinson Family Partners.

The remainder of the property has historically been utilized as pasturage for livestock owned by the Robinsons, including cattle, horses, and goats. Until most recently, a number of bulls used the pasturage. In addition to the residence, and several ancillary structures, the property also features an inland fishpond, located adjacent to the Mahaikona Stream, in the center of the property.

In addition to the development of a low-intensity and low-density resort, the proposed project is intended to restore the physical attributes of the entire property to former conditions, thereby preserving a significant chapter of the history of Hawaii and Kauai. Restoration will include physical improvements to the residence, the fishpond, and the grounds.

## 2. PROPOSED DEVELOPMENT

The proposed resort includes 250 visitor units (or cottages) that are dispersed throughout the project site, resulting in an overall density of 1.6 units per acre. Approximately 164 of the units will be free-standing and 86 units will be constructed as 43 duplex units. Average separation distance between units will be about 40 feet. Each of the single-story cottages will be about 400 square feet in size, with a 200 square foot deck. No cooking facilities, air conditioners, phones, or televisions will be provided for the units.

One of the focal points for the proposed resort will be the former Robinson family residence. The building footprint for the residence is approximately 17,000 square feet, and includes an interior courtyard and wrap-around lanais on the exterior of the building and facing the interior courtyard. The general plan for the residence is to develop the main house and attached structures as a greeting space and as a museum, administration, and meeting room area.

Amenities provided at the resort will include:

- Two restaurants;
- Snackbar;
- Museum (in the former family residence);
- Bar/Lounge (in the former family residence);
- Three swimming pools;
- Fitness center/beach club;
- Sport courts (tennis, basketball, volleyball, badminton); and
- Amphitheater

A wastewater treatment plant is proposed to handle all wastewater generated by the project, and will be located on the northern portion of the property, between the main house and Kaumualii Highway. The wastewater treatment plant is
proposed to be located with the maintenance building.

## 3. PROCEDURE

A. An EIS preparation Notice for the proposed project was published in the July 23, 1999 edition of the *Environmental Notice.* The Preparation Notice was distributed to Federal, State, and County agencies, private organizations and individuals. These are listed in Chapter 12 of the Draft EIS.

B. The 30-day consultation period ended on August 23, 1999. Twenty-three consultation letters were received. The applicant responded to substantive comments and included the appropriate information in the Draft EIS.

C. Notice of the Draft EIS was published in the November 23, 1999 *Environmental Notice.* The 45-day public review period ended on January 7, 2000. Twenty-six consultation letter were received. All substantive comments were responded to by the applicant, and both comments and responses have been included in the Final EIS.

D. The Final EIS was submitted to the County of Kauai Planning Department on March 31, 2000. Notice of the availability of that document will be published in the April 23, 2000 *Environmental Notice.*

## 4. EIS CONTENT

The Final EIS complies with the content requirements set forth in Section 11-200-18 of the State Department of Health Administrative Rules.

## 5. RESPONSE TO COMMENTS

The applicant responded to environmental comments that were raised during the EIS Preparation Notice and Draft EIS public review periods. These comments are found in Chapters 12 and 13 of the Final EIS.

## 6. UNRESOLVED ISSUES

Section 1.5 of the Final EIS identifies the necessary Federal, State, and County approvals required to complete the proposed resort. The applicant will apply for

these approvals as development of the project proceeds. Section 1.7 of Final EIS identifies two issues that are not yet entirely resolved:

A. Public Access

Section 6.7 of the Final EIS discusses existing means of public access to the Pakalas surf break, which is currently an informal agreement between the County and the landowner through a pasture which parallels the Aakukui Stream. Opinions differ on an appropriate means to formalize this access and provide other desired public facilities. Finalization of access issues will result from discussions which include County of Kauai representatives, stakeholders in the community (including surfers), the developer and the landowner.,

B. Fishpond Improvement.

Various sections of the EIS describe how the condition of the 6.5-acre inland fishpond, which is located in the central portion of the property, has deteriorated over the last few decades with accumulation of silt, and coverage of open water with vegetation. Various methods to clear the fishpond of silt and vegetation have been considered, including the use of different pieces of equipment and/or hand clearing. Specific equipment has not been identified to date. However, whatever method is used, when silt and vegetation is removed, it would need to be dewatered before disposal. Dewatering would occur adjacent to the fishpond. Spoil material would then be removed from the property and disposed on mauka agricultural lands owned by Gay and Robinson, Inc. In addition, care would need to be taken to ensure that the walls of the fishpond are not damaged. Choice of final methods and equipment would involve discussions with:

- U.S. Fish and Wildlife Service;
- U.S. Army Corps of Engineers;
- State Department of Land and Natural Resources;
- County of Kauai (Planning Department, Department of Public Works);
- The landowners; and

- The developer (Destination Villages Kauai, LLC)

## 7. DETERMINATION

The County of Kauai Planning Department has determined this Final EIS to be **ACCEPTABLE** under the requirements of Chapter 343, Hawaii Revised Statutes.

Approved
Dee M. Crowell, Director
Planning Department

2000 FEIS KAUAI
KAPALAWAI RESORT

APR 23 2000
FILE COPY

# Final
# Environmental Impact Statement

Kapalawai, Kauai, Hawai'i



# KAPALAWAI
## R E S O R T

March 2000

# Final
# Environmental Impact Statement

Kapalawai, Kauai, Hawai`i

This final environmental impact statement, and all ancillary documents were prepared under signatory's direction or supervision, and the information submitted, to the best of the signatory's knowledge, fully addresses document content requirements as set forth in sections 11-200-17 and 11-200-18, Hawaii Administrative Rules, as appropriate.

Lewis P. Geyser, President
Destination Villages, LLC

3-24-2000
Date

KAPALAWAI
RESORT

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Prepared for Destination Villages, LLC
Prepared by Helber Hastert & Fee, Planners

March 2000

# Final
# Environmental Impact Statement

Kapalawai, Kauai, Hawai`i

This final environmental impact statement, and all ancillary documents were prepared under signatory's direction or supervision, and the information submitted, to the best of the signatory's knowledge, fully addresses document content requirements as set forth in sections 11-200-17 and 11-200-18, Hawaii Administrative Rules, as appropriate.

Lewis P. Geyser, President
Destination Villages, LLC

3-29-2000
Date

# KAPALAWAI
## R E S O R T

Prepared for Destination Villages, LLC
Prepared by Helber Hastert & Fee, Planners

March 2000

# REVISIONS TO THE FINAL ENVIRONMENTAL IMPACT STATEMENT

Based on comments received on the Draft Environmental Impact Statement (DEIS), a number of revisions were made to the text of the Final Environmental Impact Statement (FEIS). To facilitate review of the FEIS, additions to the text are shown as being double underlined. Text that has been deleted is ~~shown with a line through it~~. Section 4.9, related to Historic Cultural and Archaeological Resources, has been expanded to include information concerning the results of subsurface excavations. Section 5.4, related to Traditional Customs and Practices, has been rewritten to reflect comments received from the Department of Land and Natural Resources, State Historic Preservation Division.

Two graphic figures have been revised (Figure 13: Detailed Land Classification; Figure 14: Historic Sites). Figure 13 has been simplified for ease of reference, and Figure 14 now includes information pertaining to subsurface excavations.

Chapter 13 has been added to include comment letters received during the preparation of the FEIS, and response letters sent in reply to those comments.

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# 1

# INTRODUCTION & SUMMARY

# 1.0 INTRODUCTION AND SUMMARY

## 1.1 General Information

| | |
|---|---|
| **Applicant:** | Destination Villages Kauai, LLC<br>C/o Destination Villages, LLC<br>4439 Via Abrigada<br>Santa Barbara, CA 93110<br>Contact: Mr. Lewis Geyser, President<br>Phone: (805) 687-8788 |
| **EIS Preparer:** | Helber Hastert & Fee, Planners<br>733 Bishop Street, Suite 2590<br>Honolulu, HI 96813<br>Contact: Mr. Scott Ezer<br>Phone: (808) 545-2055 |
| **Accepting Authority:** | Planning Department, County of Kauai |
| **Location:** | Makaweli, Kauai, Hawaii |
| **Tax Map Key:** | (4) 1-7-05: portion of 1 |
| **Area[1]:** | ~~170~~ 153.696 acres |
| **Landowners:** | Gay & Robinson, Inc.;<br>Robinson Family Partners; and<br>Bruce Robinson |
| **Existing Uses:** | Residence; employee housing; office; pasture |
| **Lessee:** | Destination Villages Kauai, LLC |
| **Proposed Action:** | Development of a 250-unit resort and accessory uses |
| **Applicable Permit:** | County of Kauai General Plan Amendment |

[1] At the time of the publication of the Draft EIS, the area of parcel 1 was known to be 170 acres. The certification of a shoreline survey for the parcel resulted in the determination of parcel 1's area at 166.026 acres. The actual area which is the subject of the request for a General Plan Amendment (and Zoning Amendment) is only 153.696 acres, because the portion of the parcel fronting the shoreline will remain in the State Conservation District and the County Open District. All references to the area of the project site contained in the FEIS will be as "153.696 acres."

## 1.2 Background

The ~~170~~ 153.696-acre project site ("Kapalawai") is one of the former homesteads of the Robinson family. The land comprising the property is among acreage of the Makaweli *ahupua'a* purchased in 1865 from Victoria Kamamalu, sister of King Kamehameha IV. The land is presently under the ownership of several entities, including Robinson Family Partners, Gay & Robinson, Inc., and Bruce Robinson. The residence at Kapalawai was constructed c. 1897, and was designed by Honolulu architects C.B. Ripley and Arthur Reynolds for Aubrey Robinson. The house was occupied continuously by family members until 1988. Since that time, the house has been vacant, although an auxiliary building adjacent to the residence has been used as an office for Robinson Family Partners.

The remainder of the property has historically been utilized as pasturage for livestock owned by the Robinsons, including cattle, horses, and goats. Until most recently, a number of bulls used the pasturage. In addition to the residence, and several ancillary structures, the property also features an inland fishpond, located adjacent to the Mahaikona Stream, in the center of the property.

In recent years, the property has not enjoyed a level of maintenance that would ensure the preservation of its historic assets. Although the grounds surrounding the house have been fenced off to protect against damage from grazing livestock, and irrigated and otherwise managed, the condition of the rest of the property has slowly deteriorated. The fishpond, which as recently as the 1950s was characterized by open water, has since collected silt and is overgrown with bulrush, California grass, and floating aquatic plants, such as water hyacinth, duckweed, and water lettuce. Only recently, was vegetative debris associated with damage from the two most recent destructive hurricanes, Iwa and Iniki, removed from the pasture.

In addition to the development of a low-intensity and low-density resort, the proposed project is intended to restore the physical attributes of the entire property to former conditions, thereby preserving a significant chapter of the history of Hawaii and Kauai. Restoration will include physical improvements to the residence, the fishpond, and the grounds. In addition to these restoration efforts for the property, the proposed project will provide economic stimulus for the West Kauai community, and the community at large. This economic impact will be felt directly by Kauai residents in general, and West Kauai residents in particular, in the form of employment opportunities afforded by the proposed

project. Other indirect impacts will accrue by virtue of the spending habits of the guests of the proposed resort, which will be felt by a wide variety of businesses in the West Kauai community and elsewhere on Kauai.

The profile of the target visitor to the Kapalawai Resort is also an important consideration for the design of the project, and their impact on West Kauai. The term "eco-tourism" has been used to describe a wide variety of visitor-types. What is eco-tourism? Ecotourism has been defined as "responsible travel to natural areas which conserves the environment and improves the welfare of local people." Ecotourism is alternatively termed as "ecological tourism" or "sustainable tourism." All of these terms and the type of visitor they describe are considered to be specific categories of the more broad "nature-based tourism." Another definition suggests that ecotourism is "environmentally responsible travel and visitation to relatively undisturbed natural areas, in order to enjoy and appreciate nature, that promotes conservation, has low visitor impact, and provides for beneficially active socio-economic involvement of local populations". It is the visitor who will be respectful of the history preserved at Kapalawai, the culture of Kauai, and the natural beauty of the island.

The scale and design of the proposed resort is intended to complement the physical, social, and scenic characteristics of the region. The consideration of these elements were given prime importance in the development of the preliminary site plan for the project, and affected its scale and preliminary architectural themes.

## 1.3 Summary of Probable Impacts and Mitigation Measures

### PHYSICAL ENVIRONMENT

***Topography.*** The overall development program will not affect a large portion of the project site. The cottages will be raised above grade (to comply with flood hazard requirements). Therefore, site alteration for these facilities will be minimal. The other major structural additions to the project site (two restaurants, the snack bar, the tennis clubhouse) will also be elevated to comply with flood hazard regulations. This method of construction (post and beam) involves less ground disturbance, and, therefore, less alteration of topography.

Roadways and parking lots will change the surface characteristics of about seven acres of the property (about 4 percent of the entire site) from pervious to impervious. Although surface characteristics will change, the general topographic

features of the property will not change, primarily because slopes are so small (1-4 percent).

The proposed drainage plan (See Section 6.4) requires that the an existing man-made drainage ditch be improved as a six-foot deep trapezoidal grass channel, with a bottom width of 30 feet and an overall top width of 54 feet, along a length of about 2,300 feet. In general, the overall topography of the property will not be changed, and existing drainage courses will continue to be utilized. As a result, there will be no significant impacts to topography.

***Hydrogeology.*** There will be a beneficial impact associated with drawing water from the fishpond for irrigation use in the form of better overall water quality within the fishpond. Increased withdrawal will result in increased turnover (decreased residence time), with a resultant decrease in the presence of algae and phytoplankton. Consequently, turbidity would be reduced. The water level in the fishpond could drop slightly with increased withdrawal, but would ultimately reach equilibrium balancing input and throughput.

***Agricultural Capability.*** Over the time period the project site has been owned by the Robinson family, it has never been used for commercial agriculture. The family did use the property for subsistence raising of fruits, vegetables, and livestock, including fish (in the fishpond). As recently as this year, portions of the project site were used as pasturage for about 20 bulls. However, these animals have since been removed. Therefore, the development of the project site as a resort will have no impact on agricultural production on Kauai.

***Flora.*** None of plants inventoried on the site is a threatened or endangered species; nor is any plant a species of concern. All of the plants identified on the property can be found in similar environmental habitats throughout the Hawaiian Islands. In this context, there will be no significant impacts to native vegetative habitats resulting from development of the proposed project.

Areas of the project site will benefit from development because irrigation water will be made available that will be able to support more plant life. This will also help to prevent soil erosion caused by the wind. From a botanical perspective, the presence of large numbers of the long-spined mesquite species (Prosopis juliflora) on the coastal area of the property are a primary concern. To date, the plants have only been known from Oahu at Sand Island and vicinity. If not eradicated, the plants could form large, impenetrable, spiny thickets in low land, dry habitats throughout Kauai.

It is recommended that all individual Prosopis juliflora plants be eradicated. Appropriate methods of eradication should be coordinated with the State Department of Agriculture.

It is also recommended that native plants be incorporated into the landscape plan for the proposed resort.

***Terrestrial Fauna.*** The project site has been significantly altered by introduced vegetation and ranching activities. No unusual or unexpected species were recorded, even though three endangered species were observed on the property: Common Moorhen (Gallinula chloropus); Koloa (Anas wyvilliana); and Hawaiian Hoary Bat (Lasiurus cinereus semotus).

Although endangered, the Hawaiian Hoary Bat is fairly common on Kauai. The proposed development should not adversely impact foraging opportunities for the bats. They are known to forage in urban as well as forested habitats.

Although there are several wetland type habitats on the project site, most are overgrown with emergent vegetation. This restricts their access to waterbirds. If these areas were opened up by removal of vegetation, they would provide better habitat for waterbirds. A complete removal of vegetation in the fishpond would not be attractive to native waterbirds because they require some cover (in the form of emergent vegetation) to avoid predators or as a place to retreat when disturbed. Existing vegetation should be maintained on the island in the middle of the fishpond for this purpose. The advantage of focusing vegetation on the island would be that the island would provide cover and nesting opportunities that would be protected from cats and other predatory animals.

The man-made marsh area on the Waimea side of the property will lose its source of water in the near future as a detention basin being built by Gay and Robinson, Inc. is completed mauka of Kaumualii Highway. This will cause the area to dry up and lose its wetland characteristics. However, the loss of this area will not be significant because of the presence of the fishpond and other habitats associated with the Mahaikona and Aakukui Streams. This is particularly true if the fishpond and streams are cleared, thereby creating additional open water habitat.

***Marine Environment.*** The overriding findings of the marine environmental assessment is that at present, both water quality and biotic community

composition are strongly influenced by terrigenous sediment in the nearshore ocean that appears to originate from runoff from upland drainage basins, and maintains a long residence time within the shoreline fronting the project site. Hence, even if delivery of sediment is halted, it appears that the material presently on the bottom would remain in the system for an extended period of time.

Plans for the Kapalawai Resort specify usage of an on-site wastewater treatment system that will result in effluent (reclaimed water) for use as an irrigation source on the property. As a result, none of the wastewater generated by the project will be discharged directly to the ocean. It is anticipated that this method of wastewater disposal will have no impact to the marine environment.

While the planned project at Kapalawai may result in a temporary increase in exposed soil during the construction that could reach the ocean through runoff, it is likely that such an increase would be essentially undetectable when compared to the existing situation, and best management practices during construction will mitigate the impacts of erosion. The increased impervious surfaces that will result from the construction of roadways on the property may actually reduce sediment delivery to the ocean as the roadways will replace lands otherwise subject to erosion.

*Potential Effects to Protected Species.* The threatened green sea turtle occurs in the nearshore areas off the project site. Because there is no plan for any work on the shoreline or in the nearshore region, there is no potential for activities that might affect health or behavior of turtles (or any other protected species). Potential changes in water quality that might occur as a result of construction would be undetectable, and hence would not affect turtle behavior.

The shoreline bordering the property is sand, and it is possible that turtles could haul ashore. While it has not been documented that the area serves as a turtle nesting ground, such activities are potentially possible.

Similarly, the beach presents the possibility as a haul out area for monk seals. Transplanted seals have been documented to frequent many areas in the high islands. As such, human intervention to endangered species populations has resulted in increasing the potential for interactions between humans and the endangered species. As a result, it appears that the Kapalawai area has the same potential for monk seal habitation as any other beach locale on Kauai.

The potential for impacts to marine communities as a result of development of the Kapalawai Resort appear to be minimal or nonexistent. None of the developmental activities appear to have the potential to induce long-term changes in physic-chemical water quality parameters of a magnitude sufficient to cause changes in biological community structure. The marine environments off Kapalawai (as is the case around much of the Island of Kauai in regions where sugar cultivation takes place) appear to have been subjected to substantial sediment stresses for a sufficient period of time (many decades) to have influenced community structure. Such stresses are much more destructive than the small temporary changes that could result from construction of the proposed development activity. If some unexpected event related to development activities does occur, the resulting alterations to marine community structure would probably be reversible and recovery rapid once the stress factor is mitigated. Tolerance to such changes appears to already be part of the physiological range of the community.

In order to ensure that land use activities do not alter behavior of green sea turtles or monk seals that haul out, it is recommended that project lighting in areas near the shoreline be designed so as not to illuminate the beach strand. In addition, employees of the resort, and its guests should be educated about possible interaction with these animals, and appropriate human behavior for that interaction. For employees, this information could be included in training sessions and handouts. For guests, information, in the form of brochures, could be placed in all cottages and signage erected in key locations on the property,.

***Historic, Cultural and Archaeological Resources.*** A total of six sites were identified and recorded with the State Historic Preservation Division as a result of an inventory survey conducted for this project. Many of the structural historic sites identified on the project site will be retained and efforts will be made to restore them. Buildings in this category include: the former Robinson family residence (Site 764A); the former guest house (Site 764B); ~~and~~ the former servants quarters (current offices for Robinson Family Partners) (Site 764C); and the eight employee dwellings (Sites 764G through N). Other structures will be demolished because they are in such poor condition. Buildings in this category include: the former carriage house/garage (Site 764D); the remnants of the former saddle house (Site 764E); and the former plant house (Site 764F).

The structures being retained have been surveyed to determine their condition and to identify required repairs. All repairs will be implemented to match original

materials and design to the greatest extent possible, so the exterior appearance of these buildings will remain intact.

A significant portion of the interior of the former residence (existing dining, sitting, library, pantry, china, linen rooms, as well as one guest bedroom and the original kitchen building) will be maintained as museum space, and will be repaired and restored to match original materials and design.

The fishpond will be cleared of exotic vegetation and restored to an appearance similar to that of the late 19th century and the first half of the 20th century. The exact method of pond clearance has not been determined, so impacts to the pond are difficult to determine at this time, and it is not known what type of heavy equipment will be required, if at all. If large heavy-equipment vehicles are needed, they could possibly impact the extant pond rock walls, if the full weight of the vehicles is brought to bear on the walls. ~~Appropriate actions should be implemented to ensure protection of extant fishpond walls during any activity to clean out the fishpond~~. A mitigation plan will be prepared for the restoration of the fishpond. ~~These actions~~ mitigation plan should be reviewed by the Department of Land and Natural Resources State Historic Preservation Division prior to commencement of any such activity. Additionally, there is a *pohaku* (rock) in the fish pond associated with a *mo'o wahine* legend, which could not be found due to vegetation and debris. It is recommended that before restoration work on the fishpond begins, this *pohaku* should be located and preserved in place.

Three other historic sites, the Portuguese Oven (Site 766), the rock platform (Site 763), and a series of rock walls and terrace (Site 762) will be preserved as-is and integrated into the site design of the project.

The Portuguese Oven should be clearly marked with an appropriate buffer area to prevent accidental damage during construction.

Feature 50-30-9-792/A, the cultural layer, is recommended for preservation for future archaeological research. The preservation plan will outline the short-term and long-term preservation measures that will safeguard the feature from damage during project construction and subsequent land use

Feature 50-30-9-792/B, the human burial, is recommended for preservation in place within the combination archaeological and burial preserve area. The preservation of the burial will require the preparation of a burial treatment plan. As a previously recorded burial site (so designated because it was found during

inventory survey investigations) the mitigation and treatment of these skeletal remains fall under the jurisdiction of the Kauai Island Burial Council, who must approve all mitigation and/or treatment measures. The request for preservation in place must be presented to the Burial Council in the form of the burial treatment plan.

***Scenic Resources.*** The interior of the project site is not currently visible from Kaumualii Highway because of the dense vegetation on the mauka portion of the property. Consequently, development of the proposed resort will not be visible from the highway.

The existing entry drive into the property will be formalized for the resort, thereby undergoing some modification, including the installation of a left-turn storage lane on the Waimea-bound side of Kaumualii Highway, and a right-turn deceleration lane on the Hanapepe-bound side of the highway. In addition, a new exit drive for the property will be created about 500 feet on the Hanapepe side of the entry drive.

Appropriate signage and landscaping is recommended for both the entry and exit drives to the Kapalawai Resort. These improvements should be kept in character with the region, and signage should be indirectly illuminated.

***Flood Hazards.*** Many of the structures in the proposed Kapalawai Resort are affected by flood hazards in the AE and X zones, with flood elevations ranging from one to about five feet above existing grade. All habitable floors will be raised above the base flood height. No structures are planned to be built within the area affected by the zone of inland overwash from the storm surge associated with Hurricane Iniki.

All affected structures will be constructed in compliance with flood hazard regulations, which require: (1) securely fastened columns to resist flotation, collapse, and lateral movement; and (2) certification by a registered professional engineer or architect.

***Air Quality.*** *Short-term Impacts.* The principal source of short-term air quality impacts associated with the proposed project will be construction activity, including construction vehicle emissions and particulate emissions connected with clearing, grading, grubbing and other site preparation work, and construction equipment and workers traveling to and from the project site.

*Operational Impacts.* Two sources of air quality impacts could result from the operation of the resort: (1) increased vehicle emissions due to increases in traffic volume; and (2) fugitive dust from disturbance of dry exposed soil.

After construction of the resort is completed, use of the proposed facilities will result in increased motor vehicle traffic on nearby roadways (from about 6% to 20%, depending on day and time of day; see Section 6.1) which could potentially increase air emissions in the project vicinity. The use of some electric-powered vehicles by the resort will reduce on-site emissions.

Increases in vehicular emissions will probably not have a significant impact in the vicinity of the project site because traffic flow is smooth and normal wind patterns prevent the accumulation of emissions. In addition, the elimination of lead-based gasoline has eliminated this source of motor vehicle-created pollution.

Compliance with State of Hawaii Air Pollution Control Regulations (Title II, Chapter 60.1, Hawaii Administrative Rules) will ensure reduction of fugitive dust related to construction activities. Reasonable precautions, or best management practices (BMPs) include:

- use of water on exposed soil (twice daily, if necessary);
- covering all moving, open-bodied trucks transporting materials which may result in fugitive dust;
- use of wind screens to prevent migration of fugitive dust, as appropriate;
- prompt removal of earth or other materials which have been temporarily stockpiled; and
- limiting the land area exposed by construction

Because of the dry nature of the climate in the region, fugitive dust will always be a concern. In order to minimize fugitive dust, care must be taken to avoid patches of exposed soil.

***Noise.*** Development of the Kapalawai Resort will involve grubbing, grading, some excavation, and the construction of infrastructure, cottages, restaurants and other accessory facilities. Actual noise profiles generated by these activities will depend on the construction methods employed during each phase of the project. Typical ranges of construction equipment will range from less than 60 dBA for pumps and vibrators, to almost 100 dBA for jack hammers and rock drills. Earthmoving equipment, such as bulldozers and diesel powered trucks will probably be the loudest equipment used during construction.

The closest sensitive receptor is several hundred feet from the nearest point of construction activity, and there is a heavy growth of vegetation separating the areas. Therefore, sound from construction operations will be greatly attenuated before reaching any nearby dwellings. Therefore, noise impacts attributable to the construction period are expected to be minimal, and of a temporary nature (12-15 months).

Potential noise sources attributable to the operation of the proposed resort include:

- use of lawn mowers and other landscape maintenance tools;
- pumps associated with the wastewater treatment plant and irrigation systems; and
- arrival and departure of supply, guest, and employee vehicles

Typical A-weighted noise levels at a 50-foot distance for the landscape equipment range from 74 dBA for a lawn mower to 82 dBA for a chain saw. The nearest noise sensitive areas would be residences located several hundred feet away. Due to the distance of separation, these noises should not have any adverse impact on neighboring residences.

The pumps for the wastewater treatment plant and the irrigation system will be located within buildings, which will limit their impact. In addition, these are no sensitive receptors in the immediate vicinity. Therefore, no significant off-site noise impacts are anticipated related to on-site mechanical equipment.

All construction vehicles must meet Title II, Administrative Rules of the Department of Health, Chapter 42, Vehicular Noise Control. All construction activities must meet the provisions of Title II, Administrative Rules of the Department of Health, Chapter 46, Community Noise Control.

## SOCIO-ECONOMIC ENVIRONMENT

***Population Impacts.*** Based on 250 developed cottages with an occupancy of 1.95 people per unit, and an average overall occupancy rate of 75 percent for the resort after three years, Kapalawai could be expected to accommodate an average of about 365 visitors per day (by 2004). In addition, about 143 operational employees would be present on an average day. On average, Kapalawai could also have about 240 construction workers on-site on any given

day during 2001. These figures represent the total number of persons anticipated to be on-site over a 24-hour period.

The Kapalawai Resort is not anticipated to lead to any significant migration from out-of-State. However, to the extent that persons do move to the State because of its development, such in-migrants can be expected to reside in housing or transient accommodations located off-site.

***Economic Impacts.*** The Kapalawai Resort could be expected to impact the economies of the State and the County of Kauai by: (1) attracting visitors who would make new expenditures; (2) generating construction activity, which would support expenditures for goods and services; and, (3) creating and supporting jobs and business enterprises in its ongoing operations. The new jobs would in turn generate additional business and personal income in the County and throughout the State.

Direct, indirect and induced positions could total 710 person-years of labor for construction at Kapalawai. Including its direct, indirect, and induced impacts, the project's development could support some $30.2 million in wages and salaries for Hawaii residents during construction.

Direct operational jobs are projected to stabilize at about 200 full time equivalent positions. These new employment opportunities will include a variety of types and levels of work, such as opportunities in management, sales and marketing, registration/reservations, human resources, food service, maintenance and engineering, housekeeping, grounds keeping, and related activities. The majority of these jobs would be located on-site.

Based on economic multipliers derived from the State of Hawaii's Input-Output Study (DBED&T, 1998), the total employment impacts of Kapalawai, including its indirect and induced jobs, could represent about 320 full time equivalent (FTE) positions throughout the State.

Direct wages and salaries paid to those employed in the resort's operations are expected to reach about $5.3 million per year. Including personal income associated with the indirect and induced positions, the project could generate nearly $12.3 million per year in ongoing payroll within the State.

In total, direct visitor expenditures are estimated to represent $17.8 million in 2002, increasing to about $21.2 million by 2004. Including the indirect and

induced multiplier effects within the State, visitors attracted by Kapalawai could account for over $36 million in new annual visitor expenditures by the time of project stabilization.

***Fiscal Impacts.*** *County Real Property Tax Revenues.* The most significant fiscal impact of the proposed resort for the County of Kauai is likely to derive from the higher real property taxes generated compared to those paid under its current land use designations and level of development. After adjustments for the property taxes now paid for the project site, Kapalawai is anticipated to generate approximately $420,000 annually in net new property tax revenues by 2003.

*Other County Revenues.* In addition to real property taxes, the County of Kauai is currently allocated a share of the transient accommodations taxes (TAT) collected by the State (6.5 percent of State TAT collections), and it obtains liquid fuel, utility franchise, motor vehicle weight, and other licenses and permit fees from residents and businesses.

Given the expenditures for bungalow revenues projected to be generated by out-of-State visitors to Kapalawai, the State's 7.25 percent TAT, and Kauai County's 6.5 percent share of State TAT collections, this could represent about $50,000 in annual TAT revenues for the County by 2003.

In summary, net new taxes earned by the County as result of the development of Kapalawai Resort and its future operation could represent about $470,000 per year, on an on-going basis by 2004.

*Additional State Government Operating Revenues.* Additional operating revenues accruing to the State government are expected to derive principally from the general excise tax (GET) accruing from out-of-State visitors' expenditures in Hawaii. Other sources of new State revenues attributable to the Kapalawai Resort include its share of TAT, as well as GET, income and other taxes paid by those who move to the State because of the project, and GET on the project's development costs.

In total, new operating revenues for the State are estimated to amount to some $1.3 million annually by project stabilization in 2004.

*Per Capita Government Operating Expenditures.* Both State and County governments can be expected to incur additional operating expenses in supporting the in-migrants that are attracted by the development of the

Kapalawai Resort. An analysis of the County of Kauai's 1995/1996 fiscal year expenditures suggests that the County spends about $1,900 per resident per year, and about $1,170 per full-time equivalent visitor-year. A similar analysis of State government operating expenditures per capital suggest that the State spends about $4,970 per year to support governmental operations on behalf of each resident, and $1,840 per full-time equivalent visitor year.

*Net Fiscal Benefits.* County government operating revenues from the proposed Kapalawai Resort are anticipated to exceed additional operating expenses by $60,000 per year, as the project approaches stabilized operations (about 2004). The revenue/expenditure ratio for this relationship is projected to be 1:1.

On the other hand, with its far greater taxing powers and more varied sources of income, the State government's operating revenues are anticipated to substantially exceed the additional operating expenses ($760,000) associated with the project throughout its development and operating periods. The revenue/expenditure ratio for this relationship is projected to be 2:4.

***Traditional Customs and Practices.*** A native Hawaiian traditional customs and practices impact assessment for the proposed project was prepared for the EIS. The purpose of the impact assessment was to consider the effects the proposed development may have on native Hawaiians as it pertains to their traditions and customs which are protected by law under the Hawaii State Constitution, Article XII, Section 7. Historical documents and maps were researched at the Hawaii state Archives, the Bernice Pauahi Bishop Museum Archives, the Kauai Historical Society, and the Kauai Museum. In addition, seven in-depth interviews were conducted with a total of nine people. For the past century, due to the exclusive use of the property by the Robinson family and its employees, except for Warren Robinson and Bruce Robinson, the majority of the interviewees were past employees of the Robinson family and had either worked and/or lived at the project area of Kapalawai at some time during their employment.

The interviews were a valuable part of the assessment for providing useful information about people, land use, boundaries and place names, and also helped to explain the lack of cultural practices within the project area.

Investigations for the assessment study have failed to turn up evidence of traditional customs and practices ~~in the 170-acre parcel known as~~ at Kapalawai. The lack of such evidence reflects the geographic location of the parcel as well as the nature of the land tenure. It is clear from the historic records that Kekupua

Fishpond was reserved for the chiefs and, thus, the mullet would have been *kapu* to the native tenants. When Eliza Sinclair acquired Makaweli *ahupua`a*, she controlled the whole *ahupua'a* and its resources, which would have included the fishpond. It is evident that she continued the practice of reserving the mullet for personal use and keeping the pond resources *kapu* to the native tenants.

A document search did not disclose any *kuleana* (native tenant) claims within the project area. Oral interviews, which were a part of this assessment, did not indicate that there was a Hawaiian settlement of any kind within the project area. Archaeological evidence and research of Hawaiian trails within the *ahupua`a* support the settlement of larger inland population as opposed to a coastal one.

The Robinson family has owned the *ahupua`a* of Makaweli, which includes Kapalawai, since 1865. Because Kapalawai was utilized by the family as a ranch, farm, and dairy, and because the Family preferred complete privacy regarding all of their lands, it was not possible for outsiders to go onto the property unless they had been invited or had received permission to do so. Thus, if any traditional customs and had been carried out at Kapalawai prior to the Family's arrival, these were most likely discontinued during the 135 years of the Family's ownership. Thus, if any traditional customs and practices had been carried out at Kapalawai prior to the family's arrival, these may not have been possible during the 135 years of the family's ownership. Anyone who might have been pursuing these customs and practices has long since passed away. During the oral history phase of this assessment, none of the interviewees could recall being told by their elders of any significant or documented cultural practices in the project area.

As a result, it is not likely that Hawaiian traditional customs and practices will be significantly affected by the proposed development. ~~Based on the past history, it is the conclusion of the assessment that the proposed development will have little or no impact on Hawaiian culture~~.

## PUBLIC FACILITIES

***Transportation. Construction Period Impacts.*** During construction of the project, there will be an increase in the number of trucks and other construction vehicles, including employees, that will be entering and exiting the property. Vehicles making left turns into the property from Kaumualii Highway may cause traffic to temporarily back up behind them. This potential impact should be minimized because direction of travel will be counter to peak directional flow, and the

duration of disruption would be temporary, for the approximate one-year construction period.

*Operational Period Impacts.* The Kapalawai Resort is planned for completion and full operation by ~~early year~~ 2002. The traffic assessment reflects a peak season level of use of the project for both a weekday and a Saturday.

The project is estimated to increase the peak hour volumes on Kaumualii Highway just to the east of the site by 8% during the weekday peak hours and by 20% on a Saturday with special events at the site. To the west, the project traffic would add an estimated 6% increase to the weekday peak hour volumes and 18% to the Saturday peak hour volumes on Kaumualii Highway near the site.

The left-turn movements into and out of the Project driveway connections to Kaumualii Highway are forecast to operate at very acceptable conditions for each of the peak hour periods. The vehicles turning left from the mauka-bound exit driveway would operate at Level of Service (LOS) C during each period. The left-turn movement from westbound Kaumualii Highway would operate at LOS A with the forecast volumes.

Based on the forecast peak hour volumes and traffic conditions, STOP sign controls would be appropriate for the exit driveway.

In an effort to minimize traffic disruptions during the morning and afternoon peak hours, the start and finish times for work crews during the construction period should be timed to avoid these periods. Likewise, delivery of materials and heavy equipment should also avoid morning and afternoon peak hours.

It is recommended that the left-turn storage lane discussed below (to mitigate operational period traffic impacts) be constructed as soon after final permit approvals as is practicable. This action will also mitigate stacking of vehicles making left turns into the property during employee arrivals.

It is also recommended that personnel be stationed at the exit points to the property during periods of high volume of deliveries and arrival of heavy equipment to assist in the direction of traffic.

The analyses indicate that STOP sign control is appropriate for the exit driveway approach to Kaumualii Highway for the year 2002 peak hour conditions.

Because of the vehicular speeds along this section of Kaumualii Highway, it is recommended that a left-turn lane be provided for the vehicles waiting to turn left from westbound Kaumualii Highway into the project entrance driveway. This would reduce the potential for accidents as well as delays to through traffic. The length of the left-turn storage lane should be sufficient to accommodate at least 3 or 4 waiting vehicles, or a minimum of 100 feet in length.

Separate left- and right-turn lanes are recommended for the exit driveway at the intersection with Kaumualii Highway to minimize any delay to vehicles turning right from the driveway.

A right-turn deceleration lane is recommended on westbound Kaumualii Highway at the entrance driveway for the Project for safety purposes and to minimize delays to through traffic.

***Utilities.*** *Electric/Telephone/Cable.* Utility services will be brought underground from one or more of the several utility poles fronting the project site on Kaumualii Highway, and looped through the development to serve the various buildings within the project. High voltage primary electric service will be extended to several points within the property and transformed for service to all facilities.

*Water.* A dual, private, potable/irrigation water system is proposed for the Kapalawai Resort. Both systems will be privately developed and operated because service from the Kauai Department of Water (DOW) is not available in this area.

The choice to develop a dual (potable and irrigation) water system will take advantage of the supply potential of the spring-fed fishpond. Drawing water from this pond will augment its natural turnover rate, improving its water clarity while providing irrigation supply. It also allows elements of the potable system to be downsized accordingly.

Based on use rates in accord with DOW standards, it is estimated the year-round average potable water use to be approximately 0.12 million gallons per day (MGD). Peak seasonal use could be about 50 percent higher, or approximately 0.18 MGD. Year-round irrigation use for the project is estimated to be 0.36 MGD. In the summer months, the rate could be as high as 0.66 MGD (Nance, 1999).

***Wastewater.*** A private wastewater treatment plant (WWTP) will be constructed on-site to handle all wastewater generated by the proposed resort. Elements of the proposed system includes:

- 14,600 linear feet of gravity sewer main;
- 15,500 feet of sewer laterals;
- 4,200 linear feet of force main;
- 44 sewer manholes,
- 4 sewage pumping stations, and
- 1 wastewater treatment plant.

Taking into consideration loss of potable water, peak diurnal flows, and infiltration, the WWTP must therefore be sized for an average flow of approximately 0.12 MGD, and a peak flow of 0.53 MGD.

A wastewater treatment plant produces a solid product (sludge, or biosolids), and a liquid product (effluent) for disposal or reuse. The biosolids can be safely disposed at the County of Kauai's Kekaha Municipal Landfill, as the County does with the biosolids from its own wastewater treatment plants. The best possible use of the effluent, especially on the west side of Kauai, where weather is hot and dry and water is a precious resource, is to recycle the effluent as irrigation water. Irrigation will be the method of choice at Kapalawai.

The use of reclaimed water will be accomplished in compliance with the State Department of Health's *Guidelines for the Treatment and Use of Reclaimed Water.*

***Grading and Drainage.*** Drainage systems are proposed in certain areas to control stormwater runoff for access roads and parking areas. Peak flow runoff for a 100-year storm event from the overall project site will increase from about 310 cubic feet per second (cfs) in an undeveloped condition to about 589 cfs in a developed condition. The increase of 279 cfs for the 100-year storm event is insignificant (2.5%) when compared to the total peak offsite flow of 10,863 cfs from three mauka watersheds which are tributary to the property. Therefore, impacts to near coastal water quality will not be significant.

A preliminary drainage plan for the proposed resort includes a six-foot deep trapezoidal grass channel, with a bottom width of 30 feet and an overall top width of 54 feet. This drainway will follow the same draincourse as an existing man-made ditch. The new channel will route runoff through the west portion of the site

and outlet into a retention basin mauka of the shoreline, which will allow for sediment collection and controlled release. This grass channel will accommodate the 100-year storm with two feet of freeboard.

Other improvements include storm drain systems that will drain the western portion of the main parking lot, a storm drain system for the eastern portion of the main parking lot, the roadway to the main restaurant, and its parking lot, and a storm drain system for the parking area and roadway on the eastern portion of the property, that will outlet into Mahaikona Stream. The remainder of the site shall be graded to approximate the existing condition, to promote existing sheetflow runoff from the property.

Proper and regular maintenance of the existing streambeds and the proposed grass-lined channel is essential to ensure maximum flood protection for the project. Maintenance of Aakukui Stream, which is currently overgrown in some places, will significantly improve its capacity.

***Solid Waste.*** Base upon other resorts in Hawaii, a project the size of Kapalawai can be expected to generate 70 to 90 cubic yards (cy) of waste per week.

The Kapalawai Resort will implement an aggressive recycling program to minimize its impact on the County's diminishing capacity at the Kekaha Landfill. Much of the 70 to 90 cy of solid waste anticipated for Kapalawai is recyclable, in the form of cardboard, glass, aluminum cans, paper and some plastic. The proposed resort should be able to recycle about 15% of its solid waste. In addition, some food waste and green waste should also be recyclable.

***Recreational Facilities.*** The existing recreational resources in West Kauai are diverse, vast, and exceptional, and they contribute to the overall quality of life for its residents. The addition of about 365 persons per day (Kapalawai Resort guests on an average day) to the defacto population of the Waimea District, will add to the demand on recreational resources. However 365 people represent only a 3.9% increase above the 1995 resident population of 9,220 for the Waimea District, and a 0.5% increase to the defacto population of 69,900 for the entire island. Many of the recreational facilities in the Waimea District (such as Waimea Canyon State Park, Kokee State Park, Na Pali Coast State Park, Polihale State Park) attract users from all over Kauai, including visitors. In this context, the increased demand resulting from potential Kapalawai Resort guests will be marginal. This is particularly evident when examining the area of many of these facilities. For example, Kokee State Park and Waimea Canyon State Park

are 4,345 acres and 1,866 acres in size, respectively, and offer numerous hiking, picnicking, hunting, and camping opportunities.

The project site will offer some recreational amenities to guests, thereby minimizing off-site impacts. These activities include tennis, swimming, beachcombing and walking. Therefore, some recreational demand for Kapalawai guests will be met on the property. As a result, overall impact to any single off-site recreational resource is not expected to be significant.

The development of a resort at Kapalawai will also provide on-site recreational opportunities for Kauai residents, in the form of increased shoreline access to pursue activities such as fishing, diving, beachcombing, and picnicking, in addition to surfing. As a result, there will be a beneficial impact on recreational opportunities for Kauai residents.

***Shoreline Access.*** At the very least, current access to the Pakalas surf break, paralleling the Aakukui Stream, will remain as-is. Discussions with community members indicate there may be a difference of opinion concerning the most appropriate form of beach facilities for Kapalawai at the Aakukui Stream end of the property. Various facilities have been proposed including, a parking area, restroom, shower, and a formal path to the ocean. Other suggestions have been to leave the current access as-is, with no additional formal facilities.

Adequate additional access will be available from parking areas within the resort, where sufficient parking spaces will be reserved for public use. In this context, access to the shoreline will be improved.

Discussions with community representatives (including surfers), officials from the County of Kauai, the landowners, and the developers are necessary to develop a consensus on appropriate an overall access plan for the property that meets the needs of the community and satisfies the requirements of Chapter 205A, HRS.

***Police/Fire/Emergency/Services.*** In general, impacts to police services are not anticipated to be significant, provided the resort provides on-site security, based on experience with other facilities in Koloa and Poipu. The Fire Department has indicated that if the developer provides a private fire protection system consisting of storage tanks, lines, stand pipes, and access roads (to the cottages), existing fire protection equipment and manning should be sufficient to serve the development. Emergency services staff indicated the proposed project would not require the addition of staff or equipment to the resources in the region.

## 1.4 Alternatives Considered

In addition to the "no-action" alternative, the following development alternatives were considered for the project site:

- High Density Resort
- Golf Course
- Mixed Use Resort/Commercial/Residential
- Residential Development

None of the alternatives considered were considered appropriate for the property, or for the West Kauai community. Various reasons for rejection of these alternatives include:

- Higher density use would not complement the historic nature of the existing family residence and the fishpond without overwhelming these historic resources;
- Higher density would significantly increase traffic on Kaumualii Highway;
- Higher density would require the provision of increased infrastructure;
- Higher density would not complement the existing scale of development in West Kauai
- The condition of the on-site fishpond would continue to deteriorate;
- The former family residence would not be restored and maintained.

Each of the alternatives is discussed in Chapter 7.

## 1.5 Unresolved Issues

There are two unresolved issues related to the development of Kapalawai Resort: (1) the framework for public access to the shoreline; and (2) the specific method that will be used to remove silt and vegetation from the fishpond located on the property.

***Public Access.*** Section 6.7 of the EIS discusses existing means of public access to the Pakalas surf break, which is currently an informal agreement between the County and the landowner through a pasture which parallels the Aakukui Stream. Opinions differ on an appropriate means to formalize this access and provide other desired public facilities. It is probable that finalization of access/public facilities issues will result from discussions which include County of

Kauai representatives, stakeholders in the community (including surfers), the developer and the landowner, which will continue through the development approval process.

***Fishpond Improvement.*** Various sections of the EIS describe how the condition of the 6.5-acre inland fishpond, which is located in the central portion of the property, has deteriorated over the last few decades with accumulation of silt, and coverage of open water with vegetation. Various methods to clear the fishpond of silt and vegetation have been considered, including the use of different pieces of equipment and/or hand clearing. Specific equipment has not been identified to date. However, whatever method is used, when silt and vegetation is removed, it would need to be dewatered before disposal. Dewatering would occur adjacent to the fishpond. Spoil material would then be removed from the property and disposed on mauka agricultural lands owned by Gay and Robinson, Inc. In addition, care would need to be taken to ensure that the walls of the fishpond are not damaged. Choice of final methods and equipment would involve discussions with:

- U.S. Fish and Wildlife Service;
- U.S. Army Corps of Engineers;
- State Department of Land and Natural Resources;
- County of Kauai (Planning Department, Department of Public Works);
- The landowners; and
- The developer (Destination Villages Kauai, LLC)

## 1.6 Compatibility with Land Use Plans and Policies

Chapter 3 includes a discussion of the project's compatibility with existing government plans, policies, and objectives. Because of the competing and conflicting nature of many of these plans, policies and objectives, the project supports many and is inconsistent with others. Generally, the proposed project is consistent with applicable State objectives for recreation, tourism, and the economy, and State and County objectives and policies for management of the coastal zone. The project is currently inconsistent with State Land Use designations, and County General Plan and zoning regulations, and as a result, must comply with the permit requirements, identified in Section 1.7, below.

## 1.7 Necessary Permits and Approvals

Development of the property as proposed will require the following permits and approvals from various County, State, and Federal agencies. A summary of possible required approvals is provided below. No approvals have been obtained for the project at this time.

| *Approval Required* | *Authority* | *Status* |
|---|---|---|
| ***Federal Government*** | | |
| Department of the Army Permit (for bridge crossings of Mahaikona Stream) | U.S. Army Corps of Engineers | Application to be submitted after approval of SMP |
| Department of the Army Permit (for clearing silt and vegetation from fishpond) | U.S Army Corps of Engineers | Application to be submitted after approval of SMP |
| ***State of Hawaii*** | | |
| State Land Use District Boundary Amendment | State Land Use Commission | Application to be submitted 3/2000 |
| National Pollutant Discharge Elimination System Permit (for clearing over 5 acres) | Department of Health | |
| Certification of a New Drinking Water Source | Department of Health | Application to be submitted after approval of SMP |
| Well Construction Permit | State Commission on Water Resource Management (DLNR) | Application to be submitted after approval of SMP |
| Pump Installation Permit | State Commission on Water Resource Management (DLNR) | Application to be submitted after approval of SMP |
| Permit to Perform Work Upon a State Highway (for improvements to Kaumuatii Highway) | Department of Transportation | Application to be submitted after approval of SMP |
| Stream Alteration Permit (for bridge crossings of Mahaikona Stream) | Department of Land and Natural Resources | Application to be submitted after approval of SMP |
| ***County of Kauai*** | | |
| General Plan Amendment | Planning Commission, County Council, Mayor | Submitted 1/2000 |
| Zoning Amendment | Planning Commission, County Council, Mayor | Submitted 2/1000 |
| Special Management Area Use Permit | Planning Commission | To submit 7/2000 |
| Project Development Use Permit | Planning Commission | To submit 7/2000 |
| Class IV Zoning Permit | Planning Commission | To submit 7/2000 |
| Grading, Grubbing and Stockpiling Permit | Department of Public Works | To submit 7/2000 |
| Building Permit | Department of Public Works | To submit after approval of SMP |

## 1.8 Statement of Purpose and Need for Action

Over a period of the last several decades, the ability of the Robinson family to provide the resources necessary for maintenance of the family dwelling located at Kapalawai, the fishpond, and the remainder of the Kapalawai property has decreased. As a consequence, the condition of these family resources, which are important historic resources for the family and for the rest of Hawaii, have deteriorated. The development of the proposed project will provide a steward for the property within a project concept that includes the renovation, restoration, and preservation of the former family residence as a museum, in addition to

administrative spaces, and the improvement of the fishpond. The project is necessary as a vehicle to preserve these treasures. Renovation and restoration of the residence alone will cost approximately $1,000,000.

As a beneficial by-product of development, the project will also provide welcome economic stimulus for West Kauai and the island economy as a whole. The Kapalawai Resort will add approximately 200 direct operational jobs to the West Kauai economy. In addition approximately 120 indirect and induced jobs will be created from the economic activity generated by Kapalawai. The effect of the indirect and induced jobs will be felt throughout the State, but will be most felt on Kauai. While the unemployment rate for Kauai has fallen in the last two years from about 10.2 percent to 7.1 percent, it still remains above the State-wide average of 5.6 percent, and the average for Honolulu which is 5.6 percent (State Department of Labor & Industrial Relations, 1999).

## 1.9 Purpose and Need for this Environmental Impact Statement

The purpose of this ~~draft~~ environmental impact statement (EIS) is to describe and assess a proposal for the development of a resort and accessory facilities to the resort. The EIS is a disclosure document which provides information on all known or potential effects that the proposed action may have on the environment, and the economic and social welfare of the community. It includes a discussion of the potential impacts of the proposed project, both beneficial and adverse, and proposes measures to either avoid or minimize adverse impacts to the environment.

The proposed action is subject to the provisions of Chapter 343, Hawaii Revised Statutes (HRS), because it requires a General Plan Amendment from the County of Kauai. By letter dated July 12, 1999. The County of Kauai Planning Department notified the Office of Environmental Quality Control (OEQC) that it had determined the project may have a significant effect on the environment and that an EIS was required. Notice of this determination was published in the July 23, 1999 edition of the *Environmental Notice*, commencing a 30-day public review period that ended on August 23, 1999. Chapter 12 contains a listing of agencies, organizations, and individuals consulted during the preparation of the Draft EIS. The chapter also contains reproduction of written comments on the EIS Preparation Notice (EISPN) and the applicant's responses to those comments.

## 1.10 Unavoidable Adverse Effects

The development of the Kapalawai Resort will increase the number of vehicles using the roadway network of the region. Mitigation measures can be employed to reduce impacts associated with turning movements into and out of the project site. However, traffic volume in the region will increase.

Similarly, additional solid waste material will be added to the Kekaha Landfill. The overall percentage of material contributed to the landfill by the proposed resort will be quite small and will not significantly affect the useful life of the landfill.

In addition, the resort will increase energy demands placed on Kauai Electric Company.



# 2

# PROJECT DESCRIPTION

# 2.0 PROJECT DESCRIPTION

## 2.1 Location and Ownership

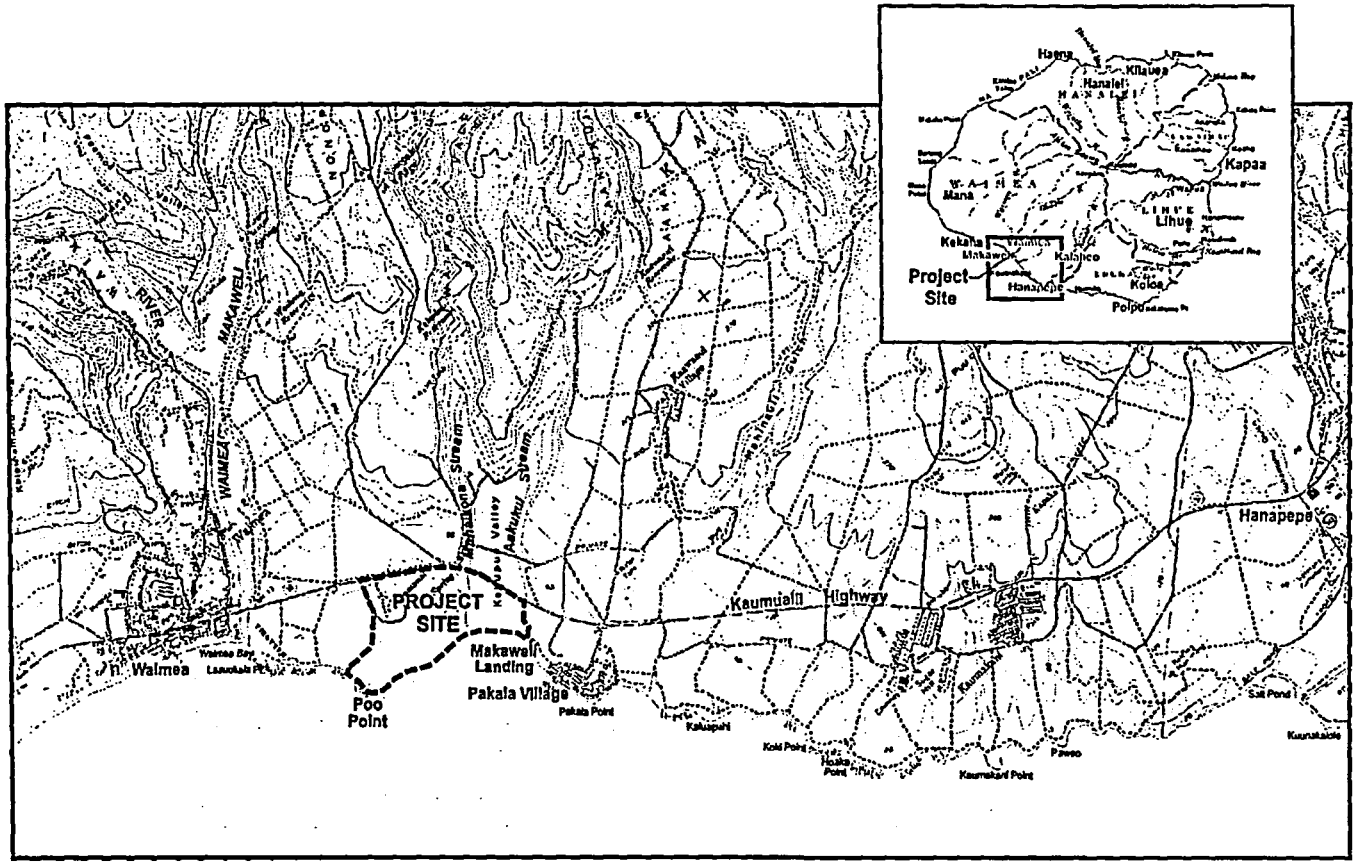
The ~~470~~ 153.696-acre Kapalawai property is located in the *ahupua'a* of Makaweli, in the judicial district of Waimea, on the west side of the island of Kauai, Hawaii. The property is located on a gently sloped piece of land between the shoreline and Kaumualii Highway, the respective southern and northern boundaries of the project site. Aakukui Stream marks the eastern boundary of the property, while agricultural lands owned by Robinson Family Partners and leased to Pioneer Hi-Bred International, Inc., are located to the west. The town of Waimea (population: 1,840) is located about 1/2 mile to the northwest. The town of Hanapepe (population: 1,400) is located about 2 miles to the southeast (Figure 1). The largest town on the West Side of Kauai is Kekaha (population: 3,500, located about 4 miles northwest of the project site.

The economy and community life of the West Side region of Kauai has long been influenced by agriculture, with sugar being the most important crop. Plantation employment has been declining over the years, and the recent closure of the Kekaha Sugar Mill and slippage of sugar prices continue to threaten the economic stability of the region. The Pacific Missile Range Facility at Barking Sands (about nine miles northwest of the project site) is the region's largest employer.

The project site, identified by Tax Map Key (4) 1-7-05:1 (Figure 2), is owned in portion by three entities: (1) Gay & Robinson, Inc.; (2) Robinson Family Partners (RFP); and, Bruce Robinson. Lease of the property is held by Destination Villages Kauai, LLC (DVK), represented by its President, Lewis Geyser.

## 2.2 Existing Uses

The now vacant former residence of the Robinson Family is the primary structure located on the property. Other structures accessory to the main house still on the property include a dwelling (former guest house), a carriage house, and an office building now used by Robinson Family Partners. In addition, eight plantation-era homes are found in the northwest corner of the property, between the entry drive and the Family residence. These homes were constructed for employees of the Family. Currently, four of the plantation-era dwellings are still occupied. These buildings will be retained, and no families will be evicted as a result of the construction of the proposed resort.




Regional Location Map

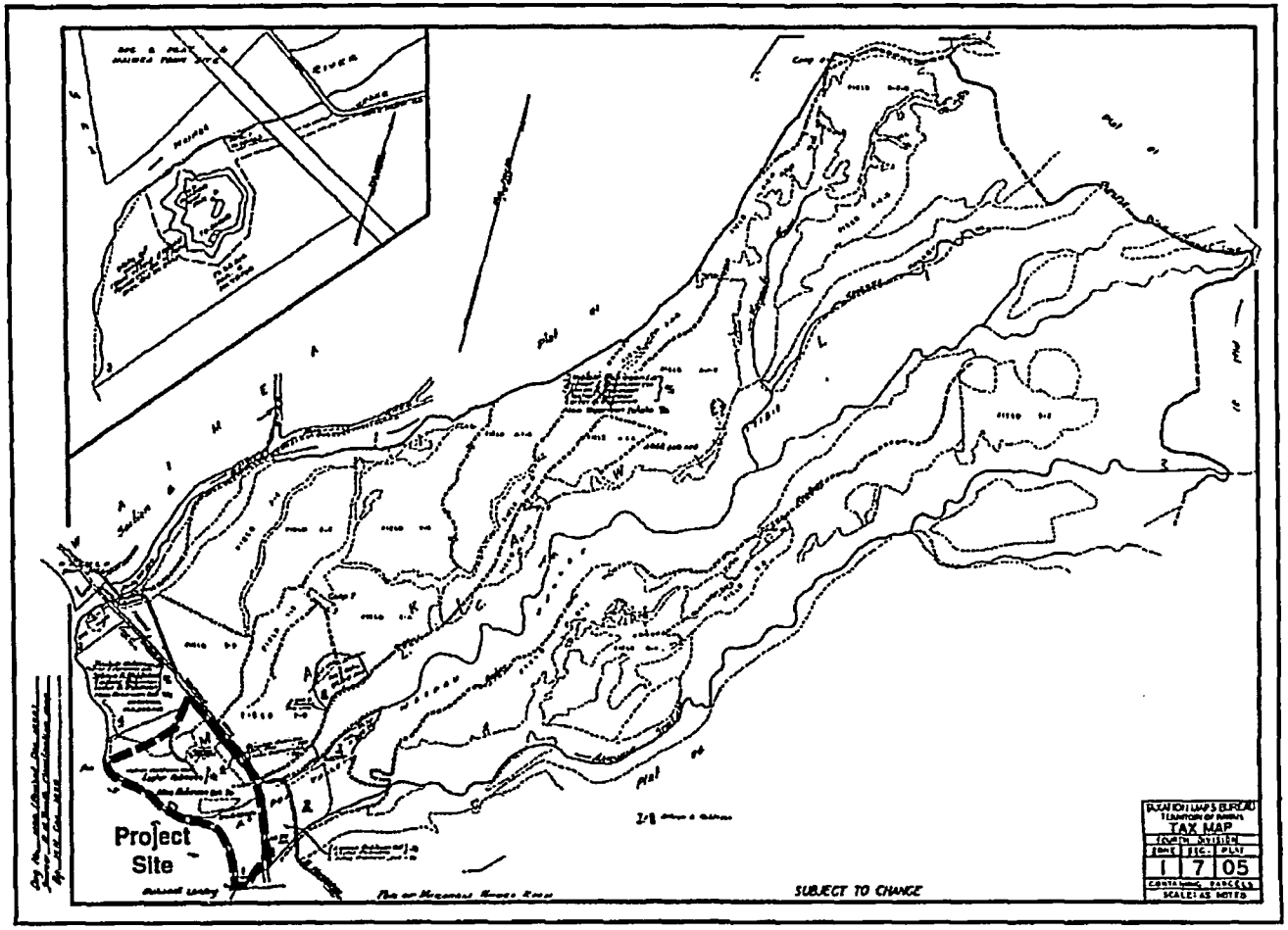
# KAPALAWAI RESORT

Kapalawai, Kauai, Hawaii

Figure 1

Feet
0 1000 2000 4000

Prepared by Helber Hastert & Fee, Planners




Tax Map Key

Figure 2

KAPALAWAI RESORT
Kapalawai, Kauai, Hawaii

Prepared for: Destination Villages Kauai, LLC
Prepared by: • Mason Architects • Helber Hastert & Fee, Planners

Outside the compound of the main house and the accessory structures, the property was, until recently, used for the grazing of bulls.

## 2.3 Project Description

The proposed resort includes 250 visitor units (or cottages) that are dispersed throughout the project site, resulting in an overall density of 1.6 units per acre. Approximately 164 of the units will be free-standing and 86 units will be constructed as 43 duplex units. Average separation distance between units will be about 40 feet. Each of the single-story cottages will be about 400 square feet in size, with a 200 square foot deck. No cooking facilities, air conditioners, phones, or televisions will be provided for the units. A preliminary floor plan and sketch of typical cottages are shown in Figure 3.

A main pedestrian arterial, which will meet Americans with Disabilities Act (ADA) requirements, will connect cottages with adjacent parking areas and activity centers. The walkways will function as the principle means of circulation within the property for resort guests. Vehicular access will be restricted to registration, parking areas, and restaurants.

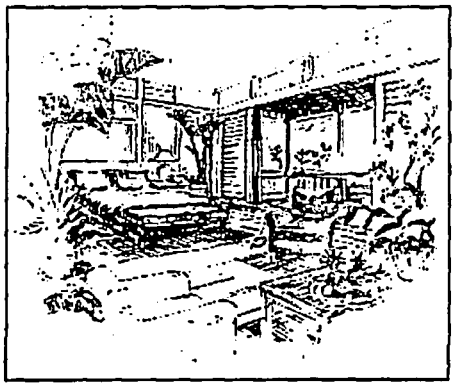
One of the focal points for the proposed resort will be the former Robinson family residence. The building footprint for the residence is approximately 17,000 square feet, and includes an interior courtyard and wrap-around lanais on the exterior of the building and facing the interior courtyard. The original drawings for the residence (completed in 1897) included the ~~following~~ rooms and floor area described in Table 1.

A 1,200 square foot wing was later added to the eastern side of the house and included three bedrooms and one bathroom for a total floor area of about 6,791 square feet.

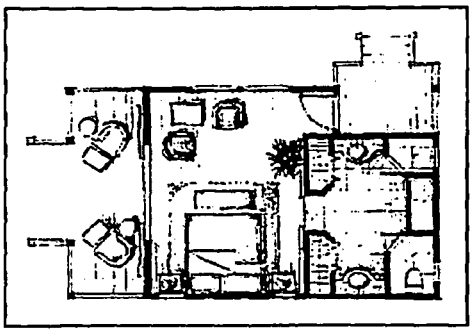
The general plan for the residence is to develop the main house and attached structures as a greeting space and as a museum, administration, and meeting room area. Some renovations, including demolition of interior walls, are proposed on the interior to provide three meeting rooms, a bar, and men's and women's restrooms. Part of a wall that had been moved out to the lanai edge on the east side of the building will be returned to its original location. The library, sitting room, dining room, pantry, china room, and linen room, as well as the original



Another view of a cottage showing relationship between the built environment and generous landscaping.



Interior of typical cottage looking toward ocean.



Floor plan for a typical cottage.



Exterior of typical cottage amongst existing mature trees.

Proposed Visitor Cottage

Figure 3

KAPALAWAI RESORT
Kapalawai, Kauai, Hawaii

Prepared for: Destination Villages Kauai, LLC
Prepared by: • Mason Architects • Helber Hastert & Fee, Planners

**Table 1**
**Original Floor Plan for Robinson Family Dwelling**

| Room | Floor Area (square feet) |
|---|---|
| Kitchen | 224 |
| Pantry (3) | 334 |
| Bakery | 140 |
| Milk Room | 120 |
| Store Room | 130 |
| School Room | 216 |
| Guest Chamber (5) | 858 |
| Linen | 180 |
| China Room | 180 |
| Dining Room | 432 |
| Sitting Room | 648 |
| Library | 270 |
| Sewing Room | 190 |
| Dressing Room (2) | 342 |
| Bedroom (4) | 855 |
| Bathroom (5) | 400 |
| Locker Room | 72 |
| Total (excluding lanais) | 5,591 |

portion of the kitchen building will be used in their current layout as museum spaces, and displays of furniture and other items currently in the house.

It is intended that guests will enter the property via the existing driveway off Kaumualii Highway (which will be for entry purposes only). The driveway extends for about 2,000 feet, and is bordered by low (3-foot) walls on either side. Night-blooming cereus (Hylocereus undatus) and cat's claw climber (Macfadyena unguis-cati) are abundant along the wall and create a memorable drive into the property. Guests will arrive near the current Robinson Family Partners office building, which is covered by a dense canopy of monkey pod trees (Samanea saman). Guests will be greeted personally by resort staff, assisted with registration, and escorted to their cottage.

Amenities provided at the resort will include:

- Two restaurants;
- Snackbar;
- Museum (in the former family residence);
- Bar/Lounge (in the former family residence);
- Three swimming pools;

- Fitness center/beach club;
- Sport courts (tennis, basketball, volleyball, badminton); and
- Amphitheater

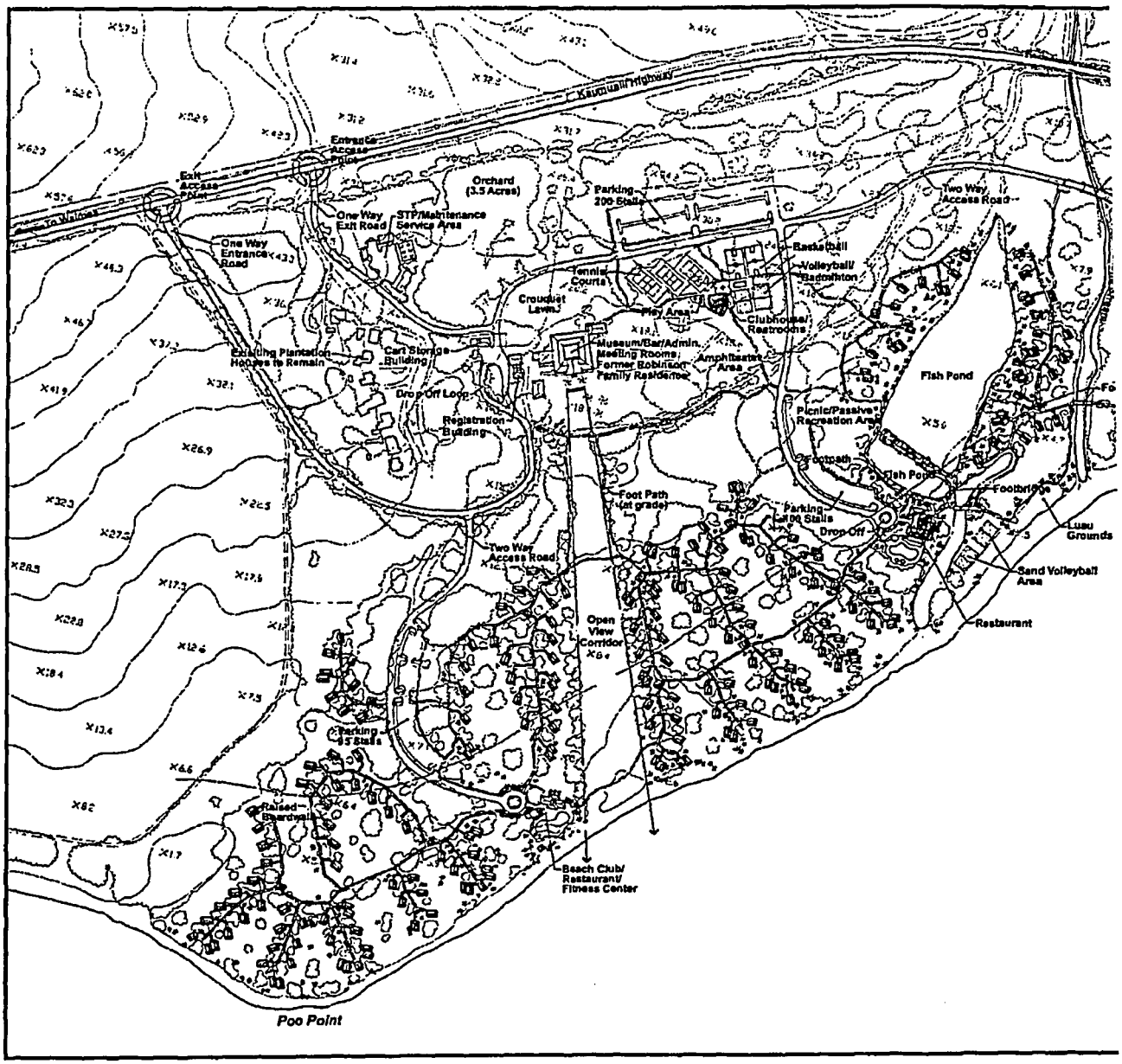
A preliminary site plan for the resort is shown in Figure 4.

A wastewater treatment plant is proposed to handle all wastewater generated by the project, and will be located on the northern portion of the property, between the main house and Kaumualii Highway. The wastewater treatment plant is proposed to be located with the maintenance building. Wastewater will be treated and the reclaimed water will be used for irrigation in the resort (see Chapter 6).

In addition, a second focal point for the project will be the preservation of the 6.5-acre fishpond located in the central portion of the property. Silt and noxious vegetation will be removed from the pond, re-establishing the open water character of the pond, as observed in an aerial photo of the property taken in 1953 (Figure 5).

## 2.4 Cost and Phasing

The estimated construction cost for the Kapalawai Resort is ±$33 million. Once all permits are obtained (projected for January 2001), construction is anticipated to take about 12-15 months. The entire development will be built in one phase.


Kaumualii Highway
Entrance Access Point
Exit Access Point
To Waimea
One Way Exit Road
STP/Maintenance Service Area
Orchard (3.5 Acres)
Parking 200 Stalls
Two Way Access Road
One Way Entrance Road
Basketball
Volleyball/ Badminton
Tennis Courts
Croquet Lawn
Play Area
Clubhouse/ Restrooms
Existing Plantation Houses to Remain
Cart Storage Building
Museum/Bar/Admin. Meeting Rooms; Former Robinson Family Residence
Amphitheater Area
Fish Pond
Drop Off Loop
Registration Building
Picnic/Passive Recreation Area
Footpath
Foot Path (at grade)
Parking 100 Stalls
Drop-Off
Footbridge
Luau Grounds
Sand Volleyball Area
Restaurant
Open View Corridor
Parking 35 Stalls
Raised Boardwalk
Beach Club/ Restaurant/ Fitness Center
Poo Point

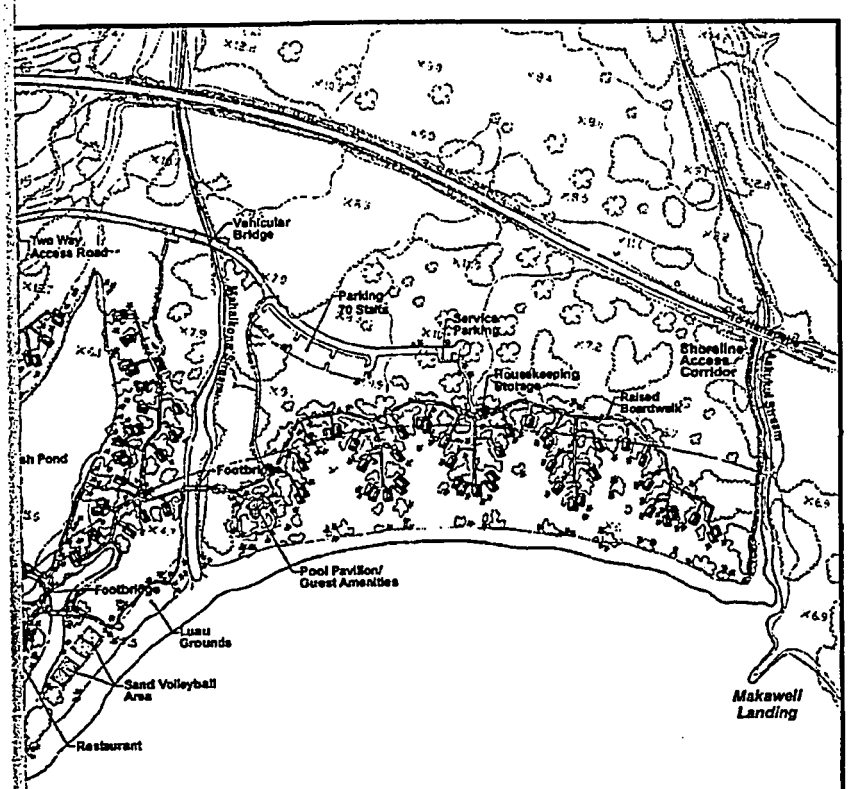



Figure 4
Preliminary Site Plan

# KAPALAWAI RESORT

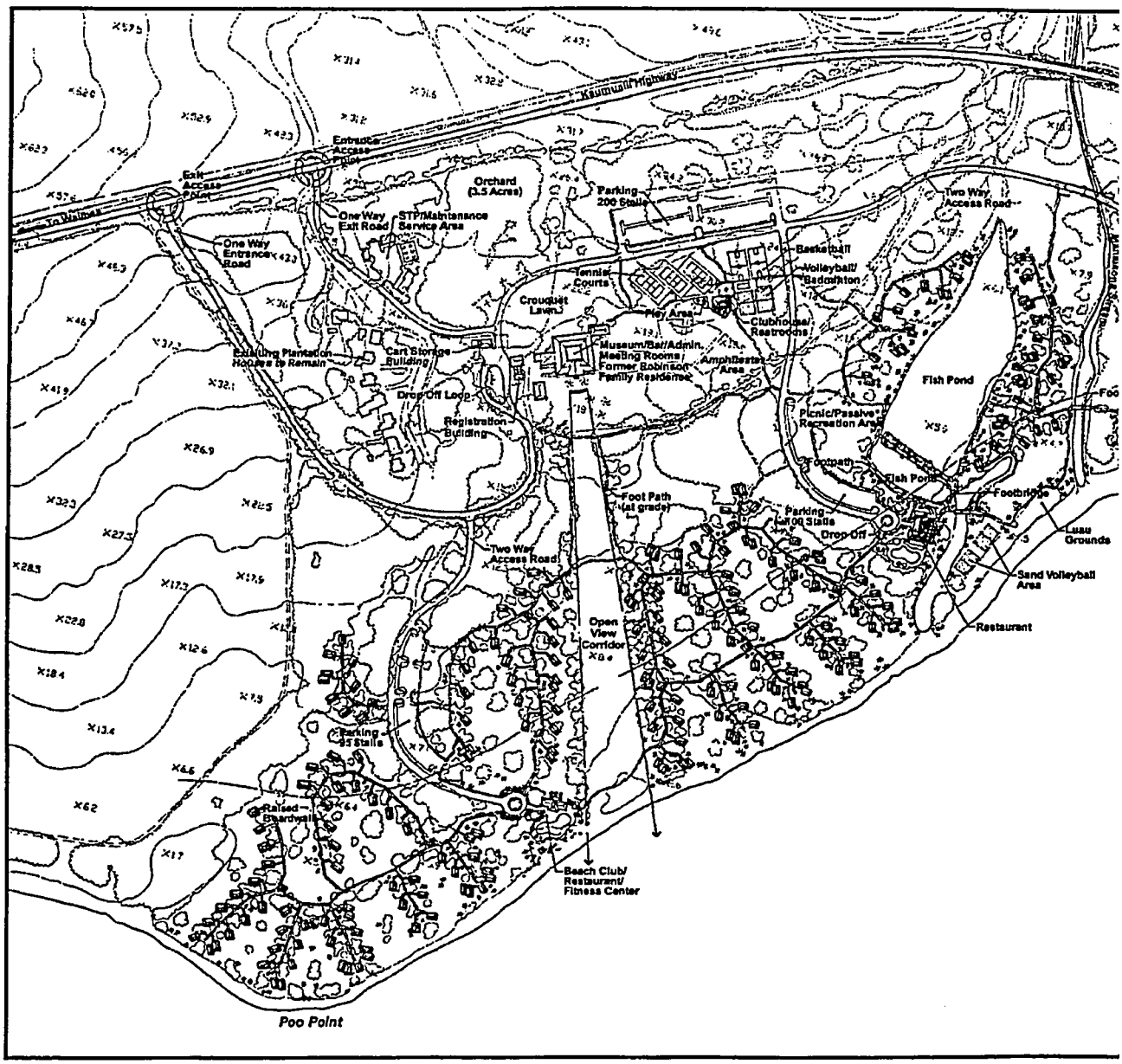
Kapalawai, Kauai, Hawaii

Feet
0 100 200 400 800

Prepared by Helber Hastert & Fee, Planners

# CORRECTION

THE PRECEDING DOCUMENT(S) HAS BEEN REPHOTOGRAPHED TO ASSURE LEGIBILITY
SEE FRAME(S)
IMMEDIATELY FOLLOWING


Kaumualii Highway
To Waimea
Entrance Access Point
Exit Access Point
One Way Exit Road
STP/Maintenance Service Area
Orchard (3.5 Acres)
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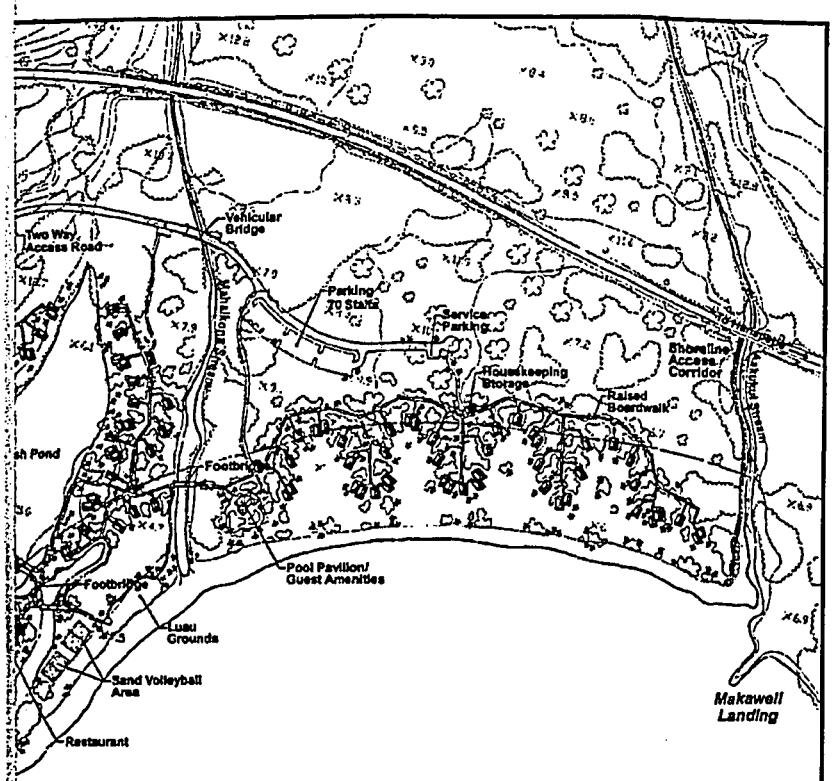



Figure 4
Preliminary Site Plan

# KAPALAWAI RESORT

Kapalawai, Kauai, Hawaii

Feet
0 100 200 400 800

Prepared by Helber Hastert & Fee, Planners




1953 Aerial Photo

Figure 5

KAPALAWAI RESORT
Kapalawai, Kauai, Hawaii

Feet
0 300 600 1200

Prepared by Helber Hastert & Fee, Planners



# 3

# RELATIONSHIP OF THE PROPOSED PROJECT TO EXISTING PUBLIC PLANS, POLICIES AND CONTROLS

# 3.0 RELATIONSHIP OF THE PROPOSED PROJECT TO EXISTING PUBLIC PLANS, POLICIES AND CONTROLS

## 3.1 State of Hawaii

### 3.1.1 Hawaii State Plan

The Hawaii State Plan (Chapter 226, HRS, as amended) establishes a set of guidelines for the statewide planning system, and provides the overall theme, goals, objectives, policies and priority guidelines. The following describes the purpose of the State Plan.

> "...[it] shall serve as a guide for the future long-range development of the State; identify the goals, objectives, policies and priorities for the State; provide a basis for determining priorities and human resources, land, energy, water and other resources; improve coordination of federal, state and county plans, policies, programs, projects and regulatory activities; and to establish a system for plan formulation and program coordination to provide for an integration of all major state and county activities" (Chapter 226-1: *Findings and Purpose, HRS*).

The goals, objectives, policies, and guidelines of the Hawaii State Plan are, on occasion, in conflict with one another. As a result, the proposed project supports some of the goals, while it is inconsistent with others. The following discussion analyzes the project's impacts with respect to relevant State Plan goals, objectives, policies and priority guidelines:

Section 226-6 Objective and policies for the economy–in general.

**Section 226-6(b)(1) Expand Hawaii's national and international marketing, communication, and organizational ties, to increase the State's capacity to adjust to and capitalize upon economic changes and opportunities occurring outside the State.**

**Section 226-6(b)(2) Promote Hawaii as an attractive market for environmentally and socially sound investment activities that benefit Hawaii's people.**

**Section 226-6(b)(3) Seek broader outlets for new or expanded Hawaii business investments.**

**Section 226-6(b)(4) Expand existing markets and penetrate new markets for Hawaii's products and services.**

**Section 226-6(b)(10) Stimulate the development and expansion of economic activities which will benefit areas with substantial or expected economic problems.**

**Discussion:** The proposed resort represents a type of visitor industry product that is unique in Hawaii. The low-density and low-impact project (250 units on ~~170~~ 153.696 acres) emphasizes the historic nature of the project site and will encourage guests to leave the property to experience other cultural and recreational experiences on Kauai in general, and Kauai's West side in particular.

The resort will attract guests who presently comprise a segment of the travel market that is not highly recruited in Hawaii, the eco-tourist. Eco-tourism is a term that can be applied to a wide variety of travelers, including adventure-travel, cultural-travel, agricultural tourism, etc. These travelers are more interested in understanding the intrinsic values that define communities (such as: history, music, art, food, etc.), rather than being pre-occupied solely with the physical attributes of an area. Traditionally, tourism in Hawaii has relied heavily on its natural beauty.

In addition to broadening the market base for visitors to Hawaii, the demographics of this type of tourist show them to be more educated, more affluent, and more environmentally aware.

In addition, the operating philosophy of the developer is to create business opportunities for other entrepreneurs who are interested in providing services to the resort. Frequently, these services are provided by the resort. Allowing local companies to provide these services allows more profits to remain in the local community.

Section 226-11 Objective and Policies for the physical environment--land-based, shoreline, and marine resources.

**Section 226-11(b)(1) Exercise an overall conservation ethic in the use of Hawaii's natural resources.**

**Section 226-11(b)(2) Ensure compatibility between land-based and water based activities and natural resources and ecological systems.**

**Section 226-11(b)(3) Take into account the physical attributes of areas when planning and designing activities and facilities.**

**Section 226-11(b)(4) Manage natural resources and environs to encourage their beneficial and multiple use without generating costly or irreparable environmental damage.**

**Section 226-11(b)(8) Pursue compatible relationships among activities, facilities and natural resources.**

**Discussion:** In addition to a corporate and operational philosophy that is based on resource conservation and recycling, the proposed resort is also dedicated to principles of environmental and ecological protection and enhancement. An existing historic fishpond will be protected and improved. The grounds of the property, which have deteriorated and been neglected for decades, will be managed once again. To the greatest extent possible, the overwhelming majority of the project site will be left in open space and natural landscaping. The emphasis on individual cottages will allow more landscaping to effectively create a natural feel to the project. The restriction of roadways and the development of a pedestrian network will also limit environmental impact and foster pedestrian activities within the property.

Section 226-12 Objective and policies for the physical environment--scenic, natural beauty, and historic resources.

**Section 226-12(b)(1) Promote the preservation and restoration of significant natural and historic resources.**

**Section 226-12(b)(3) Promote the preservation of views and vistas to enhance the visual and aesthetic enjoyment of mountains, ocean, scenic landscapes, and other natural features.**

**Section 226-12(b)(5) Encourage the design of developments and activities that complement the natural beauty of the islands.**

**Discussion:** As discussed above, the preservation and enhancement of an existing historic fishpond on the property is an integral element of the overall project. In addition to the preservation of the fishpond, other historic resources play an important role in the overall character of the project.

The master plan for the resort includes retaining and restoring the former Robinson family residence, renovating its interior and exterior, and using a

significant portion of the building as a museum dedicated to the history of the property and the Robinson Family.

The overall design of the resort will enhance the aesthetic enjoyment of the property and will not interrupt views of the ocean. The entire site is currently shielded from view along Kaumualii Highway by existing vegetation. Thus, due to the low-rise nature of the project, future development of the site will not be visible from the highway.

Section 226-13 Objectives and policies for the physical environment–land, air, and water quality.

**Section 226-13(b)(2) Promote the proper management of Hawaii's land and water resources.**

**Section 226-13(b)(5) Reduce the threat to life and property from erosion, flooding, tsunamis, hurricanes, earthquakes, volcanic eruptions, and other natural or man-induced hazards and disasters.**

**Section 226-13(b)(6) Encourage design and construction practices that enhance the physical qualities of Hawaii's communities.**

**Section 226-13(b)(8) Foster recognition of the importance and value of the land, air, and water resources to Hawaii's people, their cultures**

**Discussion:** The low density and low profile of the project respects the natural aesthetics of the property, the region, and the island. This is evident with the emphasis the project design places on pedestrian experience. The combination of low density and pedestrian experience allows for the retention of large trees. In terms of coastal views, the property is not presently visible from Kaumualii Highway because of dense vegetation fronting the highway.

Environmental sensitivity is a pervasive axiom for the design and operation of the proposed resort. Recycling wastewater, clearing the fishpond and using some of its spring water for irrigation, limiting paved surfaces, and returning to active landscape management and irrigation, are intended to restore sensitive, on-going land stewardship to the property.

The built environment will recognize constraints of the natural environment with adherence to regulations pertaining to flood hazards.

The use of boardwalks and other walkways will enhance the preservation of vegetation on the site, minimizing the trampling of vegetation on pathways, or the construction of impervious surfaces. Similarly, automobiles will be parked after registration, and the main mode of on-site transport by guests will be pedestrian.

Section 226-15 Objectives and policies for facility systems–solid and liquid wastes

**226-15(b)(2) Promote re-use and recycling to reduce solid and liquid wastes and employ a conservation ethic.**

**Discussion:** As discussed in sections above, re-use and recycling are a fundamental corporate philosophy and educational objective of the applicant and will be incorporated into project design and management. Recycling wastewater, composting green waste, and crushing and recycling glass containers are a few of the programs employing a conservation ethic.

Section 226-16 Objective and policies for facility systems–water

**226-16(b)(3) Reclaim and encourage the productive use of runoff water and wastewater discharges.**

**Discussion:** Wastewater from resort facilities will be collected, treated using an on-site wastewater treatment plant, and reclaimed as irrigation water elsewhere on the property.

### 3.1.2 State Functional Plans

The Hawaii State Plan directs the appropriate State agencies to prepare functional plans for their respective program areas, including: agriculture, transportation, conservation lands, housing, tourism, historic preservation, energy, recreation, education, higher education, and health. The State Functional Plans serve as the primary implementing vehicle for the goals, objectives and policies of the Hawaii State Plan.

The plans set forth "...the policies, statewide guidelines, and priorities within a specific field of activity, when such activity or program is proposed, administered, or funded by an agency of the State" (Section 226-2 [10] Hawaii Revised Statute). Each functional plan contains objectives to be achieved and policies to be pursued within the specified areas. "...Such policies shall address major programs and the locations of major facilities" (Section 226-57 (b) HRS).

The State Functional Plans are approved by the Governor. The project generally supports the objectives and policies of the following State Functional Plans:

***State Recreation Functional Plan***

The Department of Land and Natural Resources coordinated the preparation of this functional plan.

*Issue Area: Public Access to the Shoreline and Upland Recreation Areas*

*Objective III-A: Prevent the loss of access to shoreline and upland recreation areas due to new developments.*

*Policy III-A(1): Require land use permit applications to fully address the impact on trails and public access.*

*Issue Area: Resource Conservation and Management*

*Policy IV-B(3): Protect surfing sites.*

**Discussion:** Presently, public access to the shoreline is allowed near Aakukui Stream, on the Hanapepe side of the property. Currently, beachgoers park alongside Kaumualii Highway and walk down a path through a pasture to reach the ocean. The path ends in the vicinity of the former Makaweli Landing. The primary interest for users of this path is reaching the well-known surf break, "Pakalas" (also known as "Infinities") on the south side of the landing. Fishermen and sunbathers also use this path. This access will not be unreasonably interrupted by implementation of the proposed project.

***State Tourism Functional Plan***

Preparation of this functional plan was coordinated by the Department of Business, Economic Development and Tourism.

*Issue Area: Growth*

*Policy I.A.4: Ensure that the growth of the visitor industry assists in the overall State goal of expansion and diversification of the economy.*

*Policy I.A.5: Ensure that the benefits of tourism development are spread evenly throughout the State, to the extent desired by the counties, by making special efforts to distribute growth to the Neighbor Islands.*

*Issue area: Physical Development*

*Policy II.A.2: Enhance tourism product and encourage continued development of a diverse range of tourism products.*

*Policy IIA.3: Facilitate the reasonable distribution of financial responsibilities between government and private parties to fund tourism-related capital improvements and related infrastructure requirements.*

**Discussion:** As discussed relating to the Hawaii State Plan (Section 3.1.1), above, the proposed resort will target a previously under-marketed segment of Hawaii's visitor industry. This will broaden the economic base of the industry. The product itself will be unique because of the emphasis on the historical, social, and environmental aspects of the property. This includes the restoration and improvement of structural elements on-site (former Robinson family residence and the fishpond) and the integration of these elements into the fabric of the resort, including an on-site museum.

In terms of infrastructure requirements, the developer will assume complete responsibility for funding and construction of on- and off-site infrastructural improvements, including potable/nonpotable water and wastewater.

*Issue area: Environmental Resources and Cultural Heritage*

*Objective III.A: Enhancement of respect and regard for the fragile resources which comprise Hawaii's natural and cultural environment. Increased preservation and maintenance efforts.*

*Policy III.A.2: Assist in preserving, perpetuating, and interpreting cultural, historic and archaeological resources.*

**Discussion:** A fundamental premise for the development of the resort is the preservation of important historic resources and their integration into the overall plan for Kapalawai. The former Robinson family house, its accessory buildings, and the fishpond form the basic core of the project. Architectural themes, site planning, and visitor experience will all be enhanced by the preservation of these important historic resources, including the use of a significant portion of the house as a museum.

### *State Agriculture Functional Plan*

Preparation of this functional plan was coordinated by the Department of Agriculture.

*Issue area: Land and Water*

*Policy H(1): Conserve and protect important agricultural lands in accordance with the Hawaii State Constitution*

**Discussion:** Language in the State Constitution relative to agricultural lands, directs the State to "conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable kinds."

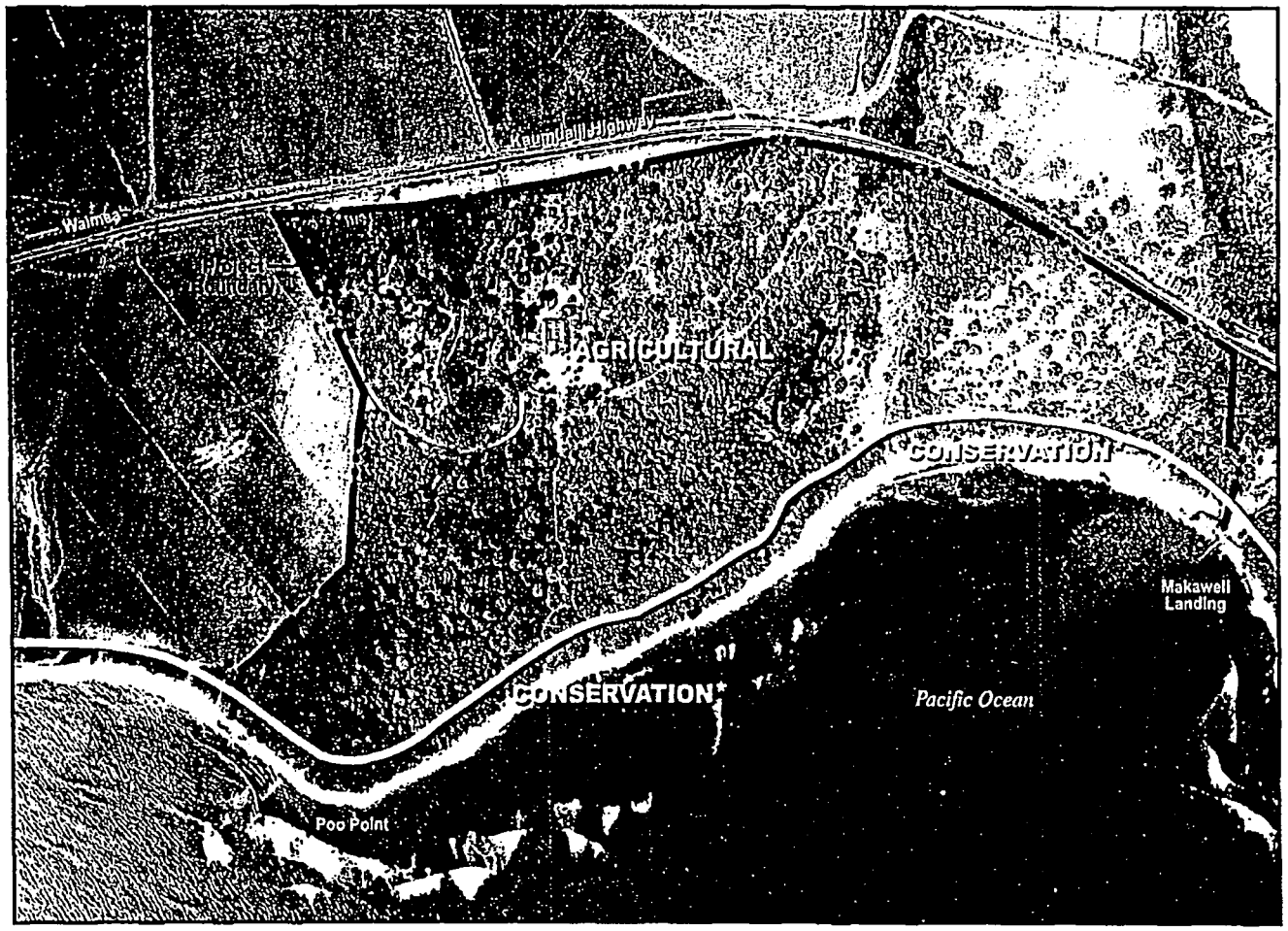
The constitution makes it clear that important agricultural lands shall not be reclassified without meeting appropriate standards (established by the State Land Use Commission) and a two-thirds vote of the Commission.

As discussed in Section 4.4, the majority of the property is not highly valued for its agricultural potential, and has never been used for commercial agricultural production. It has mainly been used as pasturage for livestock, and there is an ample supply of more highly suitable land elsewhere in the region.

The conversion of this property to a low-density resort will not compromise the State's ability to ensure the overall health of Hawaii's agricultural sector. The property has served as a primary residence for the Robinson family beginning in 1897.

### 3.1.3 State Land Use Law

All lands in the State of Hawai'i have been classified in one of four land use districts by the State Land Use Commission, pursuant to Chapter 205, Hawaii Revised Statutes (HRS). The four land use districts are: (1) Conservation; (2) Agriculture; (3) Urban; and (4) Rural. The area comprising the project site lies mostly within the State Agricultural Land Use District, with a narrow strip of land mauka of the shoreline falling within the State Conservation Land Use District. (Figure 6). Resort uses are not permitted in either the Agricultural or Conservation Districts. It is the intent of the applicant to seek a State Land Use District Boundary amendment to "urban" for that portion of the property within the State Agricultural District (153.696 acres).




State Land Use Designations

KAPALAWAI RESORT

Kapalawai, Kauai, Hawaii

* Boundary between conservation and Agricultural Districts is set at an average of 100 feet mauka of certified shoreline, per boundary interpretation of 3-22-2000.

Figure 6

Feet

0 300 600 1200

Prepared by Helber Hastert & Fee, Planners

### 3.1.4 Coastal Zone Management

In an effort by the State of Hawaii to preserve and protect the natural resources of the coastal zone, special controls on development along the shoreline have been implemented, as contained in Chapter 205A, Hawaii Revised Statutes, (HRS), as amended (hereafter referred to as Chapter 205A). This law defines the Coastal Zone Management Area to be all areas of the State of Hawaii, except forest reserve areas. As such, the project site lies within the Coastal Zone. In addition, Chapter 205A contains the general objectives and policies upon which all counties within the State of Hawaii, (including the County of Kauai), have structured more specific legislation which has created Special Management Areas (SMAs) for each county (the specific provisions of the county Special Management Area are discussed in Section 3.2.5). The requirements of Chapter 205A as related to the proposed project, are discussed below.

***Recreational Resources***

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

*Policies:*

1 *Protect coastal resources uniquely suited for recreational opportunities that cannot be provided in other areas.*

2. *Require replacement of coastal resources having significant recreational value, including but not limited to surfing sites, fishponds, and sand beaches when such resources will be unavoidably damaged by development; or requiring reasonable monetary compensation to the state for recreation when replacement is not feasible or desirable.*

3. *Provide and manage adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value.*

4. *Provide an adequate supply of shoreline parks and other recreational facilities suitable for public recreation.*

5. *Ensure public recreational use of county, state, and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources.*

6. *Adopt water quality standards and regulate point and non-point sources of pollution to protect, and where feasible, restore the recreational value of coastal waters.*

7. *Develop new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, artificial reefs for surfing and fishing.*

8. *Encourage reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, county planning commissions, and credit such dedication against the requirements of park dedication rules and regulations.*

**Discussion:** The shoreline fronting the project site is used primarily by fishermen and strollers. There is also a popular surfing break beyond the southern boundary of the property, although entry into the water to paddle to this break occurs further down the beach. Access for fishermen, surfers, or others who wish to reach the beach is readily available from off Kaumualii Highway down a path paralleling Aakukui Stream. It takes less than 5 minutes to walk to the shoreline from Kaumualii Highway. Access to the shoreline will not be interrupted by the proposed project. In addition, public access to the shoreline will also be encouraged and promoted with the provision of public spaces in on-site parking areas.

***Historic Resources***

*Objective: Protect, preserve, and, where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.*

*Policies:*

1. *Identify and analyze significant archaeological resources.*

2. *Maximize information retention through preservation of remains and artifacts or salvage operations.*

3. *Support state goals for protection, restoration, interpretation, and display of historic resources.*

**Discussion:** An archaeological inventory survey was conducted for the project site by Cultural Surveys Hawaii. The inventory survey identified five sites, including: the fishpond; a Portugese oven; the former Robinson family house complex; a series of rock walls and a terrace; and a rock platform. Each of these sites will be preserved. While the entire residence will be renovated, a portion of the building will be dedicated to the creation of a museum, documenting the history and lifestyle of the Robinson family, who comprise such an important part of the history of Kauai. In addition, the fishpond will be cleaned of silt and vegetation in an attempt to restore its former condition. The Portugese oven will also be preserved in place.

***Scenic and Open Space Resources***

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

*Policies:*

1. *Identify valued scenic resources in the coastal zone management area.*

2. *Ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline.*

3. *Preserve, maintain, and where desirable, improve and restore shoreline open space and scenic resources.*

4. *Encourage those developments which are not coastal dependent to locate in inland areas.*

**Discussion:** Views of the interior of the project site are obstructed by dense trees and vegetation along the makai side of Kaumualii Highway. There are no views of the ocean along the entire length of the project site fronting the highway. Buildings on the project site would also be obstructed from view while travelling on the highway due to existing vegetation.

Although the proposed use is not coastal dependent, many other successful resorts on Kauai, and throughout the State are typically located on ocean front parcels.

### *Coastal Ecosystems*

*Objective: Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.*

*Policies:*

1. *Improve the technical basis for natural resource management.*

2. *Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance.*

3. *Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs.*

4. *Promote water quantity and quality planning and management practices which reflect the tolerance of fresh water and marine ecosystems and prohibit land and water uses which violate state water quality standards.*

**Discussion:** Planning for the resort at Kapalawai has included consideration of impacts to aquatic habitats on-site and marine habitats off-site. A primary goal for the property is to improve the physical condition of the fishpond by removing plants and silt which are threatening to completely fill the fishpond. In addition to improving the water quality of the fishpond, clearing vegetation and silt will also create desirable habitat for endangered waterbirds. In addition, maintenance of the Mahaikona and Aakukui streams will likewise improve the open water habitats of these watercourses and increase their capacities to handle stormwater runoff.

Design of on-site drainage facilities is based on minimizing additional sediment load to nearshore receiving waters. These facilities include the grass-lined channel to be developed within an existing man-made drainage ditch. The new channel will end near the ocean emptying into a detention area that will settle sediments prior to overwash during large storm events.

### *Economic Uses*

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

*Policies:*

1. *Concentrate coastal dependent development in appropriate areas.*

2. *Ensure that coastal dependent development such as harbors and ports, and coastal related development such as visitor industry facilities, and energy generating facilities are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area.*

3. *Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated areas when:*
   - *use of presently designated locations is not feasible*
   - *adverse environmental effects are minimized*
   - *the development is important to the State's economy*

**Discussion:** Generally speaking, the proposed resort is not coastal dependent, and the objective and policies in this area are not applicable to this type of development.

***Coastal Hazards***

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

*Policies:*

1. *Develop and communicate adequate information on storm wave, tsunami, flood, erosion, and subsidence, and point and non-point source pollution hazards.*

2. *Control development in areas subject to storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, and point and non-point source pollution hazards.*

3. *Ensure that developments comply with requirements of the Federal Flood Insurance Program.*

*Prevent coastal flooding from inland projects.*

*5. Develop a coastal point and non-point source pollution control program.*

**Discussion:** Flood Insurance Rate Maps (FIRM) show that portions of the project site are subject to inundation, in "AE" zones (see Section 4.8). All affected structures will be elevated above the base flood height.

***Managing Development***

*Objective: Improve the development review process, communication, and public participation in the management of coastal resources and hazards.*

*Policies:*

*1. Use, implement and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development.*

*2. Facilitate timely processing of application for development permits and resolve overlapping or conflicting permit requirements.*

*3. Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life-cycle and in terms understandable to the public to facilitate public participation in the planning and review process.*

**Discussion:** The application for a Special Management Area Use Permit (SMP), the preparation of this EIS, including technical appendices, and the processing of the permit request, including public hearings, is consistent with the objective and policies.

***Public Participation***

*Objective: Stimulate public awareness, education, and participation in coastal management.*

*Policies:*

*1. Maintain a public advisory body to identify coastal management problems and to provide policy advice and assistance to the coastal zone management program.*

*2. Disseminate information on coastal management issues, by means of educational materials, published reports, staff contact, and public*

*workshops for persons and organizations concerned with coastal-related issues, developments, and government activities.*

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

**Discussion:** The objective and policies are geared primarily for agencies with jurisdiction for enforcing coastal zone management rules and regulations.

***Beach Protection***

*Objective: Protect beaches for public use and recreation.*

*Policies:*

1. *Locate new structures inland from the shoreline setback to conserve open space and to minimize loss of improvements due to erosion.*

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

3. *Minimize the construction of public erosion-protection structures seaward of the shoreline.*

**Discussion:** All structures at the resort will be located a minimum of 100 feet mauka of the certified shoreline. The shoreline fronting the project site appears stable and is protected with healthy vegetation. Thus, no erosion-protection structures are proposed as part of the development program.

***Marine Resources***

*Objective: Implement the State's ocean resources management plan.*

Policies:

1. *Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources.*

2. *Assure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial.*

3. *Coordinate the management of marine and coastal resources and activities management to improve effectiveness and efficiency.*

4. *Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone.*

5. *Promote research, study, and understanding of ocean processes, marine life, and other ocean resources in order to acquire and inventory information necessary to understand how ocean development activities relate to and impact upon ocean and coastal resources.*

6. *Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.*

**Discussion:** The most basic aspects of the operating philosophy for the resort are rooted in environmental sensitivity and stewardship of resources. This includes recycling, education, protection of endangered and threatened species, and improvement of wildlife habitats.

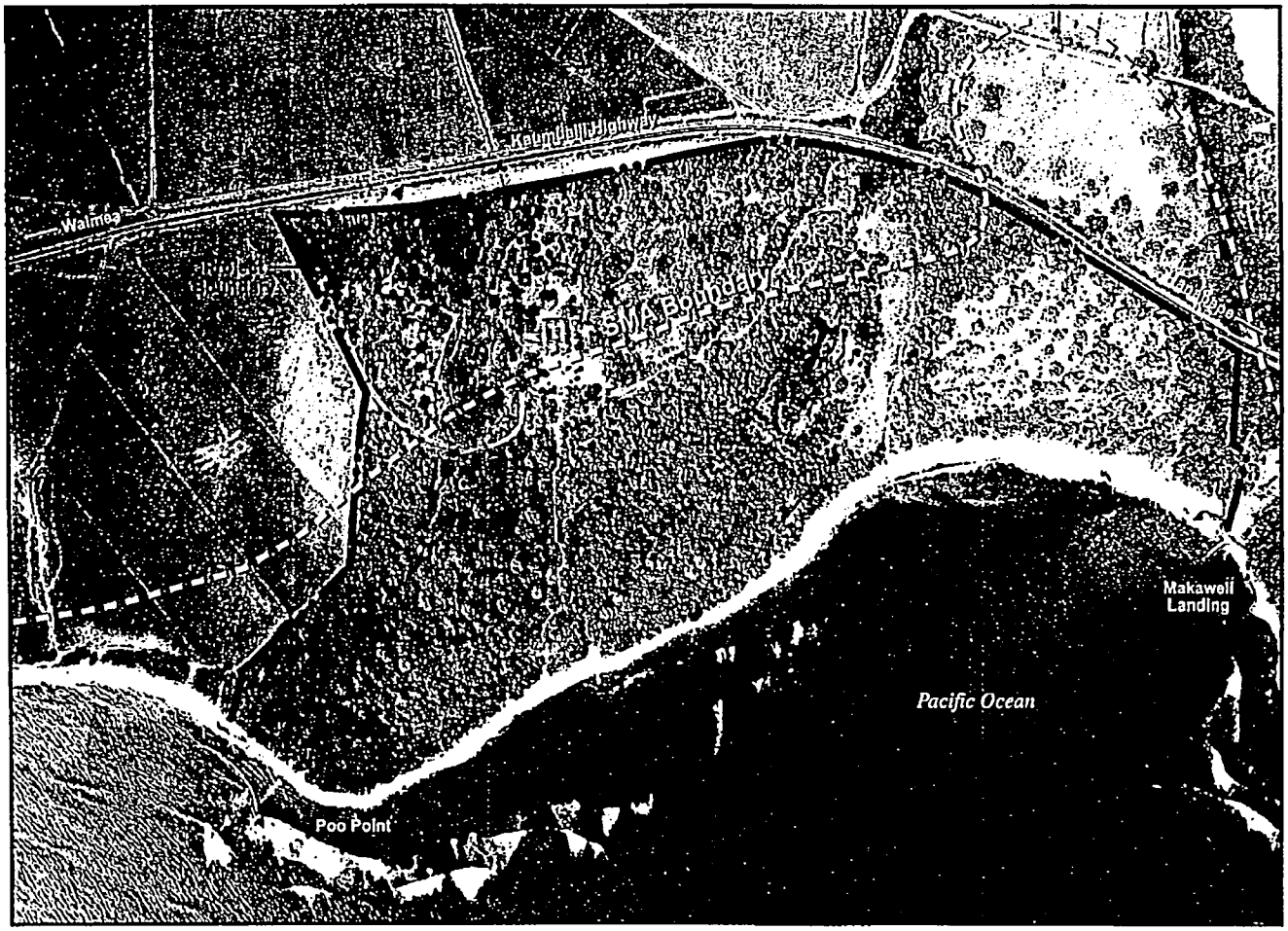
## 3.2 County of Kauai

### 3.2.1 Special Management Area

The County of Kauai, similar to other counties in Hawaii, has adopted: (1) boundaries which identify the Special Management Area (SMA); and (2) rules and regulations which are consistent with Chapter 205A, HRS that control development within the SMA. A portion of the project site lies within the SMA (Figure 7). The SMA Rules and Regulations of the County of Kauai include guidelines that are used by the County Planning Commission for the review of developments proposed within the SMA. These review guidelines, and the relationship of the proposed resort to them, are discussed below.

*All development in the special management area shall be subject to reasonable terms and conditions set by the Authority to ensure that:*

- *Adequate access, by dedication or other means, to publicly owned or used beaches, recreation areas and natural reserves is provided to the extent consistent with sound conservation principles.*
- *Adequate and properly located public recreation areas and wildlife preserves are reserved.*




Special Management Area Use Boundary

KAPALAWAI RESORT
Kapalawai, Kauai, Hawaii

Figure 7

Feet
0 300 600 1200
Prepared by Helber Hastert & Fee, Planners

- *Provisions are made for solid and liquid waste treatment, disposition, and management which will minimize adverse effects upon special management area resources.*
- *Alterations to existing land forms and vegetation except crops, and construction of structures shall cause minimum adverse effect to water resources and scenic and recreational amenities and minimum danger of floods, landslides, erosion, siltation or failure in the event of earthquake.*

**Discussion:** Existing means of pedestrian access to the shoreline near Aakukui stream will continue. Additional shoreline access will be provided with designated public parking spaces in the main parking areas of the resort.

Wastewater treatment will be provided by an on-site plant. Reclaimed water will then be recycled on-site as irrigation water. There will be no effluent discharge to the ocean or on-site streams. In regard to solid waste, the resort will implement an aggressive recycling program, including: glass; plastic; paper; and, green waste. The balance of new-recyclable solid waste will be hauled to the Kekaha Landfill.

Green waste will be composted and recycled. Glass bottles and aluminum cans will be collected and recycled. Paper products and cardboard will also be collected and recycled.

In regard to liquid waste, wastewater will be treated by an on-site ultraviolet disinfecting wastewater treatment facility. The effluent from this wastewater treatment plant will be used for irrigation on the property.

All affected structures will be elevated above base flood elevations.

*No development shall be approved unless the Authority has first found that:*

- *The development will not have any substantial, adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health and safety, or compelling public interest. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and the elimination of planning options.*
- *The development is consistent with the objectives and policies contained in Chapter 205A,HRS.*
- *The development is consistent with the County general plan, the zoning, subdivision and other applicable ordinances.*

**Discussion:** The overall environmental and ecological effects of the development will be beneficial. Positive impacts resulting from the project will include protection and improvement of the wetland area and the initiation of a program to revegetate the site with native plants.

As discussed in Section 3.1.4, the proposed project is consistent with the policies and objectives contained in Section 205-A, HRS. Further as shown in Sections 3.2.2, 3.2.3, and 3.2.4, below, the proposed project in consistent with the county general plan, development plans, and zoning.

*The Authority shall seek to minimize, where reasonable:*

- *Dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough or lagoon.*
- *Any development which would reduce the size of any beach or other area usable for public recreation.*
- *Any development which would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the special management area and the mean high tide line where there is no beach.*
- *Any development which would substantially interfere with or detract from the line of sight toward the sea from the State Highway nearest the coast, or from existing public views to and along the shoreline.*
- *Any development which would adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, or potential or existing agricultural uses of land.*

**Discussion:** The proposed project will not alter any water bodies, nor will it reduce the size of any beach or area usable for public recreation. As discussed above, access to and along the shoreline will be continued and improved.

The line of sight from Kaumualii Highway to the sea will not be impacted by the proposed resort. The ocean is not now visible from the highway fronting the project site.

Groundwater quality, and the marine environment, will not be impacted by the proposed resort. No effluent will be discharged to the ocean, and only tertiary treated wastewater will be used for irrigation.

### 3.2.2 General Plan

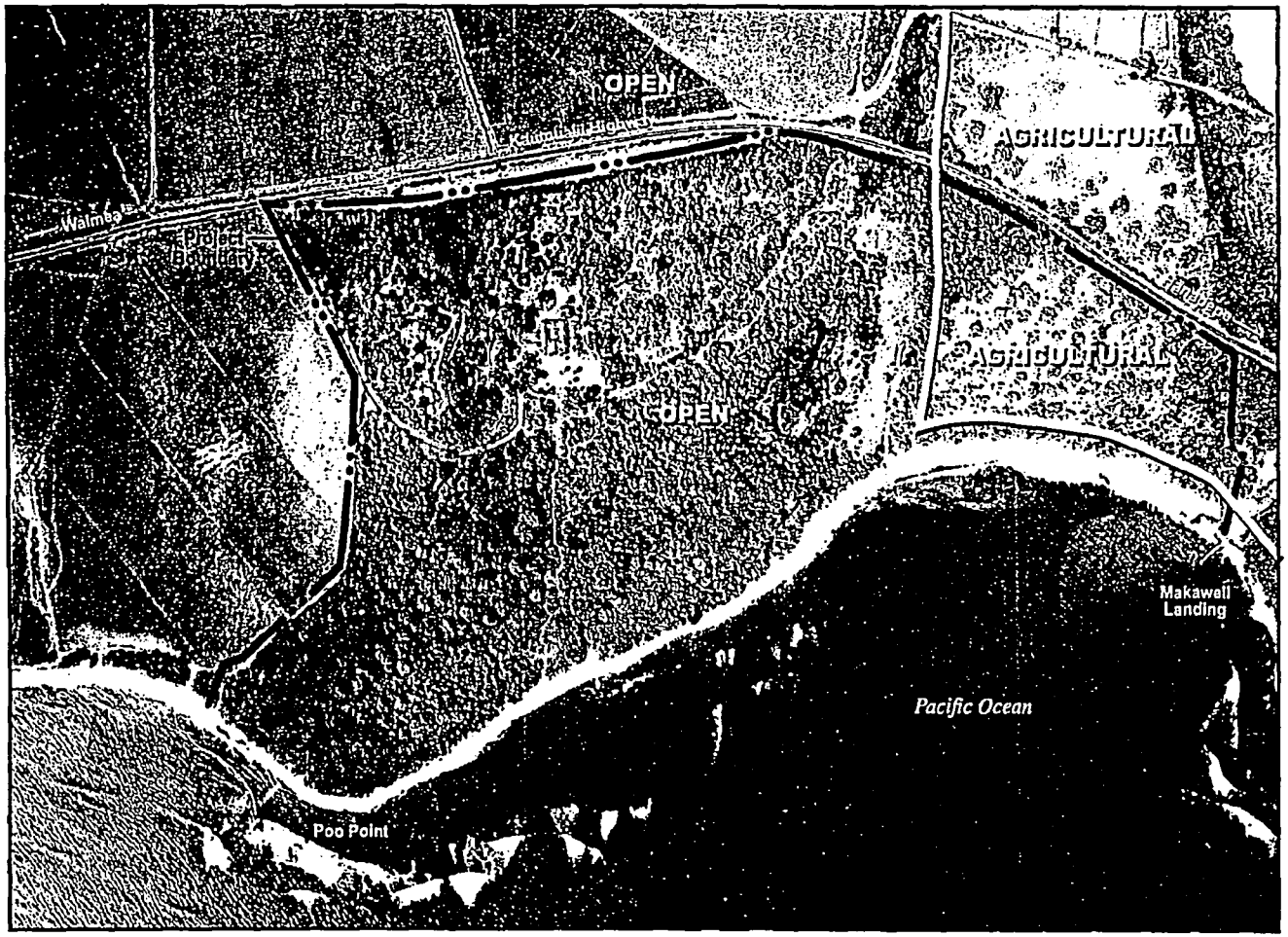
The General Plan for the County of Kauai is contained in Chapter 7 of the Kauai County Code. First adopted in 1971, it was updated in 1984, and is currently in the process of being updated again. The General Plan is the primary policy that governs long-range and comprehensive development, use and allocation of land and water resources within the County of Kauai. The General Plan also functions as enabling legislation that establishes the framework, parameters, constraints, and guidelines for all other legal and administrative instruments related to the use, development and allocation of land use and water resources, including:

- Development Plans;
- Comprehensive Zoning Ordinance;
- Subdivision Ordinance;
- Infrastructure Master Plans; and
- Capital Improvement Programs.

The General Plan establishes geographic areas of the County which are intended to be used or developed for various general purposes. The Land Use Element of the General Plan includes maps covering the entire County of Kauai which indicates the general boundaries of land and water areas according to the following general classifications: Agriculture; Open; Rural Residential; Urban Residential; Urban Resort; Urban Mixed Use; Public Facilities. The specific uses or development within these general designations are organized by the Development Plans and regulated by the Comprehensive Zoning Ordinance (CZO) and other instruments. The current General Plan designations for the project site are Open and Agriculture (Figure 8).

### 3.2.3 Waimea-Kekaha Regional Development Plan

Chapter 10 of the Kauai County Code contains provisions which regulate development in specified districts of the County of Kauai that are determined to be of particular significance because of unique physical and social characteristics. These provisions are intended to ensure that development is compatible with the environmental, social, and cultural needs of the particular special district. Six (6) development plan areas have been established in Chapter 10, including Waimea-Kekaha.




County of Kauai General Plan

KAPALAWAI RESORT
Kapalawai, Kauai, Hawaii

Figure 8

Feet
0 300 600 1200

Prepared by Helber Hastert & Fee, Planners

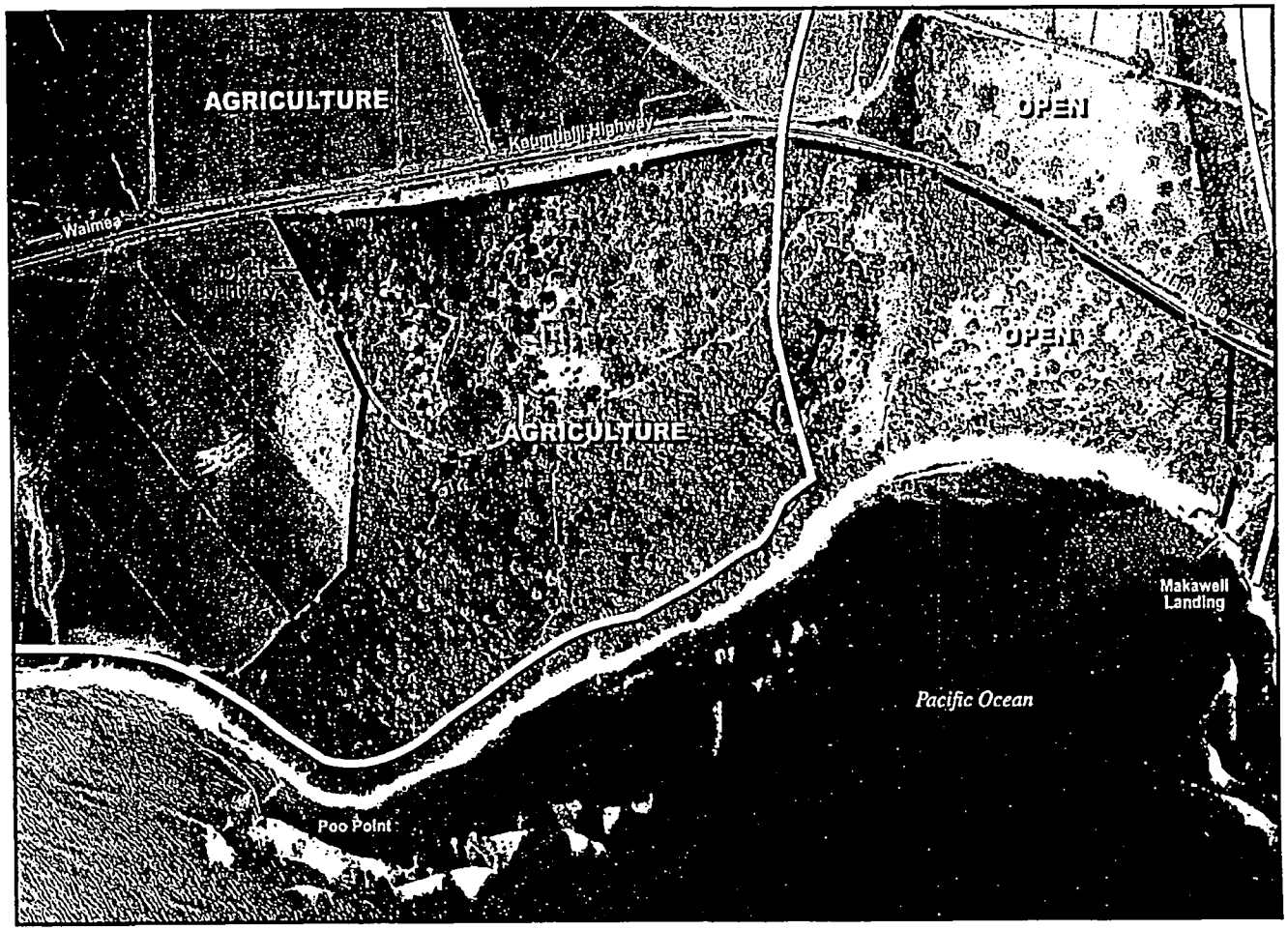
The basis of the Waimea-Kekaha Regional Development Plan is a report prepared for the County of Kauai in 1977 (*Waimea-Kekaha Regional Development Plan*). The final draft of this report was adopted as the administrative guidelines that serve as the basis of the Regional Development Plan. The regulations of the CZO and the Subdivision Ordinance apply within the Waimea-Kekaha Region, except to the extent that such regulations or procedures are changed or modified by the provisions of the Regional Development Plan.

The land use map of the *Waimea-Kekaha Regional Development Plan* was intended to establish a 10 to 15 year policy on moderate growth and development of the region. Land use designations for the project site were identified as Agriculture and Open Space.
The goals articulated in the regional plan report were as follows:

- *To have limited growth while not dramatically changing the existing lifestyle in the region.*
- *To create and maintain a role for each town and sub-area in the region.*
- *To maintain growth in consonance with the unique landscape and environmental character of the region.*
- *To insure that all physical growth is consistent with the overall ecology of the area.*
- *To promote and protect the health, safety and welfare of all residents.*
- *To sustain a healthy economy and to create opportunities for a greater diversity of employment.*
- *To create, develop and sustain an economy and population that will require and encourage the educated youth to live in the area.*
- *To provide a desirable house or living quarters for all residents in all income levels.*
- *To create opportunities for a greater fulfillment of life through the development of a broad spectrum of educational and cultural pursuits.*
- *To provide for a maximum variety of outdoor recreational activities.*
- *To recognize those aspects of the region and its people which are historically significant, and to preserve and promote them as a continuing expression of the region's physical and social structure.*
- *To promote the improvement and expansion of the region's economy, by recognizing and carefully utilizing land and water resources.*
- *To provide workable planning tools to meet the changing needs of the community.*

### 3.2.4 Comprehensive Zoning Ordinance

The CZO for the County of Kauai (Chapter 8 of the Kauai County Code), and accompanying maps, define the allowable uses of land within Kauai County. The CZO describes the various zoning districts throughout Kauai County, the uses allowed within each zoning district, and the applicable development standards for each district. The project site is currently a mix of "Open," and "Agriculture" zoning (Figure 9). Resort uses are not permitted in either the Open or Agriculture zoning districts.




County of Kauai Zoning Map

KAPALAWAI RESORT

Kapalawai, Kauai, Hawaii

Figure 9

Feet

0 300 600 1200

Prepared by Helber Hastert & Fee, Planners



# 4

## ASSESSMENT OF EXISTING CONDITIONS, PROBABLE IMPACTS AND MITIGATION: PHYSICAL ENVIRONMENT

# 4.0 ASSESSMENT OF EXISTING CONDITIONS, PROBABLE IMPACTS AND MITIGATION: PHYSICAL ENVIRONMENT

## 4.1 Climate

Existing Conditions

Temperatures on the coastal plain of West Kauai are generally mild throughout the year, varying from a mean monthly temperature of 70°F in winter to 78°F in summer. Located on the leeward side of Kauai, Kapalawai is a generally dry area that receives the least amount of rainfall on the island. The annual average rainfall at Waimea is about 21 inches (County of Kauai, 1977).

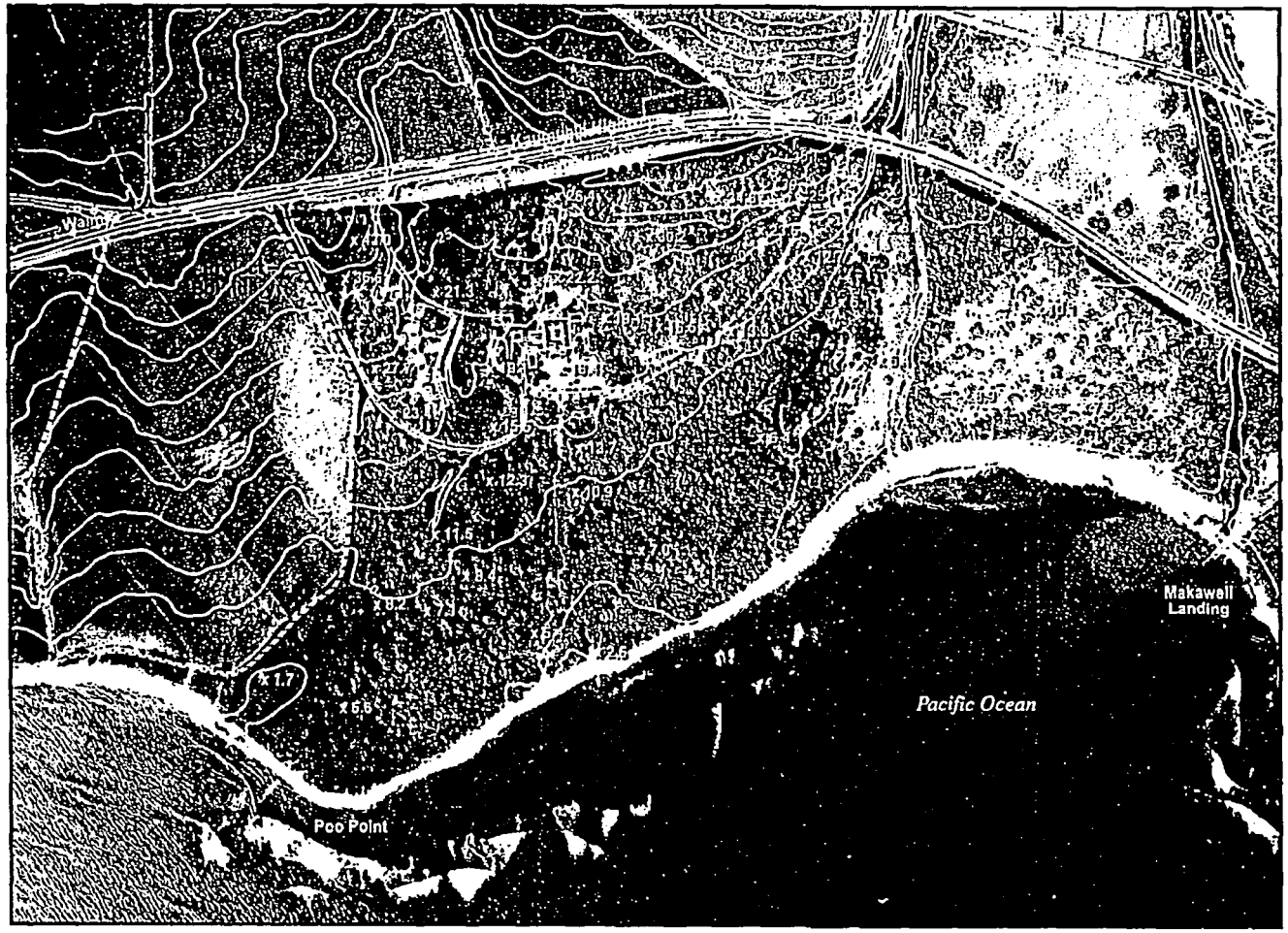
Trade winds reach the area by several paths; down from the mountains or around Mt. Waialeale through Hanapepe, or from around the Na Pali Coast that then travel inland as they reach the coastal plain. Diurnal wind patterns occur during trades weather, bringing sea breezes which arrive during the afternoon to cool the warm air arriving during the day over the coastal area. Cool air comes from the mountains during the night. Strong winds also come from the south during the winter, when the islands are struck by cyclonic storms, otherwise known as "Kona" storms (County of Kauai, 1977).

Since 1960, meteorological data collected by satellites have revealed that storm systems occur more frequently in Hawaiian waters than was previously thought. The Hawaiian Islands are small targets and landfalls are rare. Nevertheless, the tremendous damage caused by Iwa (1982) and Iniki (1992) on Kauai has highlighted the vulnerability of Hawaii to hurricanes. From 1961 to 1995 a total of 44 depressions, 68 tropical storms, and 42 hurricanes have either entered, or formed in, the central north Pacific. Hurricane strength storms typically develop in late summer or fall, when ocean surface temperatures are at a maximum, leading to increased atmospheric instability (University of Hawaii at Hilo, 1998).

## 4.2 Topography

Existing Conditions

The project site is characterized by a gentle slope, from Kaumualii Highway toward the ocean. Elevations range from about 44 feet above mean sea level (AMSL) in the center of the property at Kaumualii Highway, to about 5 feet AMSL in the southern makai corner of the property (Figure 10). The area between the




Topographic Map

KAPALAWAI RESORT
Kapalawai, Kauai, Hawaii

Figure 10

Feet
0 300 600 1200

Prepared by Helber Hastert & Fee, Planners

Mahaikona and the Aakukui Streams is generally flat, with elevations averaging about 7-8 feet AMSL. On the northern side of Mahaikona Stream, slope runs generally from the northeast to the southwest. Slopes from the highway to the ocean are approximately four percent, and approximately one percent at the shoreline.

Probable Impacts

The overall development program will not affect a large portion of the project site. The cottages will be raised above grade (to comply with flood hazard requirements). Therefore, site alteration for these facilities will be minimal. The other major structural additions to the project site will be the two restaurants, the snack bar, the tennis clubhouse, sport courts, and roads and parking areas. With the exception of the tennis clubhouse, all other structures will be elevated to comply with flood hazard regulations. This method of construction (post and beam) involves less ground disturbance, and, therefore, less alteration of topography.

Roadways and parking lots will change the surface characteristics of about seven acres of the property (about 4 percent of the entire site) from pervious to impervious. Although surface characteristics will change, the general topographic features of the property will not change, primarily because slopes are so small (1-4 percent).

The most significant change to the topography of project involves the expansion of an existing drainage course on the Waimea side of the property.

This drainage course is a manmade ditch which stretches from the sugar fields above Kaumualii Highway, under the highway and then makai on the project site whereupon it empties into the project site. The ditch primarily conveys overflow irrigation water and irrigation pump discharge.

The proposed drainage plan (See Section 6.4) requires that the existing drainage ditch be improved as a six-foot deep trapezoidal grass channel, with a bottom width of 30 feet and an overall top width of 54 feet, along a length of about 2,300 feet. In general, the overall topography of the property will not be changed, and existing drainage courses will continue to be utilized. As a result, there will be no significant impacts to topography.

## 4.3 Hydrogeology

Existing Conditions

The project area lies on a wedge of coastal sediments that are comprised of alluvium on the inland side and grade into beach sands on the coastal side. On the mauka side of Kaumualii Highway, most of the land is covered by the island's later stage Koloa volcanics. However, there are outcrops of the older Makaweli formation which are directly inland from the project site and also comprise the ridge that separates the Waipao and Aakukui Valleys. These outcrops suggest that the more recent Koloa lavas in this area are likely to be a relatively thin cover over the older lava formation. Based on changes in ground slope and water quality data taken from the fishpond, the seaward limit of the Koloa volcanics in this location may actually end somewhere beneath the project site rather than extending to and beyond the shoreline (Nance, 1999).

The fishpond found on the property is spring fed and is an interesting feature. Although it is now almost half filled with silt and is heavily overgrown by vegetation, there are at least two discrete springs that are easily identified by water quality and temperature contrasts. By these same indications, there are also other springs in the pond which are more difficult to specifically locate. One of the two easily identifiable springs is at the inland end of the pond. Its water is relatively warm (72.0° F), has a notably high silica concentration, and has a salinity as low as many sources of drinking water. This water is likely to be discharging from the Koloa formation, possibly at its seaward end (Nance, 1999).

As this water moves across the pond, its salinity becomes slightly elevated and there is some dilution of its silica concentration. The second identifiable spring is in a hydraulically separate arm of the pond that is closer to the shoreline. Water issuing from the bottom of this makai portion of the pond is much colder (67.5° F), has only about half the silica concentration, and is lower in nitrogen and phosphorus than the first spring. The temperature and silica differences suggest that the two identifiable springs are discharging from different aquifers. Water from the makai spring may be derived from the older Makaweli volcanics at depth and its nutrient levels may be altered by passage through the coastal sediments into the pond (Nance, 1999).

Based on the analysis of three recorded levels of water variation in the pond, there is a continuous mauka-makai movement of water through the pond. The discharge rate for this movement is estimated to be about 1.8 million gallons per

day (MGD). These measurements approximate the net discharge rate of springs that feed the larger portion of the pond. This flow combines with spring flow in the makai portion of the pond and discharges through a beach berm at the seaward end of the makai pond. Despite the significant magnitude of this flow rate, no leakage through the berm is visible or detectable as a change in nearshore salinity, even at low tide (Nance, 1999)

Probable Impacts

The current state of the fishpond is characterized by siltation and increased vegetation that covers most open water. Although there is approximately 1.8 MGD of water flowing through the fishpond on a daily basis, many areas of the fishpond suffer from stagnation. The implementation of the project will remove most of the silt and vegetation, and include drawing between 360,000 gpd and 660,000 gpd for on-site irrigation.

None of these actions will have negative impacts on the hydrogeology of the fishpond. In fact, there would be a beneficial impact associated with drawing water for irrigation use in the form of better overall water quality within the fishpond. Increased withdrawal would result in increased turnover (decreased residence time), with a resultant decrease in the presence of algae and phytoplankton. As a result, turbidity would be reduced.

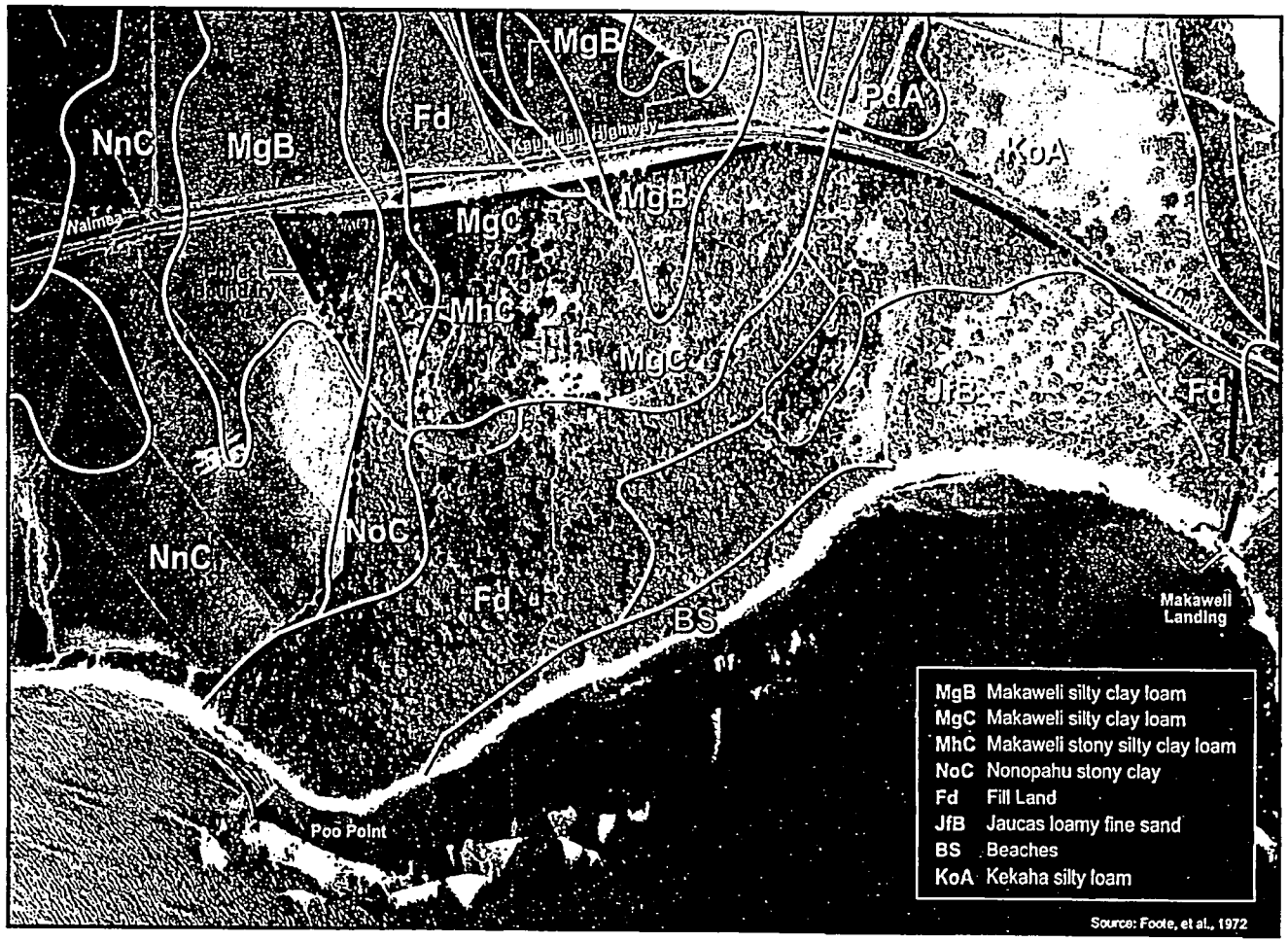
The water level in the fishpond could drop slightly with increased withdrawal, but would ultimately reach equilibrium balancing input and throughput.

## 4.4 Soils

Existing Conditions

Seven (7) soil types are found on the project site (Figure 11):

Beaches (Bs)
Fill land (Fd);
Jaucas loamy fine sand (JfB);
Kekaha silty loam (KoA);
Makaweli silty clay loam (MgC);
Makaweli stony silty clay loam (MhC); and
Nonopahu stony clay (NoC).




Soils Map

KAPALAWAI RESORT

Kapalawai, Kauai, Hawaii

Figure 11

Feet

0 300 600 1200

Prepared by Helber Hastert & Fee, Planners

The three soils types that comprise over 80 percent of the property are Fill land, Jaucas loamy fine sand and Makaweli silty clay loam.

**Fill land (Fd)** This land type consists mostly of areas filled with bagasse and slurry from sugar mills. A few areas are filled with material from dredging and from soil excavations. Generally, these materials are dumped and spread over marshes, low-lying areas along the coastal flats, coral sand, coral limestone, or areas shallow to bedrock.

**Jaucas loamy fine sand (JfB)** The Jaucas series consists of excessively drained, calcareous soils that occur as narrow strips on coastal plains, adjacent to the ocean. They developed in wind- and water-deposited sand from coral and seashells. The loamy fine sand soil of this series has slopes of 0 to 8 percent. In terms of agricultural capability, these soils are classified as "IVs," which have severe limitations because of stoniness, shallowness, unfavorable texture, or low water-holding capacity. They are well drained to excessively drained and are more than 20 inches deep.

**Makaweli silty clay loam (MgC)** The Makaweli series consists of well-drained soils on uplands on the island of Kauai. These soils developed in material weathered from basic igneous rock. This silty clay loam has slopes of 6 to 12 percent. Runoff is medium, and the erosion hazard is moderate. In terms of agricultural potential, if irrigated, these soils are classified as "IIIe," which are subject to severe erosion if they are cultivated and not protected. In most places the soils are more than 20 inches deep.

**Source: Foote, et al., 1972**

Probable Impacts

As discussed in Section 4.1 (Climate), above, the area in the vicinity of the project site receives relatively little rainfall (about 21 inches). Consequently, the upper soil levels are usually quite dry and subject to wind erosion if exposed. Because of these site characteristics, wind erosion and fugitive dust are more of a concern than stormwater erosion.

The probability of wind erosion will be highest during the construction of the resort, resulting in short-term impacts.

Mitigation

Compliance with Best Management Practices (BMPs) will mitigate the potential effects of exposing bare soil to wind erosion. BMPs will include: wetting exposed soil; erecting silt barriers, as necessary; and limiting the area of ground disturbance, among others.

## 4.5 Agricultural Capability

Existing Conditions

***Agricultural Lands of Importance to the State of Hawaii (ALISH).*** ALISH maps have been developed by the State Department of Agriculture to determine the relative agricultural importance of specific property. There are three possible ALISH designations found on the ALISH maps. These are:

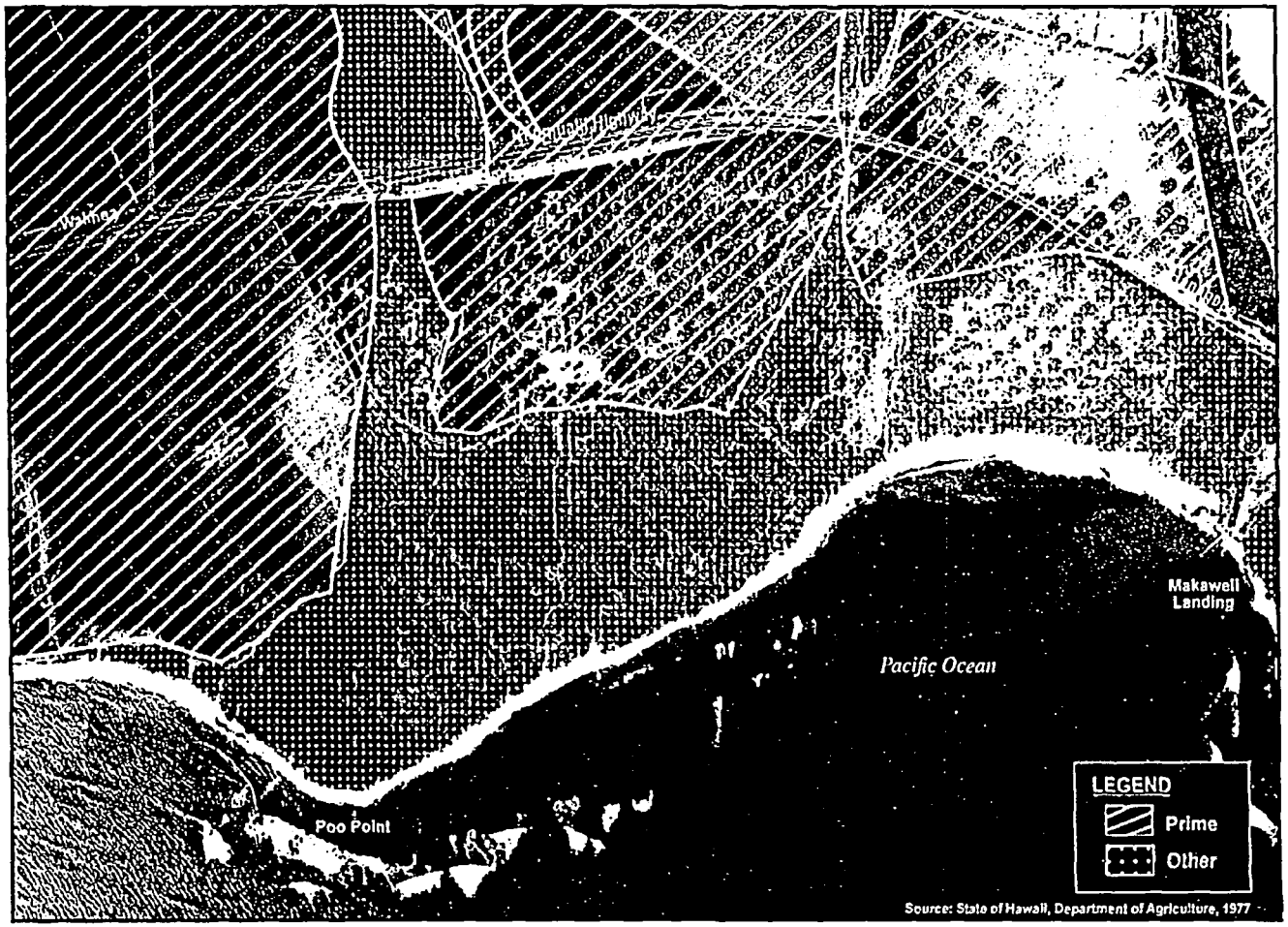
| | |
|---|---|
| **Prime** | Land which has the soil quality, growing season, and moisture needed to produce sustained high yields of crops economically when treated and managed according to modern farming methods. |
| **Unique** | Land that has the special combination of soil quality, location, growing season, moisture supply, and is used to provide sustained high quality and/or high yields of a specific crop when treated and managed according to modern farming methods. |
| **Other** | Land other than Prime or Unique land that is also of State-wide or local importance for agricultural use |

Approximately 70 percent of the project site has been designated as "Other." The remaining 30 percent of the project site is identified as "Prime" (Figure 12). Approximately half of the area designated as "Prime" comprises the compound defined by the main house and its accessory buildings, and the employee housing (Department of Agriculture, 1977).

***Detailed Land Classification.*** The Detailed Land Classification publications were prepared by the University of Hawaii to provide an analysis of lands and their respective suitability for agricultural production taking into consideration a wide variety of factors including soils, geology, topography, climate, and water resources. The classification scheme provides ratings for overall agricultural usage, which are useful in making general assessments of land qualities. Lands are classified from "A" to "E" according to their agricultural suitability. A rating of "A" indicates a master rating of very good; "B" indicates good suitability; "C" indicates fair suitability; "D" indicates poor suitability; and a rating of "E" indicates very poor suitability for agricultural use. The project site has a mixed rating of D and E, indicating poor to very poor suitability for agricultural use (Figure 13) (University of Hawaii, 1963).

Probable Impacts

Over the time period the project site has been owned by the Robinson family, it has never been used for commercial agriculture. The family did use a ±3.5-acre




Agricultural Lands of Importance to the State of Hawaii (ALISH)

Figure 12

KAPALAWAI RESORT

Kapalawai, Kauai, Hawaii

Feet 0 300 600 1200

Prepared by Helber Hastert & Fee, Planners




Detailed Land Classification

KAPALAWAI RESORT

Kapalawai, Kauai, Hawaii

Figure 13

Feet

0 300 600 1200

Prepared by Helber Hastert & Fee, Planners

area near the main house to raise fruits and vegetables for personal consumption. They also used other areas of the project site to raise livestock such as cattle, pigs, goats, chickens, and fish (in the fishpond). As recently as this year, portions of the project site were used as pasturage for about 20 bulls. However, these animals have since been removed.

Therefore, the development of the project site as a resort will have no impact on agricultural production on Kauai. Although the property is designated "Agricultural" at various levels of State and County land use designations, it has never supported agricultural use, except for the personal consumption of the family. The 3.5-acre "garden" will continue to be maintained, but the balance of the property will not be used for agricultural activities.

## 4.6 Flora

Existing Conditions

A botanical survey of the project site was conducted in March 1999 by Char & Associates. A summary of their findings is presented below and their full report is attached as Appendix A.

The vegetation on the property is dominated by introduced or alien plants. This is not surprising as the site was a primary residence for the Robinson family. Portions of the property have been used for employee housing, stables, corrals, pasturage, fruit orchards, and vegetable gardens.

Today, the majority of the site is covered by scrub vegetation, and has been used for grazing cattle over many decades. Wetland vegetation is found along the two streams (Mahaikona and Aakukui) which cross the site. A marshy area exists on the western side of the property. This area was created by the flow of sugar irrigation runoff and pump discharges from mauka areas via a man-made ditch. A very narrow band of coastal vegetation is found behind the white sand beach on the makai side of the property.

A more detailed description of the three vegetation types (scrub, wetland, coastal) follows. The former residence, employee housing area, and other actively maintained areas near the northwest corner of the property were not included in the survey, because they were not expected to harbor remnant native plant-dominated communities.

***Scrub Vegetation.*** This vegetation type is basically open to closed canopy kiawe (Prosopis pallida) scrub forest with scattered shrubs such as lantana (Lantana camara), hairy abutilon (Abutilon grandifolium), *koa haole* (Leucaena leucocephala), and patches of Guinea grass (Panicum maximum) and buffelgrass (Cenchrus ciliaris). Much of the area covered by scrub vegetation and identified as having "Fill land" as a soil type, supports patches of grasses and mostly weedy annual species. Scattered about are large, old trees of kiawe, *'opiuma* (Pithecellobium dulce), and monkeypod (Samanea saman). Commonly observed plants include swollen fingergrass (Chloris barbata), buffelgrass, guinea grass, spiny amaranth (Amaranthus spinosus), lion's ear (Leonotis nepetifolia), *'aheahea* (Chenopodium murale), coffee senna (Senna occidentalis), and cocklebur (Xanthium strumarium). Golden crown-beard (Verbesina enceliodes), a member of the daisy family with large yellow flowers and up to two feet tall, is locally abundant.

Along the makai perimeter of the property, there is dense band of kiawe and *'opiuma* trees. In this area, there are scattered groves of coconut (Cocos nucifera) and date (Phoenix sylvestris) palms, and small stands of *milo* trees (Thespesia populnea). Lantana and wild basil (Ocimum gratissimum) shrubs are locally common under the trees.

In the area between the two streams, the scrub vegetation consists of rather dense stands of *'opiuma* trees, 6 to 20 feet tall and two to three feet in diameter. Bermuda grass or *manienie* (Cynodon dactylon) and buffelgrass form extensive patches on the sand substrate. Shrubs of *'ilima* (Sida fallax), a native species with orange flowers, is also common.

Along the western portion of the property is an area with many surface stones. This area supports a closed canopy kiawe forest with Guinea grass understory.

Along the mauka portion of the property, the scrub vegetation, in places, is composed of koa haole thickets 12 to 15 feet tall, with a ground cover of dense Guinea grass clumps up to three feet tall. There are also areas with open kiawe and Guinea grass scrub. These areas often have a few large trees of mango (Mangifera indica), Java plum (Syzgium cumini), Chinese banyan (Ficus microcarpa), monkeypod, royal palm (Roysonea sp.), and many large thickets of bougainvillea. There is also a large patch of spineless or cochineal cactus (Opuntia cochenillifera) near the dirt road that accesses the employee's housing area.

***Wetland Vegetation.*** The banks of Mahaikona and Aakukui streams are well-defined with no low lying overflow areas. The top of the stream banks support scrub vegetation. Along the bottom banks, next to the water's edge, there are mats of California grass (Brachiaria mutica) and shrubs of Indian Pluchea (Pluchea indica). Wetland vegetation is denser and more varied along Aakukui Stream, especially in the area behind the beach. There are dense mats of California grass and thickets of Indian Pluchea as well as clumps of bulrush or *kaluha* (Schoenoplectus californicus) up to 7 feet tall, umbrella plant (Cyperus alternifolius), and Napier grass (Pennisetum purpureum). Further upstream, *honohono* (Commelina diffusa) is locally common.

A grove of coconut trees lines the perimeter of the fish pond. Along the north side of the pond, there are dense thickets of purple and rose-red (Bougainvillea glabra) bougainvillea. Bulrush 3 to 12 feet tall, has filled in much of the pond. A few open water areas are found mostly along the north side of the pond. These patches of open water support California grass along their margins and floating aquatics such as water hyacinth (Eichornia crassipes) and duckweed (Lemna aequinoctialis). The drainage canal which runs from the pond to the beach is covered by dense floating mats of water hyacinth and water lettuce (Pistia stratiotes).

A low lying area in the western portion of the project site where discharge water from the fields mauka of the highway has been directed, supports dense clumps of umbrella plant, 2 to 4 feet tall, and standing water 6 inches to one foot deep. Job's tears (Coix lachryma-jobi) and primrose willow or *kamole* (Ludwigia octovalvis) are locally abundant. Along the northern half of the low lying area, there are low, open, grassy patches of Bermuda grass with scattered plants of primrose willow, false daisy (Eclipta prostrata), green kyllinga (Kyllinga brevifolia), *honohono*, and jungle rice (Echinochloa colona). A few mats of the aquatic azolla fern (Azolla filiculoides) are found in areas with small pools of water. There are a few large trees in and around this low-lying area, some of which have died back due to the water-logged soils and anaerobic conditions.

***Coastal Vegetation.*** A narrow band of coastal vegetation is composed primarily of *pohuehue* or beach morning glory vine (Ipomea pes-caprae), Bermuda grass, and *'aki'aki* or beach dropseed grass (Sporobolus virginicus). Scattered are low, windswept clumps of *koa haole* shrubs and trees of kiawe, *'opiuma*, and *milo*.

Also, a long-spined algaroba or mesquite species (Prosopis juliflora) has become established in the coastal vegetation. This sprawling large shrub to medium-sized

tree has thick spines up to two inches long. Several large plants on the site had numerous clusters of pale yellowish brown pods. A number of saplings were observed inland of the coastal vegetation.

None of the plants inventoried on the site is a threatened and endangered species; nor is any plant a species of concern. All of the plants can be found in similar environmental habitats throughout the Hawaiian Islands.

Probable Impacts

The ~~170-acre~~ project site has been disturbed for a long period of time. The Robinson family home was constructed around 1897 and the site was extensively landscaped. Almost all of the property appears to have been managed by human activity during some point in time, since at least 1897.

None of the plants inventoried on the site is a threatened or endangered species; nor is any plant a species of concern. All of the plants identified on the property can be found in similar environmental habitats throughout the Hawaiian Islands. In this context, there will be no significant impacts to native vegetative habitats resulting from development of the proposed project.

This includes the man-made marshy area on the Waimea side of the property which has been created by allowing irrigation runoff water and filter discharges to collect on the ground. The water source which created this habitat will soon be eliminated when a mauka detention basin is completed. Once this water flow is discontinued, wetland vegetation is expected to die back and be replaced by scrub vegetation.

Other areas of the project site will benefit from development because irrigation water will be made available that will be able to support more plant life. This will also help to prevent soil erosion caused by the wind. To the greatest extent possible, native plants will be used to landscape the property.

From a botanical perspective, the presence of large numbers of the long-spined mesquite species (Prosopis juliflora) on the coastal area of the property are a primary concern. To date, the plants have only been known from Oahu at Sand Island and vicinity. If not eradicated, the plants could form large, impenetrable, spiny thickets in low land, dry habitats throughout Kauai.

Mitigation

It is recommended that all individual Prosopis juliflora plants be eradicated. Appropriate methods of eradication should be coordinated with the State Department of Agriculture.

It is also recommended that native plants be incorporated into the landscape plan for the proposed resort.

## 4.7 Fauna

Existing Conditions

An avifauna and feral mammal survey of the project site was conducted in March 1999 by Philip Bruner. A summary of his findings is presented below and his full report is attached as Appendix B.

No native landbirds were recorded during the survey. Given the location, elevation and type of habitats available at this site, the absence of native landbirds was not unexpected. The short-eared Owl or *Pueo* (Asio flammeus sandwicensis) forages in agricultural fields and pastures as well as in upland forested habitat, and is fairly common on Kauai. Although this species was not recorded during the present survey it could forage in the area.

Migratory shorebirds winter in Hawaii between the months of August through May. Some juveniles will stay over the summer months as well. Three species of migratory shorebirds were recorded during the survey. These were the Pacific Golden-Plover (Pluvialis fulva), the Ruddy Turnstone (Arenaria interpres) and the Wandering Tattler (Heteroscelus incanus). None of these species are listed as endangered or threatened.

Six individuals of the endangered Common Moorhen (Gallinula chloropus) were observed near open streams and along the edges of the fish pond and the man-made marsh habitat. A pair of Hawaiian Duck or *Koloa* (Anas wyvilliana) were flushed from Aakukui Stream. Koloa are endangered but are still relatively common on Kauai. A total of four Black-crowned Night Herons (Nycticorax nycticorax) were observed. This species is the only native waterbird that is not endangered.

A total of 17 species of exotic birds were recorded during the course of the field survey. The more common of these species include: the Red Junglefowl (Gallus gallus); the Spotted Dove (Stretopelia chinensis); the Zebra Dove (Geopelia striata); the Northern Cardinal (Cardinalis cardinalis); the Red-crested Cardinal (Paroaria coronata); and the House Finch (Carpodacus mexicanus).

The endemic and endangered Hawaiian Hoary Bat (Lasiurus cinereus semotus) is frequently seen on Kauai. This species is known to roost solitarily in trees and forages for insects using echolocation. They use a variety of habitats, including native forest, ranchlands, ponds and bays, as well as urban areas. Three bats were observed foraging for flying insects offshore the project site and one bat was observed flying back and forth over the man-made marsh.

Several feral cats were seen on the site, and feral dog and pig tracks were also observed. Rats and mice undoubtedly occur on the property, but were not seen.

Probable Impacts

The project site has been significantly altered by introduced vegetation and ranching activities. No unusual or unexpected species were recorded, even though three endangered species were observed on the property: Common Moorhen (Gallinula chloropus); Koloa (Anas wyvilliana); and Hawaiian Hoary Bat (Lasiurus cinereus semotus).

Although endangered, the Hawaiian Hoary Bat is fairly common on Kauai. The proposed development should not adversely impact foraging opportunities for the bats. They are known to forage in urban as well as forested habitats.

Although there are several wetland type habitats on the project site, most are overgrown with emergent vegetation. This restricts their access to waterbirds. If these areas were opened up by removal of vegetation, they would provide better habitat for waterbirds. A complete removal of vegetation in the fishpond would not be attractive to native waterbirds because they require some cover (in the form of emergent vegetation) to avoid predators or as a place to retreat when disturbed.

The marsh area on the Waimea side of the property, created by the sugar irrigation runoff and pump discharges, will lose its source of water in the near future as a detention basin being built by Gay and Robinson, Inc. is completed mauka of Kaumualii Highway. This will cause the area to dry up and lose its

wetland characteristics. However, the loss of this area will not be significant because of the presence of the fishpond and other habitats associated with the Mahaikona and Aakukui Streams. This is particularly true if the fishpond and streams are cleared, thereby creating additional open water habitat.

Mitigation

It is recommended that some vegetation be retained in the fishpond, particularly the vegetation on the small island in the center of the fishpond. The advantage of focusing vegetation on the island would be that the island would provide cover and nesting opportunities that would be protected from cats and other predators.

## 4.8 Marine Environment

Existing Conditions

A marine assessment of the nearshore area fronting the project site was conducted by Marine Research Consultants. A summary of their report is presented below and their full report is attached as Appendix C.

### PHYSICAL STRUCTURE OF THE NEARSHORE ENVIRONMENT

A narrow sand beach stretches along the length of the project boundary for about 5,200 feet. Along the southern end of the property, from near Aakukui Stream to the Makaweli Landing, the nearshore marine environment consists of a shallow, gently sloping plain of fine-grained red mud. Near the shoreline, the mud grades into a mix of mud and sand. The mud zone extends uninterrupted from near the shoreline to a distance of approximately 1 kilometer (km) offshore. Within this area there is virtually no exposed solid bottom, as such there is no reef development. It is apparent that Hoanuanu Bay receives (or has received) substantial quantities of terrigenous sediment during periods of runoff. It also appears that the typography (shape) of the bay is such that sediments are retained within the coastal indentation, and are not rapidly flushed from the area. As a result, there is a substantial permanent depositional zone of mud within the bight of Hoanuanu Bay at the southern end of the Kapalawai property. The nearshore coastal waters fronting Kapalawai are designated Class "A" waters. It is the objective of Class A waters that their use for recreational purposes and aesthetic enjoyment be protected by the State of Department of Health.

From the point where Aakukui Stream would cross the shoreline northward, the nearshore area is made up of two zones; an inner reef flat and an outer reef front that are separated by a shallow reef crest. Long-period swells become breaking waves on reaching the reef crest. As a result of the high energy, few corals occur on the crest. Bottom composition of the reef flat consists of muddy sand and coral rubble; maximum water depth on the reef flat is approximately 2 meters (m). Because of the shallow depth, high terrigenous sediment content and vigorous water motion from wave energy, water clarity on the reef flat is highly turbid. However, living colonies of corals were observed on the reef flat, predominantly lobate hemispherical heads of Porites lobata, and sturdy, branching colonies of Pocillopora meandrina.

Seaward of the reef crest, the bottom slopes gradually downward with distance offshore. The underwater physiographic structure in the nearshore zone consists of a platform of lithified reefal limestone. While areas of the platform are relatively flat, other regions are characterized by substantial vertical relief in the form of deep grooves and undercut ledges in what appears to be ancient coral reef platform. Vertical relief of the reef structures is generally not more than one meter. Grooves and channels in the reef platform are generally filled with coarse sand and rubble. The surfaces of the reef platforms are heavily pitted, probably as a result of bioerosion, resulting in an extremely friable (breakable) upper surface. A ubiquitous feature of the reef platform is a veneer of red mud sediment that appears to be bound to the limestone surface within a short layer of algal turf. The thickness of the muddy layer decreases with distance northward and offshore. The predominant biota on the inner reef platform are flat encrustations of several species of stony corals, and calcareous algae.

The entire area offshore of the proposed project is exposed to long-period swells generated by storms in the north Pacific during the winter months, and the south Pacific in the summer months. As a result of the physical forces associated with winter waves, the nearshore areas off Kapalawai are subjected to extreme stress from wave impact and scouring of sediment from wave action. As in many locations in the Hawaiian Islands, the composition of coral reef communities is structured primarily in response to physical forces of breaking waves. In addition, the high loading and accumulation of terrigenous sediment in the areas offshore of Kapalawai appear to be a major factor in affecting biotic composition of the reef communities.

## WATER CHEMISTRY

***Methods.*** Two locations fronting the Kapalawai site were selected as sampling sites for evaluation of existing water chemistry. Site 1 lies at the northern end of the property off the southern side of Poo Point; Site 2 lies off the southern end of the property, originating near the point where Mahaikona Stream enters the ocean. Water chemistry was evaluated along sampling transects at each site. Each transect was oriented perpendicular to the shoreline, and extended from the highest wash of waves across the nearshore reef platform out to the open ocean, a distance of approximately 500 meters (m).

Water samples were collected at nine stations along each transect. Such sampling was intended to span the entire range of material input at the shoreline to the open coastal ocean. Sampling was more concentrated in the nearshore zone as this area is most likely to show the effects of shoreline modification. At each station a surface sample was collected within approximately 10 centimeters (cm) of the surface. With the exception of the stations located on the reef flat within 50 m from the shoreline, a bottom sample was collected within 1 m of the sea floor.

Water quality constituents that were measured included the specific criteria designated for open coastal waters in Chapter 11-54, Section 06 (Open Coastal waters) of the State of Hawaii, Department of Health (DOH) Water Quality Standards. These criteria include: total nitrogen (TN), nitrate + nitrite nitrogen ($NO_3^- + NO_2^-$, hereafter referred to as $NO_3^-$), ammonium ($NH_4^+$), total phosphorus, chlorophyll a (Chl *a*), turbidity, temperature, pH and salinity. In addition, orthophosphate phosphorus ($PO_4^{-3}$) and silica (Si) are also reported because these parameters are sensitive indicators of biological activity and the degree of freshwater input to the ocean, respectively.

*Environmental Conditions.* Water samples were collected on March 13, 1999. Environmental conditions were sunny with light winds from the south. It is important to note that much of the rest of Kauai was experiencing heavy rainfall during the survey, while the weather was sunny at Kapalawai. Such a situation appears to be the norm, as the leeward side of the island is typically nearly arid in climate. Ocean conditions consisted of calm seas with small surf breaking on the reef crest. Water sampling was conducted during slack tide at approximately +0.2 feet above mean low water.

*Horizontal and Vertical Stratification*. Examination of data reveals several distinct patterns with respect to horizontal stratification of water chemistry. The plot of salinity vs. distance (from shore) reveal a sharp gradient of increasing salinity on the reef flat between the shoreline and 50 m offshore. As there was no streamflow reaching the ocean during the sampling, the freshwater input to the area appears to be from efflux of groundwater in the nearshore zone that mixes with oceanic water (~35‰). Freshwater efflux appears to be greater on the northern transect relative to the southern transect. Seaward of the reef flat, there was little evidence of variation in salinity between the samples collected 100 to 500 m from shore.

The plots of dissolved nutrients Si, $NO_3^-$, TN, $PO_4^{-3}$ and TP exhibit patterns that are mirror images of the patterns of salinity. Groundwater normally contains high concentrations of these nutrients and low salinity, while seawater typically contains low nutrient content and high salinity. While salinity is also generally low in surface runoff (i.e., rainfall), nutrients are also low; hence there is relatively little corresponding increase in nutrients with decreased salinity. Hence, the mirror images of salinity and concentrations of nutrients off Kapalawai indicate input of groundwater at the shoreline.

As freshwater is lower in density than seawater, there is also an indication of vertical stratification of nutrients and salinity. Salinity is consistently higher in bottom samples than surface samples, which nutrient concentrations are elevated in surface samples relative to bottom samples. However, at the sampling stations that exhibited the greatest variation in nutrient concentrations and salinity on the reef flat, the shallow depth of water precluded sampling at the surface and bottom.

The patterns of distribution of dissolved organic nutrients (DON, DOP) and $NH_4^+$ that are not present in relatively high concentrations in groundwater are distinctly different from the patterns for inorganic nutrients. The concentrations of $NH_4^+$ on the south transect are essentially constant in value across the entire transect. On the north transect the concentrations of $NH_4^+$ peak at the outer boundary of the reef flat. Profiles of DON and DOP show little pattern throughout the sampling regime.

On both transects, TSS and turbidity peaked at the shoreline and decreased with distance from shore. TSS and turbidity were also higher on the northern transect compared to the southern transect from the shoreline to a distance of 300 m from

shore. Chl *a* was also highest on the reef flat, peaking in concentration at the shoreline on the north transect and 25 m from shore on the southern transect.

*Compliance with DOH Standards.* DOH standards include specific criteria that are not to be exceeded during either 10% or 2% of the time, or as the geometric mean of the sampling set. With only one sample set collected to date from each sampling station, comparison of the 10% or 2% criteria or the geometric mean criteria for any sampling station are not statistically meaningful. However, comparing sample concentrations to these criteria provide an indication of whether water quality is near the stated specific criteria.

Data shows samples seaward of the shoreline that exceed DOH water quality standards for open coastal waters under "wet" conditions. The criteria for wet conditions are applied to the Kapalawai area because this region probably receives at least 3 million gallons of groundwater input per mile per day. During the March 1999 survey, several constituents exceeded the 10% or 2% limits. On the north transects $NO_3^-$, turbidity and Chl *a* in samples within 50 m of the shoreline exceeded specific criteria. On the south transect, these constituents, as well as $NH_4^+$, exceeded specific criteria. The recorded concentrations of $NH_4^+$ and Chl *a* exceeded specific criteria from the shoreline to a distance of 300 m from shore on the southern transect.

As noted in the section above, $NO_3^-$ is a natural component of groundwater. In areas that receive substantial input of groundwater there is typically a zone of mixing near the shoreline where $NO_3^-$ concentrations may consistently exceed DOH criteria as long as physical mixing processes remain low. However, $NH_4^+$ is not a normal component of groundwater. It is apparent that some other source of $NH_4^+$ than groundwater input is responsible for the elevated concentrations along almost the entirety of the south transect off of Kapalawai.

## BIOTIC COMMUNITY STRUCTURE

***Coral Communities.*** The predominant taxon of macrobenthos (bottom-dwellers) throughout the reef off the Kapalawai area are Scleractinian (reef-building) corals and benthic macroalgae. Results of qualitative reconnaissance surveys indicated that reef coral occurrence did not occur in the area off Mahaikona Stream owing to deposition of substantial reservoirs of red mud. To the north of the stream bed, the mud bottom decreased, grading into a reef platform composed of pitted limestone. On the reef platform, living coral abundance was relatively consistent along the northern portion of the Kapalawai property. Coral abundance also

peaked within a zone approximately 50-100 m seaward of the reef crest in the region of the high relief limestone platform. With distance seaward, bottom topography flattened to a relatively featureless platform with low coral abundance.

Results of quantitative line transects conducted in two typical reef zones provide an estimate of coral community structure. In total, eight species of "stony" corals, were encountered on transects. Total coral cover was substantially higher on the shallower transects (30-32%) compared to the deeper transects (2-3%). The dominant species on the two north transects and the deep southern transect was Porites lobata, which accounted for about 37% of total coral cover. The other dominant species, especially on the shallow southern transect was an encrusting coral identified as Leptoseris spp. This coral is generally not found in abundance in shallow water on Hawaiian reefs, and is usually limited to deeper water. The anomalously high abundance of the species is likely a result of the consistently high sediment loads in the nearshore waters. Other coral species encountered on transects included several forms of the genera Montipora (M. verrucosa and M. patula) *and* Pocillopora (P. meandrina *and* P. damicornis).

The growth form of most of the corals that were present in the study area consisted of flat encrustations or low sturdy lobate structures. Branching and vertically plated species were observed primarily on the sides of channel cuts.

***Other Benthic Macroinvertebrates.*** The other dominant group of macroinvertebrates generally found on Hawaiian reefs are the sea urchins (Class Echinoidea). However, on the reefs surveyed off Kapalawai, urchins were very rare. The only urchin that was observed was Echinometra matheai, which are small urchins that are generally found within interstitial spaces bored into the limestone substrata. Several Crown-of-thorns starfish (Acanthaster plancii) were observed on the reef. Nearby bleached skeletons of colonies of Pocillopora meandrina suggested that the starfish had been feeding on these corals. Numerous sponge were also observed under ledges and in interstitial spaces. Several spiny lobsters (Panulirus spp.) were also observed under ledges.

***Benthic Algae.*** Frondose benthic algae were common throughout the nearshore region. In addition, encrusting red calcareous algae (Porolithon spp., Peysonellia rubra, Hydrolithon spp.) were common on exposed limestone surfaces throughout the study area. Dominant species of frondose algae observed on the reef included the genera Dictyopteris, Dictyota, Sargassum, and Turbinaria, and the red alga, Amansia, Asparagopsis, Corallina, Laurencia, Liagora, Martensia,

and Plocamium. All of these plants occurred commonly on the limestone platform.

***Reef Fish Community Structure.*** In general, reconnaissance surveys indicated that the reef fish community off the Kapalawai area was limited in numbers of both species and individuals. However, reef fish community structure was largely determined by the topography and composition of the benthos. On the outer flat reef platform, fish abundance was substantially lower than on the inner zones characterized by high vertical relief which affords shelter to fish. The most abundant fish throughout the survey area was the blue-lined snapper (*ta'ape*, Lutjanus kasmira). Most of the other fish observed were Juveniles fish belonging mostly to the families Pomacentridae (damselfish), Acanthuridae (surgeonfish), with representatives from the families Labridae (wrasses), Mullidae (goatfish) and Chaetodontidae (butterfly fish). The complex habitat created by the eroded limestone reef provided limited shelter for small fish.

Overall, fish community structure off Kapalawai is poor when compared to assemblages found in relatively undisturbed Hawaiian reef environments. The lack of an abundant fish community suggests that either the area has been subjected to substantial amounts of fishing pressure, or the environmental conditions (e.g., suspended and deposited terrigenous sediments) result in a sub-optimal setting for fish.

***Endangered and Protected Species.*** Three species of marine animals that occur in Hawaiian waters have been declared threatened or endangered by Federal jurisdiction. The threatened green sea turtle (Chelonia mydas) occurs commonly throughout the island chain, and is known to feed on selected species of macroalgae. The endangered hawksbill turtle (Eretmochelys imbricata) also occurs, but is considered rare compared to the green turtle. Several green sea turtles were sighted on the surface and underwater during the surveys off Kapalawai. Many of the turtles sighted underwater were either swimming slowly near the bottom or resting within crevices or under ledges in the reef.

Populations of the endangered humpback whale (Megaptera novaeangliae) are known to winter in the Hawaiian Islands from December to April. Hawaiian monk seals (Monachus schauinslandi) also occur occasionally in waters off the high islands. No monk seals were observed during the surveys off Kapalawai.

Probable Impacts

Implementation of the proposed plan for the Kapalawai Project will involve grading and some vegetation removal associated with construction of the resort structures, although disturbed areas will be landscaped as part of the project design. Construction of roadways and parking areas will increase the amount of impervious surfaces compared to the present situation. However, there are no changes planned to the existing shoreline or nearshore area. The overriding findings of the marine environmental assessment is that at present, both water quality and biotic community composition are strongly influenced by terrigenous sediment in the nearshore ocean. This sediment appears to originate from runoff from upland drainage basins, and maintains a long residence time within the shoreline fronting the project site. Hence, even if delivery of sediment is halted, it appears that the material presently on the bottom would remain in the system for an extended period of time. Water quality in the nearshore zone reflects high levels of suspended sediment that appears to be a consistent characteristic of the area regardless of season and weather. While coral communities occur in the outer reef area, it appears that the composition of these communities are strongly biased toward species that are sediment-resistant.

Results of water chemistry surveys conducted off the Kapalawai site reveal that a surface layer of low salinity, high nutrient groundwater occurs in the nearshore area as a result of efflux of groundwater. However, owing to rapid mixing, and the high level of suspended material in the nearshore zone, there is little response to the input of high nutrient water in terms of benthic algal growth. Plans for the Kapalawai Resort specify usage of an on-site wastewater treatment system that will result in effluent (reclaimed water) for use as an irrigation source on the property. As a result, none of the wastewater generated by the project will be discharged directly to the ocean.

It is anticipated that this method of wastewater disposal will have no impact to the marine environment for several reasons. In light of the observed substantial input of dissolved inorganic nutrients to the nearshore ocean as a result of existing groundwater fluxes that reflect current and past land uses, the small augmentation to groundwater from the proposed disposal of wastewater is likely to be undetectable or very small. In addition, the unrestricted circulation of the offshore zone by tidal and wind-driven currents, eddies, and wave action promotes rapid dilution and water exchange. While the residence time of deposited sediment appears relatively long, the residence time of a parcel of

water fronting the development is probably on the order of hours to days, so long-term buildup of any dissolved constituent is unlikely.

While the planned project at Kapalawai may result in a temporary increase in exposed soil during the construction that could reach the ocean through runoff, it is likely that such an increase would be essentially undetectable when compared to the existing situation. The increased impervious surfaces that will result from the construction of roadways on the property may actually reduce sediment delivery to the ocean as the roadways will replace lands otherwise subject to erosion. Preliminary drainage calculations indicate that there are nearly 8,000 acres of land area that drain through the project site. Thus, the changes to the approximate 100 (of ~~470~~ 153.696) acres of the project site as a result of project implementation will have an insignificant impact to offshore water.

*Potential Effects to Protected Species.* The threatened green sea turtle occurs in the nearshore areas off the project site. Because there is no plan for any work on the shoreline or in the nearshore region, there is no potential for activities that might affect health or behavior of turtles (or any other protected species). Potential changes in water quality that might occur as a result of construction would be undetectable, and hence would not affect turtle behavior.

The shoreline bordering the property is sand, and it is possible that turtles could haul ashore. While it has not been documented that the area serves as a turtle nesting ground, such activities are potentially possible.

Similarly, the beach presents the possibility as a haul out area for monk seals. Transplanted seals have been documented to frequent many areas in the high islands. As such, human intervention to endangered species populations has resulted in increasing the potential for interactions between humans and the endangered species. As a result, it appears that the Kapalawai area has the same potential for monk seal habitation as any other beach locale on Kauai.

In summary, the potential for impacts to marine communities as a result of development of the Kapalawai Resort appear to be minimal or nonexistent. None of the developmental activities appear to have the potential to induce long-term changes in physic-chemical water quality parameters of a magnitude sufficient to cause changes in biological community structure. The marine environments off Kapalawai appear to have been subjected to substantial sediment stresses for a sufficient period of time (many decades) to have influenced community structure. Such stresses are much more destructive than the small temporary changes that

could result from construction of the proposed development activity. If some unexpected event related to development activities does occur, the resulting alterations to marine community structure would be reversible and recovery rapid once the stress factor is mitigated. Tolerance to such changes appears to already be part of the physiological range of the community.

Mitigation

In order to ensure that land use activities do not alter behavior of green sea turtles or monk seals that haul out, it is recommended that project lighting in areas near the shoreline be designed so as not to illuminate the beach strand. In addition, employees of the resort, and its guests should be educated about possible interaction with these animals, and appropriate human behavior for that interaction. For employees, this information could be included in training sessions, materials, and handouts. For guests, information, in the form of brochures, could be placed in all cottages, and signage in strategic locations on the property may also be appropriate.

It can also be concluded that as long as reasonable steps (best management practices; see Section 6.4, Grading and Drainage) are taken during construction periods, and because operational procedures for the project do not involve substantial changes in material delivery to the nearshore ocean, there should be no adverse impacts to the marine environment.

## 4.9 Historic, Cultural and Archaeological Resources

Existing Conditions

***General Regional Background.*** Written historical accounts of Hawaii began when Captain James Cook anchored offshore from Waimea, Kauai on January 20, 1778. Prior to Cook's landing at Waimea, Hawaiians inhabited the region for hundreds of years. Since 1778, Waimea has had a major role in the island's history, being at one time Kauai's port of entry and focal point for economic activity (County of Kauai, 1977).

Waimea's history also includes the influence of the Russians and the construction of Fort Elizabeth in 1817, about ½ mile northwest of the project site.

Missionaries began arriving in Waimea during the 1820's while whaling was, at the same time, becoming an important industry in the islands. By the 1840's,

whaling reached its peak, and Waimea had become a port of entry comparable to Honolulu Harbor (County of Kauai, 1977).

It was not until the 1880's that the sugar industry was brought to Waimea. Sugar marked the start of a new era for the region. Population and employment increased and a long-term economic base was established (County of Kauai, 1977). It was during this era that ancestors of the Robinson family first arrived in Hawaii. Eliza Sinclair, native of Scotland and widow of Captain Francis Sinclair, arrived in Hawaii by way of New Zealand in September 1863, along with many of her children and grandchildren. After many months of looking for appropriate land, the family accepted the king's offer to sell Niihau: "After my brothers had investigated the place they were so enthusiastic that we accepted the King's offer, and...we bought the island of Niihau off the coast of Kauai" (Von Holt, 1985).

In subsequent years, the family purchased land at Makaweli, Kauai (in 1865), establishing a residence at the 1,800 foot elevation "...and a little later built what is still known as the Makaweli House. The altitude, eighteen hundred feet, the lovely forest, hills and valleys, the flowers, especially roses, all over the veranda and porch, reminded Anne poignantly of the old Craigforth House in New Zealand. Grandmama, who disliked the heat on Niihau during the summer, always felt Makaweli was her true home" (Von Holt, 1985).

It was soon thereafter that the house at Kapalawai was constructed in approximately 1897 for Aubrey Robinson, the grandson of Eliza Sinclair. The family used the Kapalawai property not only as a residence. Horses, cattle, and dairy cows were raised at Kapalawai, in addition to fruits and vegetables in the gardens and orchards around the house. Fish were plentiful in the fishpond.

Throughout this period, and up to the present, the Robinson family has been active in ranching and the sugar industry in Makaweli, recently expanding their sugar holdings with the purchase of the assets of Olokele Sugar Company.

***Archaeological Inventory Survey.*** ~~A draft~~ An archaeological inventory survey has been prepared for the project site by Cultural Surveys Hawaii and is attached as Appendix D. This report has been ~~submitted to~~ accepted by the Department of Land and Natural Resources, Historic Preservation Division ~~for review~~. A summary of the ~~draft~~ survey is presented below. In addition, interviews with knowledgeable individuals were conducted for the purpose of identifying and

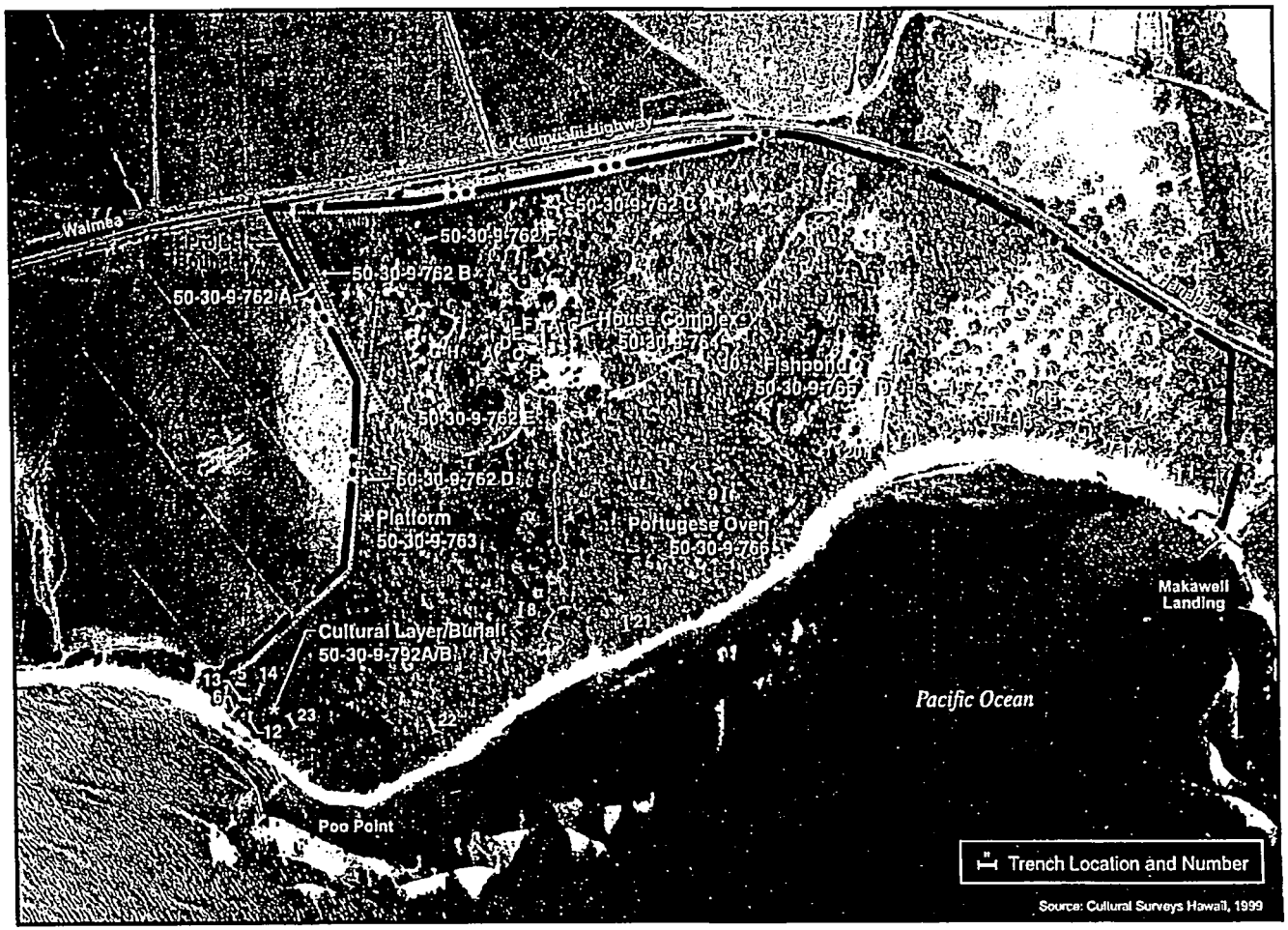
evaluating historic properties in conjunction with a study on cultural impacts (Section 5.4)

Within the project area ~~five~~ six sites were identified and recorded with the State Historic Preservation Division (SHPD). Three of these were single feature sites, and ~~two~~ three were multiple feature sites. Each of these sites is generally described below, and located on Figure 14.

***Site #50-30-9-762.*** This site consists of a series of rock walls and a terrace located in the northwest section of the project site, situated in and around the plantation-era homes. Two of the walls line the main driveway (Features A and B). Feature A also acts as part of the western property boundary. One wall follows an old government road (Feature C). Another wall intersects with Feature A and continues makai as the western property boundary. There are several wall segments in the plantation camp area that partition house lots. The terrace is mauka of the houses in the camp area (Feature F).

***Site #50-30-9-763.*** Site 763 is a large oval platform measuring 155 feet long north to south by 73 feet wide east to west. This feature consists of *pahoehoe* cobbles and boulders of varying diameter (2" to 3.2'). The surface of the platform is relatively even with five distinguishing characteristics: (1) a ridge down the middle; (2) and (3) two paved depressions; (4) a mound; and (5) a square pit. Large boulders are found around the perimeter of the site with small boulders and cobbles found mainly on the upper surface. There are several kiawe trees growing within the site's perimeter, and some deadfall trees over the surface. The configuration of the platform and the pattern of boulder placement suggests that this structure has clearly been modified or altered, or entirely constructed during the historic period as a mound of cleared rocks. Testimonies given by individuals familiar with the property describe the platform as a clearing pile. However, it does possess some other characteristics that suggest portions of the rock platform may be of indigenous construction and use.

***Site #50-30-9-764.*** This site is described as the main house complex, and is comprised of ~~six~~ 14 separate structures, each identified as a feature of the site: (A) the main house; (B) the guest house; (C) servants quarters; (D) the carriage house; (E) the saddle house; ~~and~~ (F) the plant house; (G) through (N) eight employee dwellings. The main house and all buildings associated with the main house were surveyed by Mason Architects. Their complete report, which has been accepted by the State Historic Preservation Division (Hibbard, October 6, 1999), is attached as Appendix E. This site is situated in the northern quadrant of




Historic Sites / Trench Excavations

KAPALAWAI RESORT

Kapalawai, Kauai, Hawaii

Figure 14

Feet 0 300 600 1200

Prepared by Helber Hastert & Fee, Planners

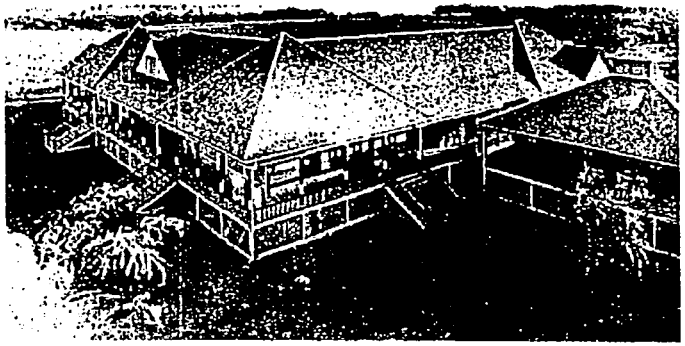
the project area, and is fenced protecting the grounds from the cattle pasture which encompasses the rest of the property. The grounds are maintained, and several of the structures are in use today, while others are in disrepair.

*Feature 764/A.* This feature is the former residence for the Robinson family, and was constructed in 1897 (Figure 15). It is basically a square house in plan view measuring 125 feet by 125 feet, with an open courtyard in the center. Added to these dimensions are a bedroom wing off the eastern corner of the house and living quarters and a large kitchen off the western side of the house. The front lanai has a view of the ocean to the southwest through an open space corridor that is intended to kept clear of obstructions as stipulated by family documents. The house is in good condition and contains many original furnishings, and is slated for renovation and use as a museum. The original sections of Feature 764A, the main house, are basically unaltered. Later additions to the house have left the original sections intact. The house is an example of the Queen Anne style, which is a sub-type of the Victorian style, typical of the turn-of-the century period. The architects of the house, C.P. Ripley and Arthur Reynolds, were prominent during that period in Hawaii. The Queen Anne style utilized details such as hipped roofs with gales, turned porch columns, bead decorative elements, patterned shingles and scroll-like elements at the gables, pent roofs enclosing the gable, brackets to accentuate overhangs, and full-width porches, all used at this house. The house design is unique in its modification for the local climate and lifestyle by including a central courtyard and continuous deep lanais around the courtyard and the building exterior. The lanai area is so extensive that it makes up more than half of the total floor area of the house.

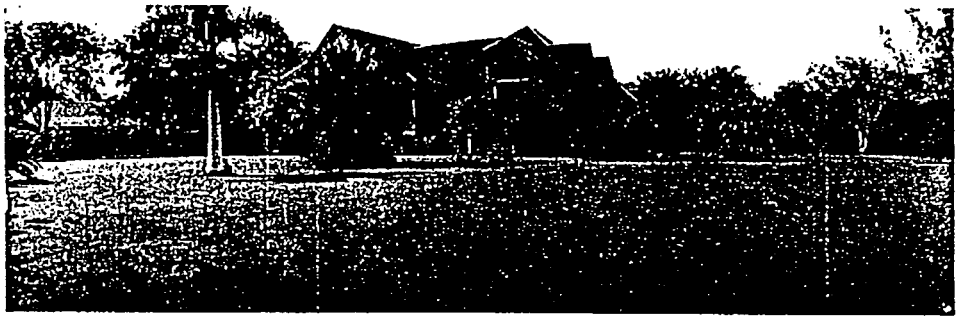
*Feature 764/B.* Feature 764/B was originally constructed as a guest house (Figure 16). It is a wooden structure built off the west corner of the main residence, and is detached from it. This house faces the southeast. It is in good condition and is presently used as an employee residence.

*Feature 764/C.* This feature is a single wooden structure that was built off the northwest side of the main house. It was formerly used as the servants' quarters. It has been converted into office space and is currently used as such (Figure 17). This structure is in good condition.

*Feature 764/D.* Feature 764/D is a large two-story wooden structure constructed north of the servants' quarters (Figure 18). Originally, the building was used a carriage house. Today, it houses several older vintage automobiles previously



View of family house toward Pakala taken soon after completion (c.1897).



View of front lawn of house, with guest cottage at left (c.1920).

Robinson Family Dwelling (Site 50-30-9-764A)

Figure 15

KAPALAWAI RESORT

Kapalawai, Kauai, Hawaii

Source: Robinson Family Archives

Prepared by Helber Hastert & Fee, Planners



Front view of guest house taken from front lawn of main house (c.1920).

Former Guest House (Site 50-30-9-764B)

Figure 16

KAPALAWAI RESORT

Kapalawai, Kauai, Hawaii

Source: Robinson Family Archives

Prepared by Helber Hastert & Fee, Planners



View of former servants quarters (recently taken), now used as office for Robinson Family Partners.

Robinson Family Partners Office (Site 50-30-9-764C) Figure 17

KAPALAWAI RESORT

Kapalawai, Kauai, Hawaii Source: Helber Hastert & Fee Prepared by Helber Hastert & Fee, Planners



View of former carriage house recently taken. Note disrepaired state of structure.

Former Carriage House (Site 50-30-9-764D) Figure 18

KAPALAWAI RESORT

Kapalawai, Kauai, Hawaii Source: Helber Hastert & Fee Prepared by Helber Hastert & Fee, Planners

used by the family. Presently, the entire building is leaning; a significant portion of the roof is gone, and the staircase to the second floor has collapsed.

*Feature 764/E.* This feature is currently only a remnant. It was formerly the saddle house. This structure was attached to the eastern side of the carriage house. The floor and foundation are all that remain intact. Presently, on the floor surface is the wood from the walls and roof intermixed with equestrian tools.

*Feature 764/F.* Feature 764/F is a vacant plant house in poor condition. The structure is rectangular and made of wood. The dirt floor has been excavated about three feet below the ground surface. The walls of the excavated portion are lined mostly with hollow tile, but also basalt boulders. The hollow tile might have been a later addition. The steps at the entrance are cut basalt. The roof is damaged.

*Feature 764/G through N.* These features comprise eight houses located approximately 500 feet northwest of the main house. These structures were built as housing for employees of the Robinson Family. Earlier houses were located in the same or approximately the same area as the existing houses. A 1912 USGS map and a 1930's-era aerial photograph show buildings in about the same location as the existing housing. Gay and Robinson, Inc. tax records indicate that two of the houses were rebuilt in 1953, and two others were rebuilt in 1954.

The design and materials of the eight houses are so similar that it is nearly certain that they were all constructed close together in time. They are nearly identical, varying slightly in layout or size. There appears to be two different floor plans, with either three or four bedrooms. The houses are rectangular in plan, with wood post and beam foundations and vertical wood tongue and groove (T & G) exterior siding. The houses have received little renovation and generally retain their original layouts, materials and character. The houses appear to generally be in good condition, with little termite or other damage.

***Site #50-30-9-765.*** Site 765 is a 6.5-acre inland fishpond. This site is a large enclosure constructed of *pahoehoe* cobbles and boulders to 2.5 feet in diameter which form a wall surrounding the fishpond. The wall is discontinuous. Some areas of the perimeter have been disturbed by cattle. Other spots have vegetation covering, or trees fallen over the perimeter wall.

This fishpond is classified as a *pu'uone* type pond. A *pu'uone* is created by the formation of a barrier sand berm that isolates the pond from the sea. This is a

very common type of pond in the coastal zone of the major islands in the Hawaiian chain. On Kauai, this is the type of pond most frequently used as a fishpond. Most *pu'uone* have freshwater spring sources, a feature which converts them into an almost freshwater pool termed *lokowai*. (Kikuchi, 1999) In addition to the wall constructed around the perimeter, there is a wall which transects the width of the pond at its makai end, essentially splitting the pond into two unequal parts (Figure 19). This wall, which is approximately 19 feet across and 352 feet long, is constructed of the same materials as the perimeter wall.

There have been a number of historic modifications to the pond. A gate at the southern end is made of concrete. At the mauka terminus of the pond, a pump house was built on a concrete slab. This structure is made from corrugated metal. Inside there is a combustion engine pump attached to a 6-inch cast iron pipe. Water was pumped from the pond for use on the rest of the property.

At the present time, the pond has large deposits of silt accumulated, and there are dense concentrations of vegetation throughout. Although the pond appears to have been used for fish farming in the past, it is not now in a state to support fish farming, and exhibits extensive historic modification.

The only known story relating to the fishpond centers around a *mo'o wahine* (a fresh water mermaid with the ability to change into a partially human form) who is said to reside in the pond. Legend has it that she can be seen in the early mornings sitting on a particular *pohaku* (rock) just before sunrise. The stone was described as being flat and oblong in shape. It used to lie about a foot under water, near the pond's northeast edge. There is also a particular monkeypod tree and coconut tree which mark the spot where the *pohaku* is said to have been. While the name of the *mo'o wahine* is not known, it is probable that there is an older name for the pond which relates to the legend in some way.

***Site #50-30-9-766.*** This site is a mortared stone and brick structure commonly referred to as a "Portugese Oven." Immigrants from Portugal introduced this type of wood-fired outdoor oven to Hawaii. This structure is clearly of historic origin, and is in very good condition.

***Site #50-30-9-972.*** This site consists of two features. Feature A is a subsurface cultural layer that contains the remains of prehistoric habitation and other activities. The layer contains traditional Hawaiian food remains, including mammal and fish bone and marine shell, charcoal from combustion features, and



View of fishpond looking mauka (c.1920). The berm separating the two sections of the fishpond is seen in the foreground. Note abundance of open water.



Recent view looking across fishpond. Note growth of vegetation.

Fishpond at Kapalawai

Figure 19

KAPALAWAI RESORT
Kapalawai, Kauai, Hawaii

Source: Robinson Family Archives, Helber Hastert & Fee

Prepared by Helber Hastert & Fee, Planners

artifacts such as basalt flakes and volcanic glass. The site also contains numerous intrusive features that extend from the cultural layer into the underlying, culturally sterile, beach sand. These features are the result of Hawaiian excavations for many purposes, including hearths, earth-ovens, and structural supports such as post holes. This feature was located and documented during the backhoe subsurface testing of the project area (see "Test Excavations," below). Backhoe trenches 5, 6, 14 and 23 cut through this layer and exposed it in profile. This layer is generally 12 to 16 inches thick, but is up to 4.3 feet thick in some areas.

Feature B contains what is most likely a prehistoric human burial, and is associated with the cultural layer at Feature A. It was found in backhoe trench 23 approximately 4-6 feet below the surface ground elevation. Based on the general context of the burial (an unmarked burial in coastal sand deposits, with no apparent historic artifacts in association, within what is most likely a prehistoric cultural deposit) it is more likely that the burial is pre-historic/early Historic Native Hawaiian. After observation and recordation, the trench was backfilled. Appropriate State Historic Preservation officials (Burials Program and Kauai archaeologist) were notified of the burial find.

***Test Excavations.*** Subsurface testing was performed in and around Site #50-30-9-763, and at the juncture of the Mahaikona Stream and the shoreline. Three test units were excavated on the surface of Site #50-30-9-763. Test Units 1,2, and 3 did not yield midden, charcoal, or artifacts of any kind. Test Unit 2 was excavated into the mounded ridge extending down the center of the platform. The results of Test Unit 2 indicate the paved surface of the platform is continuous and that the ridge postdates the construction of the surface of the platform. Five shovel test pits were placed around the perimeter of the platform to look for cultural deposits. None were found. The findings indicate a sterile environment in and around the platform. A single test unit was excavated above the west bank of Mahaikona Stream where the vegetation begins behind the beach. This test units location (#4) was chosen as a likely spot for pre-contact occupation because of
its proximity to the ocean and perennial stream. In addition to Test Unit 4, the west bank of Mahaikona Stream where it cuts through the beach was examined. Neither Test Unit 4, nor the shovel exploration of the stream bank yielded any evidence to support pre-contact occupation at this location.

Background research revealed a substantial amount of historic modification to the project area for the purpose of ranching. Field observations confirmed that the project area has been utilized for ranching, and residential habitation.

A total of 23 backhoe trenches were excavated and documented. Trench locations are shown on Figure 14. The majority of trenches were excavated in sandy coastal deposits. As expected, sediments in the makai portion of the project area are predominately calcareous beach sand. Only in the area immediately around the fishpond were substantial terrigenous sediments found. No evidence of prehistoric/traditional Hawaiian subsurface deposits was found in terrigenous sediments. Evidence of massive historic earth moving was found in Trench 10, where an artificial berm was created along the northern boundary of the Fishpond.

Loam and sandy loam terrigenous sediments appear to have been deposited discontinuously over many portions of the project area. Based on field observations these deposits are most likely recent historic or modern and related to land clearance or earth movement. An apparently historic or modern sandy loam deposit was often observed immediately above the older, now buried sand A-horizon.

Beside the historic fill layers documented in Trench 10, subsurface evidence of cultural activity was documented in three locations during the backhoe testing. Two of these locations, Trenches 3 and 7, consisted of discontinuous cultural deposits, charcoal flecking and marine shell, in pit-features. The cultural deposits in Trenches 3 and 7 are most likely historic and were not assigned State site numbers.

The third location consisted of the extensive prehistoric/traditional-Hawaiian cultural layer that was documented and sampled in Trenches 5, 6, 14, and 23 at the project area's west end. A most likely prehistoric/early historic Native Hawaiian burial was located in association with this cultural layer.

The backhoe testing adequately sampled the *makai* portions of the project area for subsurface cultural deposits. The *mauka* portion of the parcel was not sampled with backhoe trenches based on observations made during the pedestrian inspection of this region. These observations indicated little likelihood of buried cultural deposits in the project area's *mauka* terrigenous sediments.

In addition to the terrestrial test excavations, one 220 cm long core sample was taken from the middle of the pond, in an attempt to date the pond by paleoecological methodologies. From this sample, it has been suggested that the pond began as a natural basin subject to marine overwash, followed by modification by prehistoric Hawaiians to minimize marine influence, which was followed by a swamp-forest stage with periods of increased erosion into the pond

concluded by last phase of organic sedimentation reflecting recent overgrowth of the pond by aquatic vegetation (Shideler, October, 1999).

A drupe (seed) from a hala fruit (Pandanus tectorius) was extracted at a depth of about 170 cm. (Kikuchi, 1999). Subsequent Carbon$^{14}$ dating indicated a date between AD 895 and 1225 for the drupe. While dating the drupe to this period does not definitely date the fishpond, it does provide a window to establishing an approximate period for the fishpond. This would seem to correspond to the time of initial modification of the natural basin by prehistoric Hawaiians to minimize marine influence or effectively to the creation of the fishpond. This date is consistent with other carbon dating from Kauai which suggests a substantial expansion of human settlement in the latter portion of the posited Kauai island "Developmental Period from AD 600 to 1400. The time frame from AD 1150 to 1400 seems to have been a time of pronounced population increase, settlement and agricultural/aquacultural expansion on Kauai (Shideler, 1999).

***Site Significance.*** Site significance was evaluated using five broad criteria defined by the State of Hawaii and National Registers of Historic Places (Chapter 6E-10 and 6E-5.5, Hawaii Revised Statutes). A cultural site is determined to be significant if the:

A. Site reflects major trends or events in the prehistory of the state of nation.
B. Site is associated with the lives of persons significant in our past.
C. Site is excellent example of a site type.
D. Site has yielded or is likely to yield information important to prehistory or history.
E. Site has traditional cultural significance to an ethnic group.

***Site #50-30-9-762.*** This is a multiple feature site composed of six features (A-E) which include a series of rock walls plus one terrace. The walls are difficult to date, but the property boundary wall features besides defining property limits, appear to have been constructed to provide a certain amount of privacy to the landowner. The smaller camp wall features and terrace seem customized for use in and around the camp. The complex of walls are assessed under criterion 'D' only.

The remaining walls help to define the boundaries of the property. They are integral to the property design. Preservation is recommended to the extent possible within the confines of the proposed plans. No further research is recommended.

***Site #50-30-9-763.*** This platform has a relatively even surface that slopes from its high end at the south downward to the north. There are five identifying characteristics on the surface of the platform: two linear paved depressions; a mounded ridge extending down the center; an oval mound; and a constructed pit. A total of 8 test units were excavated in and around the structure. Testing revealed no cultural materials of any kind. Testing also revealed the structure had been modified through multiple phases of construction. The surface is relatively even, and its construction required substantial time and effort. Based on these observations it is assessed as historically significant under criterion 'D.'

Based on the amount of time taken to construct, and the effort taken to pave the surface of the platform, the recommendation is preservation, with no buffer zone.

***Site #50-30-9-764.*** This site consists of ~~six~~ 14 historic structures (Features A to ~~F~~ N) which include: three living quarters, a garage, a collapsed saddle house, ~~and~~ a greenhouse, and eight employee houses.

The house is considered significant under Criteria C, as it embodies distinctive characteristics of a type and period, and possesses high artistic values. The house is also significant under Criteria B, as it is associated with the Robinson family, who are important in the history of the islands of Kauai, and Niihau, and the state of Hawaii. The house is the primary structure at the site, and is the most significant feature there. The bedroom wing, although a later addition, has been part of the house complex for more than 50 years, and has developed significance as part of the complex. It was built using the same materials and style as the main house and blends well architecturally.

The main house and attached kitchen and bedroom wings shall be preserved as much as possible, particularly on the exterior. Damaged architectural materials shall be restored using material types and sizes to match the original.

Feature B, the guest house, has been an integral part of the property since the earliest historic-period construction on the site, and served an important role as guest quarters for visitors to this then-remote location. Although there are a few additions to the structure, most of these are attached only at the roof, and do not affect the historic fabric of the structure. These additions could easily be removed. The building has been used for the same general purpose since its construction and is a relatively unaltered historic structure, with construction materials and style representative of its period. It has played an important role in the history of, and activity at, this property. It is a significant part of the Kapalawai complex. This

building is significant under Criteria B and C, as part of the complex which is associated with the Robinson family, which further embodies the distinctive characteristics of a period of construction, and as part of a significant and distinguishable entity (the house and complex at the site).

The cottage will most likely be used for administrative space. The exterior of the building will be restored, including repair or replacement of all damaged material, and removal of the non-historical additions. This work will increase the historic integrity of this structures.

Feature C, the building used as office space by Robinson Family Partners, is significant as a relatively intact historic structure that played an integral role in life at the Kapalawai complex. It has been part of the property since the earliest historic-period construction on the site, and has been in continuous use as part of the property since construction. This building, as well as an the associated tack and storage buildings, are significant under Criteria B and C, as part of the complex which is associated with the Robinson family, which embody the distinctive characteristics of a period of construction, and as part of a significant and distinguishable entity (the house and complex at the site).

The office building will continue to be used for that purpose. The tack and storage portion on the mauka side of the building will cleaned and repaired. It is possible that an adjacent structure or addition to the office building will be constructed to serve as a reception area for arriving guests; if this occurs, it will be designed to conform to the U.S. Secretary of the Interior's Standards for additions to historic buildings and for new construction adjacent to historic buildings.

Feature D, the garage, has significance due to its age and essential role it served at the site, The front elevation has been altered somewhat from its original appearance by the replacement of the lower portion of the wall with the doors, and the removal of an awning roof. The changes in the structure reflect the changes in the type of activities and mode of transportation available throughout the history of the site. The building appears to be structurally unsound and in very poor condition. Additional investigation of the stability and condition of the building will be done to determine if it can be saved. If it is demolished, the plant growth should be cleared off the structure as much as possible, and the building should be photographically documented, using equipment and materials that meet the U.S. Secretary of the Interior's Standards for documentation. The tack shed (Feature E) is a ruin, and will be removed.

Feature F, a vacant greenhouse, has certainly been present at the site for many years, and has significance as a structure continuously used for the same general purpose since its construction. However, due to its poor condition, like the garage buildings, repairs needed would require so much reconstruction that very little historic material would remain, diminishing much of the building's historical integrity.

Current plans do not include the restoration or the development of the garden area. This building will be demolished due to its poor condition. Prior to demolition, the plant growth should be cleared from the structure as much as possible, and the building should be photographically documented, using equipment and materials that meet the U.S. Secretary of the Interior's Standard's for documentation.

At least four, and possibly all of the houses, are not yet 50 years old, which is the minimum age for properties to generally be considered as significant under National Register Criteria. However, these structures have been part of the property for at least 45 years, and have served an important role as housing for employees of the Robinson Family. The buildings have been used for the same general purpose as the houses they replaced at the same location. The buildings are relatively unaltered structures, with construction materials and styles representative of their construction period. The houses are significant as a group of related structures that have played an important role in the history of, and activity at, the Kapalawai complex.

***Site #50-30-9-792.*** Site 50-30-9-792 consists of subsurface cultural deposits containing the charcoal-enriched sediments, pit-features, artifacts, and midden associated with prehistoric or early historic traditional-Hawaiian occupation. The site is significant under Criterion D of the State and National Registers of Historic Places for its information content regarding traditional-Hawaiian coastal habitation in this portion of Kauai. The age and ethnicity of the human burial associated with the cultural layer (Feature B), based on the available evidence, is most likely a prehistoric or early historic Native-Hawaiian. Accordingly, the site also has traditional cultural significance to Native Hawaiians and is significant under Criterion E of the State and Register of Historic Places.

***Other Structures.*** Other structures in the vicinity of the main house include a water tank, wash house structures, and three sheds. The water tank has been present at the site for a long time, and certainly served an important function during the days of its use. However, the structure is now in such poor condition, and has lost so much of its original material, that it retains little historic integrity. The

structure will most likely remain as a ruin, unless final plans show development in this area.

The wash house structures do not have enough historic material remaining to be significant. The three sheds have little significance due to their minor roles at the site. One shed, which is wood-sided, in the garden area, can continue to be used as storage for grounds maintenance. The other two sheds will be demolished.

Probable Impacts

Many of the structural historic sites identified on the project site will be retained and efforts will be made to restore them. Buildings in this category include: the former Robinson family residence (Site 764A); the former guest house (Site 764B); and the former servants quarters (current offices for Robinson Family Partners) (764C). Other structures will be demolished because they are in such poor condition. Buildings in this category include: the former carriage house/garage (Site 764D); the remnants of the former saddle house (Site 764E); and the former plant house (Site 764F). The eight employees houses (sites 764G through N) will continue to be used as housing for employees of the development or Gay & Robinson, Inc., continuing the historical use of the structures. Alterations will be limited to general repairs and maintenance whenever possible, with replacement construction occurring only when necessary when buildings cannot be rehabilitated.

The structures being retained have been surveyed to determine their condition and identify required repairs. All repairs will be implemented to match original materials and design to the greatest extent possible, so the exterior appearance of these buildings will remain intact.

A significant portion of the interior of the former residence (existing dining, sitting, library, pantry, china, linen rooms, as well as one guest bedroom and the original kitchen building) will be maintained as museum space, and will be repaired and restored to match original materials and design. The remainder of the main house will undergo the most interior renovations. Within the two guest chambers with bathrooms at the front of the house, all interior walls and fixtures will be removed and a lounge bar will be constructed. Most of the interior walls in the east section of the house will be removed to create space for men's and women's restrooms and meeting rooms. The interior walls in the attached bedroom wing will be removed to create another meeting room.

All existing painted surfaces will be repainted. All papered walls will be repapered. Every effort will be made to restore the existing wallpaper. If evidence of original wallpaper cannot be found, it will be replaced with appropriate period wallpaper.

The fishpond will be cleared of exotic vegetation and restored to an appearance similar to that in the latter part of the 19th century and the first half of the 20th century. The exact method of pond clearance has not been determined, so impacts to the pond are difficult to determine at this time, and it is not known what type of heavy equipment will be required, if at all. If large heavy-equipment vehicles are needed, they could possibly impact the extant pond rock walls, if the full weight of the vehicles is brought to bear on the walls.

Three other historic sites, the Portuguese Oven (Site 766), the platform (Site 763), and a series of rock walls and terrace (Site 762) will be preserved as-is and integrated into the site design of the project.

The discovery of a human burial in the property's sandy coastal deposits is hardly surprising. It is possible that as yet undiscovered human burial remains may be located within the project area's sandy deposits.

Mitigation

Appropriate actions should be implemented to ensure protection of extant fishpond walls during any activity to clean out the fishpond. These actions should be reviewed by the DLNR SHPD prior to commencement of any such activity. Additionally, there is a *pohaku* (rock) in the fish pond associated with a *mo'o wahine* legend, which could not be found due to vegetation and debris. It is recommended that before restoration work on the fishpond begins, this *pohaku* should be located and preserved in place.

The Portuguese Oven should be clearly marked with an appropriate buffer area to prevent accidental damage during construction.

A mitigation plan will be prepared and implemented for all historic properties identified in the project area. This plan will include interim mitigation measures to protect historic properties during construction and development related activities. In addition, a long-term preservation plan and interpretive plan will be prepared.

The three buildings associated with the residence that are to be demolished (764D: Carriage House/Garage; 764E: Tack Room; and 764F: Greenhouse) should be photographically documented.

Feature 762G (iron try-pot) is recommended for preservation, with the construction of a moderate roof structure to shelter it from the weather.

Oral interviews suggested Site 763 (Rock Platform) was used as a clearing mound in the 1940's. However, due to some remaining uncertainty regarding the function of this highly anomalous site, it is recommended for preservation with no buffers.

Site 792, (Traditional-Hawaiian Cultural Layer and Burial) are recommended for preservation through the establishment of an archaeological and burial preserve area. Two mitigation steps will be required to establish this preserve area:

(1) Cultural Layer Preservation Plan

Feature 50-30-9-792/A, the cultural layer, is recommended for preservation for future archaeological research. The preservation plan will outline the short-term and long-term preservation measures that will safeguard the feature from damage during project construction and subsequent land use. Recommended short term preservation measures include:

a) a preconstruction meeting with the project construction personnel to make them aware of the location and significance of the preserve area;

b) surveying the preserve area boundaries by professional land surveyors so the correct dimensions of the preserve area can be plotted on all project development maps. No construction or other land disturbance should take place within this preserve area; and

c) the erection of temporary 4-foot high plastic event fencing during construction along the preserve area boundary to make the boundary highly visible to machine operators. This fencing can be removed once construction is completed.

Long term preservation measures should protect the site for future research. These include keeping the preserve area free of ground disturbance such as construction, excavation, or major landscaping, such as tree planting. Simple landscaping, such as a grass lawn, should be installed to cover and protect it from erosion and

pedestrian traffic. Once adequately protected by a lawn covering the preserve area need not be closed off from public access. No fencing or other demarcation of the preserve area is recommended, as this will only draw undue attention to the area.

(2) Burial Preservation Plan

Feature 50-30-9-792/B, the human burial, is recommended for preservation in place within the combination archaeological and burial preserve area. The preservation of the burial will require the preparation of a burial treatment plan. As a previously recorded burial site (so designated because it was found during inventory survey investigations) the mitigation and treatment of these skeletal remains fall under the jurisdiction of the Kauai Island Burial Council, who must approve all mitigation and/or treatment measures. The request for preservation in place must be presented to the Burial Council in the form of the burial treatment plan. The requirements for a burial treatment plan are clearly outlined in Chapter 13-300, Hawaii Administrative rules "Rules of Practice and Procedure Relating to Burial Sites and Human Remains". Along with other information the burial treatment plan must include:

a) Evidence of good faith search for lineal and cultural descendants, including legal advertising;

b) Names of known lineal or cultural descendants recommended by the SHPD Burials Program and recognized by the Burial Council; and

c) A description of proposed treatment of all burial sites including a statement of preservation in place or relocation. This should include both short and long term measures, which would be very similar to the measures given above for the archaeological site preservation plan.

Both the preservation plan and the burial treatment plan will be written, approved by SHPD (preservation plan) and the Kauai Island Burial Council (burial treatment plan), and implemented, before development of the parcel can begin.

Finally, archaeological monitoring will be required during construction. Subsurface testing results indicate that two site or feature types will potentially be found during ground disturbance: human-burials and subsurface prehistoric cultural layers. These site/feature types are much more likely to be found in the project area's sand deposits along the coast. Accordingly, archaeological monitoring is recommended for all portions of the project area containing sand deposits. Before

construction begins a monitoring plan should be written, approved by SHPD, and implemented.

It is recommended that the monitoring plan include provisions for the documentation of inadvertently discovered prehistoric cultural deposits. Documentation of features should include plotting their location on the overall project area map, profile drawings, descriptions of their stratigraphic context, descriptions of the feature's contents, and, if possible, samples for radiocarbon dating analysis. The monitoring plan should contain provisions for the analysis of these samples, if they are encountered. If available this information would provide better understanding of the prehistoric coastal occupation in the region.

In consultation with DLNR/SHPD and the Kauai Island Burial Council it may be possible to combine the burial treatment and preservation plans for Site 50-30-9-792 with the monitoring plan for the entire parcel into a comprehensive historic preservation mitigation document.

## 4.10 Scenic Resources

Existing Conditions

The physical ambience of West Kauai is characterized by its rural nature, dominated by open space and the presence of sugar cane. Sugar cane has been a dominant visual condition in West Kauai for many decades. Recently, other agricultural crops have been introduced in the region, most notably coffee on former sugar lands near Eleele, and experimental corn in Makaweli. The dominant colors of the region are influenced by the bright blues of sky and ocean, the vibrant greens of agricultural fields, and the reds and browns of the soil. Development in the region is decidedly low-rise in nature, and plantation-era in style, including the two main towns of Hanapepe and Waimea.

Driving along Kaumualii Highway in either direction, motorists enjoy periodic views of the ocean and the mountains, depending on topography and vegetation immediately adjacent to the highway. The project site has approximately one mile of frontage along Kaumualii Highway. Views into the project site are transitory at the southern end of the property near the bridge that spans the Aakukui Stream, and near a secondary dirt access road about ¼ mile north of Aakukui Stream. At no time is the shoreline visible from the highway. Otherwise, views toward the property are interrupted by dense, tall thickets of bougainvillea and other trees. The bougainvillea provide a spectacular array of color, when the bushes bloom in a

beautiful splash of colors. Tourists are often seen stopping their cars and posing for pictures using the bougainvillea as a backdrop.

After passing the property travelling in a northwesterly direction, vistas toward the ocean are restored as agricultural fields once again provide a clearer view of the shoreline area.

Probable Impacts

The interior of the project site is not currently visible from Kaumualii Highway because of the dense vegetation on the mauka portion of the property. Consequently, development of the proposed resort will not be visible from the highway.

The existing entry drive into the property will be formalized for the resort, thereby undergoing some modification, including the installation of a left-turn storage lane on the Waimea-bound side of Kaumualii Highway, and a right-turn deceleration lane on the Hanapepe-bound side of the highway. In addition, a new exit drive for the property will be created about 500 feet on the Hanapepe side of the entry drive.

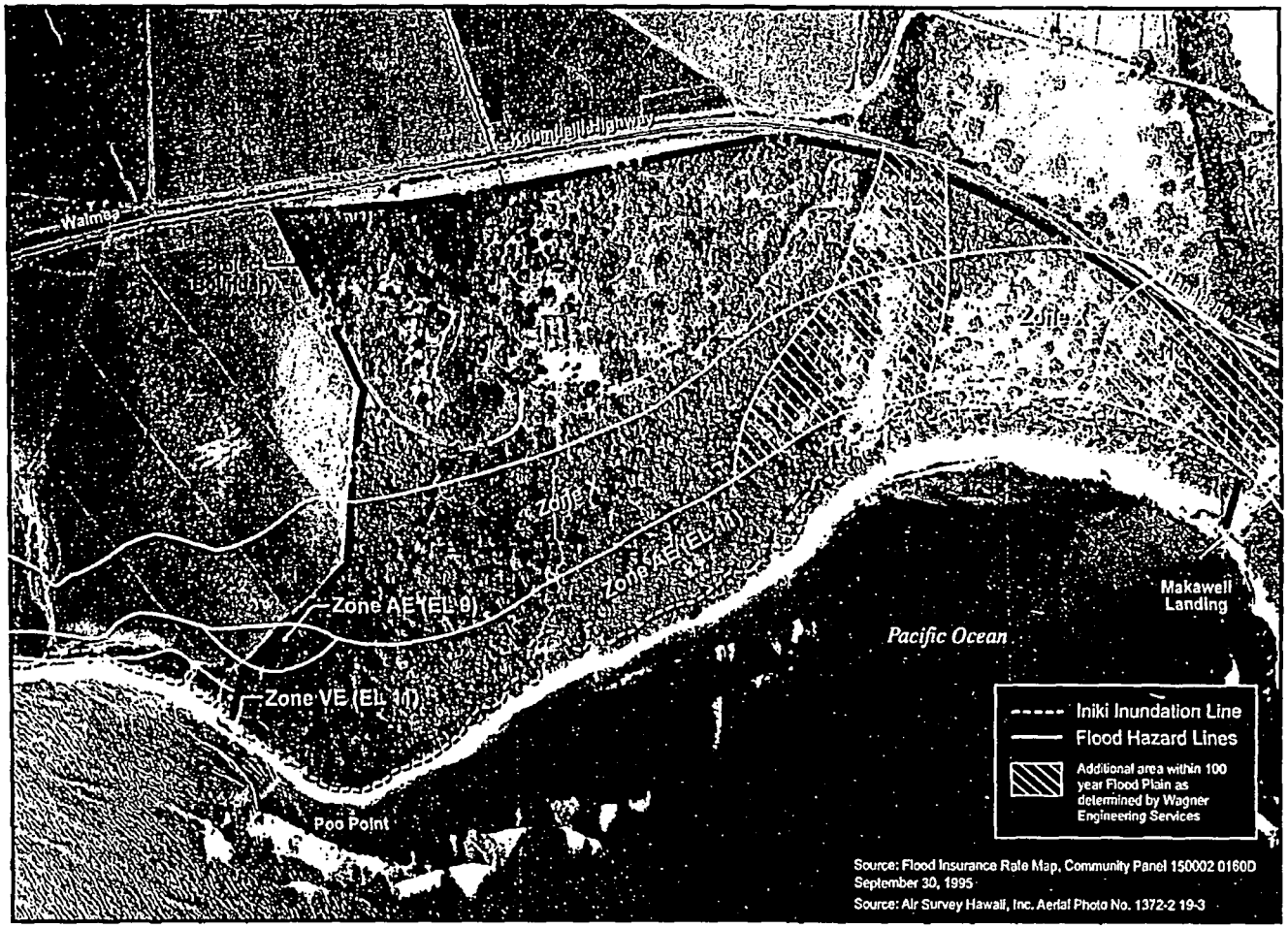
Mitigation

Appropriate signage and landscaping is recommended for both the entry and exit drives to the Kapalawai Resort. These improvements should be kept in character with the region, and signage should be indirectly illuminated.

## 4.11 Flood Hazards

Existing Conditions

The 100-year floodplain is based on National Flood Insurance Rate Maps, where areas designated "AE" and "VE" are subject to inundation. Both these areas fall within "special flood hazard areas inundated by the 100-year flood." Both zones also have base flood elevations determined. As can be seen in Figure 20, an area along the makai portion of the property is within the AE zone, with a base flood elevation of 11 feet above mean sea level (AMSL). A smaller portion of the project site is affected by the AE zone, with base flood elevations of 9 feet AMSL. Another small portion of the property is affected by the VE zone, a coastal flood with wave velocity (tsunami). Base flood elevations in this area have been determined to be 11 feet AMSL. A band mauka of the AE zone has been designated "Zone X," which




Flood Hazards / Hurricane Iniki Inundation

Figure 20

KAPALAWAI RESORT

Kapalawai, Kaual, Hawaii

Feet

0 300 600 1200

Prepared by Helber Hastert & Fee, Planners

indicates an area which is affected by the 100-year flood, but has flood depths of less than one foot.

Additional calculations conducted by Wagner Engineering Services indicate an expansion of areas affected by the 100-year flood adjacent to Mahaikona and Aakukui Streams. Base flood heights in the vicinity of Mahaikona Stream are 12 and 13 feet closer to Kaumualii Highway, and 11 feet adjacent to Aakukui Stream.

Hurricanes cause damage in several ways. Heavy rains and tornadoes can accompany strong winds and storm surges. Surges, intrusions of wind- and pressure-driven coastal waters above the tideline, are restricted to the first few hundred meters of the coastal zone, while winds impact entire islands. Figure 20 shows the extent of inland overwash of storm surge at Kapalawai (this line was determined by digitizing an aerial photograph of the project taken on September 18, 1992, 7 days after Hurricane Iniki struck Kauai, and tracing the debris line).

Probable Impacts

Many of the structures in the proposed Kapalawai Resort are affected by flood hazards in the AE and X zones, with flood elevations ranging from one to about five feet above existing grade. No structures are planned to be built within the area affected by the zone of inland overwash from the storm surge associated with Hurricane Iniki.

Mitigation

All affected structures will be constructed in compliance with flood hazard regulations, which require: (1) securely fastened columns to resist flotation, collapse, and lateral movement; and (2) certification by a registered professional engineer or architect.

## 4.12 Air Quality

Existing Conditions

Regional and local climatology significantly affect the air quality of a given location. Wind, temperature, atmospheric turbulence, mixing height, and rainfall all influence air quality.

Present air quality in the vicinity of the project area is affected by air pollutants from natural, vehicular, and agricultural sources.

Natural sources of air pollution which may affect the area but cannot be quantified accurately include the ocean (sea spray), plants (aero-allergens) and wind blown dust. In the case of the project site, wind blown dust could originate from agricultural fields adjacent (mauka and Waimea side) to the property. This particular pollutant would be affected by seasonal variations in factors affecting soil cover and moisture content (temperature, rainfall, wind speed and direction, and harvest schedule). Wind blown dust could also originate from within the project site.

Kaumualii Highway, which borders the project site, is the region's major arterial roadway, and as a result, is the source of exhaust from motor vehicles.

Agricultural operations in the area also affect air quality with the operation of the sugar mill at Kaumakani, approximately one mile east of the project site.

Probable Impacts

***Short-term Impacts.*** The principal source of short-term air quality impacts associated with the proposed project will be construction activity, including construction vehicle emissions and particulate emissions connected with clearing, grubbing and other site preparation work, and construction equipment and workers traveling to and from the project site. Factors favoring good air quality is the vicinity of the project site include good exposure to tradewinds, and ample open space. Moreover, vehicular traffic flow along the section of Kaumualii Highway fronting the project site is relatively smooth, further enhancing air quality.

Factors contributing to less favorable air quality include low annual rainfall (about 21 inches), which creates dusty conditions, and good exposure to tradewinds.

***Operational Impacts.*** Two sources of air quality impacts could result from the operation of the resort: (1) increased vehicle emissions due to increases in traffic volume; and (2) fugitive dust from disturbance of dry exposed soil.

After construction of the resort is completed, use of the proposed facilities will result in increased motor vehicle traffic on nearby roadways (from about 6% to

20%, depending on day and time of day; see Section 6.1). This could potentially cause long-term impacts on ambient air quality in the project vicinity.

The use of electric-powered vehicles by the resort will reduce on-site emissions.

Increases in vehicular emissions will probably not have a significant impact in the vicinity of the project site because traffic flow is smooth and normal wind patterns prevent the accumulation of emissions. In addition, the elimination of lead-based gasoline has eliminated this source of motor vehicle-created pollution.

Mitigation

***Short-term Impacts.*** Compliance with State of Hawaii Air Pollution Control Regulations (Title II, Chapter 60.1, Hawaii Administrative Rules) will ensure reduction of fugitive dust related to construction activities. Reasonable precautions, or best management practices (BMPs) include:

- use of water on exposed soil (twice daily, if necessary);
- covering all moving, open-bodied trucks transporting materials which may result in fugitive dust;
- use of wind screens to prevent migration of fugitive dust, as appropriate;
- prompt removal of earth or other materials which have been temporarily stockpiled; and
- limiting the land area exposed by construction

***Operational Impacts.*** Because of the dry nature of the climate in the region, fugitive dust will always be a concern. In order to minimize fugitive dust, care must be taken to avoid patches of exposed soil.

## 4.13 Noise

Existing Conditions

The ambient noise environment of this coastal project is influenced by the sounds of ocean waves and the wind rustling vegetation. In most locations on the project site, traffic noise from Kaumualii is not discernible. The cottages are proposed to be set back from the highway distances ranging from about 400 feet to about 2,500 feet.

Probable Impacts

***Short-term Impacts.*** Development of the Kapalawai Resort will involve grubbing, grading, some excavation, and the construction of infrastructure, cottages, restaurants and other accessory facilities. Actual noise profiles generated by these activities will depend on the construction methods employed during each phase of the project. Typical ranges of construction equipment will range from less than 60 dBA for pumps and vibrators, to almost 100 dBA for jack hammers and rock drills. Earthmoving equipment, such as bulldozers and diesel powered trucks will probably be the loudest equipment used during construction.

The closest sensitive receptor is several hundred feet from the nearest point of construction activity, and there is a heavy growth of vegetation separating the areas. Therefore, sound from construction operations will be greatly attenuated before reaching any nearby dwellings. In addition, agricultural activity in the vicinity already includes the operation of heavy equipment and trucks. Therefore, noise impacts attributable to the construction period are expected to be minimal, and of a temporary nature (9-12 months).

***Operational Period Impacts.*** Potential noise sources attributable to the operation of the proposed resort include:

- use of lawn mowers and other landscape maintenance tools;
- pumps associated with the wastewater treatment plant and irrigation systems; and
- arrival and departure of supply, guest, and employee vehicles

Typical A-weighted noise levels at a 50-foot distance for the landscape equipment range from 74 dBA for a lawn mower to 82 dBA for a chain saw. The nearest noise sensitive areas would be residences located several hundred feet away. Due to the distance of separation, these noises should not be objectionable.

The pumps for the wastewater treatment plant and the irrigation system will be located within buildings, which will limit their impact. In addition, these are no sensitive receptors in the immediate vicinity. Therefore, no significant off-site noise impacts are anticipated related to on-site mechanical equipment.

Mitigation

All construction vehicles must meet Title II, Administrative Rules of the Department of Health, Chapter 42, Vehicular Noise Control. All construction activities must meet the provisions of Title II, Administrative Rules of the Department of Health, Chapter 46, Community Noise Control.

## 4.14 Interrelationships and Cumulative Impact: Physical Environment

Potential impacts to the physical environment will be limited to the borders of the project site. Baseline date has been collected relative to the marine environment (both physical structure and water chemistry), indicating some input of fresh water to the nearshore environment. The collection of this data will allow future comparisons with regional data to determine any changes in nearshore marine water quality.

The infrastructure proposed for the resort will limit potential impacts to the marine environment. This is attributable to the construction of an on-site wastewater treatment plant. The overall physical appearance of the region (open space) will remain unchanged. There are no known projects in the near future that would impact the project area, or the region in its vicinity. Agricultural activities are continuing on land in the region. This includes the on-going sugar activities of Gay and Robinson, Inc., and other agricultural activities on land owned by Gay and Robinson, Inc. The open character of the project will complement the region, particularly since buildings on the project site will not be visible from Kaumualii Highway.

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# 5

## ASSESSMENT OF EXISTING CONDITIONS, PROBABLE IMPACTS AND MITIGATION: SOCIO-ECONOMIC ENVIRONMENT

# 5.0 ASSESSMENT OF EXISTING CONDITIONS, PROBABLE IMPACTS AND MITIGATION: SOCIO-ECONOMIC ENVIRONMENT

An Economic and Fiscal Impact Assessment was prepared for the proposed project by the Mikiko Corporation. Following is a summary of their findings. Their full report is attached to the EIS as Appendix F.

## 5.1 Population Impacts

Development of Kapalawai could affect population in several ways: (1) it is expected to attract new travelers to the State, primarily staying on-site; (2) construction and operational employment opportunities would lead to new de facto population on-site; and (3) some of those taking advantage of the construction and operational employment generated by Kapalawai might move from other counties or states because of job opportunities, thus increasing the Kauai County and/or Hawaii State resident population levels. Other household members might also accompany in-migrating individuals.

***On-site population.*** Based on 250 developed cottages, with an occupancy of 1.95 people per unit, and an overall occupancy rate of 75 percent for the resort after three years, Kapalawai could be expected to accommodate an average of about 365 visitors per day (by 2004). In addition, about 143 operational employees would be present on an average day[2]. On average, Kapalawai could also have about 240 construction workers on-site on any given day during 2001. These figures represent the total number of persons anticipated to be on-site over a 24-hour period.

***Off-site population: In-migration to the State of Hawaii.*** The Kapalawai Resort is not anticipated to lead to any significant migration from out-of-State, as discussed below. However, to the extent that persons do move to the State because of its development, such in-migrants can be expected to reside in housing or transient accommodations located off-site.

*Construction period.* Hawaii's labor market is considered to have sufficient supply and the required skills to satisfy virtually all of Kapalawai's construction labor needs. However, a nominal number (2), or 1 percent of full time equivalent

[2] This number represents total employees present on the property over the course of multiple shifts.

(FTE)[3] staffing needs are assumed to come from the U.S. mainland. These persons would be temporarily resident on Kauai during the project's development.

*Operational period.* Recent hotel openings on Kauai have been directly associated with little, if any, in-migration of persons from out-of-State. Human resource managers at the 413-room Sheraton Kauai Resort and the 216-room Holiday Inn SunSpree, which opened in December 1997, and November 1998, respectively, were interviewed regarding the amount of in-migration associated with their properties. In both cases, no line employees were known to have moved from out-of-State due to employment opportunities on Kauai. Only two management personnel at the Sheraton may have moved due to Kauai employment opportunities. This represents from 0 percent to 0.6 percent of the total employees at each hotel. For purposes of this EIS, 1 percent of Resort employees (a total of 2 individuals) were assumed to move to Kauai from out-of-State due to employment opportunities at Kapalawai.

*Dependents.* In-migrant dependents are estimated at an average of 0.2 FTE in-migrant construction worker (since the position on which the "move" is based would be temporary), and 1.0 per FTE in-migrant operational employee. This would result in 2 additional individuals who would migrate from out-of-State.

***Off-site population: In-migration to the County.*** Resort construction at Kapalawai is likely to be associated with a temporary movement of employees between islands (primarily Oahu and Kauai), but its operations are expected to be staffed predominantly by prior island residents, as discussed below.

*Construction.* The amount of off-island construction labor Kapalawai will attract would be dependent on such factors as: (1) how the project is bid; (2) the bonding capacity and other on-going activities of Kauai-based general contractors at the time of construction; (3) the general contractor's criteria for selecting subcontractors; and other factors beyond prediction. Discussions with Kauai construction industry professionals and the head of the Contractor's Association of Kauai indicate, however, that there are general contractors on Kauai with the capacity to bond a construction project of Kapalawai's size. It was estimated that ultimate staffing for the resort's construction could vary from about 60 percent to 75 percent Kauai residents, assuming the general contractor is

[3] Full time equivalent is defined as 40 hours per week, or 2,080 hours per year.

from Kauai. Based on this input, projections assume that 30 percent (72) of construction workers employed on-site would be from off-island.

*Operations.* The openings of the Sheraton Kauai and the Holiday Inn SunSpree are estimated to have drawn about 7 or 8 employees each from other islands. This represents 2.5 percent of all employees at the Sheraton, and 6 percent of those at the Holiday Inn. For purposes of this EIS, 5 percent (10 individuals) were assumed to move to Kauai from other islands due to employment opportunities created at Kapalawai.

*Dependents.* Similar to estimates provided for the State of Hawaii, each in-migrating construction employee is anticipated to be accompanied by an average of 0.2 dependents. This results in 14 dependent in-migrants during the construction phase. On average, each in-migrant operations employee is assumed to be accompanied by 1.0 dependent, resulting in a total of 10 in-migrant dependents during the operational phase.

## 5.2 Economic Impacts

The Kapalawai Resort could be expected to impact the economies of the State and the County of Kauai by: (1) attracting visitors who would make new expenditures; (2) generating construction activity, which would support expenditures for goods and services; and, (3) creating and supporting jobs and business enterprises in its ongoing operations. The new jobs would in turn generate additional personal income in the County and throughout the State.

***Construction Expenditures.*** The estimated construction budget for the Kapalawai Resort is approximately $33 million. The budget includes:

- **Professional services** (architectural, engineering, landscape design, legal, and similar services)
- **Bungalow construction** (including materials and labor, but excluding the furnishings, fixtures and equipment associated with the cottages)
- **Support facilities construction** (support and "back of house" facilities, including walkways, landscaping, swimming pools, restaurants and snack bars, and renovation of the former Robinson family residence, but also excluding furniture, fixtures, and equipment that may be purchased for these facilities)
- **Infrastructure construction** (all costs related to infrastructural development, such as sewage, utility and cable lines, roads, parking facilities, etc.)

Development of the resort is estimated to require about 280 person-years of labor. While the majority of this work would occur on-site, some, such as the professional and administrative positions related to construction, are likely to be primarily located off-site, including elsewhere on Kauai, or on Oahu. Direct personal income associated with these Hawaii-based positions could total about $15.7 million.

Indirect and induced positions could total about 430 person-years of labor, for a total, including direct positions, of 710 person-years of labor for construction at Kapalawai. The indirect and induced positions could be supported throughout the State, but many would be located on Kauai.

Including its direct, indirect, and induced impacts, the project's development could support some $30.2 million in wages and salaries for Hawaii residents.

***Operational Employment.*** In addition to development-related positions, the Kapalawai Resort will support many long-term permanent jobs in its operations. Direct operational jobs are projected to stabilize at about 200 FTE positions. These new employment opportunities will include a variety of types and levels of work, such as opportunities in management, sales and marketing, registration/reservations, human resources, food service, maintenance and engineering, housekeeping, grounds keeping, and activities. The majority of these jobs would be located on-site.

Based on economic multipliers derived from the State of Hawaii's Input-Output Study (DBED&T, 1998), the total employment impacts of Kapalawai, including its indirect and induced jobs, could represent about 320 FTE positions throughout the State.

Direct wages and salaries paid to those employed in the resort's operations are expected to reach about $5.3 million. Including personal income associated with the indirect and induced positions, the project could generate nearly $12.3 million per year in ongoing payroll within the State (not including potential profits of proprietors whose businesses could serve Kapalawai, nor do they include employee benefits).

***Visitor Expenditures.*** The anticipated mix of types of visitors staying at Kapalawai is based on the findings of a market study prepared by Mikiko

Corporation (Mikiko Corporation, June 1999). This study assumes the following average mix of guests at Kapalawai:

Westbound visitors – 75%
Eastbound visitors – 5%
Hawaii residents – 20%

Hawaii residents are not expected to contribute significant new expenditures to the State since it is assumed their vacation budgets would have been spent elsewhere in the islands even if Kapalawai did not exist. To the extent local residents choose to stay within the State for their budgeted vacations because of Kapalawai, this assumption underestimates the project's positive economic impacts and is therefore considered conservative. However, Kapalawai's unique vacation opportunities may result in some Hawaii residents vacationing on Kauai rather than other islands of the State. Thus for the purposes of projecting County of Kauai impacts that stem from visitor population levels, 50 percent of the resort's Hawaii resident visitor mix is assumed to be persons who would not have otherwise stayed on Kauai.

*Bungalow expenditures.* Bungalow revenues are projected to represent about $8.8 million in 2002, increasing to $10.7 million by 2004 as operations stabilize. This is based on an estimated achieved rate of $185 per room night in 2002. Thereafter, real dollar increases of 3 percent per year are assumed until stabilization in 2004.

*Other expenditures.* Other expenditures from the anticipated out-of-state visitor markets are based on 1997 average daily expenditures of westbound and eastbound travelers to Hawaii (adjusted t0 1998 dollars and considering exchange rate changes). Based on this analysis, eastbound visitors are projected to spend about $186.00 per person per day[4]. Likewise, westbound visitors to Kapalawai could spend about $91.50 per day per person on non-lodging items and services.

On average then, the typical out-of-State Kapalawai visitor is projected to contribute $98.00 per day in non-lodging expenditures to the State's economy[5]. These expenditures would total about $9.1 million In new visitor spending by 2002, and $10.5 million per year upon stabilization of operations.

[4] Expenditures would be for items such as food and beverages, retail, entertainment, activities, and inter-island travel.
[5] This figure excludes any expenditures by Hawaii residents.

*Total direct expenditures.* In total, direct visitor expenditures are estimated to represent $17.8 million in 2002, increasing to about $21.2 million by 2004. Including the indirect and induced multiplier effects within the State, visitors attracted by Kapalawai could account for over $36 million in new annual visitor expenditures by the time of project stabilization.

## 5.3 Fiscal Impacts

The Mikiko Corporation has estimated the fiscal impacts of the proposed resort by comparing the project's anticipated contributions to State and County revenues to government service costs associated with the additional population that may be attracted to the State and County due to the project's construction and operation. The Mikiko Corporation's findings are summarized below, and their complete report is attached as Appendix F.

***County Real Property Tax Revenues.*** The most significant fiscal impact of the proposed resort for the County of Kauai is likely to derive from the higher real property taxes generated compared to those paid under its current land use designations and level of development. Total real property taxes for the project site payable in Fiscal Year 1999 are $2,041. Net new real property taxes at the site are based on the County of Kauai's Fiscal Year 1999/2000 rates, as adopted by the Kauai County Council in May 1999. The Resort/Hotel and Commercial tax rates are the same, both representing $8.40 per thousand dollars of assessed value of improvements and $8.80 per thousand dollars assessed value of land.

The projected assessed value of the project site (after assumed entitlements in January 2001) are based on comparison to assessed values at other projects on Kauai, and recent property transactions. Assuming entitlements are received in 2001, the properties would be reassessed under new land use designations as of January 2002. Therefore, the new real property tax classifications would be applied in the next fiscal year, which would begin July 1, 2002.

After adjustments for the property taxes now paid for the project site, Kapalawai is anticipated to generate approximately $420,000 annually in net new property tax revenues by 2003.

***Other County Revenues.*** In addition to real property taxes, the County of Kauai is allocated a share of the transient accommodations taxes (TAT) collected by the State (6.5 percent of State TAT collections), and it obtains liquid fuel, utility

franchise, motor vehicle weight, and other licenses and permit fees from residents and businesses.

Given the expenditures for bungalow revenues projected to be generated by out-of-State visitors to Kapalawai[6], the State's 7.25 percent TAT, and Kauai County's 6.5 percent share of State TAT collections, this could represent about $50,000 in annual TAT revenues for the County by 2003.

Persons who move to Kauai for job opportunities offered by the project would also pay additional liquid fuel, utility franchise, motor vehicle and other minor County taxes. These miscellaneous tax sources could represent a nominal further increase in County taxes attributable to Kapalawai.

In summary, net new taxes earned by the County as result of the development of Kapalawai Resort and its future operation could represent about $470,000 per year, on an on-going basis by 2004.

***Additional State Government Operating Revenues.*** Additional operating revenues accruing to the State government are expected to derive principally from the general excise tax (GET) accruing from out-of-State visitors' expenditures in Hawaii. Other sources of new State revenues attributable to the Kapalawai Resort include its share of TAT[7], as well as GET, income and other taxes paid by those who move to the State because of the project, and GET on the project's development costs.

Taxes paid by households that move to the state were adjusted downward from their historical levels to reflect the income tax rate reductions implemented by the State Legislature in 1998. These projected individual income taxes and other revenue sources from in-migrants are considered conservative because the overall figure was adjusted downward based on changes in State income tax levels, whereas the total figure includes specific excise and other taxes as well.

In total, new operating revenues for the State are estimated to amount to some $1.3 million annually by project stabilization in 2004. The projected State tax revenues may be conservative because they do not include:

[6] TAT paid by Hawaii residents staying at the Kapalawai Resort are not considered additional impact, since Hawaii residents are assumed to vacation elsewhere in the State.
[7] The County of Kauai receives 6.5% of all TAT revenues collected in Hawaii.

- Potential income taxes from proprietary operating income, including those that may be paid by the operating entity for the resort;
- GET or possible income taxes on ground lease rents earned by the landowner; or
- The State surcharge on motor and tour vehicles that would be rented by Kapalawai visitors.

***Per Capita Government Operating Expenditures.*** Both State and County governments can be expected to incur additional operating expenses in supporting the in-migrants that are attracted by the development of the Kapalawai Resort. An analysis of the County of Kauai's 1995/1996 fiscal year expenditures suggests that the County spends about $1,900 per resident per year, and about $1,170 per full-time equivalent visitor-year. These expenditures support services ranging from public safety and highways to recreation and cash capital improvements.

A similar analysis of State government operating expenditures per capital suggest that the State spends about $4,970 per year to support governmental operations on behalf of each resident, and $1,840 per full-time equivalent visitor year.

***Additional County and State Government Operating Expenditures.*** Applying the per capita budgets discussed above to the numbers of visitors and anticipated in-migrants to the County because of employment opportunities at Kapalawai, it is estimated that about $420,000 per year in additional County government expenditures will be required as a result of the development and operation of the Kapalawai Resort, by the time of project stabilization in 2004[8].

***Net Fiscal Benefits.*** County government operating revenues from the proposed Kapalawai Resort are anticipated to exceed additional operating expenses by $60,000 per year, as the project approaches stabilized operations (about 2004). The revenue/expenditure ratio for this relationship is projected to be 1:1.

On the other hand, with its far greater taxing powers and more varied sources of income, the State government's operating revenues are to anticipated to substantially exceed the additional operating expenses ($760,000) associated

[8] 50 percent of Hawaii-resident visitors to Kapalawai are considered "new population" for Kauai, meaning that the other 50% are assumed to be Hawaii residents who would have been likely to visit Kauai even without development of the project.

with the project throughout its development and operating periods. The revenue/expenditure ratio for this relationship is projected to be 2:4.

## 5.4 Traditional Customs and Practices

A native Hawaiian traditional customs and practices impact assessment for the proposed project was prepared by Cultural Surveys Hawaii, and has been reviewed ~~submitted to~~ by the Department of Land and Natural Resources, Historic Preservation Division. Following is a summary of Cultural Survey Hawaii's ~~their~~ findings. ~~Their~~ The full report is attached to the ~~DEIS~~ FEIS as Appendix G.

The purpose of the impact assessment was to consider the effects the proposed development may have on native Hawaiians as it pertains to their traditions and customs which are protected by law under the Hawaii State Constitution, Article XII, Section 7. Historical documents and maps were researched at the Hawaii state Archives, the Bernice Pauahi Bishop Museum Archives, the Kauai Historical Society, and the Kauai Museum. In addition, seven in-depth interviews were conducted with a total of nine people. Due to the exclusive use of the property by the Robinson family and its employees for over one century, except for Warren Robinson and Bruce Robinson, the majority of the interviewees were past employees of the Robinson family and had either worked and/or lived at the project area of Kapalawai at some time during their employment.

Even though most of the informants were prior employees and had spent time at Kapalawai, most had very little knowledge of Hawaiian legends, names and cultural practices related to the project area. All interviewees did have a common tie; they had all known a particular native Hawaiian man named Kuwalo who had worked for the Robinsons. All said that Kuwalo lived to be 104 years old. Due to the age and memories of most of the informants, information they heard from Kuwalo was not retained.

The interviews were a valuable part of the assessment for providing useful information about people, land use, boundaries and place names, and also helped to explain the lack of cultural practices within the project area.

~~Existing Conditions~~

~~Investigations for the assessment study have failed to turn up evidence of traditional customs and practices in the 170-acre parcel known as Kapalawai.~~

~~The lack of such evidence reflects the geographic location of the parcel as well as the nature of the land tenure. The project area is located on the flat table lands of Makaweli near the coast. There is no abundant source of surface water other than the on-site fishpond that is fed by underground springs. Prior to the Robinson's the *ahupua'a* of Makaweli had always belonged to the *ali'i* and it is highly possible that this particular fishpond was reserved solely for their use. A document search did not disclose any *kuleana* (native tenant) claims within the project area. Oral interviews, which were a part of this assessment, did not indicate that there was a Hawaiian settlement of any kind within the project area. Archaeological evidence and research of Hawaiian trails within the *ahupua'a* support the settlement of larger inland population as opposed to a coastal one.~~

~~The Robinson family has owned the *ahupua'a* of Makaweli, which includes Kapalawai, since 1865. Because Kapalawai was utilized by the family as a residence, ranch, farm, and dairy, and because the family preferred complete privacy regarding all of their lands, it was not possible for outsiders to go onto the property unless they had been invited or had asked permission. Thus, if any traditional customs and practices had been carried out at Kapalawai prior to the family's arrival, these may not have been possible during the 134 years of the family's ownership. Anyone who might have been pursuing these customs and practices has long since passed away. During the oral history phase of this assessment, none of the interviewees could recall being told by their elders of any cultural practices in the project area.~~

~~Probable Impacts~~

~~Based on the past history, it is the conclusion of the assessment that the proposed development will have little or no impact on Hawaiian culture.~~

Native Hawaiians traditionally accessed the coastal areas for gathering and subsistence and for trade. Though there is no record of coastal trails and no LCA record of native tenant *kuleana* parcels within the proposed project area of Kapalawai, it is likely that native Hawaiians did practice traditional gathering and use rights in the project area and the off-shore waters prior to Eliza Sinclair's acquisition of the *ahupua'a* of Kapalawai. An 1857 lease between the guardians of Victoria Kamamalu and a group of 120 people from Makaweli and Waimea indicate that the *kapu* (protected/tabooed) items exempted from the lease were the orange trees at Waikea, the large trees of Maha'iha'i, the fort, the Po'alima taro fields, the small and large ponds in Kekupua, the *kapu* fish (*'o'opu*), and firewood—if it was for sale for personal and monetary gain. Thus, for example,

firewood for personal use could be gathered, along with any other traditional resource items not mentioned, such as *pili* grass for thatching, *hau* for cordage, plants for medicinal use, and marine resources in the off-shore waters. It is likely that any existing resources were utilized unless a specific *kapu* was placed on a particular item, as mentioned above. It is clear from the historic records that Kekupua Fishpond was reserved for the chiefs and, thus, the mullet would have been *kapu* to the native tenants. When Eliza Sinclair acquired Makaweli *ahupua`a*, she controlled the whole *ahupua'a* and its resources, which would have included the fishpond. It is evident that she continued the practice of reserving the mullet for personal use and keeping the pond resources *kapu* to the native tenants.

Research and oral interviews identified one historic property associated with a cultural tradition — the legend of a *mo'o* and a rock near the pond's edge where the *mo'o wahine* sits and can be seen. Very little is known about this particular *mo'o* who resides at Kekupua Pond. The pond is significant in that it houses the home and watery realm of the *mo'o*. Traditionally, *mo'o* were revered and worshiped and shrines on which to lay offerings were constructed. The presence of a *mo'o* in a pond contributes to the productivity of the pond, as well as, to the health and welfare of the people. Though the stone cannot be seen due to fallen debris, it is likely that the stone exists and is still there. It is recommended that prior to commencing restoration work on the pond, Hawila Kaleohano be contacted to identify the exact location of the stone. The recommendation is that the stone be preserved in place.

The issue of access to the shoreline is a non-issue as there are currently two public access routes adjacent to the east and west boundaries of the project area. The community is free to utilize these access routes and walk along the shoreline from Pakala all the way to the Waimea River. In addition to this, the present project plans include commitments to improve shoreline access by providing access routes from designated public parking areas from within the proposed development.

Investigations for the present assessment study have failed to turn up evidence of traditional customs and practices presently being exercised on the project site. This reflects the geographic location of the parcel, as well as the nature of the land tenure. The project area is located on the flat pasture lands of Makaweli near the coast. There is no abundant source of surface water other than the fishpond, which is fed by three underground springs. The *ahupua`a* of Makaweli had always belonged to the *ali`i* and it is likely that this particular fishpond was

reserved solely for their use and it would not have been accessible to the common people of the area. A document search did not disclose any *kuleana* (native tenant) claims within the project area, though this does not mean that native Hawaiians were not living in this area. The oral interviews which were a component of the traditional customs and practices report, did not indicate there were any Hawaiian settlements within the project area. The general consensus among the informants interviewed was that known settlements tended to be closer to the Russian Fort and Waimea where there were more abundant sources of water and food. Archaeological evidence and research of Hawaiian trails within the *ahupua'a* support the settlement of a larger coastal and inland population concentrated near the seaward portion of the Waimea-Makaweli-Mokuone river valleys. The historic record reflects very little Hawaiian activity at Kapalawai, other than use of the fishpond.

The Sinclair-Robinson family has owned the *ahupua'a* of Makaweli, which includes Kapalawai, since 1865. Because Kapalawai was utilized by the family as a ranch, farm, and dairy, and because the Family preferred complete privacy regarding all of their lands, it was not possible for outsiders to go onto the property unless they had been invited or had received permission to do so. Thus, if any traditional customs and had been carried out at Kapalawai prior to the Family's arrival, these were most likely discontinued during the 135 years of the Family's ownership. Anyone who might have been pursuing these customs and practices have long since passed away. During the oral history phase of the traditional customs and practices report, none of the interviewees could recall being told by Kualo, or their elders, of any cultural practices in the project area. As a result, it is not likely that Hawaiian traditional customs and practices will be significantly affected by the proposed development.

## 5.5 Interrelationships and Cumulative Impact: Socio-Economic Environment

The proposed resort will positively contribute to the employment and fiscal and economic health of the region, the county, and the state. The number of businesses that will provide services to the resort is significant, creating additional employment opportunities. There have been other recent business additions to West Kauai. These include the high technology center and seed corn operation in Waimea. Collectively, these projects will beneficially impact the economy of West Kauai. These new ventures will not only provide additional jobs, but will diversify the economic base of West Kauai by providing employment in businesses not traditionally associated with West Kauai.

The defacto population of the area will increase modestly (about 365 people on an average day) related to the proposed project. Discussion of any other increases in defacto population for West Kauai are speculative at this point. Certainly, there has been a general trend toward additional visitors to Kauai that has followed the rise of the economy of Kauai, the increase in hotel occupancies and the return of some properties to visitor room inventories. All these developments will generally contribute to a better economic outlook for Kauai as a whole, including West Kauai. However, the average daily visitor census for Kauai has yet to reach that of pre-Hurricane Iniki. In 1991, the average daily visitor census was 19,020; in 1998 the average daily visitor census was 17,222, or 90 per cent of that prior to Iniki.



# 6

# ASSESSMENT OF EXISTING CONDITIONS, PROBABLE IMPACTS AND MITIGATION: PUBLIC FACILITIES

# 6.0 ASSESSMENT OF EXISTING CONDITIONS, PROBABLE IMPACTS AND MITIGATION: PUBLIC FACILITIES

## 6.1 Transportation

Traffic conditions in the region and the anticipated impacts associated with the resort were assessed by Wilbur Smith Associates. Their findings are summarized below and their complete report is attached as Appendix H.

Existing Conditions

### EXISTING ROADWAY SYSTEM

Kaumualii Highway is the major roadway serving the areas in the vicinity of the project site. This roadway and the key cross streets in the area are discussed in the following paragraphs.

- **Kaumualii Highway** - This two-lane State highway is the major roadway providing access to the south and southwest areas of Kauai from Lihue westward to the Pacific Missile Range Facility at Barking Sands. This roadway passes through Waimea Town and most of the commercial uses have developed on the properties located adjacent to the roadway. The intersections with all cross streets in Waimea Town and other roadways in the vicinity of the Project site are controlled by STOP signs on the cross street approaches. The highway segment adjacent to the project site is rural in character with a posted speed limit of 50 mph in both directions. The posted speed limit in Waimea Town is 25 mph. Parallel parking is permitted along both sides of the roadway within Waimea Town. The section east of the site has a posted speed limit of 50 mph with speed reductions to 35 mph at the key intersections with the Pakala Village Road and the Kaumakani Mill Road.

- **Ala Wai Road, Waimea Town** - This two-lane street intersects Kaumualii Highway at the west end of the Waimea Stream bridge, and is the intersection closest to the Project site within Waimea Town. The roadway connects to Waimea Road, and provides access to the residential areas on either side of Kaumualii Highway, as well as the park area on the makai side. A single traffic lane is provided on each of the four approaches to the intersection.

- **Panako Road, Waimea Town** - This two-lane street extends one block mauka of Kaumualii Highway to provide access to Waimea Road and the commercial uses and parking areas along Waimea Road. The street extends several blocks makai to provide access to the Ishihara Market and the adjacent residential areas. On the mauka side, the approach to Kaumualii Highway is wide enough to permit vehicles turning right to pass by vehicles waiting to turn left or continue straight across the intersection. Only a single lane is provided for the makai-side approach. No turn lanes are provided on Kaumualii Highway although the curb parking is restricted near the intersection, thus allowing use by vehicles turning right or by through vehicles passing by vehicles waiting to turn left.

- **Menehune Road/Hapule Road, Waimea Town** - Menehune Road connects to the west end of Waimea Road commercial area as well as provides access to residential areas mauka of Waimea Road. The intersection with Waimea Road is located only about two car lengths from Kaumualii Highway. The Menehune Road approach to Kaumualii Highway has sufficient width to allow right-turn vehicles to pass by vehicles waiting to turn left. Hapule Road provides access to the commercial uses and residential area makai of Kaumualii Highway.

- **Pakala Village Road** - This gravel roadway provides access to the Pakala Village and Makaweli Post Office on the makai side of Kaumualii Highway and to the Kaawanui Village on the mauka side. Both approaches of this gravel roadway provide sufficient width to allow right-turn vehicles to pass by vehicles waiting to turn left.

- **Kaumakani Mill Road** - This paved two-lane street provides access to the Mill and village on the makai side of Kaumualii Highway. A short right-turn lane has been constructed on the eastbound approach of Kaumualii Highway.

- **Kaumakani Village Road** - This gravel roadway provides access to the Thrifty Mart and adjacent village area. The gravel roadway provides sufficient width to allow right-turn vehicles to pass by vehicles waiting to turn left. The Thrifty Mart has a direct exit driveway connection to Kaumualii Highway located east of the gravel roadway.

## EXISTING TRAFFIC VOLUMES

Near the project site, the State of Hawaii Department of Transportation (DOT) periodically makes 24-hour machine counts of traffic along Kaumualii Highway at the intersection with Menehune Road/Hapule Road (Count Station #17-A), and east of Pakala Village Road at the Mahinauli Stream Bridge (Count Station #15-D). The most recent weekday count at Menehune Road was made June 17, 1997, and the most recent weekday count at the Mahinauli Stream station was made June 24, 1997. Based on these counts, the daily volumes of vehicles on area roadways are as follows:

**Table 2**
**Daily Volume Vehicle Counts**

| Location | Weekday Volumes |
|---|---|
| Kaumualii Highway | |
| East of Pakala Village Road | 10,200 |
| East of Menehune Road | 11,300 |
| Menehune Road | 2,300 |
| Hapule Road | 720 |

Source: Wilbur Smith Associates, 1999

The State DOT has not made any weekend traffic counts along Kaumualii Highway in recent years. Saturday and Sunday traffic counts are available for Kuhio Highway at the Count Station #CC-2 near Kilauea on the north side of Kauai. Daily traffic counts were obtained from that location for the month of January 1998. The counts indicated that traffic volumes along Kuhio Highway were higher on Saturdays than for Sundays, with the highest hourly volumes on either day occurring during the midday and early afternoon. For the weekdays, Fridays had the highest volumes, with the afternoon peak hour volumes slightly above those for Saturday.

Wilbur Smith Associates (WSA) conducted special traffic turning movement counts during Friday January 15, 1999 to represent traffic on a weekday afternoon and on January 16, 1999 to represent traffic on a Saturday afternoon. The counts were recorded for each 15-minute period between 6:00 and 8:30 AM and 3:00 and 6:30 PM on Friday, and from 11:00 AM to 4:00 PM on Saturday. The highest one-hour counts in the each of the three periods are used to

represent peak traffic volumes during the two weekday peak hours and for the Saturday peak hour.

### Weekday Peak Hour Volumes

The highest weekday morning traffic on Kaumualii Highway near the project site occurred between 6:30 and 7:30 AM, with a total of 724 vehicles in both directions. Traffic volumes along Kaumualii Highway were higher to the east and west of the Project site, with peak hour volumes on those sections approaching 800 vehicles. Traffic volumes were higher in the westbound travel direction, most likely due to workers commuting to Pacific Missile Range Facility at Barking Sands. Within Waimea Town, the traffic on the mauka leg of each intersection was much higher than the volume on the makai side of Kaumualii Highway, with Menehune Road having higher volumes than Panako and Ala Wai Roads.

The highest traffic volumes on Kaumualii Highway during the Friday afternoon generally occurred between 3:45 and 4:45 PM when a total of 964 vehicles were counted near the project site, or about 26% higher than the morning peak hour. As in the morning, the traffic volumes along Kaumualii Highway increased eastward and westward from the project site. Traffic volumes were higher in the eastbound direction in the afternoon.

Within Waimea Town, the traffic volumes on the cross streets were generally two to three times higher than the volumes during the morning peak hour. The highest volumes occurred on the mauka legs of Panako Road and Menehune Road, with totals of almost 300 vehicles on each. These volumes reflect concentration of businesses and parking in the area adjacent to these streets.

### Saturday Peak Hour Volumes

The highest volume of traffic on Saturday was recorded between 1:45 and 2:45 PM. The Saturday traffic volumes along Kaumualii Highway were similar to those in the weekday morning peak hour, with 719 vehicles near the Project site. For the cross streets, the Saturday traffic volumes were higher at most locations and for most movements than those recorded during the weekday morning peak hour, but less than those recorded during the Friday afternoon peak hour.

## EXISTING TRAFFIC CONDITIONS AT KEY INTERSECTIONS

Traffic conditions were analyzed for the Friday morning and afternoon one-hour periods that have the highest volumes of traffic and for the Saturday afternoon peak hour.

### Methodology for Analyzing Levels of Service

The Transportation Research Board (TRB), a division of the National Science Foundation, has developed standardized methods for use in evaluating the effectiveness and quality of service for roadways and streets. Different methodologies are available for analyzing traffic signal-controlled intersections and other types of roadways.

The TRB evaluation methods use a concept known as level-of-service (LOS). This concept describes facility operations on a letter basis from A to F, which signify excellent to unacceptable conditions, respectively. The methods generally compare traffic volumes on a facility to the facility's theoretical capacity. Capacity is estimated based on the facility's physical characteristics (e.g. number and widths of lanes), traffic characteristics (e.g. types of vehicles), and type of traffic controls. The comparisons are frequently referred to as the volume-to-capacity ratio (V/C). The methodologies are described in the *1994 Highway Capacity Manual* (1994 HCM).

**Signal-Controlled Intersections** - Traffic conditions at traffic signal-controlled intersections were evaluated using the Operations Analysis methodology described in the 1994 HCM. Using this method, the level-of-service is based on the average delay time per vehicle passing through the intersection. The delay time, calculated in seconds, is the result of the phasing and timing of the traffic signal as well as the intersection's physical layout and the composition of the traffic. Average delay time and level-of-service are estimated for the entire intersection, for each roadway approach, and for each traffic movement or lane group.

The methodology also calculates a ratio of actual or estimated peak hour traffic volumes to the theoretical capacity of the intersection. This ratio indicates the proportion of available capacity being used by traffic volumes and where there is unused capacity available for future traffic increases. This volume-to-capacity ratio (V/C) reflects the physical characteristics of the intersection and the traffic

characteristics, and is somewhat independent of the efficiency of the traffic signal phasing/timing.

**Unsignalized Intersections** - At intersections with STOP sign controls, the level of service was calculated using the 1994 HCM procedures for intersections with STOP or YIELD signs. In this methodology, the six levels of service, A through F, are used to describe traffic conditions for those movements that must yield to other movements:

- Left-turn out of the side street or driveway;
- Through movement from the side street,
- Right-turn out of the side street or driveway; and
- Left-turn into the side street.

Through vehicles on the major streets are not required to yield to other movements at two-way STOP controlled intersections.

The general indicator of intersection delay is determined by calculating the one-hour capacity for each key movement, based on the conflicting traffic volumes, and then comparing the number of vehicles making that maneuver to the calculated capacity. The unused or "reserve" capacity for the movement is then used to identify a delay time and a level-of-service for that movement. Unlike analysis at signalized intersections, an overall intersection level-of-service is not calculated, but a level-of-service is calculated for each lane group subject to the STOP or YIELD condition.

The level-of-service criteria for unsignalized intersections with STOP or YIELD controls is shown in Table 3.

**Table 3**
**LEVEL-OF-SERVICE CRITERIA**
**FOR UNSIGNALIZED INTERSECTIONS**

| LOS | Average Stopped Delay (seconds/vehicle) |
|---|---|
| A | <5.0 |
| B | 5.1 - 10.0 |
| C | 10.1 - 20.0 |
| D | 20.1 - 30.0 |
| E | 30.1 - 45.0 |
| F | >45 |

Source: Highway Capacity Manual, Special Report 209, Transportation Research Board, Chapter 10, 1994.

### Intersection Conditions

The traffic conditions at each of the key intersections are summarized in Table 4 for the weekday peak hours and the Saturday midday peak hour. The conditions indicated in the table are for the traffic movement at each intersection that experiences the longest wait time (delay) to travel through the intersection. For these STOP sign-controlled intersections, the longest delay usually occurs for the higher volume left-turn movement from the cross street, such as the left turn movement from Menehune Road at its intersection with Kaumualii Highway.

During the weekday morning peak hour, the left-turn movements at each of the six key intersections included in the study operated with short delays averaging between 9.5 and 11.2 seconds, equivalent to levels of service (LOS) B or C.

Average delays for the left-turn movements during the Friday afternoon peak traffic hour were higher at each of the intersections than the delays for the morning peak hour. This resulted from the higher volume of through traffic along Kaumualii Highway during the afternoon peak hour, which provides fewer gaps for vehicles to exit the side streets, combined with a higher volume of vehicles turning left at several of the cross streets.

The longest Friday afternoon peak hour delays were calculated for the vehicles turning left from makai-bound Menehune and Panako Roads in Waimea Town. The delays for these left-turn movements averaged approximately 22 to 23

seconds, equivalent to LOS D. Field observations indicated that delays by left-turn vehicles on Menehune Road did occasionally interfere with vehicles exiting Waimea Road to turn right onto Kaumualii Highway. The left turn traffic at the other study intersections operated at LOS C conditions.

For the Saturday midday peak hour, the delay for most of the left-turn movements were similar to those for the weekday morning peak hour. The exception was the turns from the Kaumakani Village Road, where the average delay (17.5 seconds, LOS C) was the same as for the Friday afternoon peak hour.

**Table 4**
**EXISTING CONDITIONS AT KEY INTERSECTIONS**

| Kaumualii Hwy. Intersection and Traffic Movement | Friday Morning Peak Hour | | Friday Afternoon Peak Hour | | Saturday Midday Peak Hour | |
|---|---|---|---|---|---|---|
| | ADPV | LOS | ADPV | LOS | ADPV | LOS |
| Menehune Road | | | | | | |
| Makai-bound Left Turn | 11.2 | C | 23.0 | D | 11.9 | C |
| Panako Road | | | | | | |
| Makai-bound Left Turn | 9.5 | B | 21.9 | D | 10.4 | C |
| Ala Wai Road | | | | | | |
| Makai-bound Left Turn | 10.3 | C | 15.9 | C | 9.6 | B |
| Pakala Village Road | | | | | | |
| Mauka-bound Left Turn | 9.8 | B | 15.4 | C | 9.9 | B |
| Kaumakani Mill Road | | | | | | |
| Mauka-bound Left Turn | 10.3 | C | 14.0 | C | 9.3 | B |
| Kaumakani Village Road | | | | | | |
| Mauka-bound Left Turn | 10.5 | C | 17.5 | C | 10.2 | C |

ADPV = Average delay per vehicle, in seconds.
LOS = Level of service for the traffic movement.
Source: Wilbur Smith Associates, 1999.

Probable Impacts

**2002 CONDITIONS WITHOUT THE PROJECT**

The Kapalawai Resort is planned for completion and full operation by ~~early year~~ 2002. Forecast traffic volumes and conditions are presented for early in year

2002 without the Kapalawai Resort Project as a base from which to identify the incremental effects of the Project.

### ROADWAY IMPROVEMENTS

No major modifications are expected for the roadways near the Project site by year 2002. The State DOT plans to construct left-turn lanes on Kaumualii Highway at several intersections that have higher volumes of vehicles turning left from Kaumualii Highway. Left-turn lanes are planned for Kaumualii Highway at the intersection with the Pakala Village/Post Office Road, ~~and with~~ the Kaumakani Mill Road, and with the Kaumakani Village Road. The left-turn lanes should improve traffic safety at these intersections and reduce delays to through traffic caused by vehicles waiting to turn left. The additional lanes should not have a significant effect on the delays to traffic entering Kaumualii Highway from the cross streets at these locations.

### TRAFFIC GROWTH WITHOUT THE PROJECT

No major new development projects are anticipated for the areas near the Project site by early 2002. Traffic increases over the next three years are expected to primarily result from increases in activity levels for the existing commercial and recreational uses in the southwest Kauai area, and small infill development or small increments of new developments in the area. An annual area growth factor was used to estimate the traffic increases from these sources. In addition, the Pioneer Hi-Bred facility being constructed near the Project site will add traffic along the adjacent section of Kaumualii Highway.

#### Area Traffic Growth Factor

The traffic growth factor for the roadways near the Project site was based on the traffic counts for the nearest count station along Kaumualii Highway for which historic count data was available. Traffic count data from State DOT count stations #15-D and #17-A, located along Kaumualii Highway in the study area, was available for the period between 1993 and 1997, which indicated average annual increases of 1.6 to 1.8% along Kaumualii Highway. Based on these counts, the average annual growth rate of 1.8% was used to represent traffic increases for the next three years, both for weekdays and weekends. This annual rate provides an increase of 5.5% over the three years.

#### Pioneer Hi-Bred Facility

The Pioneer Hi-Bred facility is expected to employ approximately 50 workers. This work force is estimated to generate approximately 23 and 22 peak vehicle

trips during the weekday morning and afternoon peak hours, respectively. The routing for these trips was based on local traffic patterns. No vehicle trips were added to the Saturday midday peak hour.

### Weekday and Sunday Peak Hour Volumes

The growth factor was applied to all traffic movements at the key intersections near the Project site, and the Pioneer Hi-Bred trips were added to the weekday traffic volumes.

## TRAFFIC CONDITIONS AT KEY INTERSECTIONS

The traffic conditions for the left-turn movements from the cross streets at the key Kaumualii Highway intersections are summarized in Table 5.

**Table 5**
**2002 CONDITIONS AT KEY INTERSECTIONS WITHOUT PROJECT**

| Kaumualii Hwy. Intersection and Traffic Movement | Friday Morning Peak Hour | | Friday Afternoon Peak Hour | | Saturday Midday Peak Hour | |
|---|---|---|---|---|---|---|
| | ADPV | LOS | ADPV | LOS | ADPV | LOS |
| Menehune Road<br>Makai-bound Left Turn | 12.4 | C | 27.6 | D | 13.0 | C |
| Panako Road<br>Makai-bound Left Turn | 10.3 | C | 26.5 | D | 11.2 | C |
| Ala Wai Road<br>Makai-bound Left Turn | 11.2 | C | 18.1 | C | 10.3 | C |
| Pakala Village Road<br>Mauka-bound Left Turn | 10.8 | C | 18.0 | C | 10.6 | C |
| Kaumakani Mill Road<br>Mauka-bound Left Turn | 11.4 | C | 15.6 | C | 9.8 | B |
| Kaumakani Village Road<br>Mauka-bound Left Turn | 11.5 | C | 20.1 | D | 10.9 | C |

ADPV = Average delay per vehicle, in seconds.
LOS = Level of service for the traffic movement.
Source: Wilbur Smith Associates, 1999.

In the weekday morning peak hour, the critical left-turn movement from each of the study intersections is forecast to operate at LOS C.

In the weekday afternoon peak hour, the critical left-turn movements at the Menehune and Panako Road intersections would remain at LOS D, although the delay times would be approaching the threshold for LOS E (30 seconds). The additional traffic at the Kaumakani Village Road intersection would worsen conditions to LOS D for the left-turn traffic at that intersection. The other left-turn movements would remain at LOS C.

The delays to left-turns at each of the intersections would increase by around one second or less for the Saturday midday peak hour. Left-turn traffic conditions would worsen to LOS C for the intersections with Ala Wai and Pakala Village Roads (from LOS B). The other intersections would remain at their existing LOS B or C conditions.

**2002 CONDITIONS WITH THE PROJECT**

***Construction Period Impacts.*** During construction of the project, there will be an increase in the number of trucks and other construction vehicles, including employees, that will be entering and exiting the property. Construction employees will probably enter the property from the existing main driveway. Employees would exit the property either at ascend existing gate about 300 feet west of the Aakukui Stream Bridge, or from an existing driveway servicing the 8 plantation homes on the property. Heavy trucks would use the gate closest to the bridge.

Vehicles making left turns into the property from Kaumualii Highway could cause traffic to back up behind them. This potential impact should be minimized because direction of travel will be counter to peak directional flow, and the duration of disruption would be temporary, for the approximate one-year construction period.

***Operational Period Impacts.*** The Kapalawai Resort is planned for completion and full operation by ~~early year~~ 2002. The traffic assessment reflects a peak season level of use of the project for both a weekday and a Saturday.

Access to the Kapalawai Resort will be provided by two one-way driveway connections to Kaumualii Highway. The existing paved driveway to the Robinson family residence, located near the western (Waimea) boundary of the site, will serve as the entrance driveway. The exit driveway will intersect Kaumualii Highway at the location of the existing driveway to plantation homes, located about 480 feet east of the entrance driveway.

## VEHICLE TRIP GENERATION

The number of vehicle trips to/from the Project was estimated using the average trip generation rates for a full-service resort hotel (land use category #330) as compiled in *Trip Generation* by the Institute of Transportation Engineers (ITE). The ITE trip rates for a resort hotel are generally higher than those for either Waikiki or Neighbor Island hotels. Therefore, the use of the ITE trip rates should provide a conservative (high) estimate of the number of trips generated by the Kapalawai Resort project.

The trip rate selected for weekdays was based on the number of occupied rooms, rather than other available rates based on total rooms or total number of employees. The rate based on occupied units is more reflective of peak season. The ITE Saturday rate for occupied units is about twice the weekday rate. This large differential was due to only one observation for Saturday for this rate basis, which may have included unique features that resulted in higher weekend use unrelated to the number of guest units. The ITE Saturday rate was used since it should fully reflect any weekend use of the Resort's dining and other facilities by local residents, as well as visitors to the museum. The estimated numbers of weekday and Saturday vehicle trips was based on an occupancy level of 90% of the units, which reflects a high usage day in the peak season.

In addition, public access would be permitted to the beach areas of the site. For forecast purposes, it was assumed that a peak of approximately 40 parking stalls would be used by residents using the beach areas. The trip rates per parking space are based on typical usage rates for these types of uses.

The Project is estimated to generate a total of about 1,880 vehicle trips on a weekday during the peak visitor season and about 3,180 vehicle trips on a Saturday. In the weekday morning peak hour, about 108 vehicle trips would be generated to or from the Project, including arriving and departing employees. Higher levels of guest activity in the afternoon peak hour would result in 143 vehicle trips to or from the site, with the trips almost evenly split between vehicles entering and exiting the Project. A total of 297 vehicle trips could be generated by peak use on a Saturday afternoon, which would reflect a special event at the site that attracts local residents and/or visitors from other resort areas.

## PEAK HOUR TRAFFIC VOLUMES

The project vehicle trips were distributed and assigned to the adjacent roadway system based on the existing traffic patterns in the study area. Slightly more trips

were assigned to/from areas east (Lihue/Poipu side) of the Project than to the west (Waimea Town side).

The project is estimated to increase the peak hour volumes on Kaumualii Highway just to the east of the site by 8% during the weekday peak hours and by 20% on a Saturday with special events at the site. To the west, the project traffic would add an estimated 6% increase to the weekday peak hour volumes and 18% to the Saturday peak hour volumes on Kaumualii Highway near the site.

## TRAFFIC CONDITIONS AT KEY INTERSECTIONS

Traffic conditions during the weekday and Saturday peak hours with the Project is summarized for each key intersection in Table 6.

### Project Driveways

The left-turn movements into and out of the Project driveway connections to Kaumualii Highway are forecast to operate at very acceptable conditions for each of the peak hour periods. As listed in Table 6, the vehicles turning left from the mauka-bound exit driveway would operate at LOS C during each period. The left-turn movement from westbound Kaumualii Highway would operate at LOS A with the forecast volumes.

Based on the forecast peak hour volumes and traffic conditions, STOP sign controls would be appropriate for the exit driveway.

### Nearby Key Intersections

In the weekday morning peak hour, the conditions for the critical left-turn movement from each of the study intersections is forecast to remain at LOS C. The Project would increase the average delay by about one second or less for the left-turn movement at each intersection.

**Table 6**
**2002 CONDITIONS AT KEY INTERSECTIONS WITH PROJECT**

| Kaumualii Highway Intersections and Traffic Movement | Friday Morning Peak Hour | | Friday Afternoon Peak Hour | | Saturday Midday Peak Hour | |
|---|---|---|---|---|---|---|
| | ADPV | LOS | ADPV | LOS | ADPV | LOS |
| Menehune Road | | | | | | |
| Makai-bound Left Turn | 13.3 | C | 31.4 | E | 16.0 | C |
| Panako Road | | | | | | |
| Makai-bound Left Turn | 11.0 | C | 31.2 | E | 14.2 | C |
| Ala Wai Road | | | | | | |
| Makai-bound Left Turn | 12.1 | C | 20.3 | D | 12.8 | C |
| Project Driveways | | | | | | |
| Mauka-bound Left Turn | 11.7 | C | 19.6 | C | 16.6 | C |
| Westbound Left Turn | 3.5 | A | 4.4 | A | 3.7 | A |
| Pakala Village Road | | | | | | |
| Mauka-bound Left Turn | 11.8 | C | 20.7 | D | 13.6 | C |
| Kaumakani Mill Road | | | | | | |
| Mauka-bound Left Turn | 12.5 | C | 17.6 | C | 12.2 | C |
| Kaumakani Village Road | | | | | | |
| Mauka-bound Left Turn | 12.7 | C | 23.0 | D | 13.8 | C |

ADPV = Average delay per vehicle, in seconds.
LOS = Level of service for the traffic movement.

Source: Wilbur Smith Associates, 1999.

In the weekday afternoon peak hour, the project traffic would increase average delay for the critical left-turn movements at the Menehune and Panako Road intersections by about 4 to 5 seconds. This increase would worsen the conditions to LOS E, from LOS D. Given the forecast LOS E conditions, the afternoon conditions at these two intersections were checked against the warrants for installation of traffic signal controls (see "Mitigation").

For the weekday afternoon peak hour, the additional traffic at the Pakala Village Road intersection would increase average delay to LOS D for the left-turn traffic at that intersection. The left-turn movements at the other intersections would remain at LOS C.

The delays to left-turns at each of the intersections would increase by about 2 to 3 seconds for the Saturday midday peak hour. Left-turn traffic conditions would

worsen to LOS C for the intersection with the Kaumakani Mill Road (from LOS B). The other intersections would remain at the LOS C conditions forecast without the Project.

Mitigation

***Construction Period.*** In an effort to minimize traffic disruptions during the morning and afternoon peak hours, the start and finish times for work crews should be timed to avoid these periods. Likewise, delivery of materials and heavy equipment should also avoid morning and afternoon peak hours.

It is recommended that the left-turn storage lane discussed below (to mitigate operational period traffic impacts) be constructed as soon after final permit approvals as is practicable. This action will also mitigate stacking of vehicles making left turns into the property during employee arrivals.

It is also recommended that personnel be stationed at the exit points to the property during periods of high volume of deliveries and arrival of heavy equipment to assist in the direction of traffic.

***Operational Period.*** Mitigation actions were considered at the Kaumualii Highway intersections with the project driveways and with Panako and Menehune Roads.

**Project Driveways**

The analyses indicate that STOP sign control is appropriate for the exit driveway approach to Kaumualii Highway for the year 2002 peak hour conditions.

Left-turn storage lanes are typically considered for locations where 100 or more vehicles turn left in a one-hour period. Because of the high speeds along this section of Kaumualii Highway, it is recommended that a left-turn lane be provided for the vehicles waiting to turn left from westbound Kaumualii Highway into the project entrance driveway. This would reduce the potential for accidents as well as delays to through traffic. The length of the left-turn storage lane should be sufficient to accommodate at least 3 or 4 waiting vehicles, or a minimum of 100 feet in length.

Separate left- and right-turn lanes are recommended for the exit driveway at the intersection with Kaumualii Highway to minimize any delay to vehicles turning right from the driveway.

A right-turn deceleration lane is recommended on westbound Kaumualii Highway at the entrance driveway for the Project for safety purposed and to minimize delays to through traffic.

**Panako and Menehune Roads**

The analyses indicate that the increased volume of project and non-project traffic at these two intersections with Kaumualii Highway would result in increased delays by vehicles turning left from the cross streets. The traffic turning left from the makai-bound approach of each street is expected to experience delays equivalent to LOS E for the Friday afternoon peak traffic hour. The conditions for traffic turning left from the mauka-bound approaches are forecast as LOS D at Panako Road and LOS C for Hapule Road (opposite approach of Menehune Road).

Installation of a traffic signal at one or both of these intersections would be one method of facilitating this left-turn movement, given the delays in waiting for a gap in Kaumualii Highway traffic. The State DOT would have to approve any installation of a traffic signal along a State highway. Except for rare exceptions, the State DOT will not approve a traffic signal for a location unless it satisfies one or more "warrants" for installation of a traffic signal.

Highway officials have adopted a series of these "warrants" that govern consideration of a traffic signal at a location.[9] If a location does not satisfy one or more of the warrants, a traffic signal is not appropriate; if it satisfies one or more warrants, a traffic signal *may be considered* as a potential action to improve operations or safety.

The forecast conditions at the two intersections with Kaumualii Highway were assessed relative to two of the warrants:

- **Warrant #10 Peak Hour Delay**
  The initial criteria for this warrant is that the minor street approach must experience total delay of at least four vehicle hours for a

[9] *Manual on Uniform Traffic Control Devices*, U. S. Department of Transportation, Federal Highway Administration, 1988.

single lane approach and five vehicle hours for a two-lane approach, during the peak one-hour period.

Neither of the intersections satisfy this requirement since the estimated total delay in the worst peak one hour (Friday afternoon peak hour) is 0.54 vehicle hours at the Panako intersection and 0.52 vehicle hours at the Menehune Road intersection, with these total delays substantially below the minimum requirement for either a single- or two lane approach.

- **Warrant #11 Peak Hour Volume**
  For the number of lanes at this intersection and the Friday peak hour volumes along Kaumualii Highway, this warrant would require either:

  1. A minimum of 75 vehicles exiting the higher volume approach of the cross street in the peak hour if that approach has only a single approach lane.

  2. A minimum of 100 vehicles exiting the higher volume approach of the cross street in the peak hour if that approach has two approach lanes (separate left- and right-turn lanes).

  The makai-bound approaches on both streets have a single wide lane that permits right-turn vehicles to pass by the waiting left-turn vehicles, thereby functioning as two approach lanes. The Panako Road approach has 75 peak hour vehicles, while the Menehune Road approach has 143 vehicles in the afternoon peak hour. However, the left-turn and through volumes, those with the long delays, amount to only 31 vehicles at Panako Road and 48 at Menehune Road.

  The Panako Road intersection does not satisfy this warrant, while the Menehune Road intersection does meet the minimum volume warrant as a result of the very high volume of vehicles turning right from this approach.

The Menehune Road approach would pose a traffic operations problem with the installation of a traffic signal. The traffic signal would result in the queue of

waiting vehicles stacking beyond and blocking the left-turns from the Waimea Road approach to Menehune Road. The Panako Road intersection provides the better geometric layout for installation and operation of a traffic signal as a result of its slightly longer block length between Kaumualii Highway and Waimea Road.

Due to the marginal satisfaction of the minimum warrants and the potential queuing problems on the mauka side of the intersections, a traffic signal does not appear appropriate at the intersections for year 2002. If a traffic signal is installed in the future, the Panako Road intersection would likely provide the better location due to the longer block length. A signal at Panako Road would also benefit the Menehune Road traffic by providing gaps in the westbound traffic flow along Kaumualii Highway. If a signal were to be installed at Panako Road, the 2002 Friday peak hour volumes would approximate 54% of intersection capacity and would operate at LOS B.

The installation of STOP signs on all four approaches (four-way STOP control) would not be appropriate for either intersection due to the much higher volumes on Kaumualii Highway as compared to either of the cross streets.

## 6.2 Utilities

A civil engineering report was prepared for the EIS by Wagner Engineering Services and included a discussion of existing and future utility demands. Their complete report is attached as Appendix I.

Existing Conditions

***Electric/Telephone/Cable.*** Electric, telephone and cable television service from Kauai Electric, GTE Hawaiian Tel, and Garden Isle Telecommunications, respectively, are readily available from overhead lines on Kaumualii Highway (Wagner Engineering Services, 1999).

***Water.*** Water Service from the Kauai Department of Water (DOW) is not available for the project site. DOW's Waimea system ends at the Waimea River, 0.8 miles west of the Kapalawai. Even if water transmission lines were extended to Kapalawai, the DOW system does not have source capacity to serve Kapalawai. DOW's system serving the Hanapepe area ends four miles to the east of Kapalawai (Nance, 1999)

Probable Impacts

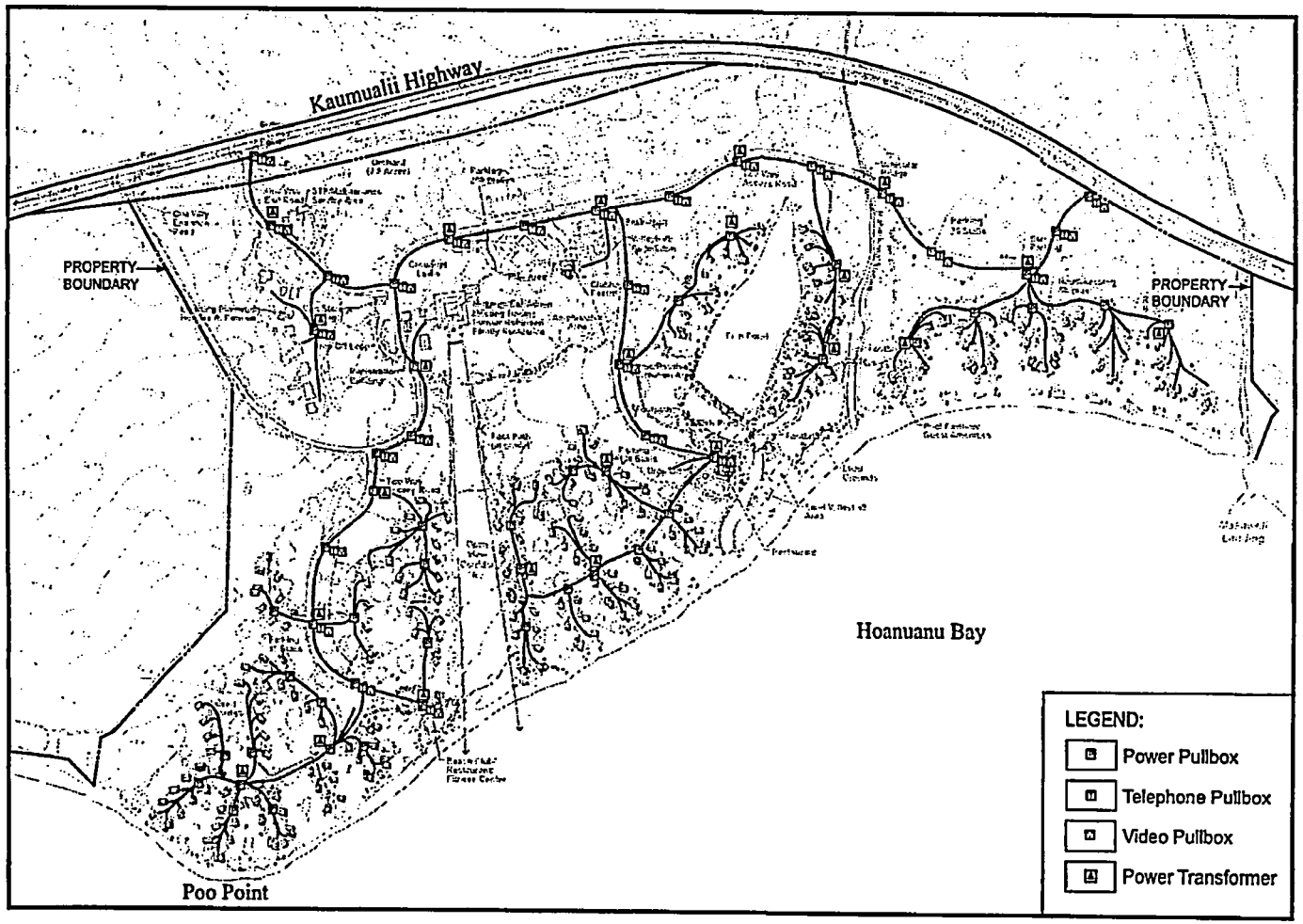
***Electric/Telephone/Cable.*** Utility services will be brought underground from one or more of the several utility poles fronting the project site on Kaumualii Highway, and looped through the development to serve the various buildings within the project. High voltage primary electric service will be extended to several points within the property and transformed for service to all facilities. The individual cottages are to be serviced with power only and telephone and cable service will be extended to common areas such as the restaurants, tennis facilities, and the administrative facilities, and other guest services. A schematic drawing depicting the proposed underground service is shown on Figure 21.

***Water.*** A dual, private, potable/irrigation water system is proposed for the Kapalawai Resort. Both systems will be privately developed and operated because service from the Kauai Department of Water (DOW) is not available in this area (Nance, 1999).

The choice to develop a dual (potable and irrigation) water system will take advantage of the supply potential of the spring-fed fishpond. Drawing water from this pond will augment its natural turnover rate, improving its water clarity while providing irrigation supply. It also allows elements of the potable system to be downsized accordingly (Nance, 1999).

Based on use rates in accord with DOW standards, it is estimated the year-round average potable water use to be approximately 0.12 million gallons per day (MGD). Peak seasonal use could be about 50 percent higher, or approximately 0.18 MGD (Table 7) (Nance, 1999).

In order to determine irrigation water needs year-round and peak season evapotranspiration data was collected from nearby Station 962.00. An additional 10 percent allowance for application inefficiencies was used. Based on these data, irrigation application rates in the summertime may be as high as 10,200 gallons per acre per day. Year-round irrigation use for the project is estimated to be 0.36 MGD. In the summer months, the rate could be as high as 0.66 MGD (Nance, 1999).




Proposed Underground Utility Service

# KAPALAWAI RESORT

Kapalawai, Kauai, Hawaii

Figure 21

Feet 0 100 200 400 800

Source: Wagner Engineering Services, 1999

Prepared by Helber Hastert & Fee, Planners

**Table 7**
**Projected Potable Water Requirements of the Kapalawai Resort**

| Land Use | No. | Units | Use Rate (GDP/Unit) | Projected Water Use: Year-Round Avg. (MGD) | Projected Water Use: Peak Season (MGD) |
|---|---|---|---|---|---|
| Cottages | 250 | Each | 350 | 0.0875 | 0.1312 |
| Restaurants (2) | 240 | Seats | 40 | 0.0096 | 0.0144 |
| Fitness Center | 2,000 | Sq. Ft. | LS | 0.0050 | 0.0075 |
| Snack Bar | 50 | Seats | 40 | 0.0020 | 0.0030 |
| Tennis Clubhouse | 2,000 | Sq. Ft. | LS | 0.0050 | 0.0075 |
| Administration | 11,132 | Sq. Ft. | 200/1000 sf | 0.0022 | 0.0033 |
| Registration Bldg. | NA | NA | LS | 0.0010 | 0.0015 |
| Cart Storage | NA | NA | LS | 0.0010 | 0.0015 |
| STP/Maintenance | NA | NA | LS | 0.0020 | 0.0030 |
| Existing Plantation Homes | 8 | Ea. | 400 | 0.0032 | 0.0048 |
| **Total** | | | | **0.1185** | **0.1777** |

Source: Nance, 1999

Figure 22 illustrates the main elements for the proposed potable and non-potable systems for Kapalawai.

## 6.3 Wastewater

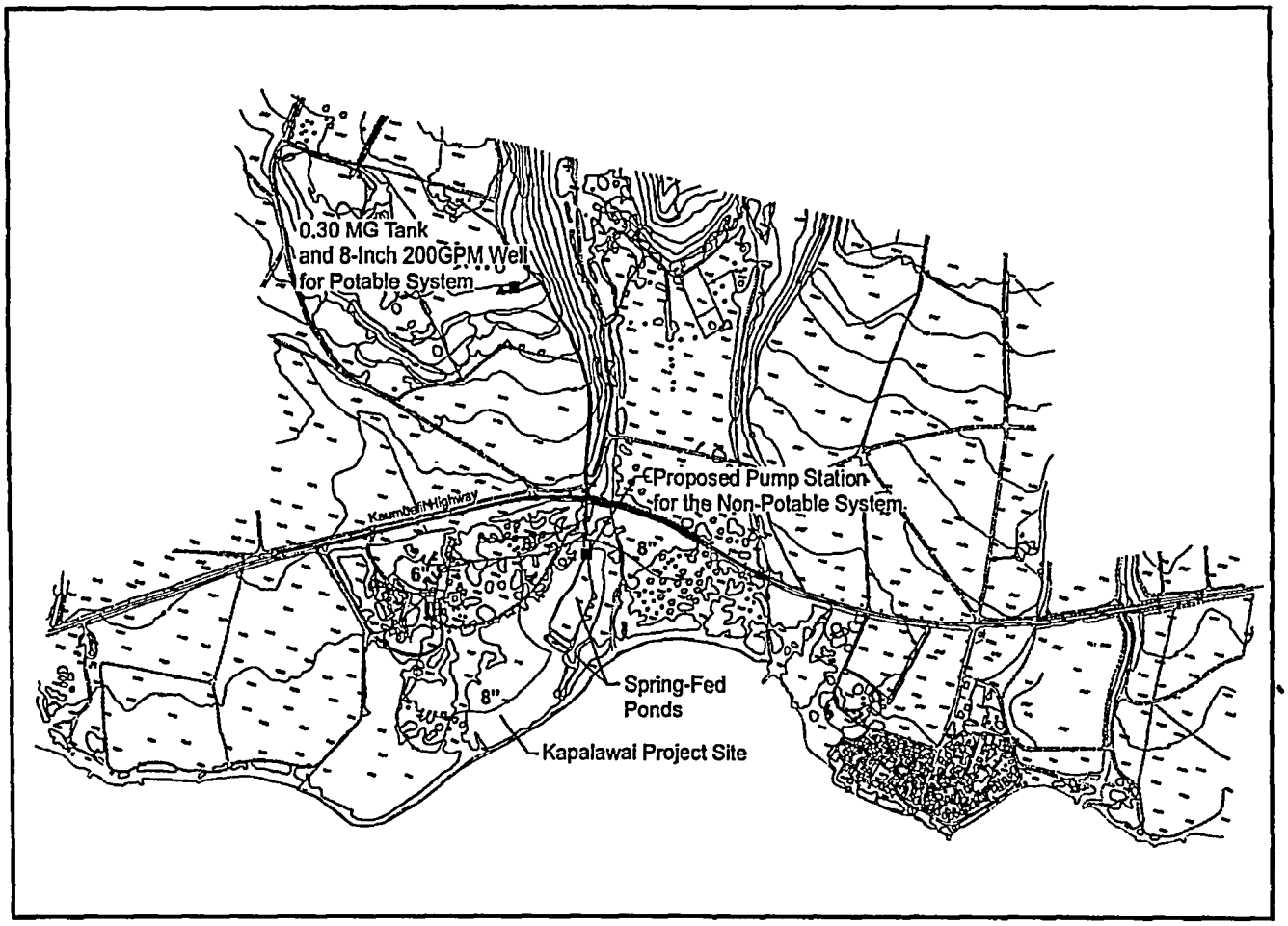
A civil engineering report was prepared for the EIS by Wagner Engineering Services and included a discussion of wastewater demands. Their complete report is attached as Appendix I.

### Existing Conditions

The County of Kauai operates a wastewater treatment plant (WWTP) in Waimea, about one mile from the project site. The service area for this WWTP stops at the Waimea River, about 0.5 miles from the project site. The design flow for this facility is 0.3 million gallons per day (MGD). The WWTP is presently operating at capacity, and there are no plans to include the project site in its service area.

### Probable Impacts

A private WWTP will be constructed on-site to handle all wastewater generated by the proposed resort. A description of the proposed system follows.




Proposed Water Systems

Figure 22

KAPALAWAI RESORT
Kapalawai, Kauai, Hawaii

Source: Tom Nance Water Resources Engineering, 1999

Not to Scale

Prepared by Helber Hastert & Fee, Planners

*Collection System.* The proposed wastewater collection system includes the following elements:

- 14,600 linear feet of gravity sewer main;
- 15,500 feet of sewer laterals;
- 4,200 linear feet of force main;
- 44 sewer manholes,
- 4 sewage pumping stations, and
- 1 wastewater treatment plant.

Three of the pumping stations are located in the makai portion of the project site in order to receive flows from the cottages and other proposed facilities in that area. These pumping stations will lift wastewater to a main pumping station, which will lift and transmit wastewater to the WWTP. The proposed collection system is illustrated in Figure 23.

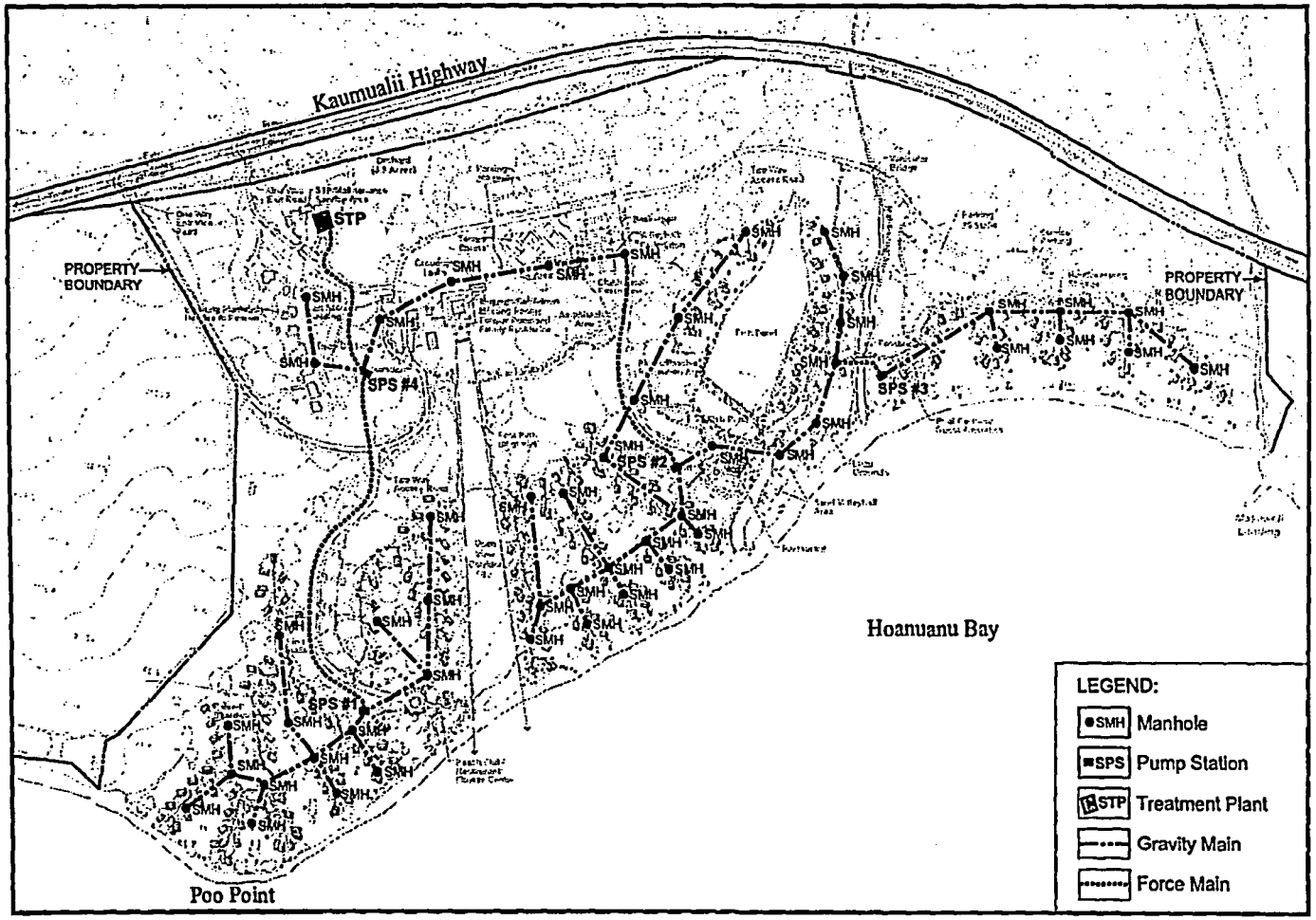
Proper design, operation, and maintenance of the pumping stations will assist in controlling odor problems. In order to prepare for the possibility of unforeseen odor problems, the stations will be designed to accommodate the addition of odor scrubbers, biofilters, or other appropriate odor-inhibiting appurtenances.

*Wastewater Treatment Plant (WWTP).* Wastewater flows can be estimated by considering return of potable water to the sewer system based upon certain return factors, as shown in Table 8.

**Table 8**
**Projected Wastewater Flows for the Kapalawai Resort**

| | | | | Projected Water Use | | | Projected Wastewater Flow | |
|---|---|---|---|---|---|---|---|---|
| Land Use | No. | Unit | Use rate (GPD/Unit) | Year Round Average (MGD) | Peak Season (MGD) | Return Factor | Year Round Avg. (MGD) | Peak Season (MGD) |
| Cottages | 250 | lea. | 350 | 0.0875 | 0.1313 | 55% | 0.0481 | 0.0722 |
| Restaurants (2) | 240 | seats | 40 | 0.0096 | 0.0144 | 65% | 0.0062 | 0.0094 |
| Fitness Center | 2,000 | sq. ft. | LS | 0.0050 | 0.0075 | 65% | 0.0033 | 0.0049 |
| Snack Bar | 50 | seats | 40 | 0.0020 | 0.0030 | 65% | 0.0013 | 0.0020 |
| Tennis Clubhouse | 2,000 | sq. ft. | LS | 0.0050 | 0.0075 | 65% | 0.0033 | 0.0049 |
| Administration | 11,132 | sq. ft. | 200 per 1,000 sq. ft | 0.0022 | 0.0033 | 65% | 0.0014 | 0.0022 |
| Registration Bldg. | | | LS | 0.0010 | 0.0015 | 65% | 0.0007 | 0.0010 |
| Cart Storage | | | LS | 0.0010 | 0.0015 | 65% | 0.0007 | 0.0010 |
| WWTP/Maintenance | | | LS | 0.0020 | 0.0030 | 65% | 0.0013 | 0.0020 |
| Existing Plantation Homes | 8 | lea. | 400 | 0.0032 | 0.0048 | 55% | 0.0018 | 0.0026 |
| | | | Totals | 0.1185 | 0.1778 | | 0.0680 | 0.1020 |

Source: Wagner Engineering Services, 1999




Proposed Wastewater System

Figure 23

# KAPALAWAI RESORT

Kapalawai, Kaual, Hawaii

Source: Wagner Engineering Services, 1999

Prepared by Helber Hastert & Fee, Planners

# CORRECTION

THE PRECEDING DOCUMENT(S) HAS BEEN REPHOTOGRAPHED TO ASSURE LEGIBILITY
SEE FRAME(S)
IMMEDIATELY FOLLOWING

*Collection System.* The proposed wastewater collection system includes the following elements:

- 14,600 linear feet of gravity sewer main;
- 15,500 feet of sewer laterals;
- 4,200 linear feet of force main;
- 44 sewer manholes,
- 4 sewage pumping stations, and
- 1 wastewater treatment plant.

Three of the pumping stations are located in the makai portion of the project site in order to receive flows from the cottages and other proposed facilities in that area. These pumping stations will lift wastewater to a main pumping station, which will lift and transmit wastewater to the WWTP. The proposed collection system is illustrated in Figure 23.

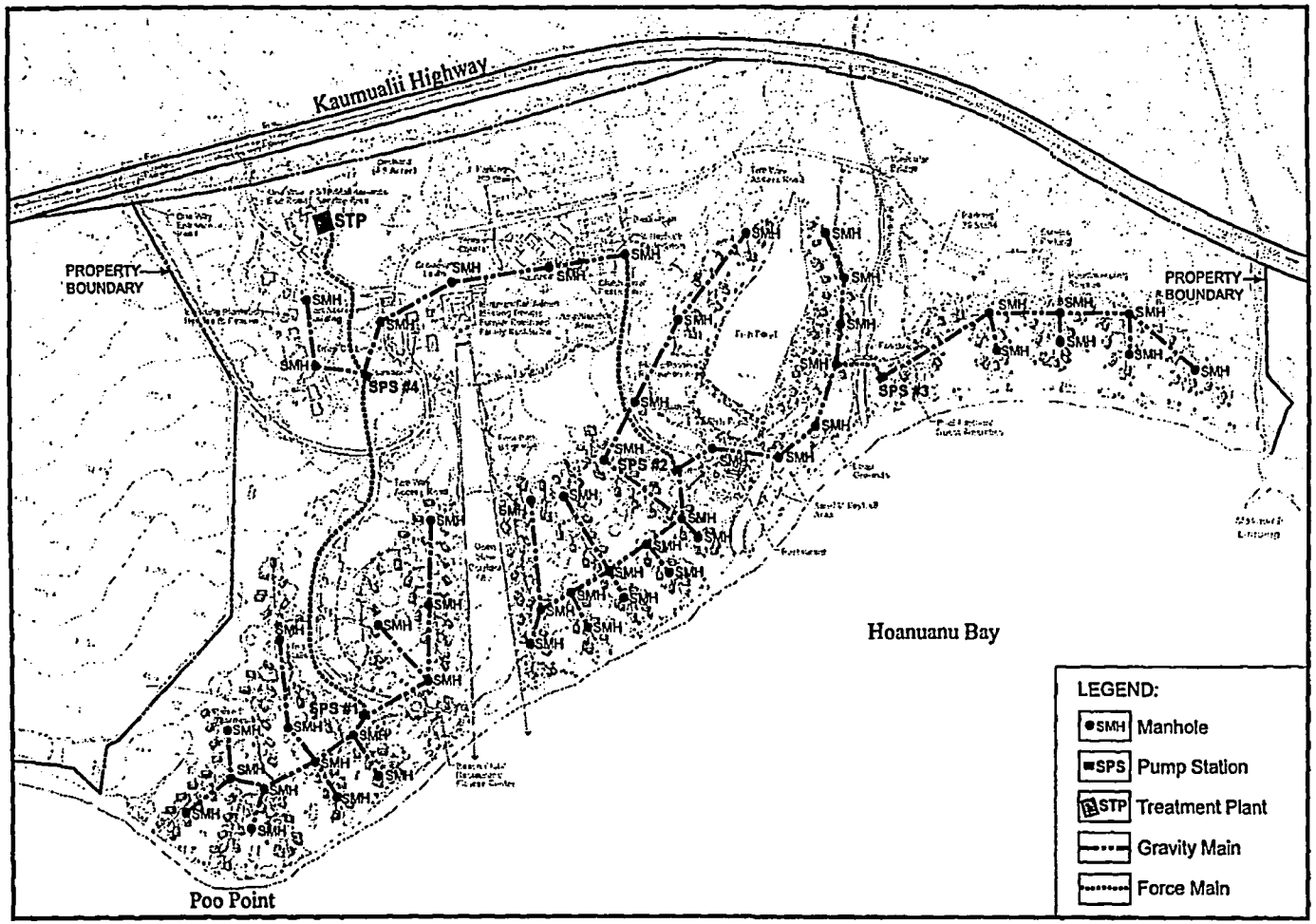
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*Wastewater Treatment Plant (WWTP).* Wastewater flows can be estimated by considering return of potable water to the sewer system based upon certain return factors, as shown in Table 8.

**Table 8**
**Projected Wastewater Flows for the Kapalawai Resort**

| | | | | Projected Water Use | | | Projected Wastewater Flow | |
|---|---|---|---|---|---|---|---|---|
| Land Use | No. | Unit | Use rate (GPD/Unit) | Year Round Average (MGD) | Peak Season (MGD) | Return Factor | Year Round Avg. (MGD) | Peak Season (MGD) |
| Cottages | 250 | ea. | 350 | 0.0875 | 0.1313 | 55% | 0.0481 | 0.0722 |
| Restaurants (2) | 240 | seats | 40 | 0.0096 | 0.0144 | 65% | 0.0062 | 0.0094 |
| Fitness Center | 2,000 | sq. ft. | LS | 0.0050 | 0.0075 | 65% | 0.0033 | 0.0049 |
| Snack Bar | 50 | seats | 40 | 0.0020 | 0.0030 | 65% | 0.0013 | 0.0020 |
| Tennis Clubhouse | 2,000 | sq. ft. | LS | 0.0050 | 0.0075 | 65% | 0.0033 | 0.0049 |
| Administration | 11,132 | sq. ft. | 200 per 1,000 sq. ft | 0.0022 | 0.0033 | 65% | 0.0014 | 0.0022 |
| Registration Bldg. | | | LS | 0.0010 | 0.0015 | 65% | 0.0007 | 0.0010 |
| Cart Storage | | | LS | 0.0010 | 0.0015 | 65% | 0.0007 | 0.0010 |
| WWTP/Maintenance | | | LS | 0.0020 | 0.0030 | 65% | 0.0013 | 0.0020 |
| Existing Plantation Homes | 8 | ea. | 400 | 0.0032 | 0.0048 | 55% | 0.0018 | 0.0026 |
| | | | Totals | 0.1185 | 0.1778 | | 0.0680 | 0.1020 |

Source: Wagner Engineering Services, 1999




Proposed Wastewater System

Figure 23

# KAPALAWAI RESORT

Kapalawai, Kauai, Hawaii

Feet 0 100 200 400 800

Source: Wagner Engineering Services, 1999

Prepared by Helber Hastert & Fee, Planners

Any WWTP must also be capable of accommodating peak diurnal flows from the development. According to the County Kauai's Maximum Rate of Flow Chart, a peaking factor of 5.0 should be applied to the peak season flow of 0.1020 MGD, for a peak flow of 0.51MGD.

Estimates for wastewater flow must also include infiltration. A common limit for an acceptable level of infiltration in a sewer system is approximately 500 gallons per day per inch-mile of pipe.[10] This results in an estimated infiltration rate of about 20,000 gallons per day, or 0.02 MGD. The WWTP must therefore be sized for an average flow of approximately 0.12 MGD, and a peak flow of 0.53 MGD.

*Wastewater Treatment By-Products.* A WWTP produces a solid product (sludge, or biosolids), and a liquid product (effluent) for disposal or reuse. The biosolids can be safely disposed at the County of Kauai's Kekaha Municipal Landfill, as the County does with the biosolids from its own wastewater treatment plants. The biosolids must pass a "Paint Filter Test" at the landfill to ensure that it is sufficiently dewatered prior to disposal. The biosolids can also be used in a small on-site composting operation. Combined with green waste generated from landscaping maintenance operations on the project, compost could then be reused for the development's landscaping.

Traditional options for disposal of effluent include ocean outfall, injection well, rapid infiltration and irrigation. The best possible use of the effluent, especially on the west side of Kauai, where weather is hot and dry and water is a precious resource, is to recycle the effluent as irrigation water. Irrigation will be the method of choice at Kapalawai.

The use of reclaimed water will be accomplished in compliance with the State Department of Health's *Guidelines for the Treatment and Use of Reclaimed Water.* If the effluent is treated to the R-1 level, it may be used to spray irrigate the project site with few restrictions, whereas R-2 quality effluent could be used for drip irrigation.

[10] "Inch-mile" refers to total length of a certain diameter pipe. For example 5,280 lineal feet of 6-inch pipe is 6 inch-miles.

## 6.4 Grading and Drainage

A civil engineering report was prepared for the EIS by Wagner Engineering Services and included a discussion of grading and a preliminary drainage study. Their complete report is attached as Appendix I.

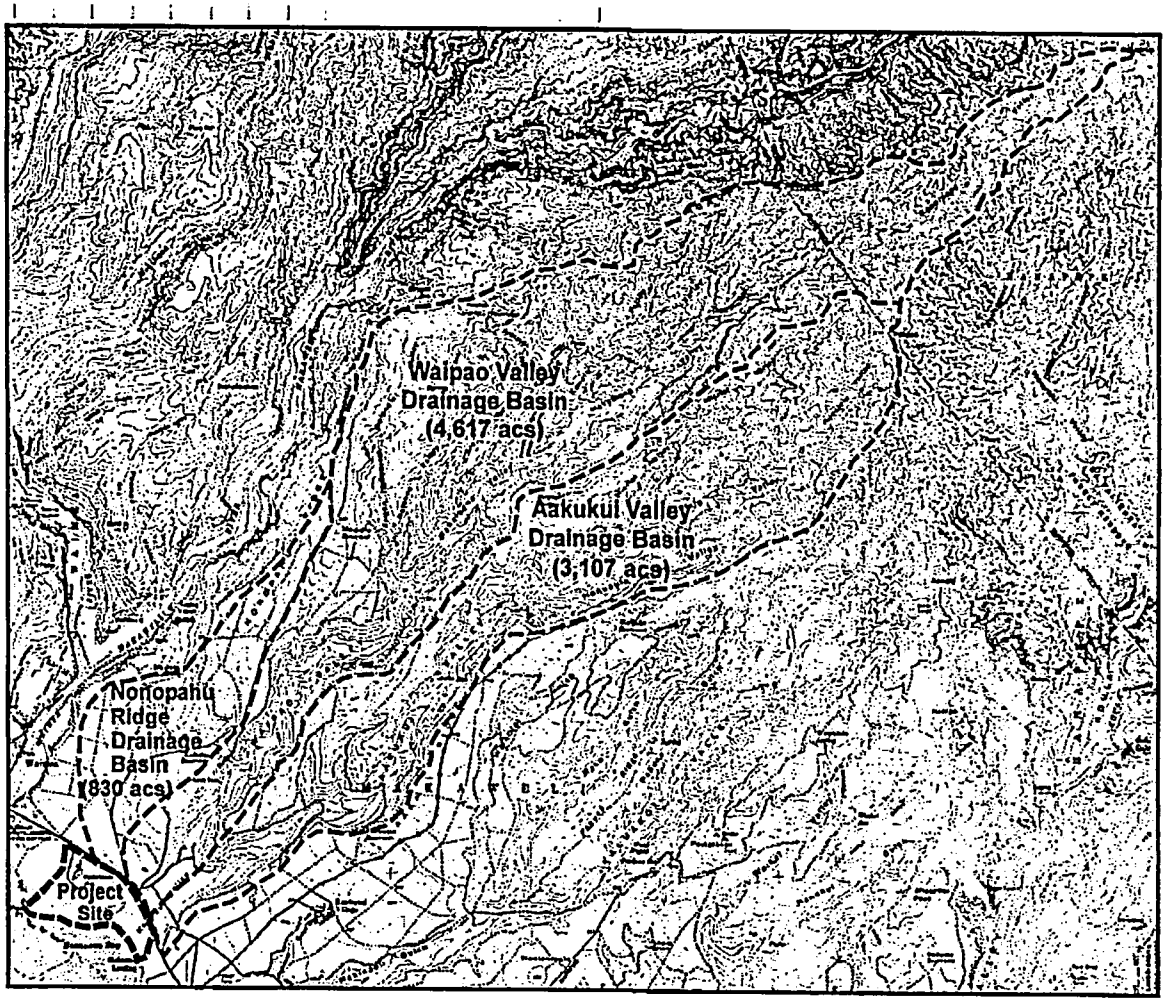
Existing Conditions

*Off-Site Drainage*. Three off-site drainage basins are tributary to the project site. According to the United States Geological Survey Map, Hanapepe Quadrangle, they are, from west to east, the Nonopahu Ridge drainage basin (830 acres), the Waipao Valley drainage basin (4,617 acres), and the Aakukui Valley drainage basin (3,107 acres) (Figure 24). All three drainage courses drain under Kaumualii Highway to the project site.

*Nonopahu Ridge Drainage Basin*. During the 100-year storm event, the Nonopahu Ridge drainage basin generates a peak flow of 1,578 cubic feet per second (cfs). Stormwater from the drainage basin sheetflows makai and is also collected in a manmade ditch found in the Gay & Robinson, Inc. Akia field system. Two existing 36-inch culverts convey runoff under Kaumualii Highway and into a manmade ditch on the western side of the project site. These culverts do not have the capacity to accommodate the 100-year storm event, so the highway will be overtopped during the 100-year event.

*Waipao Valley Drainage Basin*. During the 100-year storm event, the Waipao Valley drainage basin generates a peak flow of 5,491 cfs. The watercourse for the drainage basin is conveyed under an overpass on Kaumualii Highway, and then into a well defined, rock wall reinforced drainage channel (Mahaikona Stream), all the way to the ocean. The existing watercourse is approximately 36 feet wide, three to four feet deep, and clear of flow obstructions. During the 100-year storm event, the watercourse will overtop its banks.

*Aakukui Valley Drainage Basin*. During the 100-year storm event, this drainage basin generates a peak flow of 3,794 cfs. The drainage basin watercourse (Aakukui Stream) is conveyed under an overpass on Kaumualii Highway all the way to the ocean. The existing watercourse is approximately twelve feet wide, two to three feet deep, and overgrown in places. During the 100-year storm event, it is predicted that the watercourse will overtop its existing banks.




Off-Site Drainage Areas

KAPALAWAI RESORT

Kapalawai, Kauai, Hawaii

Source: Wagner Engineering Services, 1999

Figure 24

Feet 0 2500 5000 10,000

Prepared by Helber Hastert & Fee, Planners

***On-Site Drainage***. Aside from the three existing watercourses which traverse the project site, the remainder of the site slopes from the highway to the ocean at approximately four percent immediately makai of the highway, to approximately one percent at the shoreline. Sheet flow of the runoff to the ocean tends to minimize erosive effects on the property. Peak flow runoff for a 100-year storm event is approximately 310 cfs, which comprises about 2.7 percent of the total 11,173 cfs generated within the tributary drainage basins (including the project site) that reach the project site.

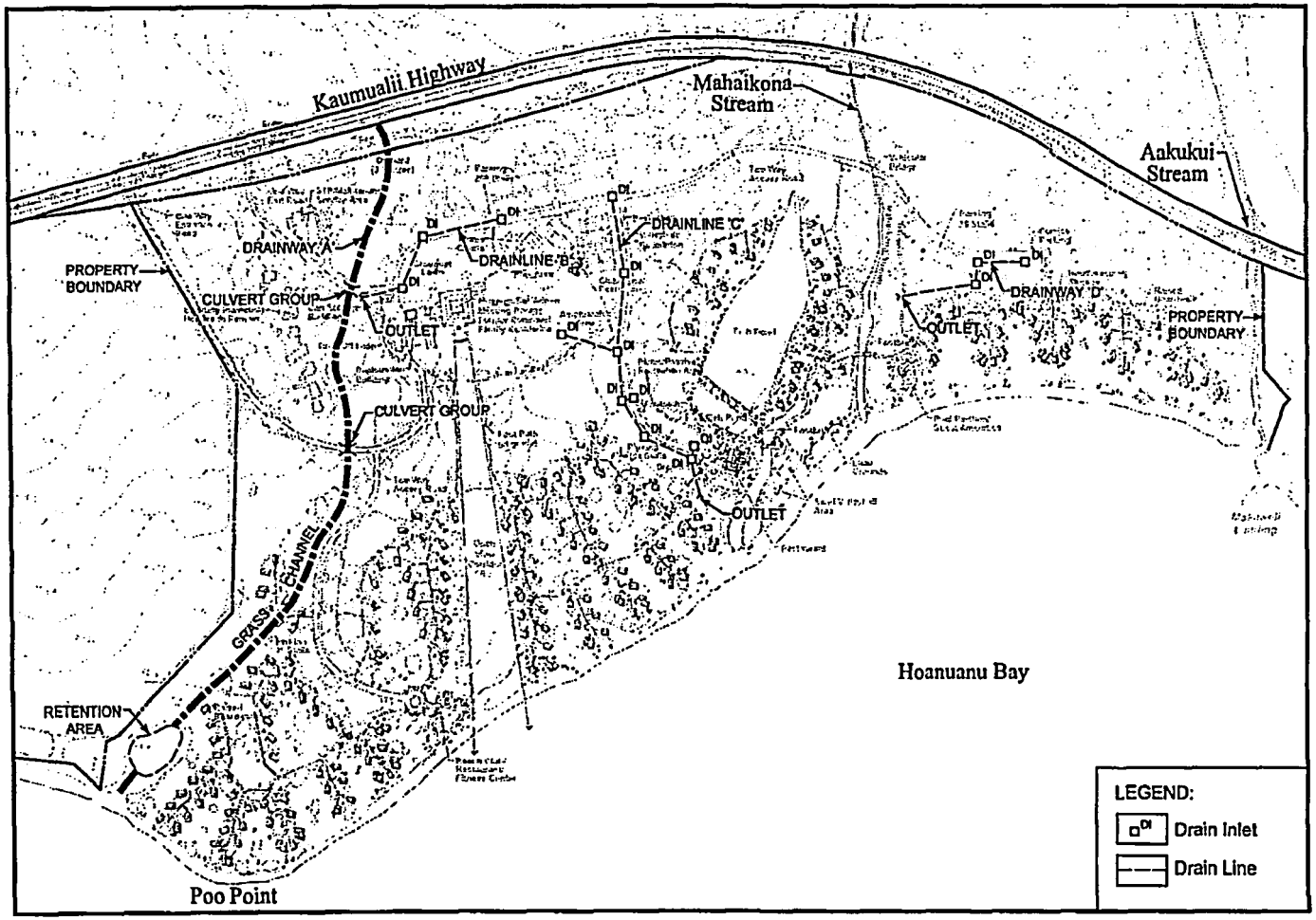
Makai of the highway the ditch discussed above continues and conveys runoff (and sugar cane irrigation filter discharge) to an area on the project site used as a settling basin by the plantation.

Gay & Robinson, Inc. is presently constructing a new retention basin mauka of the highway within the Nonopahu Ridge drainage basin for the collection of irrigation filter discharge and stormwater runoff. After settling, collected water will be pumped mauka for reuse. The retention basin will eliminate the irrigation discharge and most stormwater runoff from the Nonopahu Ridge System from reaching the project site.

Probable Impacts

Drainage systems are proposed in certain areas to control stormwater runoff for access roads and parking areas. Peak flow runoff for a 100-year storm event from the overall project site will increase from about 310 cfs in an undeveloped condition to about 589 cfs in a developed condition. The increase of 279 cfs for the 100-year storm event is insignificant (2.5%) when compared to the total peak offsite flow of 10,863 cfs from the three mauka watersheds which are tributary to the property. Therefore, impacts to near coastal water quality will not be significant.

Figure 25 illustrates a preliminary drainage plan for the proposed resort. Drainway "A" is a six-foot deep trapezoidal grass channel, with a bottom width of 30 feet and an overall top width of 54 feet. This drainway will follow the same draincourse as the existing man-made ditch. The new channel will route runoff through the west portion of the site and outlet into a retention basin mauka of the shoreline, which will allow for sediment collection and controlled release. This grass channel will accommodate the 100-year storm with two feet of freeboard.




Proposed Drainage System

Figure 25

# KAPALAWAI RESORT

Kapalawai, Kauai, Hawaii

Source: Wagner Engineering Services, 1999

Prepared by Helber Hastert & Fee, Planners

Drainline "B", is a storm drain system that will drain the western portion of the main parking lot. This drainline will empty into Drainway "A." Drainline "C," a storm drain system for the eastern portion of the main parking lot, the roadway to the main restaurant, and its parking lot, will outlet to an open lawn area downstream of the fishpond. Drain line "D," a storm drain system for the parking area and roadway on the eastern portion of the property, will outlet into Mahaikona Stream. The remainder of the site shall be graded to approximate the existing condition, to promote sheetflow runoff from the property.

Mitigation

Proper and regular maintenance of the existing streambeds and the proposed grass-lined channel is essential to ensure maximum flood protection for the project. Maintenance of Aakukui Stream, which is currently overgrown in some places, will significantly improve its capacity. Also, inclusion of best management practices (BMPs) in the design of the drainage system will reduce the potential for sediments and other pollutants to reach the ocean and on-site streams. These BMPs include: grass channels; filter strips; and biorentention areas. Other more direct options, such as sand filters, will also be considered. Selection of final BMPs, which could include a combination of those listed, will be made at the time of detailed project design.

## 6.5 Solid Waste

Existing Conditions

The County of Kauai's only municipal solid waste landfill is located in Kekaha, approximately seven miles to the northwest. The capacity and life span of the landfill was severely shortened after receiving waste and debris generated by Hurricane Iniki in 1992. At present, the landfill has approximately 5-1/2 years of capacity remaining.

Probable Impacts

Base upon other resorts in Hawaii, a project the size of Kapalawai can be expected to generate 70 to 90 cubic yards (cy) of waste per week.

Mitigation

According to the provisions of Article 7 (Landfills) of the Kauai County Code, the following materials are not allowed at the Kekaha Landfill from non-residential sources:

- Corrugated cardboard;
- Ferrous and non-ferrous metal objects;
- Loads with more than 20% green wastes; and
- Liquid waste.

The Kapalawai Resort will implement an aggressive recycling program to minimize its impact on the County's diminishing landfill capacity. Much of the 70 to 90 cy of solid waste anticipated for Kapalawai is recyclable, as follows:

**Table 9**
**Recyclable Waste**

| Item | Primary Source | Approximate Weekly Volume |
|---|---|---|
| Cardboard | Delivery of packaged goods | 5 to 10 cy |
| Glass | Food and beverage storage containers from restaurants | 3 cy |
| Aluminum cans | Beverage containers | 1 cy |
| Paper | Administration and registration offices | 1 cy |

Source: Wagner Engineering Services, 1999

Garden Island Disposal is the only commercial solid waste hauler on the Kauai. Garden Island has contracted with the County of Kauai to handle recycling of the above materials. The key to any successful recycling program is maintaining a clean, uncontaminated waste stream. The proposed resort should be able to recycle about 15% of its solid waste, as indicated above. In addition, the following items may also be diverted from the landfill:

- ***Plastic.*** Currently only number 2 plastics are recyclable on Kauai. Though not a significant portion of the waste stream, recycling of plastic fits in well as part of a larger recycling program, and may grow to include other types of plastic in the future.
- ***Food Waste.*** Restaurant food waste can be composted on-site and reused in project landscaping.

- ***Green waste.*** The volume of green waste generated from landscape maintenance can be significant. The green waste can be composted on-site, or delivered to the Kekaha landfill where the County of Kauai already has a green waste program in operation, provided the volume of green waste does not exceed 20% of any individual load.

Liquid wastes (other than wastewater) will be collected by a vendor and shipped off-island for recycling. In addition, the County of Kauai is currently evaluating proposals from private entities to handle large portions of the island's solid waste to avoid its placement in landfills.

## 6.6 Recreational Facilities

Existing Conditions

The West Kauai community is blessed with some of the most diverse and spectacular recreational resources in Hawaii. There are a number of federal, state, and county facilities that offer Kauai residents and visitors the opportunity to boat, fish, hike, swim, surf, picnic, camp, snorkel, and otherwise enjoy the outdoors. These facilities include:

**Table 10**
**Public Recreational Facilities in the Waimea District**

| Federal Facilities[11] | State Facilities | County Facilities |
|---|---|---|
| Nohili Point | Polihale State Park | Salt Pond Beach Park |
| Kinikini | Waimea Canyon State Park | Lucy Wright Beach Park |
| Majors Bay | Kokee State park | Kekaha Beach Park |
| | Na Pali Coast State Park | Hanapepe Beach Park |
| | Port Allen Small Boat Harbor | |
| | Kiklaola Small Boat Harbor | |

In addition, as discussed in Section 6.7, below (Shoreline Access), access to the shoreline is provided through the project site to the "Pakalas" ("Infinities") surf break.

[11] These facilities all represent beach access through the U.S. Navy's Pacific Missile Range Facility at Barking Sands

Probable Impacts

The existing recreational resources in West Kauai are diverse, vast, and exceptional, and contribute to the overall quality of life for its residents. The addition of about 365 persons per day (Kapalawai Resort guests on an average day) to the defacto population of the Waimea District, will add to the demand on recreational resources. However 365 people represent only a 3.9% increase above the 1995 resident population of 9,220 for the Waimea District, and a 0.5% increase to the defacto population of 69,900 for the entire island (Department of Business Economic Development and Tourism, 1996). Many of the recreational facilities in the Waimea District (such as Waimea Canyon State Park, Kokee State Park, Na Pali Coast State Park, Polihale State Park) attract users from all over Kauai, including visitors. In this context, the increased demand resulting from potential Kapalawai Resort guests will be marginal. This is particularly evident when examining the area of many of these facilities. For example, Kokee State Park and Waimea Canyon State Park are 4,345 acres and 1,866 acres in size, respectively, and offer numerous hiking, picnicking, hunting, and camping opportunities.

The project site will offer some recreational amenities to guests, thereby minimizing off-site impacts. These activities include tennis, swimming, beachcombing and walking. Therefore, some recreational demand for Kapalawai guests will be met on the property. As a result, overall impact to any single off-site recreational resource is not expected to be significant.

The development of a resort at Kapalawai will also provide on-site recreational opportunities for Kauai residents, in the form of increased shoreline access (Section 6.7, below), to pursue activities such as fishing, diving, beachcombing, and picnicking, in addition to surfing. As a result, there will be a beneficial impact on recreational opportunities for Kauai residents.

## 6.7 Shoreline Access

Existing Conditions

At the present time, there is an informal agreement between the Robinson family and the County of Kauai that allows beachgoers access to the shoreline on the southern side of the project site in the vicinity of Aakukui Stream. This access is primarily for surfers who want surf at Pakalas. Other shoreline access in the

region is provided at various Federal, State, and, County beach facilities from Hanapepe to Polihale.

Probable Impacts

At the very least, current access to the Pakalas surf break will remain as-is. Discussions with community members indicate there may be a difference of opinion concerning the most appropriate form of beach facilities for Kapalawai at the Aakukui Stream end of the property. Various facilities have been proposed including, a parking area, restroom, shower, and a formal path to the ocean. Other suggestions have been to leave the current access as-is, with no additional formal facilities.

Additional access will be available from parking areas within the resort, where some parking spaces will be reserved for public use. In this context, access to the shoreline will be improved.

Mitigation

Discussions with community representatives, officials from the County of Kauai, the landowners, and the developers are necessary to develop an overall access plan for the property that meets the needs of the community and satisfies the requirements of Chapter 205A, HRS.

## 6.8 Police/Fire and Emergency Services

Existing Conditions

***Police.*** The Waimea District (Hanapepe-Polihale/Kokee) has one beat officer on patrol at any time. There are three nine-hour shifts (6am-3pm, etc.), so there is some overlap between the patrol officers. One sergeant overseas four officers from Koloa to Polihale, and provides backup to the beat officers during evening and late night shifts. During the day shift, the district commander takes care of administrative matters at the Waimea Substation, and provides additional backup response to the beat officer and sergeant.

Existing police manning and facilities are adequate to serve current conditions (Ihu, Personal Communication, Sept. 28, 1999).

***Fire.*** Fire protection services are provided by Station 6 in Hanapepe and Station 7 in Waimea. Either or both stations would respond to structural fires on the property. Only Station 7 would respond to brush fires, unless additional back up was required. Each station has a 5-man crew. Response time from Waimea to the project site would be about 3 minutes; from Hanapepe about 6 minutes (Kanno, Personal Communication, Sept. 28, 1999).

***Emergency Services.*** Emergency services on Kauai are contracted by the State to American Medical Response. The Waimea unit ("Medic 20") serves the project area. Its service area runs from Polihale and Kokee in the west to near Kalaheo in the east. It is an advanced life support unit with one paramedic and one emergency medical technician (EMT). The unit usually transports patients to Kauai Veterans Memorial Hospital I Waimea. Severe trauma and isolated orthopedic cases are transported to Wilcox Hospital in Lihue, or to Honolulu (Maiava, Personal Communication, Sept. 29, 1999).

The Waimea unit responds to about 280 calls per year, or 31 calls per 1,000 population. This is the lowest incident rate on Kauai. The average response time of 10.5 minutes is considered excellent. If backup response is needed (e.g., the unit is already on a call), the Poipu unit will respond. The Fire Department co-responds on all calls (Maiava, Personal Communication, Sept. 29, 1999).

Probable Impacts

***Police.*** The Police Department has indicated that there are problems in the district with car break-ins in isolated areas. Increased traffic in the region could result in more traffic accidents. (Ihu, Personal Communication, Sept. 28, 1999). However, having on-site security personnel would reduce impact to police services. In general, impacts to police services are not anticipated to be significant, provided the resort provides on-site security, based on experience with other facilities in Koloa and Poipu.

***Fire.*** The Fire Department has indicated that if the developer provides a private fire protection system consisting of storage tanks, lines, stand pipes, and access roads (to the cottages), existing fire protection equipment and manning should be sufficient to serve the development. (Kanno, Personal Communication, Sept. 28, 1999).

***Emergency Services.*** Emergency services staff indicated the proposed project would not require the addition of staff or equipment to the Waimea Unit.

## 6.9 Interrelationships and Cumulative Impact: Public Facilities and Service

The proposed resort will have marginal impacts to the public facilities and services of the region. Electricity and phone services are adequate to meet demand. Wastewater treatment will occur on-site, with reclaimed water being recycled as an irrigation source. Potable and irrigation water will be provided with the development of a private source and delivery system. Traffic will increase slightly in the vicinity of the resort, including consideration of general increases in traffic attributable to background growth. Impacts will be mitigated by the construction of improvements to Kaumualii Highway at the entry to the resort. However, longer-range development on West Kauai could include another low-density resort of similar size to the proposed project, on land owned by Kikiaola Land Company. Development of a second resort could require traffic improvements within Waimea Town.

Recycling efforts will keep generation of solid waste to a minimum. Shoreline access will be improved with the provision of on-site parking.

Wastewater generated by the project will be handled via an on-site wastewater treatment plant, with effluent recycled on the property as irrigation water. Hence, impacts are limited to project boundaries.

Other utility demands are modest, and can be met by existing infrastructure systems. There are no pending projects that would otherwise require upgrading capacity.

As more properties return to visitor facility inventories, and new properties develop additional visitor units (Alexander & Baldwin's Kukuiula project), there will be an increase in the number of visitors who travel to West Kauai for sightseeing from other areas on Kauai. These visitors will increase the number of people at some recreational facilities, particularly the larger, more spectacular attractions such as Kokee State Park, Waimea Canyon State Park, and Polihale Beach Park. Other recreational facilities, such as County beach parks, should not be impacted as much.

Police/Fire and Emergency Service infrastructure appear adequate for the foreseeable future.



# 7

# ALTERNATIVES TO THE PROPOSED ACTION

# 7.0 ALTERNATIVES TO THE PROPOSED ACTION

As discussed in Chapter 1, four development alternatives and one non-development alternative ("no-action") were considered in place of the proposed action. Each of the alternatives discussed represents a realistic concept to develop the property. Each of these alternatives is discussed below, including the major anticipated impacts of each alternative as compared to the proposed action.

Although the no-action alternative was considered, it was determined to be an unrealistic expectation of the landowner's ultimate disposition of the property. It is appropriate to assume, and within the rights of the landowner to expect, that the property will realize a return. Thus, eventual development of the property will occur. While some of the alternatives are more feasible than others, none compared to the proposed project in terms of impacts to the environment. For this reason, the proposed action was determined to be the best use of property with the least impact.

## 7.1 High Density Resort

The overall density of the proposed resort is approximately 1.5 units per acre. The property is capable of handling much higher densities. If buildings containing conventional hotel rooms were constructed at 4-6 stories, it would be possible to accommodate 1,700 hotel rooms on the property, which would be consistent with the RR-10 Hotel Zoning District. A resort of this size would also include some commercial space, a number of restaurants, and a greater number of recreational amenities on-site.

Traffic impacts would be significantly greater than the proposed action. Signalization would probably be required on Kaumualii Highway, and intersections in Hanapepe and Waimea Town would also be negatively affected. Physical changes to property would be more severe, with much larger building footprints required, resulting in greater excavation, and a higher percentage of impervious surfaces devoted to roadways and parking areas. Higher investments would be required to provide adequate wastewater treatment and potable water.

In addition, the overall volume of employees and guests would overwhelm Waimea Town, and would require the evaluation of existing County and State services in the region.

## 7.2 Golf Course

The overall size of the project site (~~170~~ 153.696 acres) is suitable to accommodate a golf course. Under this development scenario, the former family residence could be preserved and used as a clubhouse, and the fishpond could be incorporated into the course as a water feature. It is probable that sufficient water for irrigation would be available from the fishpond.

If a golf course were developed, the property would retain it's character as open space, although it would require a much more intensive level of management in order to maintain the health and integrity of the course turf. The course could be designed to accommodate significant storm events on-site without sheet flow into the ocean. Although golf courses require the application of fertilizers and pesticides to promote turf health, recent trends in golf course management limit the leaching of these chemicals to groundwater, and eventual seepage to the nearshore marine environment.

Although the overall environmental impacts of a golf course are favorably compared to the proposed action, the economics of golf course construction and maintenance as stand-alone developments are questionable in today's market conditions. Therefore, a golf course was not considered as the most appropriate use of the property.

## 7.3 Mixed Use Resort/Commercial/Residential

A mixed use development is typical of many areas in Hawaii, such as Kapalua, Wailea, Kaanapali, and Poipu. This type of resort is considered more of a "self-contained" unit, and attempts to keep its guests within the resort. This allows the resort to capture dollars spent by its guests, instead of promoting guests to spend dollars outside of the resort, within the regional community. The overall scale of this type of development would be consistent with the scale discussed in Section 7.1 (High Density Resort), and environmental impacts would be similar. In addition, in terms of economic impact, there would be a higher percentage of expenditures that "leaked" out of the region.

One objective of the developer of the proposed resort is to provide economic stimulus to existing local businesses and service providers, in addition to creating new opportunities for local entrepreneurs. The development of a higher density mixed use project does not meet these objectives.

## 7.4 Residential Development

Another possible use of the property would be to create a residential subdivision. If an average lot size of 10,000 to 15,000 square feet is achieved, it would be realistic to estimate upwards of 300 lots available for residential development. The immediate impact of 300 single-family dwellings (assuming there is a market for that many homes), would be to add over 600 people to the resident population of the Waimea District. In terms of physical environmental impacts, development of a residential subdivision would be similar in nature to a high density resort. Traffic impacts would not be as significant. However, project area devoted to roadways and sidewalks would be probably be higher, resulting in increased stormwater runoff. In addition, 300 individual properties with extensive lawn areas would result in a large variance in fertilizer and pesticide application, with some property owners using considerably more chemicals than actually required. Also, the number of new permanent residents would place heavier burdens on public infrastructure systems, including wastewater treatment, potable water, and public schools.

Further, the historic context of the family residence and the fishpond would be significantly compromised. For these reasons, this alternative was rejected.

## 7.5 No-Action

The no-action alternative would leave the property in its present condition. Two immediate consequences of the no-action alternative would be that: (1) the Robinson family would have to continue expend resources to maintain the present condition of the former family residence, or it would deteriorate; and (2) the condition of the fishpond would continue to degrade with the accumulation of silt and noxious vegetation, resulting in the ultimate loss of this resource. These two consequences are not acceptable to the Robinson family, and, therefore, do not meet their objectives for the long-term management of the property.

A third consequence of the no-action alternative would be that the balance of the property formerly used as pasturage for livestock would become available for that use once again, allowing for limited agricultural use of the property. The number of bulls formerly accommodated on the property was limited in number (20), and other pasturage, of higher quality, is available to be used for this purpose. In addition, the remainder of the property would continue to be overgrown with vegetation, and would not be managed in a manner meeting the Robinson family's expectations.

For these reasons, the no-action alternative was rejected.



# 8

# IRREVERSIBLE AND IRRETRIEVABLE COMMITMENTS OF RESOURCES

# 8.0 IRREVERSIBLE AND IRRETRIEVABLE COMMITMENTS OF RESOURCES

The construction of the proposed project will result in an irreversible and irretrievable commitment of capital, labor and energy for the design and construction of the project. In addition, the operation of the resort will require the expenditure of energy and the consumption of some natural resources.

However, the overall project should also be seen in the context of how operations strive to reduce commitments of resources. Wastewater reclamation, and other recycling activities, not only reduce overall consumption, but will educate guests about the opportunities to reduce consumption in their daily lives when they return home.

Although land will be used and occupied during the development and operation of the project, the overall character of the property will remain in open space. The point is that development of the project site as proposed offers a low-impact use of the property (particularly in contrast to alternative uses) which would operate on a basis of low resource consumption and recyclability.



# 9

# RELATIONSHIP BETWEEN LOCAL SHORT-TERM USES OF THE ENVIRONMENT AND MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY

# 9.0 RELATIONSHIP BETWEEN LOCAL SHORT-TERM USES OF THE ENVIRONMENT AND MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY

The undeveloped nature of the project site suggests a low level of use and environmental impact. In addition, during the last few decades, management of the property has been reduced, resulting in a degradation of the fishpond, and continued growth of non-native species, including the recent discovery of a particularly destructive species of kiawe, which has gained a foothold on the makai portions of the property. The long-term benefits of the development of a low-density resort at Kapalawai will include:

The fishpond will be improved and managed, providing appropriate habitat for endangered native waterbirds;

The grounds of property will also be managed, reducing the exposure of soil to the effects of erosion, thereby reducing impacts to the nearshore environment related to sedimentation;

The former Robinson family residence will be renovated, restored, and maintained, with a major portion of its floor area devoted to a museum, thereby preserving an important aspect of the history of Kauai and the State of Hawaii;

The project will generate about 200 jobs on-site, and over $36 million in annual expenditures, statewide;

The Kapalawai Resort will support agricultural operations in the region, thus enhancing the long-term productivity of the agricultural sector; and

Recycling efforts, including wastewater reclamation, will reduce consumption of natural resources.



# 10

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## 10.0 REFERENCES

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# 11

## PREPARERS OF THE EIS

## 11.0 PREPARERS OF THE EIS

This environmental impact statement was prepared for the applicant, Destination Villages Kauai, LLC by Helber Hastert & Fee, Planners. The following list identifies individuals and organizations involved in the preparation of this EIS and their respective contributions.

**Helber Hastert & Fee, Planners**
Scott Ezer (Project Manager and Principal Author)
Michael Garris (Physical Planning)
Sherrie Dodo/Lori Oumaye (Graphic Presentation)

**Technical Consultants**

| Consultant | Technical Area |
|---|---|
| Char & Associates | Botanical Resources |
| Phil Bruner | Terrestrial Fauna |
| Marine Research Consultants | Marine Biology |
| Cultural Surveys Hawaii | Archaeology |
| Tom Nance Water Resources Engineering | Hydrogeology |
| Wagner Engineering Services | Civil Engineering/Surveying |
| Cultural Surveys Hawaii | Traditional Cultural Practices |
| Mikiko Corporation | Fiscal/Economic Impact |
| Wilbur Smith Associates | Traffic Analysis |
| Mason Architects | Architectural Analysis of Structures |



# 12

## PARTIES CONSULTED DURING THE PREPARATION OF THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

# 12.0 PARTIES CONSULTED DURING THE PREPARATION OF THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

The County of Kauai of Planning Department (accepting authority) determined that the proposed project may have a significant effect on the environment. By letter dated July 9, 1999, the Planning Department notified the Office of Environmental Quality Control (OEQC) that it had determined an EIS was required for the project. Notice of this determination was published in the July 23, 1999 edition of the *Environmental Notice*, commencing a 30-day public review period that ended on August 23, 1999. A copy of the environmental impact statement preparation notice (EISPN) and/or notice of the project was mailed to the agencies and organizations listed below. The list contains parties believed to have an interest in the project.

A total of 23 agencies, organizations, or individuals provided written comments on the EISPN. The parties who responded to the EISPN are identified by an asterisk (*) and their respective comments are reproduced in the following pages, along with response letters to the comments. Parties identified by a double asterisk (**) were not on the original mailing list but sent in comments or requested to be considered a consulted party.

## Elected Representatives

The Honorable Avery B. Chumbley, Hawaii State Senator District 6
The Honorable Jonathan Chun, Hawaii State Senator, District 7
The Honorable Hermina Morita, Hawaii State Representative, District 12
The Honorable Ezra Kanoho, Hawaii State Representative, District 13
The Honorable Bertha Kawakami, Hawaii State Representative, District 14
The Honorable Maryanne W. Kusaka, Mayor, County of Kauai
The Honorable Ronald Kouchi, Chair, Kauai County Council
The Honorable Bryan J. Baptiste Kauai County Council
The Honorable Gary Hooser, Kauai County Council
The Honorable Daryl Kaneshiro, Kauai County Council
The Honorable William Swain, Kauai County Council
The Honorable James Kunane Tokioka, Kauai County Council
The Honorable Randal Valenciano, Kauai County Council

## Federal Agencies

Department of Agriculture, Soil Conservation Service
Department of Defense
**Department of the Army, Army Corps of Engineers***
Department of the Navy, Pacific Missile Range Facility, Barking Sands
Department of the Interior
**Fish and Wildlife Service***
**Geological Survey***
Department of Commerce
**National Marine Fisheries Service***

## State Agencies

- **Department of Accounting and General Services***
- Department of Agriculture
- Department of Business, Economic Development, and Tourism
  - **Land Use Commission***
  - Librarian, DBEDT Library
  - **Office of Planning***
  - **State Energy Office***
- **Department of Defense***
- Department of Education
  - **Superintendent***
  - Hawaii State Library
  - Hanapepe Public Library
  - Waimea Public Library
  - Koloa Library
  - Kapaa Library
  - Princeville Library
  - Lihue Regional Library
  - Hawaii Kai Regional Library
  - Kaimuki Regional Library
  - Hilo Regional Library
  - Kaneohe Regional Library
  - Kahului Regional Library
  - Pearl City Regional Library
- **Department of Hawaiian Home Lands***
- **Department of Health***
  - **Office of Environmental Quality Control***
- Department of Land and Natural Resources
  - **Historic Preservation Division***
- **Department of Transportation***
- **Office of Hawaiian Affairs***
- Legislative Reference Bureau
- University of Hawaii
  - Environmental Center
  - Hamilton Library
  - Water Resource Research Center

## County of Kauai Agencies

- Office of the County Attorney
- **Fire Department***
- Department of Planning
  - Chair, Planning Commission
  - Historic Preservation Review Commission
- Police Department
- **Department of Public Works***
- **Department of Water***
- **Civil Defense Agency***
- Office of Economic Development

## Public Utilities

**GTE Hawaiian Tel***
Kauai Electric Company

## Community Organizations/Individuals

Amfac Sugar Company
Hanapepe Business Association
Hanapepe Bay Association
Hanapepe Professional Businessmen's Association
Hanapepe Economic Alliance, Inc.
ILWU (Kauai Division)
Judy Naumu Stewart
Kauai Chamber of Commerce
Kauai Economic Development Board
Kauai Visitors Bureau
Kiklaola Land Co., Ltd.
**Life of the Land***
Sierra Club
West Kauai Development Corporation
West Kauai Main Street
**Dorothea Hayashi****

## Newspapers

*The Garden Island* Newspaper
Kauai Business Report
Honolulu Advertiser
Honolulu Star-Bulletin

PHONE (808) 594-1888

FAX (808) 594-1865

STATE OF HAWAI'I
OFFICE OF HAWAIIAN AFFAIRS
711 KAPIOLANI BOULEVARD, SUITE 500
HONOLULU, HAWAI'I 96813

August 23, 1999

Mr. Keith Nitta
Department of Planning
County of Kaua'i
4444 Rice Street, Suite 473
Lihu'e, HI 96766

EIS #329 (99)

Re: Environmental Impact Statement Preparation Notice (EISPN)
Kapalawai Resort, TMK: (4) 1-7-05:01

Dear Mr. Nitta,

Thank you for the opportunity to comment on the Environmental Impact Statement Preparation Notice (EISPN) for the proposed Kapalawai Resort in Makaweli, Kaua'i, Hawai'i. The 170-acre project site will include 250 visitor units with no cooking facilities, phones, or televisions. In addition, amenities such as: two restaurants; a snackbar; museum; bar/lounge; three swimming pools; fitness center/beach club; sport courts; and an amphitheater will be provided.

According to the EISPN, the Hawaiian Islands are vulnerable to hurricanes, especially the island of Kaua'i which suffered tremendous damage from Iwa (1982) and Iniki (1992). The coastal area of the proposed project site is within the Hurricane Iniki inundation. The Office of Hawaiian Affairs (OHA) suggests the creation of a mitigation plan for the proposed resort site in the event of another hurricane.

Also, 30% of the project site is considered "Prime" agricultural land. It would be inappropriate to rezone this portion of agricultural land. Moreover, the State of Hawai'i classifies that resort uses are not permitted on Agricultural and Conservation Districts, and Open or Agricultural Zoning Districts for the County of Kaua'i.

According to the botanical survey done on the project site in March 1999, none of the plants on the project site are threatened or endangered. However, shrubs of the native *'ilima* are common on the project area.



In addition, no native land-birds were recorded during a survey conducted in March 1999, by Phillip Bruner. However, the Hawaiian Duck or *Koloa*, and the endemic Hawaiian Hoary Bat were observed during the survey.

The Office of Hawaiian Affairs (OHA) urges that appropriate mitigative efforts be taken to preserve Hawai'i's native flora and fauna. OHA anticipates the draft Environmental Impact Statement (EIS) for our further review and comment of the botanical and avifaunal surveys conducted on the project site.

In addition, five archaeological sites in the project area were identified and recorded with the State Historic Preservation Division (SHPD). Again, OHA urges that appropriate mitigative efforts be taken to preserve these sites. We anticipate the Draft EIS for our further review and comment of the draft archaeological inventory survey conducted on the project site.

OHA urges that a cultural impact statement with detailed sections on gathering and religious rights be prepared and included with the Draft EIS. In addition, we suggest that the Hawaiian cultural expert chosen to work on the statement should be a person who is recognized within the Hawaiian community for their cultural expertise. The concerns of the community will not be addressed if the cultural impact statement contains information and analysis provided solely by a person whose knowledge of Hawaiian culture is limited to a study of archaeology or anthropology.

Lastly, since shoreline resources must be made available to the public, we suggest there should be a formal agreement between the developers of the project and the County of Kaua'i to provide for public access to the shoreline.

If you have any questions, please contact Mark A. Maraingan, Policy Analyst-Government Regulations at 594-1945.

Sincerely,

C. Sebastian Aloot
Hawaiian Rights Division Director

Colin Kippen
Deputy Administrator

cc: OHA Board of Trustees
Mr. Lewis Geyser, Destination Villages Kaua'i, LLC
Mr. Scott Ezer, Helbert Hastert & Fee, Planners
Kaua'i CAC

Helber Hastert
Planners

November 5, 1999

Mr. C. Sebastian Aloot, Hawaiian Rights Division Director
Mr. Colin Kippen, Deputy Administrator
State of Hawai'i
Office of Hawaiian Affairs
711 Kapiolani Boulevard, Suite 500
Honolulu, HI 96813-5249

Dear Messieurs Aloot and Kippen:

**Environmental Impact Statement Preparation Notice**
**Kapalawai Resort**
**Kapalawai, Kaua'i, Hawai'i**

Thank you for your letter dated August 23, 1999 on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared.

For ease of reference, we will respond to comments in the order they appear in your letter.

**Hurricane Inundation.** The DEIS will include a discussion of coastal inundation related to Hurricane Iniki. We obtained aerial photos of the project site taken a week after the hurricane, which clearly shows the mauka reach of the Iniki storm surge. Structures will be setback beyond this area. The State Department of Defense has recommended that a warning siren be erected on the property for the safety of resort employees and guests.

**Agricultural Land.** The area of the project site designated as "Prime" under the Agricultural Lands of Importance to the State of Hawaii (ALISH) rating system surrounds the residential compound. Because this land has been used by the Robinson family for residential and related purposes since 1897, this land has never been used for commercial agriculture, and is of negligible importance to agricultural production. In order to incorporate the several buildings of the residential complex into the resort, the State land use designation will need to be changed. This is of critical importance in consideration of the need to preserve these valuable historic resources.

**'Ilima.** The complete botanical survey prepared for the project by Char & Associates will be appended to the DEIS. In addition to the 'ilima, several other native plants were found on the property, including pohuehue, kupala, naupaka kahakai, milo, 'ilie'e, and 'aki'aki, among others.

Helber Hastert & Fee
Grosvenor Center, Mauka Tower
733 Bishop Street, Suite 2290
Honolulu, Hawaii 96813
Telephone 808 545-2055
Facsimile 808 545-2050



**Historic Sites.** The five historic sites identified during the archaeological inventory survey will be preserved. Several will be incorporated into the development program of the resort, and others will be preserved "as-is." The archaeological inventory survey will also be appended to the DEIS.

**Cultural Impact.** The firm of Cultural Surveys Hawaii also prepared a traditional customs and practices report, which will be appended to the DEIS.

**Shoreline Access.** Section 6.7 of the DEIS will discuss current and future considerations for shoreline access. We have suggested that final determination of an acceptable method of formal shoreline access on the eastern end of the property needs to be resolved. There are differing views in the community concerning how access should be provided, and what kinds of facilities are appropriate in the area, if any at all. We believe that a thorough discussion of this issue between community representatives (including surfers), county officials, the landowners, and the developer will be necessary to develop a plan that is acceptable to a majority of stakeholders.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer

Scott Ezer
Senior Associate

cc: Dee Crowell, Kaua'i County Planning Department
Lewis Geyser, Destination Villages Kaua'i, LLC

DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM

BENJAMIN J. CAYETANO
GOVERNOR
SEAN P. MAYA, Ph.D.
DIRECTOR
BRADLEY J. MOSSMAN
DEPUTY DIRECTOR
DAVID W. BLANE
DIRECTOR, OFFICE OF PLANNING

OFFICE OF PLANNING
235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824

Ref. No. P-8230

August 16, 1999

Mr. Dee Crowell
Director
Planning Department
County of Kauai
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

Attention: Keith Nitta

Dear Mr. Crowell:

Subject: Environmental Impact Statement Preparation Notice (EISPN)
Kapalawai Resort, Waimea, Island of Kauai, TMK (4) 1-7-05:01

The proposed resort includes 250 visitor cottages dispersed throughout the 170-acre site. The project would restore the former homestead of the Robinson family, the fishpond, and grounds as a reflection to a bygone era in Kauai's history. Resort amenities include two restaurants, snack bar, museum (in the homestead), bar/lounge (in the homestead), three swimming pools, fitness center/beach club, sport courts (tennis, basketball, volleyball, badminton) and amphitheater. We have reviewed the project and have the following comments.

The property extends along the shoreline for approximately one mile and is within the Agriculture and Conservation State Land Use Districts. A narrow band along the shoreline is within the Conservation District. The remainder is in the Agricultural District. A State Land Use District Boundary Amendment must be obtained from the State Land Use Commission. The EISPN should discuss the number of jobs created during the construction and operation of the resort at buildout and the adequacy of existing and/or planned affordable housing to meet demand. The EISPN should discuss the project's impact on existing schools from workers (construction and operational) moving into the nearby communities and the impact on diversified agricultural pursuits, land availability and agricultural labor resources.

The State Land Use Five-Year Boundary Review recommended reclassification of Russian Fort Elizabeth State Historical Park from the Agricultural District to the Conservation District. The EISPN should discuss the impacts of the resort on this adjacent resource. There should also be a discussion on the lessee and/or fee owner's plans for the remainder of the property (approximately 20 acres) which, if left undeveloped, would buffer Russian Fort Elizabeth State Historical Park from the proposed resort.



We commend the restoration of the 6.5-acre fishpond that is presently half-filled with silt and overgrown vegetation. The fishpond, Aaukui Stream, and Mahiakona Stream and existing wetland areas on the property are habitats for the endangered Common Moorhen (Gallinula chloropus) and the endangered Hawaiian Duck (Anas wyvilliana). The native Black-crowned Night Herons (Nycticorax nycticorax) were also found on the property. We hope the restoration of the fishpond and sensitive landscaping of the streams and wetland areas would encourage native wildlife. The EISPN should discuss best management practices as outlined in Hawaii's Coastal Nonpoint Pollution Control Program Management Plan to mitigate contamination of coastal waters and wetland resources from construction debris, drainage, and chemical/pesticides used for ground maintenance.

The following should also be addressed in the EISPN:

A shoreline access plan from the highway for swimmers, fishermen, and other recreational or traditional users.

A plan to incorporate recycling provisions within the project during the construction and completed phases of the project.

Evacuation/protection plans to ensure the safety of visitors during emergencies (tsunamis, hurricanes).

Documentation of community support for the project.

The relationship of the project to various plans and policies: State Tourism Plan, County General Plan, State Plan, and the Coastal Zone Management objectives and policies.

If there are any questions, please contact Christina Meller of our Coastal Zone Management Program at 587-2845 and Judith Henry of our Land Use Division at 587-2803.

Sincerely,

David W. Blane
Director
Office of Planning

c: Office of Environmental Quality Control
Destination Villages Kauai, LLC
Helber Hastert & Fee

Heller Hubert
Planners

November 5, 1999

Mr. David Blane
Director
Office of Planning
Department of Business, Economic Development & Tourism
235 South Beretania Street, 6th Floor
Honolulu, HI 96813

Dear Mr. Blane:

**Environmental Impact Statement Preparation Notice**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated August 16, 1999 on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared. For your ease of reference, we will respond to your comments in the order they appear in your letter.

**State Land Use District Boundary Amendment.** We acknowledge the requirement to petition for a State Land Use Boundary Amendment for the proposed resort. We intend to keep the strip of land mauka of the shoreline within the Conservation District. We will ask to designate the remainder of the property as Urban.

**Jobs/Population.** A fiscal and economic impact assessment was prepared for the project by Mikiko Corporation. The findings of this report will be described in the DEIS, and the entire report will be appended to the DEIS. In response to your question, we estimate that approximately 710 person-years of labor for construction at Kapalawai, and about 200 full time equivalent positions will be created for the operation of the resort. In-migration will be negligible, and we anticipate that most jobs will be filled by Kauai residents. Therefore, there will be no significant impacts to area schools.

**Diversified Agriculture.** The project site has never been used for commercial agriculture. As such, no land will be taken out of agricultural production. There are eight plantation-era homes on the property that will remain. Four of these homes are currently occupied, and there is some subsistence crop growing by these residents, which will continue.

Heller Hubert & Fee
Grosvenor Center, Mauka Tower
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813
Telephone: (808) 545-2055
Facsimile: (808) 545-2050



**Russian Fort Elizabeth State Historical Park.** This park is approximately ¼ mile west of the project site. The area between the two parcels is currently in active agricultural production, and there are no plans to discontinue these activities. As such, there will be a significant buffer between the properties. The area of the land in agricultural production is closer to 85 acres, rather than 20 acres.

**Best Management Practices.** During construction, traditional best management practices will be employed to reduce wind erosion and fugitive dust, such as: watering exposed soil; covering all moving, open-bodied trucks transporting materials which may result in fugitive dust; use of wind screens; prompt removal of earth or other temporarily stockpiled material; and limiting the land area exposed by construction. Drainage systems will be designed to retain stormwater on-site to allow for settling of sediment before reaching the ocean. Plant materials will be selected for their ability to tolerate the locally dry climate, thus reducing requirements for fertilizer and pesticides. Native species will be given the highest priority during the development of a landscape plan for the project site.

**Shoreline Access Plan.** Section 6.7 of the DEIS will discuss current and future considerations for shoreline access. We have suggested that final determination of an acceptable method of formal shoreline access on the eastern end of the property needs to be resolved. There are differing views in the community concerning how access should be resolved, and what kinds of facilities should be provided in the area, if any at all. We believe that a thorough discussion of this issue between community representatives, county officials, the landowners, and the developer will be necessary to develop a plan that is acceptable to a majority of stakeholders.

**Recycling.** Recycling will be a fundamental operating principle for the resort. Reclaimed water from the on-site wastewater treatment plant will be reused as irrigation on the property. Green waste will be composted and reused. An aggressive recycling program for other solid waste will also be implemented (cans, bottles, paper, plastic), to reduce solid waste volume.

**Evacuation/protection.** The State Department of Defense has recommended that the project install a warning siren on the property for the safety of resort employees, guests, and others in the region. Regional shelters and evacuation routes will be included in printed materials that are placed in all cottages, and all

employees will be made aware of these plans during training periods before beginning work.

Documentation of Community Support. We have had several meetings and open forums within the West Kauai community to present the project to the community and discuss it with them. We believe the project has been well-received and that we have responsibly made information available to residents. The EIS process will allow additional information to be available to all residents of Kauai, as we begin the permitting process to allow development of the resort.

Public Plans and Policies. Chapter 3 of the DEIS will include a discussion of the project and its relationship to public plans and policies, including the State Tourism Plan, the County General Plan, the State Plan, and Coastal Zone Management objectives and policies.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC



LIFE OF THE LAND

*Ha Maa Ke Ea O Ka 'Aina I Ka Pono*
Hawai'i's own local Community Action Group
Protecting our Fragile Natural & Cultural Resources
through Research, Education, Advocacy & Litigation

August 22, 1999

Scott Ezer
Helber Hastert & Fee, Planners
733 Bishop Street, Suite 2590
Honolulu, HI 96813

Keith Nitta
Department of Planning
County of Kauai
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

re: Kapaluwai Resort Environmental Impact Statement Preparation Notice

How many projects are there?

As Life of the Land read this Environmental Impact Statement Preparation Notice ("EISPN") one thing really stuck out. There are two proposed resorts on Agriculturally-Zoned Land: Kapaluwai Resort (Kaua'i) and Pua'ena Eco-Campus (O'ahu). These two proposals have the same Applicant and the same Consultant.
This was really shocking because we specifically asked if Pua'ena was one-of-a-kind or part of a larger vision. We were assured that it was one-of-a-kind. Currently the Applicant has released the Kapaluwai Resort EISPN, while the Pua'ena Resort plan has been sent to the County Council without a recommendation by the Department of Planning and Permitting.

Zoning

Zoning Laws are designed to bring about an orderly, well-defined change. Planning allows for adequate development of infrastructure (roads, utilities, schools, emergency services). The alternative is spot zoning where developers build wherever they want wherever they want. The extreme case are cities without zoning laws (Houston, Texas). As the Kaua'i 2020 Vision Plan (CAC Draft 3: 1/27/99) states:

> "Land use regulations specifically provide for rural residential communities, with design standards to preserve open space and landscape features. Regulations and tax incentives are structured to promote legitimate agriculture enterprises and to increase opportunities for small farmers. ... We support our farm entrepreneurs in helping to keep Kaua'i green. Large- and small-scale agriculture and aquaculture operations occupy substantial tracts of prime agricultural land throughout the Island. Forest plantations are maturing on large and smaller tracts of land. County land use regulations and property tax incentives promote active agricultural and forestry use of agricultural lands."

• 76 North King Street • Suite 203 • Honolulu, Hawai'i 96817 • phone: 533-3454 • fax: 533-0993 •
• email: <lifeoftheland@hotmail.com> •

Comprehensive planning and sound reasoning should be used to develop General Plans, Regional Plans and Development Plans. Comprehensive planning forces the municipality to focus on sound planning reasons when it makes its decision. As the Hawaii Supreme Court has noted "Zoning ordinances are in derogation of the common law, and their provisions must be strictly construed."

**Current Zoning**

"The current [Kaua'i] General Plan designations for the project site are Open and Agriculture" (EISPN page 36) "The land use map of the *Wainiha-Kalaheo Regional Development Plan* was intended to establish a 10 to 15 year policy on moderate growth and development of the region. Land use designations for the project site were identified as Agriculture and Open Space." (EISPN page 38) "The Comprehensive Zoning Ordinance for the County of Kaua'i (CZO) *define* the allowable uses of land within Kaua'i County: ... the project site is a mix of "Open," and "Agriculture" zoning. Resort uses are not permitted in either the Open or Agriculture zoning districts." (EISPN page 39) "Approximately 80 percent of the property lies within the SMA" (EISPN page 39)

"Agriculture is keeping Kaua'i green and economically healthy through a variety of crops and products from both large corporate and small farms. Aquaculture is also a strong and growing industry contributing to local markets and exports. ... The market for organically-grown crops is increasing . Kaua'i now produces 50 percent of its own food, reducing food imports and keeping more money in the community. Small farmers on Kaua'i are thriving and *profitable . . Kaua'i's larger corporate agriculture and aquaculture businesses are valuable exporters for niche markets.* ... Their ability to weather varying market conditions lends stability to the Kaua'i economy. ... State and county governments support diversified agriculture by offering tax incentives; maintaining the agricultural irrigation and road infrastructure on State-owned lands; and managing affordable agricultural parks." The Kaua'i 2020 Vision Plan (CAC Draft 3: 1/27/99)

"Noted for its low-key development, dry and sunny climate, and laid-back lifestyle, the West Side offers surprising diversity. It includes small-town communities; vast agricultural lands; the unique resources of Waimea Canyon, Kokee and other mauka wilderness areas; and the high-technology Pacific Missile Range Facility. . . Agricultural lands have been preserved from sprawling subdivisions." Vision for the West Side Planning District (Draft 1/99)

**Resort Zoning**

The Kapalawai project has far more restrictive zoning than the Pua'ena project. Both projects test the same principle. Can a developer propose a project which directly violates zoning laws that were just enacted or are in the process of being enacted. The Kapalawai project goes one step further: can the developer propose to look only at alternatives which violate the current zoning for the property? These are heavy issues. The EISPN MUST look at the CUMULATIVE IMPACT of proposing a series of eco-camps that propose clearing the very agricultural lands we need. Agricultural lands are protected by the State Constitution. This must be part of the analysis.

1. How are the projects in line with court rulings, Land Use Commission rulings, and Administrative rulings?

**Similarities/Differences**

Each facility (Pua'ena, Kapalawai) was originally designed to have eating facilities, fitness facilities, sports courts, and swimming pools on site leading to the obvious question.

2. How much will the guests contribute to the local economy?

3. Do you have an economic model that shows this?



The Difference is that Kapalawai appears to have larger, more secure facilities. Kapalawai was designed to be slightly less dense in units. (250 units on 170 acres as opposed to 252 units on 144.5 acres [Pua ena DEIS]). However, Pua'ena had a limit of 6 people/unit while Kapalawai has an unstated upper number/unit.

**Alternatives**

Before a developer can apply for a variance under O'ahu's Land Use Ordinance (LUO), the developer must show that there is no REASONABLE use currently permitted.

4. Is Kaua'i's CZO the same?

5. Why were only four Resort alternatives looked at?

Life of the Land would like to see fully developed alternatives reviewed. These alternatives should include ALL less intense uses for the land such as: (1) AG-2 Agricultural Lot Subdivision; (2) Livestock Options; (3) Diversified Agricultural Operations; (4) Agricultural Service Center. (5) Historical Site; and (6) Rural/Residential.

**Questions**

6. What will be the increase in traffic expected on Kaumualii Highway?

7. How will viewplanes be changed (landmarks; cottages) as seen from the ocean?

8. Will the beach be more or less accessible to local residents?

9. How close will the nearest cottage be from the ocean?

10. How will the ocean be affected from normal operations?

11. How will the ocean be affected from non-point-source-pollution?

12. What intermittent streams are on the property?

"Elements of a healthy economy: Preservation of our special environment and culture; Expanding and building local markets and reducing imports, resulting in more money remaining in the local economy; More jobs, with higher wages reflecting a variety of profitable businesses seeking qualified employees; A strong education system which prepares Kaua'i's children, teens, college students and adults to work in the diversified economy." The Kaua'i 2020 Vision Plan (CAC Draft 3: 1/27/99)

13. Will Kapalawai Resort preservation of our special environment? How?
14. Will Kapalawai Resort preservation of our culture? How?
15. Will Kapalawai Resort expand and build local markets? How?
16. Will Kapalawai Resort reduce imports? How?
17. Will Kapalawai Resort increase the amount of money remaining in the local economy? How?
18. Will Kapalawai Resort create local jobs for local residents that pay higher wages? How?

19. Will Kapalawai Resort help diversify the economy? How? Please be specific.
20. Will the county economy be more or less diversified if your project is approved? How?
21. Will Kapalawai Resort strengthen the educational system on Kaua'i? How?

22. How does a resort on agricultural land, which violates the General Plan, the Regional Plan, and the CZO, push the community-based values supporting the promotion of agriculture?

23. How does a resort on agricultural land, which violates the General Plan, the Regional Plan, and the CZO, help to diversify the economy?

24. Does a resort on agricultural land, which violates the General Plan, the Regional Plan, and the CZO, lead others to believe that zoning laws are only for the little guy while variances are for the elite? Or should variances be issues whenever someone wants something different that the existing law? If that is so, why have zoning laws in the first place?

25. Have there been any archeological review of the property? When? By whom?
26. Have there been any cultural (non-archeological) review of the property? When? By whom?

27. Please include the Office of Environmental Quality Control's Cultural Impact Guidelines in your Draft EIS. Please detail how the project conforms to each section of the guidelines.

28. Historically, have there been fishponds, saltponds, streams, etc on the property?

29. Please explain the non-conformance of the project with each section of the General Plan, Regional Plan and CZO

30. Are there phases to the project?
31. Do you have a map of the full build-out?
32. Will non-potable water enter the ocean under any circumstance?

Please have copies of old maps, aerial photographs and military documents in the Draft EIS

APPENDIX
(underlined and bold added for emphasis)

A) Pu'ena/Kapalawai Comparison

| Project | Pu'ena Eco-Camps | Kapalawai Resort |
|---|---|---|
| Consultant | Helber Hastert & Fee | Helber Hastert & Fee |
| Consultant contact | Scott Ezer | Scott Ezer |
| Applicant | Destination Resorts | Destination Resorts |
| Applicant Contact | Lewis Geyser | Lewis Geyser |
| EIS | (March 1998-May 1999) | (June 1999-) |



| Nature of Project | Resort | Resort |
|---|---|---|
| Land Designation | Urban (State) | Agriculture/Conservation (State) |
| | Agriculture (County) | Agriculture/Open Space (County) |
| Permits Required | SMA, CUP1 | SMA |
| Zone Changes | LUO | CZO, LUC |
| Variances Required | | General Plan, Regional Development Plan |
| Alternatives | Agricultural | Resort |
| | Agricultural | Resort |
| | Agricultural | Resort |
| | Residential | |
| | Residential | |

B) The Kaua'i 2020 Vision Plan (CAC Draft 3: 1/27/99)

A Strong, Diverse Economy

Kaua'i's economy is strong, stable and diversified. While the visitor industry still provides the largest number of jobs (30-35 percent of total jobs), new businesses in diversified agriculture, aquaculture and high technology provide an increasing proportion of total jobs.

Job opportunities are many and varied, with wages that allow people to comfortably support their families. Unemployment is at an all-time low of 3-5 percent. Kaua'i has a four-year college with agricultural, business, and high-technology programs to support our youth in finding well-paying, rewarding careers on Kaua'i.

Carrying on community traditions, some Kaua'ians provide a substantial portion of their own food and subsistence through hunting, fishing, gathering and cultivating. These activities support the traditions of ohana and hakahi of family and community working together, sharing the work and the bounty of land and ocean.

DIVERSIFIED AGRICULTURE AND AQUACULTURE

Agriculture is keeping Kaua'i green and economically healthy through a variety of crops and products from both large corporate and small farms. Aquaculture is also a strong and growing industry contributing to local markets and exports.

Kaua'i is exporting coffee, seed crops, papaya and exotic fruits, and seafood, as well as refined sugar and other value-added food products. In addition, small farmers grow a variety of unique crops such as kava, hemp, herbs, nutraceuticals, exotic flowers, and perfume ingredients. The taro industry is the largest in the state and a major supplier to O'ahu and to the mainland markets. Many taro products are produced on Kaua'i, including chips and poi. Other value-added food products are produced for both local consumption and export, including roasted coffee and refined sugar. Range-fed Kaua'i beef

Kaua'i residents support the farmers by buying locally-grown fruits, vegetables, taro and other basic foods. The market for organically- grown crops is increasing. In place of imported meat, Kaua'ians enjoy grass-fed beef from cattle raised in Kaua'i's beautiful pastorlands and processed in local processing facilities. Kaua'i now produces 50 percent of its own food, reducing food imports and keeping more money in the community.

Small farmers on Kaua'i are thriving and profitable. They are known for their high-quality products, including exotic fruits not available elsewhere. They are supported by a high local demand and exports to Asia and the Mainland. Many farmers work directly with restaurants and the visitor industry. Local agricultural products are an important attraction for visitors. The visitor industry showcases Kaua'i agricultural and aquacultural products, and provides advertising for export products.

Small farmers work together in co-ops, collaborating to control costs and effectively market their products. By developing strong local demand, they minimize their vulnerability to transportation problems and fluctuation in overseas markets.

Kaua'i's aquaculture businesses produce shrimp, frog legs, trout, and fish for local consumption and export to Asia and the mainland. Located mostly on the West Side, aquaculture farms employ 150-200 people and are still growing. State and county government support aquaculture with leases of government lands, low water rates, tax incentives, a supportive and proactive permitting process, improvement districts, and education and training. Prime aquacultural land is identified and preserved.

The college, as well as other organizations, help farmers to acquire business skills essential for success. There are specialized programs for tropical agriculture and aquaculture. Many of Kaua'i's youth are finding careers in these fields.

Kaua'i's larger corporate agriculture and aquaculture businesses are valuable exporters for niche markets. Locally-managed, they work in cooperation with small independent producers. Their financial strength provides for new crop research and extensive marketing, resulting in increased demand for unique Kaua'i products. Their ability to weather varying market conditions lends stability to the Kaua'i economy.

The forest products industry is growing hardwoods in a number of locations throughout the Island. Kaua'i's sawmill cuts the rough timber to provide local building materials, as well as to provide fine woods for local craftspeople making and exporting wood bowls, musical instruments, furniture and other wood products.

State and county government support diversified agriculture by offering tax incentives; maintaining the agricultural irrigation and road infrastructure on State-owned lands; and managing affordable agricultural parks. They promote cooperatives and partnerships for central processing; provide facilities for disinfestation and shipping; and offer technical and marketing support. Airport facilities have been improved to facilitate the direct shipment of Kaua'i agricultural products to the mainland. State and county government maintain rights to irrigation water and oversee shared usage and maintenance of irrigation systems. They also walk their talk by buying local products.

While 5-10 percent of residences continue to be built in agricultural areas, there is still an ample amount of prime agricultural land for existing use and future cultivation. Through a government-private landowner partnership, an inventory of small agricultural lots, with irrigation water, is maintained for lease to individual farmers and small cooperatives. This public-private partnership is supported through innovative tax incentives and zoning regulations.

Land, facilities and systems of the former sugar plantations are used primarily for farming, forestry, and aquaculture. Some mill buildings are now food processing centers. Sugar irrigation systems are maintained and enhanced. They are managed by joint government/private boards and supply Kaua'i's diversified agriculture industry island-wide. Enough water is available to return some to stream systems for fisheries, ahupua'a and recreational use.



## HIGH TECHNOLOGY

Kaua'i's high quality of life attracts knowledge-based businesses working in high technology enterprises. These businesses are linked with the college and the high schools, providing internship and training opportunities for Kaua'i students. After attending college, students are able to find well-paying high-technology jobs on Kaua'i. All parts of the Island are served with fiber optic cable, allowing high-speed communications.

The entire Island has access to fiber optic and the latest technological advances, accommodating large regional headquarters facilities as well as small businesses. These businesses, and the supporting programs provided in our schools and university, have encouraged our youth to stay on Kaua'i. Many residents have been trained in technological skills. A large number of them have their own businesses. Many work from their homes and service a world-wide market through global computer communications systems.

New high-technology businesses include a computer animation facility for the movie industry, and a solar energy research and development facility, and a bio-engineering company. Kaua'i has also become a center for electronic marketing, and several large national companies operate marketing centers here. Electronic marketing allows people to work from their homes, taking advantage of Kaua'i's excellent communication system. High-technology businesses employ two to three percent of our workforce.

The Pacific Missile Range Facility is a major federal research and development facility, supporting civilian as well as military projects. As one of the most important marine and space research centers in the Pacific, it attracts other high-technology businesses to locate on Kaua'i. Benefiting from a protracted period of peace among major world powers, PMRF is making a transition away from military applications into scientific and commercial research. With a proactive program to hire current and returning residents, PMRF provides training programs and works in cooperation with the college and the high schools. Continuing agriculture and aquaculture operations on adjacent State lands provides a buffer and uses surface water that would otherwise inundate the base.

State and county government support technology through funding research and development, providing solar tax credits and other tax incentives, making land and infrastructure available with appropriate zoning, and subsidizing the telecommunication infrastructure. They provide assistance in reaching global markets, in encouraging local employment and business ownership, in streamlining the development and use of alternative power generation; and in educating Kaua'i students so that they can fill high-technology jobs.

## BUSINESS DIVERSITY

Small business is the foundation of Kaua'i's economy, employing the largest percentage of the population. There is a variety of opportunities: Small retail businesses, meeting resident and visitor needs; Outdoor recreation, including environmental tourism and sports facilities; Entertainment industry support facilities for movies and television; Kaua'i as a healing destination and health care provider for residents, both in the alternative health fields and in assisted living facilities for retirees; Innovative power generation; Light manufacturing and food processing; Authentic Hawaiian cultural businesses and cultural education; Home-based cottage businesses networked with shared marketing.

Some of the former sugar mills are now commercial centers with shops, restaurants, crafts and artisan areas, and restaurants. They are preserved for their historical significance and promote local products and culture.

State and county government have streamlined. They encourage small businesses by offering tax incentives and consulting assistance, especially during start-up. New businesses are nurtured to ensure their success. Financing is available. Regulations are simplified. Business education is subsidized.

## THE IMPACT OF DIVERSIFICATION

Kaua'i's diverse economy has provided its residents with more challenging work at a variety of skill levels, better paying jobs, and greater economic stability. The cost of living has gone down and the standard of living has gone up for the average resident. People have more time with their families and to provide service to their communities.

Crime and drug use are down. In general, there is a greater sense of stability, peace of mind, and hope for the future. The diverse economy fosters the expansion and improvement of our education system, so that our youth can fill the available jobs.

Kaua'i businesses and government work together to combine the key ingredients of a successful island economy. Government supports business by providing tax incentives and business assistance, and by minimizing regulation and controls

Elements of a healthy economy: Preservation of our special environment and culture; Expanding and building local markets and reducing imports, resulting in more money remaining in the local economy; More jobs, with higher wages reflecting a variety of profitable businesses seeking qualified employees; A strong education system which prepares Kaua'i's children, recent college s' 'ents and adults to work in the diversified economy.

### A Vibrant, Stable Visitor Industry

Kaua'i has a vibrant, stable visitor industry, with high occupancy rates and a high rate of return visitors. Kaua'i is known not only as the Garden Island 8 a place of outstanding mountain and coastal scenery, but also as a community friendly to visitors. Kaua'i is known as a place whose residents and businesses both respect and nurture the natural environment and their cultural heritage. Visitors can choose among a variety of activities: relaxed recreation and entertainment, in either basic or luxury accommodations; touring by motorized vehicle or by bicycle; adventure in ocean and wilderness exploration; and unique cultural experiences. Kaua'i is known for its extraordinary variety of activities.

While it is a major visitor destination, Kaua'i maintains a rural, laid-back atmosphere. Limited in height and size, visitor accommodations and attractions are located primarily in the major resort areas of Princeville, Wailua-Kapaa, and Poipu. Visitor attractions and accommodations are designed to complement the rural setting. The island is safe, and commercial and public facilities are clean and well-maintained. People visit to enjoy the environment, culture, and authentic hospitality. They enjoy our parks, recreation areas, accommodations, restaurants, shopping and special events. Development is managed to feature the natural environment, using tropical Hawaiian architecture and natural materials. Traffic flow is controlled to minimize noise and crowding.

Kaua'i's residents, businesses, and government care for visitors and nurture the visitor industry. They share a common understanding that "The environment is the economy, our natural capital, the basis of our economic survival and success." Together, they plan for visitor industry development which is compatible with the environment, supports the community's quality of life, and sustains the qualities which attract visitors.

Kaua'i attracts over one million visitors per year. On average, there are 19,000 to 24,000 people visiting Kaua'i each day. Visitors occupy various types of accommodations, buy from local businesses, and bring outside money into the Kaua'i economy. The average length of stay per visitor is over six days, the highest among the Hawaiian Islands. Hotels and other resort accommodations have an average occupancy of 73 percent. Average wages and benefits for industry employees are the highest in the state.



Native Hawaiian organizations have assumed management and care of Hawaiian cultural sites, such as heiaus, and have developed cultural centers near important sites, where dance, language, and arts are practiced and taught. People trained in Hawaiian culture interpret the history and meaning of the sites as a paid service to visitors. The centers also market native crafts and other products.

Hotels and resort apartments are located in designated Visitor Destination Areas (VDAs). The original VDAs of Poipu, Lihue/Nawiliwili, Wailua-Kapaa, and Princeville continue to experience moderate growth.

In existing VDAs, older buildings have been renovated or replaced, consistent with architectural guidelines and environmental requirements. With the exception of a few larger hotels, resort accommodations built since the year 2000 are smaller, more low-key and intimate. New visitor accommodations on the West Side, designed with community input, consist of low- and residential-style buildings.

New resort structures are required to maintain a deep setback from the coast, in order to avoid potential tsunami or hurricane damage, to preserve dunes and other important physical features, and to preserve views along the shoreline.

Vacation rentals, inns, and bed and breakfasts provide alternative visitor accommodations. They are licensed and monitored by professional associations, which promote cooperative relationships with neighbors

## AIRPORT & HARBORS

Lihue Airport supports the desired level of visitor industry development and the export of agricultural products to the mainland.

Several cruise lines visit Kaua'i and serve the travel industry and local residents with cruises of varying lengths and cost. Cruise ships are welcomed in Nawiliwili and Port Allen Harbors. Passenger reception areas are attractive and well-designed, with easy circulation among visitor welcome stations and ground transportation staging areas. Some communities also welcome cruise ships to moor off the coast and ferry visitors ashore, using small boat harbors.

Our small boat harbors accommodate boat tours and rentals, popular visitor recreation activities. Commercial use of the small boat harbors is managed by the State, assuring that facilities are adequate to accommodate resident fishermen and boating recreation. The Department of Land and Natural Resources manages and regulates boat tours and use of rental boats on the Wailua River, assuring that commercial boating does not degrade natural or recreational resources and does not crowd out resident use and enjoyment of the river. The DLNR regulates use of other rivers under the same principles. Limits on boat tour landings in wilderness coastal areas are strictly enforced

Helicopter tours are another popular way that visitors experience Kaua'i. Tour companies work closely with residents to minimize negative impact and employ the latest technology to reduce noise. They link flights to provide one quiet day each week in the various parts of the island. They control their routes to prevent intrusion on communities, sacred sites, and wilderness areas such as Kalalau Valley. Helicopter tour operations are centralized at Lihue Airport. To avoid imposing impacts on other communities, no additional heliport sites have been developed elsewhere on the island

The visitor industry has contributed to a healthy economy by encouraging many new businesses and activities on Kaua'i. Our guests, as well as residents, can enjoy guided hiking, biking, horseback-riding, boat rides, and cultural tours. They can enjoy water sports and athletic parks, or attend classes on Hawaiian culture.

People visit Kaua'i to learn about Hawaiian culture. Ancient Hawaiian sites and cultural practices are protected with respect and authenticity. They are protected, restored and interpreted appropriately. Some areas are off-limits and visited only under approved circumstances. Cultural sites and centers are managed by native Hawaiians and preserved by laws and regulations of the State and the County.

The people of Kaua'i appreciate the many benefits the visitor industry brings to the Island. They, in turn, give the gift of aloha, encouraging guests to return and to stay longer. Residents support the industry's role in strengthening the economy, preserving the culture, and protecting the environment. In general, residents agree that a healthy, well-managed visitor industry is a major contributor to the quality of life on Kaua'i.

A Rural Landscape

Kaua'i is a place of great natural beauty and green open spaces, valued by residents and visitors alike. Rural and urban development are carefully planned and regulated to ensure that Kaua'i continues to be "The Garden Island".

About 55 percent of Kaua'i's lands, including watersheds, mountainous and wilderness areas, are preserved through the State Conservation District. About 40 percent of lands are devoted to agricultural and rural uses

URBAN DEVELOPMENT

Businesses, residences and other urban uses are concentrated in Kaua'i's towns. These compact communities occupy only four to five percent of the total land area. To minimize highway traffic and avoid urban sprawl, new residential communities are centered around existing major towns and job centers in Lihue and Kalaheo Poipu. In the past two decades, the largest number of new residences have been built in two new developments on either side of Lihue @ Puakea/Puhi on the west side of Lihue and an extension of Lihue town to the east and north, filling in around the airport and Hanamaulu. Another new residential/resort community has developed at Kukuiula, near the Poipu resort area.

Extension of urban areas, particularly new shopping centers and other retail developments which attract a large amount of vehicular traffic, are controlled to avoid urban sprawl and strip development along the highway. Town edges are clearly defined, and greenbelts are maintained between towns.

RURAL DEVELOPMENT

Rural areas are characterized by broad expanses of open space @ a mixture of pastures and large-scale agricultural plantations, small farms, and clusters of residences. Land use regulations specifically provide for rural residential communities, with design standards to preserve open space and landscape features. Regulations and tax incentives are structured to promote legitimate agriculture enterprises and to increase opportunities for small farmers

Rural residential development includes larger lots and clustered housing surrounded by open land dedicated to conservation or agriculture. Development standards require new residential development to match the character of the rural landscape. Roads and structures are integrated into the topography, compatible with the lay and look of the land. Large trees and important natural features, such as streams and hills, are preserved. Residences and other structures are sited and designed so that they do not visually dominate the landscape. Building height, size, color and materials are carefully controlled.

We support our farm entrepreneurs in helping to keep Kaua'i green. Large- and small-scale agriculture and aquaculture operations occupy substantial tracts of prime agricultural land throughout the Island. Forest plantations are nurturing on large and smaller tracts of land. County land use regulations and property tax incentives promote active agricultural and forestry use of agricultural lands. (See the DIVERSE ECONOMY section of the Vision Statement.)



RURAL ROADS AND HIGHWAYS

Our rural roads retain their "country character." They are limited to two lanes, bordered with natural vegetation. Speed limits are kept low for safety reasons. The right-of-way may include grassed drainage swales, but there are no sidewalks, curbs or gutters. Only the vehicle travel lanes are paved, except where there is a paved bicycle route. One-lane bridges have been preserved, both for their historic value and because they slow traffic. Road signage is minimal. Safe bicycle and pedestrian routes are provided.

Highways in rural areas are designed to retain a natural appearance, affording unobstructed views of the ocean and the countryside. State and county agencies have adopted "flexible highway design", in order to enhance scenic and historic qualities and to strike a balance between flow of automobile traffic and safe facilities for buses, bicycles and pedestrians. Highway signage is minimized and is designed to enhance the travel experience. Electrical utility poles and lines are designed to be unobtrusive, and, where feasible, utility lines are placed underground. Trees and other plantings have been added along highways in places where they enhance scenic qualities. Scenic pull-outs, built with natural materials, are placed in key locations. Where four lanes are required to carry traffic in a particular corridor, the roadway is divided by a landscaped median or separated into two smaller roadways. Long stretches of highway between towns, such as the expanded section of Kaumualii Highway between Lihue and Makaha Road and the Kapaa Bypass, are designed as scenic parkways.

Keeping our roads and highways beautiful is a successful public/private effort. State and county agencies ensure proper roadside maintenance. Highways are bordered by low-care landscaping that does not require herbicide control. The County and community groups maintain an effective litter control program.

Most of what is seen along Kaua'i's rural highways is open land in active agricultural and natural uses, such as farming, ranching, wild areas and forest. To avoid the appearance of sprawl, County land use regulations require new residential development to observe wide setbacks from the highway. New commercial developments outside of existing towns are required to limit highway frontage, screen parking lots from the highway with landscaping, and provide access from a side road where feasible.

SHORELINE

Visitor industry development along the shoreline provides well-marked, easy do-use public access and clean shower/rest room facilities, with ample parking. Buildings are set well back from the shoreline, providing an open, landscaped area with a street or walkway facilitating public access up and down the beach. Residents and visitors share the beaches comfortably.

Development along the shoreline is designed and landscaped to moderate visual impact. There is a transition zone which allows increased building height with larger setbacks, up to the four-story height limit.

Residential and other buildings are generally excluded from undeveloped shoreline lands which are in the State Conservation District or which are designated "Open" under the Kaua'i General Plan. In newly zoned areas, residential and resort development has been required to set back beyond the historic hurricane inundation zone and beyond areas at hazard of chronic beach erosion. We have also landbanked oceanfront whenever possible, to protect views and open space. Residences along the shoreline are required to meet special design standards for height, size, set-back, and color.

Increased setbacks have reduced the need for seawalls or artificial hardening of the shoreline. Along sandy shorelines, shore protection structures are allowed only in special instances as a last resort.

NATURAL RESOURCES

Kaua'i's most abundant natural resources are its lands and waters, clean rivers, blue skies and open fields. Our protected natural resources in non-agricultural open space are vital to the environment, which is the foundation of our economy. These areas attract visitors, provide habitats for residents, stabilize our hot and humid climate, affect agricultural lands, and support self-sufficiency. Kaua'i County works closely with State and Federal agencies to conserve our natural resources for future generations.

PARKS

The County Parks Program supports thriving youth and adult sports leagues, as well as providing a diverse range of recreational and social opportunities for people of various ages and interests. The Parks program also recognizes the need to support the visitor industry and to balance visitor and community needs. An alliance between the County Parks Division and the visitor industry ensures that park facilities used by visitors are well-maintained, supported by visitor fee revenues and industry resources.

The updated County Parks Master Plan is used to prioritize capital improvements and development of new parks and indoor recreation facilities. The Master Plan is fiscally-constrained, balancing projected capital expenditures and long-term operating costs against projected available financial resources. The Master Plan's priorities are adjustable, based on a comparison of community benefits and consideration of the degree to which costs are offset by user fee revenues and/or community work.

Visitors share Kaua'i's parks, natural areas, and waters in harmony with residents and the environment. The County is implementing a park master plan which is regularly updated and sets priorities for park operations and capital improvements. Each of the major State parks also has an up-to-date master plan, prepared in collaboration with the community. Increased funding to maintain and expand parks comes from State tax revenues as well as user fees paid by out-of-state visitors. Parks are safe. Restrooms are clean. Parking is ample. Facilities are available for local gatherings and public events.

ACCESS

We manage the access to public lands and shoreline by enforcing laws, working out solutions with all concerned, and establishing dedication and acquisition programs funded by developers. Landowners are offered incentives such as easements, tax credits for access, and limits on liability for public access. Conveyance taxes are used to acquire public lands, parks, and shoreline areas. We plan ahead for access by purchasing areas deemed necessary, using clear guidelines established through community-based planning.

Towns and Commercial Development

The County has completed major actions to revitalize and improve central Lihue and Kaua'i's historic small towns and communities. Actions include upgraded sewer and water facilities, public parking, sidewalks and other pedestrian-friendly improvements. These were coordinated with County zoning, private landowner initiatives, and highway and road development through collaborative planning among County agencies, community and business organizations, and the State Highways Division.

Under the General Plan, new commercial development has been focused on meeting community shopping needs while supporting local small businesses and older business areas. With strategic decisions about highway development and new commercial zoning, the County has avoided strip development and urban sprawl.



C) Vision for the West Side Planning District (Draft 1997)

Kaua'i's West Side covers the area from Eleele to Kekaha. Noted for its low-key development, dry and sunny climate, and laid-back lifestyle, the West Side offers surprising diversity. It includes small-town communities; vast agricultural lands; the unique resources of Waimea Canyon, Koke'e and other wonderful wilderness areas; and the high-technology Pacific Missile Range Facility.

The West Side maintains an active sugar plantation, preserving the vast green sugar fields and the working sugar mill at Okala'e. The "historic sugar corridor" is a major visitor attraction, linking the plantation and mill with the towns and other historic sites. Visitors come to the West Side to see the sugar corridor attractions, shop in the towns, gain access to the Waimea Canyon and Koke'e parks and trails, and to enjoy ocean activities out of the small boat harbors. During the last 20 years, businesses and employment have increased due to the sugar corridor, the addition of small inns and residential-style visitor accommodations, expansion of aquaculture and diverse agriculture, and increased use of the harbors by cruise ships and visitor excursions.

The West Side prides itself on its small towns and lack of urban sprawl. Agricultural lands have been preserved from sprawling subdivisions. Retail shops and commercial businesses are contained within the towns. New resort developments occur in village clusters hidden from the highway. Kaumuali'i Highway between Hanapepe and the Russian Fort affords travelers broad views of sugar fields and natural features, looking both mauka and makai.

Eleele and Hanapepe are the gateway to the West Side. As Kaumuali'i Highway turns south and descends from the uplands of Kalaheo, views of the ocean open up together with views of mountain views and the Hanapepe River valley. Over the years, residential developments in Eleele and on Hanapepe Heights have brought more families to the area. Eleele's businesses serve local residents, while visitors are especially attracted to Old Hanapepe Town. The historic character of the town is cultivated through careful renovation of historic buildings and appropriate design of new buildings. Hanapepe is a center for artists and craftspeople, offering numerous shops, galleries, and restaurants.

Port Allen is a center for industrial and port activities. Expanded and improved commercial harbor facilities accommodate the new generation of large cruise ships and their large passenger loads. Around the small boat harbor, new harbor facilities and adjacent commercial developments attract cruise passengers and other visitors to patronize commercial fishing charters, boat tours and other recreational activities, while still providing ample access to commercial fishermen and recreational boaters.

Waimea is the vital civic center of the West Side, home to the high school and other community facilities as well as to a variety of restaurants and retail stores. As the gateway to Waimea Canyon and Koke'e State Parks, the town attracts a large amount of business from visitors as well as from residents. Waimea also protects visitors because of its many historic sites. The community continually seeks to enhance its historic sites, to improve walking connections among the sites and businesses, and to reinforce the historic character of the town. Historic buildings are well-maintained, and new buildings are designed to be consistent with the historic architecture. Well-located parking and good walkways help to minimize traffic congestion. A new visitor center occupies a central location and serves as the starting point for walking tours of historic sites. The expanded High-Tech Center attracts a wide range of both mainland- and locally-based companies. An expanded and improved Kikiaola Harbor, with adjacent commercial facilities, supports ocean recreation and fishing for both residents and visitors. Increased small-scale visitor accommodations in and around Waimea bring jobs and prosperity, while contributing to the historic and open space character of the region.

Framed by the ocean and by large open spaces being cultivated in various agriculture and aquaculture crops, Kekaha retains its simple, small-town charm. Diversified agriculture companies and small farmers now cultivate the lands once used by the Kekaha Sugar Company. The town looks out on a well-maintained beach park, which has parking, comfort stations, and "oases" of plantings and picnic facilities. The beach is enjoyed by residents and visitors from all over the Island. Small-scale accommodations provide hospitality for a limited number of visitors. Good pedestrian walkways connect the beachfront with town stores located a few blocks mauka. The renovated sugar mill houses shops, a museum about West Side culture and history, and an area devoted to the making and sale of hand-craft items. A small industrial area, set apart from residences, provides opportunities for manufacturers and other industrial businesses. The parks and streets are landscaped with trees and other vegetation that is suited to the sunny, dry climate and can be maintained with minimal irrigation.

Issues for West Side Communities

1. Kekaha Landfill. Kaua'i needs to expand the Kekaha Landfill or develop a replacement landfill facility within the next 5-10 years. Selecting the appropriate option is an islandwide issue, involving trade-offs on environmental impacts, costs of operation and other factors.

2. Use of Burns Field. The State has proposed construction of a heliport at Burns Field. Community groups such as the Hanapepe Improvement Association are opposed to increased helicopter operations and recommend instead that the airfield be converted to park use. This would allow for expansion of the well-used Salt Pond Park.

3. Commercial Boating. These businesses are growing and will provide job opportunities on the West Side. There is concern, however, that fishermen and recreational boaters may be squeezed out. State small boat harbor facilities need to be expanded and improved.

Opportunities

1. Access to mountains and beaches. Between Waimea and Waimea, access to the mountains and beaches is controlled by private landowners. Allowing limited access to some beaches and some hiking trails could provide new recreation opportunities for residents and economic opportunities for landowners.

2. Kekaha Bypass Road. A mauka bypass road could relieve traffic on the beachfront highway, providing a better route for heavy trucks traveling to and from the landfill as well as for other through traffic in PMAP and agricultural operations. If the County decides to expand the landfill, building a bypass road is one way to mitigate impacts and support improvement of the beachfront roadway.

3. Kokee State Park. The State Department of Land & Natural Resources is preparing a new Master Plan for Kokee. Its attractiveness to "ecotourists" and the many recreational activities at Kokee could support increased visitors and new business opportunities on the West Side.

D) Kauai County Code

(This Kauai County Code is made available [on the Web] by the Kauai Board of Realtors. The County of Kauai neither warrants, guarantees, nor assures the accuracy or completeness of this version of the Kauai County Code, or that this version of the Code is up-to-date.)



Article 1. General Provisions

Sec. 8-1.1 Title. This Chapter shall be known as and may be cited as "The Comprehensive Zoning Ordinance for the County of Kauai" and its official abbreviated designation shall be "CZO".

Sec. 8-1.2 Purpose. This Chapter is adopted for the purpose of: (a) Implementing the intent and purpose of the adopted General Plan. (b) Regulating the use of buildings, structures and land for different purposes. (c) Regulating location, height, bulk and size of buildings and structures, the size of yards, courts and other open spaces. (d) To maintain the concept of Kauai as "The Garden Isle", thus ensuring that any growth will be consistent with the unique landscape and environmental character of the Island. (e) To insure that all physical growth is carried out so as to maintain the natural ecology of the Island to the extent feasible. (f) To create opportunities for a greater fulfillment of life through the development of a broad spectrum of educational and cultural pursuits. (g) To promote and protect the health, safety and welfare of all residents. (h) To provide opportunities for desirable living quarters for all residents in all income levels. (i) To recognize those aspects of the Island and its people which are historically significant, and to preserve and promote them as a continuing expression of the Island's physical and social structure. (j) To guide and control development to take full advantage of the Island's form, beauty and climate, and preserve the opportunity for an improved quality of life. (k) To protect, maintain and improve the agriculture potential of land located in the County.

Sec. 8-1.3 Nature Of County Zoning Ordinance. (a) This Zoning Ordinance consists of the establishment of six (6) major Use Districts in conjunction with two (2) Special Districts within the territory of the County of Kauai (This Chapter includes regulations concerning the uses permissible within each of the six (6) Use Districts and concerning the special conditions under which the uses may be developed or created within each of the two (2) special districts.) The boundaries of the Use Districts are established on the Zoning Maps of the County as specified in Sec. 8-2.3 of this Chapter. The boundaries of the special districts are established on the Zoning Maps or on the Constraint Map.

(b) The districts established and located by this Chapter are based upon the findings and analysis utilized in the General Plan for the County of Kauai. The designations of the Use Districts reflect in part the elements of the environment and society and, in addition, reflect appropriate interrelationships of land use, transportation, utilities, public services, existing development, recreational and employment opportunities, economic conditions, resource management, and population.

(c) The designations of the Constraint and Special Treatment districts reflect: (1) The capability of the land within the County to accommodate disturbances; (2) Potential threats to health, safety and welfare, social and aesthetic values; and (3) Relative development of use potential because of existing parcel conditions or unique or limited natural resources.

(d) The intent of the regulations governing all districts is to be permissive within the minimum requirements and performance criteria specified for each district. Development, use or construction should be permitted where it can be established by following the provisions of this Chapter so that the development and construction for a specific use or combination of uses can be accommodated within the specific physical and social conditions of a particular location in such a manner that it will not create the inadequate, harmful or disruptive conditions that formed the basis of the establishment of regulations of any district.

(e) The Use Districts allocate and regulate the various functions necessary to a diverse and viable society and specify the performance required to develop land and create improvements consistent with those functions and their interrelationships.

(f) The Residential District regulates the number of people living in a given area by specifying the maximum allowable number of dwelling units that may be developed on any given parcel of land. In order not to differentiate between economic groups or life-styles, a reasonable flexibility in the type of dwelling units and their placement on the land has been provided.

(g) Commercial, Industrial and Resort Districts recognize the specific nature of such uses and allocate their location in relation to land suitability and established or potential patterns of residential uses and other activities, such as transportation and community facilities.

(h) The Agriculture District establishes means by which land needs for existing and potential agriculture can be both protected and accommodated, while providing the opportunity for a wider range of the population to become involved in agriculture by allowing the creation of a reasonable supply of various sized parcels.

(i) The Open District is established and regulated to create and maintain an adequate and functional amount of predominantly open land to provide for the recreational and aesthetic needs of the community or to provide for the effective functioning of land, air, water, plant and animal systems or communities.

(j) Overlaying the regulation of development or use in any or all of the Use Districts are additional special regulations which relate more specifically to the land and the existing community structure. These special regulations have been defined in the Constraint District and the Special Treatment District and may modify the manner in which uses regulated under the Use Districts may be developed or may require special performance in the development.

(k) The Constraint District specifies the additional performance required when critical or valuable physical, ecologic, or biologic characteristics of the environment exist on the same parcel where particular functions or uses may be developed.

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

(m) Any or all of these districts may overlap any Use Districts, creating accumulated regulations which more nearly relate to the conditions of the specific location where the development or use may occur.

(n) Since the degree and type of the development or use may determine the magnitude of public concern, the procedures for administering the requirements of use and condition have been structured to permit smaller developments, while insuring that the effects of larger developments are adequately examined. (Ord. No. 164, August 17, 1972; Sec. 8-1.3, R.C.O. 1976)

Sec. 8-1.4 Application Of Regulations. (a) For the purposes of this Chapter, the County of Kauai shall include the districts of Waimea, Koloa, Lihue, Kawaihau and Hanalei as described in Section 4-1(4), H.R.S. (b) Unless otherwise expressly prohibited by law, the provisions of this Chapter shall apply to all areas within the County boundaries.

Sec. 8-1.5 Definitions.

When used in this Chapter the following words or phrases shall have the meaning given in this Section unless it shall be apparent from the context that a different meaning is intended:



"Agriculture" means the breeding, planting, nourishing, caring for, gathering and processing of any animal or plant organism for the purpose of nourishing people or any other plant or animal organism; or for the purpose of providing the raw material for non-food products. For the purposes of this Chapter, Agriculture shall include the growing of flowers and other ornamental crops and the commercial breeding and caring for animals as pets.

"Aquaculture" means the growing and harvesting of plant or animal organisms in a natural or artificial aquatic situation which requires a body of water such as a pond, river, lake, estuary or ocean.

"Compatible Use" means a use that, because of its manner of operation and characteristics, is or would be in harmony with uses on abutting properties in the same zoning district. In judging compatibility the following shall be considered: intensity of occupancy as measured by dwelling units per acre, pedestrian or vehicular traffic generated, volume of goods handled, and other factors such as, but not limited to: vibration noise level, smoke, odor or dust produced or light or radiation emitted.

"Developed Campgrounds" means land or premises designed to be used, let or rented for temporary occupancy by campers traveling by automobile or otherwise and which contain such facilities as tent sites, bathrooms or other sanitary facilities, piped water installations, and parking areas, but not including mobile home parks. Developed campgrounds may include facilities for the temporary placement of camp trailers and camping vehicles which are utilized for non-permanent residential uses at no more than six (6) vehicles per acre.

"Diversified Agriculture" means the growing and harvesting of plant crops for human consumption which does not involve a long-range commitment to one (1) crop. Diversified Agriculture includes truck gardening and the production of fresh vegetables, and minor fruit or root crops such as prawns or taro.

"Open Space" means the portion or portions of a parcel unoccupied or unobstructed by buildings, paving or structures from the ground upward.

"Organized Recreation Camps" means land or premises containing structures designed to be used for organized camping. The structures include bunk houses, tent platforms, mess halls and cooking facilities, and playfields. Examples include Boy Scout Camps and summer camps.

"Outdoor Amusement, Commercial" means land or premises designed to be used by members of the public, for a fee, that contain outdoor amusement facilities such as miniature golf courses, merry-go-rounds, car race tracks, and outdoor motion picture theaters.

"Outdoor Recreation" means uses and facilities pertaining primarily to recreation activities that are carried on primarily outside of structures.

"Outdoor Recreation Concession" means uses and facilities ancillary to outdoor recreation uses, such as gasoline pumps at piers and marinas, and boat rental and food and beverage facilities at public beaches.

"Private Recreation Areas" means lands or premises designed to be used exclusively by owners and renters of dwelling units, that contain such facilities as tennis courts, playfields, swimming pools, clubhouses, bathing beaches, and piers.

"Transient Vacation Rentals" means rentals in a multi-unit building for visitors over the course of one (1) or more years, with the duration of occupancy less than thirty (30) days for the transient occupant.

"Undeveloped Campground" means land or premises designed to be used for temporary occupancy by campers traveling by foot or horse which may contain facilities and fireplaces, but do not contain facilities as are provided at developed campgrounds.

E) Pua'ena Eco-Camp

"Project Name: Pua'ena Eco-Camp. Location: Haleiwa, Hawaii, U.S.A. Client: Destination Villages, LLC. The Pua'ena Eco-Camp represents a project that underscores the operating philosophy of its developer, world-renown Stanley Selengut: to provide harmony with the outdoors in a beautiful setting with facilities that allow some comfort and convenience. In addition, the construction and operation of these facilities must be conducted in an environmentally responsible manner, including the recycling of waste and trash. The intent is to demonstrate that environmental sensitivity, human comfort, and responsible consumption are not only compatible, but can also enhance a vacation experience. Helber Hastert & Fee, Planners' task was to design a master plan for the project while remaining faithful to its operating philosophy. The result is a 144.5-acre site that includes 252 eco-tents, an on-site nursery to provide native plants to revegetate the site, a multi-purpose building, open-air pavilions, recreational facilities, cafeterias, the preservation of a 14-acre wetland, interpretation of on-site historic sites, and an on-site wastewater treatment plant that will provide irrigation water for the project. HHF also managed the production of and was the principal author for the project's environmental impact statement." www.hhfcom/projects/puaena.htm

F) Waimea Plantation Cottages

"Visitor Accommodations. Waimea Plantation Cottages has served, since 1983, as the only "resort" in West Kaua'i. The 48 unit complex is made up of relocated plantation housing from Waimea, Kekaha and Mana. The community events and festivals have outgrown this small resort and there is a need another low-key development or expansion of the cottages. Waimea, especially during the winter months, has become a popular getaway for visitors from off-Island as well as from the rainy North and East Shores. Families with roots in the plantations of West Kaua'i hold family reunions, some annually, in these nostalgic historic homes. Gay & Robinson, Inc. is looking at a similar style of development at their Kapaloa/Mauiwawa near the Random Fort. They have leased the land to Louis P. Geyser of Destination Villages. Possible plans include a museum, 125 cottage units and low-key resort amenities. Along with these resort facilities there are vacation rentals, bed & breakfasts and camping facilities available to accommodate visitors." waimea.hawaiian.net/visitorcenter/waimeaprofile.html

G) Robinson Family Partners

"Robinson Family Partners. Chairman: Warren Robinson. Size of Kaua'i Land Holdings: 51,000 acres. Primary Land Uses: Agriculture, cattle. Organization: Private Corporation with Board of Directors. Headquarters: O&R Sugar, Makaweli, HI 96769. History: Because the family matriarch, Frances Sinclair, was not content with the climate and living conditions on NI'ihau, she purchased the ahupua'a (large land division) of Makaweli on Kaua'i which belonged to Victoria Kamamalu, a granddaughter of Kamehameha I.



The family land holdings increased further with additional land purchases in Hanapepe, Kalaheo, Waimea, and small miscellaneous lots in scattered locations. The latter purchases occurred between the late 1800s and the 1960s." www.kahawai.com/databook/kauai/land.html

Sincerely,

Henry Curtis

Henry Curtis
Executive Director

Helber Hastert
[illegible]

November 5, 1999

Mr. Henry Curtis
Executive Director
Life of the Land
76 North King Street, Suite 203
Honolulu, HI 96813

Dear Mr. Curtis:

**Environmental Impact Statement Preparation Notice**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated August 22, 1999 on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement being prepared. For your ease of reference, we will respond to your comments in the order they appear in your letter. However, before proceeding with these responses, we would like to make clear that the proposed development at Kapalawai is a resort. Land use approvals for the resort will include a State Land Use District Boundary Amendment, a County of Kauai General Plan Amendment and Zoning Amendment, in addition to a Special Management Area Use Permit. No variances are being sought for this project. Further, we respectfully submit that any comments or questions you have concerning the proposed development on Oahu are inappropriate and irrelevant to the consideration of the EISPN and the DEIS for this project, and should be addressed to appropriate agencies with jurisdiction on Oahu.

1. **How is the project in line with court rulings, Land Use Commission rulings, and Administrative rulings?**

   As discussed in the EISPN, and elaborated upon in the DEIS, the proposed project must obtain a number of County and State land use approvals. These approval processes have long-established legal procedures that will be followed, as many other similar projects have followed in the past.

Helber Hastert & Fee
Grosvenor Center, Mauka Tower
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813
Telephone 808 545-2055
Facsimile 808 545-2050



2/3. **How much will the guests contribute to the local economy?/Do you have an economic model that show this?**

   An economic and fiscal impact analysis has been prepared for this project and will be appended to the DEIS. This report indicates (using accepted economic models referenced in the report) that in total, direct visitor expenditures are estimated to represent $17.6 million in 2002, increasing to about $21.2 million by 2004. Including the indirect and induced multiplier effects within the state, visitors attracted by Kapalawai could account for over $36 million in new annual visitor expenditures by the time of project stabilization.

4. **Does the Kauai CZO require that one must show there is no reasonable use of the property currently permitted before a variance can be submitted?**

   No zoning variances are contemplated for the Kapalawai Resort.

5. **Why were only four Resort alternatives looked at?**

   Four alternatives will be discussed in the DEIS: (1) high density resort; (2) golf course; (3) mixed use Resort/commercial/residential; and (4) Residential. The consideration of various alternatives was based on several factors, including the preservation of existing historic resources and the necessity to provide the Robinson family with necessary income to supplement agricultural operations. The chosen alternative meets these objectives with the least environmental impact, while fitting in with the scale of development on West Kauai.

6. **What will be the increase in traffic expected on Kaumualii Highway?**

   A traffic impact assessment was prepared for the project and will be summarized in the DEIS, and appended in its entirety.

7. **How will viewplanes be changed (landmarks: cottages) as seen from the ocean?**

   The cottages will be setback from the shoreline at least 100 feet. The property is blessed with a large number of mature trees, many located at

the shoreline. The cottages will be situated within the trees and landscaping and will be visually screened from the ocean.

8. Will the beach be more or less accessible to local residents?

The shoreline will be more accessible to local residents.

9. How close will the nearest cottage be from the ocean?

See #7, above.

10. How will the ocean be affected from normal operations?

Impacts to the ocean will be minimal. Over the past few decades, the Robinson family has not been able to maintain the property as had been the practice during the past. With development, planting of appropriate landscape elements, and irrigation, the entire property will be less susceptible to wind and stormwater runoff. Runoff that is generated will be detained on-site until sediments have settled. Overall, the effects of sedimentation will actually be reduced.

11. How will the ocean be affected from non-point-source-pollution?

A marine resources survey was prepared for this project, and its findings determine that the ocean fronting the property is affected by sediments delivered from mauka lands. This is clear from the observation of specific coral species which are abundant in the nearshore region fronting the property, and the normal range of environmental conditions where these corals are found. As indicated in #10, above, sedimentation from the property itself will be negligible. The marine resources survey will be appended to the DEIS.

12. What intermittent streams are on the property?

Two streams are found on the property: (1) the Mahaikona Stream in the center of the property; and (2) the Aakukui Stream on the eastern end of the property.



13/14 Will Kapalawai Resort preserve our special environment/culture?

The development objectives of the project are deeply rooted in a commitment to preserve an important part of Kauai's (and Hawaii's) history. The primary focus of this preservation effort are the physical reminders of the Robinson's family use of the property as a primary residence for over one century. These include the main residence and its accessory buildings. These structures will be renovated, restored, and incorporated into the design of the project. The residence will have a significant portion of its floor area devoted to a museum. Another important resource on the property is a degraded inland fishpond that will be improved as a result of the project. Further, the project is scaled to complement the region's existing development patterns.

In terms of historic resources, in addition to he main house complex and the fishpond, three other historic sites will be preserved as-is and integrated into the site plan.

15/18 Will Kapalawai Resort expand and build local markets?/Create local jobs for local residents that pay higher wages?

In addition to the 200 full time jobs estimated to be created by the resort, a total of 120 induced or indirect, full time jobs are expected. These jobs will be created in service industries that serve the resort directly, or through companies that do business with the companies that do business with resort directly. A large number of these opportunities will be created in West Kauai.

16 Will Kapalawai Resort reduce imports?

It is unclear from your question what kind of imports you are referring to. The resort can help diversified agricultural on Kauai by purchasing produce and other foodstuffs available on Kauai from Kauai producers. In this context, they will be increasing demand for local products.

17/19 Will Kapalawai Resort increase the amount of money remaining in the local economy?/Will Kapalawai help diversify the economy?

We believe this question relates to concerns about "leakage" of dollars spent on Kauai out of Kauai. Kapalawai Resort will not directly provide

many of the services and activities associated with similar projects. Instead, local entrepreneurs will be asked to provide these services. In this manner, dollars spent by guests will go directly into the pockets of local residents. A policy of buying local produce and other food products available will also ensure that leakage is kept to a minimum.

20. Will the county economy be more or less diversified if the project is approved?

The development of the Kapalawai Resort will add a unique hospitality product to the Kauai market. The low-density (250 units on 170 acres), residential-scale (cottages), and historic nature of the property will provide an ambience that is not found anywhere else, and will broaden the appeal of Kauai to a more diverse travel group.

21 Will the Kapalawai Resort strengthen the educational system on Kauai?

The development of the Kapalawai Resort will strengthen the educational system on Kauai. In particular, the culinary program at Kauai Community College is recognized for its excellence. The two restaurants at Kapalawai will provide opportunities for graduates of this program. In addition, the resort will offer additional travel industry management positions to residents of Kauai.

22. How does a resort on agricultural land, which violates the General Plan, the Regional Plan, and the CZO, push the community-based values supporting the promotion of agriculture?

Earlier, we pointed out that the project must obtain several County and State land use approvals. If obtained, the project would then be in conformance with land use policies. In addition, we also pointed out that the project site has never been used for commercial agricultural production. In fact, the property is not attractive for agricultural production. It is rated poorly by the ALISH and Land Study Bureau classification systems.



23. How does a resort on agricultural land, which violates the General Plan, the Regional Plan, and the CZO, help to diversify the economy?

See #19, above.

24. Does a resort on agricultural land, which violates the General Plan, the Regional Plan, and the CZO, lead others to believe that zoning laws are only for the little guy while variances are for the elite? Or should variances be issues whenever someone wants something different from the existing law? If that is so, why have zoning laws in the first place?

No variances are being requested for the Kapalawai Resort. All applicable procedures and regulations for land use approvals will be followed.

25/26 Have there been any archaeological/cultural review of the property? When? By whom?

An archaeological inventory survey and traditional customs and practices report were prepared for the DEIS by Cultural Surveys Hawaii in 1999. Both reports will be appended to the DEIS.

27. Please include the Office of Environmental Quality Control's Cultural Impact Guidelines in the DEIS. Please detail how the project conforms to each section of the guidelines.

The Office of Environmental Quality Control (OEQC) prepared a pamphlet in 1997 entitled *Guidelines for Assessing Cultural Impacts*. In OEQC's own words "The Environmental Council encourages [emphasis added] preparers of environmental assessments and environmental impact statements to analyze the impact of a proposed action on cultural practices and features associated with the project area. The Council provides the following methodology and content protocol as guidance [emphasis added] for any assessment of a project that may significantly affect cultural resources."

In following the intent of this guidance, we enlisted the services of Cultural Surveys Hawaii (CSH) to prepare two reports for this DEIS: (1)

an archaeological inventory survey; and (2) a traditional customs and practices assessment. Both of these reports are appended in their entirety to the DEIS. CSH is familiar with *Guidelines for Assessing Cultural Impacts*, and has prepared numerous studies that have been accepted by the Department of Land and Natural Resources, State Historic Preservation Division. The traditional customs and practices report prepared for this project is consistent with the guidelines, and in compliance with the intent of Chapter 343, Hawaii Revised Statutes, and Title 11, Chapter 200, Hawaii Administrative Rules.

28. **Historically, have there been fishponds, saltponds, streams, etc., on the property?**

    The DEIS will document the two streams identified above (#12), in addition to the existing fishpond.

29. **Please explain the non-conformance of the project with each section of the General Plan, Regional Plan and CZO.**

    Chapter 3 of the DEIS will contain a discussion of the project in relation to these public plans and policies.

30. **Are there phases to the project?**

    The project will be constructed in one phase.

31. **Do you have a map of the full build-out?**

    Figure 4 in the DEIS will portray the development plan for the project.

32. **Will non-potable water enter the ocean under any circumstances?**

    It is probable that during periods associated with intense storm events, that stormwater from the property will enter the ocean.

33. **Please have copies of old maps, aerial photographs and military documents in the DEIS.**

    The DEIS will include aerial photos from 1953 and 1992, in addition to photographs of the property between 1897 and 1930. We do not



understand your reference to military documents as the property has never been under the jurisdiction of the Department of Defense, or any other federal agency.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 3378
HONOLULU, HAWAII 96801

BRUCE S. ANDERSON, Ph.D., R.P.H.
DIRECTOR OF HEALTH

In reply, please refer to:
File:

August 19, 1999 99-166/epo

Mr. Kenneth Nitta
Department of Planning
County of Kauai
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

Dear Mr. Nitta:

Subject: Environmental Impact Statement Preparation Notice (EISPN)
Kapalawai Resort
Waimea, Kauai
TMK: 1-7-5: 1

Thank you for allowing us to review and comment on the subject project. We have the following comments to offer:

Wastewater

As there is no existing sewer service system in the area and none will be constructed in the near future, the Department of Health concurs with the proposed construction of a private wastewater treatment facility. We also concur with and encourage plans for the use of treated effluent for irrigation. We do recommend that wastewater be treated to R-1 standards, as there are less restrictions on the types of reuse and setback distances which must be met with lower quality reclaimed water.



All wastewater plans must conform to applicable provisions of the Department of Health's Administrative Rules, Chapter 11-62, "Wastewater Systems," and to the "Guidelines for the Treatment and Use of Reclaimed Water," November 1993. The Department will need to review and approve the wastewater plans before construction begins.

Should you have any questions on this matter, please contact the Planning/Design Section of the Wastewater Branch at 586-4294.

Safe Drinking Water

1. Federal and state regulations define a public water system as a system that serves 25 or more individuals at least 60 days per year or has at least 15 service connections. All public water system owners and operators are required to comply with Hawaii Administrative Rules, Title 11, Chapter 20, Rules Relating to Potable Water Systems.

2. Chapter 11-20, Section 11-20-30 requires that new or substantially modified distribution systems for public water systems be approved by the Director of Health. However, if the water system is under the jurisdiction of the County of Kauai, the Department of Water will be responsible for the review and approval of the plans.

3. Chapter 11-20, Section 11-20-29 requires that all new sources of potable water serving a public water system be approved by the Director of Health prior to its use. Such an approval is based primarily upon the submission of a satisfactory engineering report which addresses the requirements set forth in Section 11-20-29.

4. The engineering report must identify all potential sources of contamination and evaluate alternative control measures which could be implemented to reduce or eliminate the potential for contamination, including treatment of the water source. In addition, water quality analyses, performed by a

laboratory certified in the State of Hawaii, must be submitted as part of the report to demonstrate compliance with all drinking water standards. Additional tests may be required by the Director of Health upon his review of the information submitted.

5. The Safe Drinking Water Act Amendments of 1996 introduced a number of new mandates and initiatives that emphasize the prevention of contamination through improved water system management. Two such programs will impact the proposed water system:

   a. Capacity Assurance: By October 1, 1999, all new public water systems must demonstrate adequate technical, financial, and managerial capacity necessary to reliably produce and deliver drinking water meeting all State and Federal drinking water regulations prior to commencing operations.

      Technical capacity refers to the management structure of the water system, including but not limited to the adequacy of the source water, infrastructure (source, treatment, storage, and distribution), and the ability of system personnel to adequately operate and maintain the system and to otherwise implement technical knowledge.

      Financial capacity refers to the financial resources of the water system, including but not limited to revenue sufficiency, credit worthiness, and fiscal controls.

      Managerial capacity refers to the management structure of the water system, including but not limited to ownership accountability, staffing and organization, and effective linkages to customers and regulatory agencies.

   b. Operator Certification: EPA has established guidelines specifying minimum standards for certification and recertification of the



operators of community water systems and nontransient, noncommunity water systems. Every water system must have an operator to perform certain key compliance functions, and who is trained and certified to the level that the State determines is appropriate to the functions, facilities, and operations of that system.

6. The Environmental Impact Statement Preparation Notice indicates that the proposed development will have a dual water system. The potable and nonpotable water systems must be carefully designed and operated to prevent cross-connections and backflow conditions. The two systems must be clearly labeled and physically separated by air gaps or reduced pressure principle backflow preventers to avoid contaminating the potable water supply. All nonpotable spigots and irrigated areas should be clearly labeled with warning signs to prevent the inadvertent consumption of nonpotable water.

If you have any questions concerning these comments, please contact Mr. Stuart Yamada of the Safe Drinking Water Branch at 586-4258.

Sincerely,

GARY GILL
Deputy Director for
Environmental Health

c: OEQC
Destination Villages Kauai, LLC
Helber Hastert & Fee
WWB
SDWB

Helber Hastert
Planners

November 5, 1999

Mr. Gary Gill
Deputy Director for
Environmental Health
State of Hawaii
Department of Health
P.O. Box 3378
Honolulu, HI 96813

Dear Mr. Gill:

**Environmental Impact Statement Preparation Notice**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated August 19, 1999 on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared.

For your ease of reference, we will respond to your comments in the order they appear in your letter.

**Wastewater.** We appreciate your recommendation to treat wastewater to R-1 standards, because there will be less restrictions on its reuse. We understand that all wastewater plans must conform to the Department of Health's Administrative Rules (HAR), Chapter 11-62 ("Wastewater Systems"), and to the *Guidelines for the Treatment and Use of Reclaimed Water*. We also recognize that the Department will need to review and approve wastewater plans before construction begins.

**Safe Drinking Water.** We acknowledge the need to comply with the *Rules Relating to Potable Water Systems* (Title 11, Chapter 20, HAR) for the potable water system to be constructed for Kapalawai. We also acknowledge other requirements related to engineering reports, and the provisions of the Safe Water Drinking Act Amendments of 1996 (capacity assurance, operator certification).

**Dual Water System.** We note that dual water systems must be carefully designed and operated to prevent cross-connections and backflow conditions.

Helber Hastert & Fee
Grosvenor Center, Mauka Tower
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813
Telephone 808 545-2055
Facsimile 808 545-2050



If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

Dorothea Hayashi
P. O. Box 76
Hanapepe, Hawaii 96716

August 23, 1999

Department of Planning
County of Kauai
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

Aloha:

Subject: Comments on Kapalawai Resort
Environmental Impact Statement Preparation Notice

In light of the size and anticipated impacts of the proposed Kapalawai Resort, I concur that an Environmental Impact Statement is needed. The Draft Environmental Impact Statement (DEIS) should address the following:

(1) Project description. While the Preparation Notice provided a description of the project, it provided no information on the context of this proposal. The applicant should provide information on how does this project fits in with the current and future plans for the site and the surrounding Robinson lands. What is the eventual buildout of the project? What other components or phases are being considered, which have not been disclosed in the Preparation Notice?

(2) Consultant reports. The DEIS should include the consultant reports in their entirety.

(3) Water. The applicant should disclose the impact of meeting the project's water needs on the landowner's current agricultural activities and future agricultural options for the landowner's remaining lands.

(4) Recreational resources and recreational uses. The recreational uses of the subject property deserves more attention. A description of the recreational resources of the subject property and ocean are warranted. The significance of these resources should also be disclosed.

(5) Coastal resources. A description and significance of the coastal resources should be provided.

(6) Native Hawaiian gathering practices. The DEIS should provide information on native Hawaiian gathering practices on the property and nearby areas, and how native Hawaiian gathering rights will be accommodated.

(7) Burials. The DEIS should address the possibility of burial on the property.

(8) Flooding. The DEIS should disclose how the project will mitigate flooding.

(9) General Plan. It is important to note that the property is not a designated Visitor Destination Area. It is not clear what the applicant plans to do about the designation and what the implications are to the residents of the region.

(10) Impacts. The DEIS should include a comprehensive assessment of the potential impacts of the project and appropriate mitigating measures or options.

Very truly yours,

Dorothea Hayashi

Dorothea Hayashi

cc: Office of Environmental Quality Control
Destination Villages Kauai, LLC
Helber Hastert & Fee, Planners
State Land Use Commission
Office of Planning

Heller Haslett
Planners

November 5, 1999

Ms. Dorothea Hayashi
P.O. Box 76
Hanapepe, HI 96716

Dear Ms. Hayashi:

**Environmental Impact Statement Preparation Notice**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated August 23, 1999 on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared. For your ease of reference, we will respond to your comments in the order they appear in your letter.

1. Project Description. The project described in the EISPN and the DEIS is being proposed by Destination Villages Kauai, LLC and not by the Robinson family. The project is self-contained and involves no other phases or components. We are aware that proposals have been presented by the Robinsons on other agricultural land as part of the review and revision of the Kauai General Plan. The Kapalawai project is not tied to any other proposal. While the Robinsons have made public these proposals, they remain just that: proposals. The General Plan revision must undergo a rigorous public review and hearings. Any fundamental changes to this important public policy document are many months away.

2. Consultant Reports. A total of 10 consultant reports, in their entirety, will be attached to the DEIS as appendices.

3. Water. The project site is located on land that has served as a primary residence for the Robinson family since at least 1897, and has never been used for commercial agricultural purposes. In this regard, the project will have no effect on the landowner's current agricultural activities. Potable water demand for the project is modest in scope, approximately 120,000 gallons per day. This water will be provided by drilling a new well mauka of the property, on other land owned by Gay and Robinson, Inc.

Heller Haslett & Fee
Grosvenor Center, Mauka Tower
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813
Telephone: 808 545-2055
Facsimile: 808 545-2050



4. Recreational resources and recreational uses. The recreational uses of the property, both those associated with the resort, and the ocean, will be discussed in the DEIS.

5. Coastal resources. One of the consultant reports included in the DEIS will be a marine environmental assessment. This report will describe coastal resources and their significance.

6. Native Hawaiian gathering practices. Cultural Surveys of Hawaii prepared a report on the traditional customs and practices associated with the project site. Their report will be discussed in the DEIS, and appended to the DEIS in its entirety.

7. Burials. In addition to a review of traditional customs and practices, Cultural Surveys Hawaii prepared an archaeological inventory survey that included a consideration of burials. This report will also be appended to the DEIS.

8. Flooding. We are aware that portions of the property are affected by flood hazards. Any structures located in these areas will be elevated above base flood heights, as required by flood hazard regulations, and will otherwise be constructed in compliance with these same regulations. We have also obtained aerial photo documentation of the ocean overwash associated with Hurricane Iniki in 1992, and will be setting all structures mauka of this area. These issues will be addressed in the DEIS.

9. General Plan. We acknowledge that the project does not conform to existing General Plan designations, and will require an amendment to the General Plan. That is the reason for the preparation of this DEIS. Chapter 343, Hawaii Revised Statutes requires assessment of all projects in the State of Hawaii that require general plan changes in their respective counties. This DEIS is intended to support an application for a General Plan amendment.

10. Impacts. The DEIS will include a comprehensive assessment of the potential impacts of the project and appropriate mitigating measures, as required by Chapter 343, Hawaii Revised Statutes.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

BENJAMIN J. CAYETANO
GOVERNOR

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

KAZU HAYASHIDA
DIRECTOR

DEPUTY DIRECTORS
BRIAN E. MINAAI
GLENN M. OKIMOTO

IN REPLY REFER TO

STP 8.9197

August 23, 1999

Mr. Dee M. Crowell
Director
Department of Planning
County of Kauai
Suite 473, Building A
4444 Rice Street
Lihue, Hawaii 96766

Dear Mr. Crowell:

Subject: Kapaiwai Resort
Environmental Impact Statement Preparation Notice (EISPN)
TMK: (4) 1-7-05: 01

Thank you for your transmittal requesting our comments on the subject project.

The applicant should be required to include a traffic analysis report in the EIS. This report should identify the impacts to the transportation facilities, particularly at the access points along Kaumualii Highway, and recommend any required mitigation measures.

Very truly yours,

Kazu Hayashida

KAZU HAYASHIDA
Director of Transportation

c: Ms. Genevieve Salmonson, Office of Environmental Quality Control
Mr. Lewis Geyser, Destination Villages Kauai, LLC
Mr. Scott Ezer, Helber Hastert & Fee, Planners

Helber Hastert
Planners

November 5, 1999

Mr. Kazu Hayashida
Director of Transportation
State of Hawaii
Department of Transportation
869 Punchbowl Street
Honolulu, HI 96813-5097

Dear Mr. Hayashida:

**Environmental Impact Statement Preparation Notice**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated August 23, 1999 on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared.

A Traffic Impact Analysis Report (TIAR) will be included in DEIS. The TIAR will identify the impact the proposed development will have to both AM/PM peak and weekend/holiday demand on traffic. The TIAR will also identify any mitigation measures required. We look forward to your comments on this report.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

Helber Hastert & Fee
Grosvenor Center, Mauka Tower

733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813

Telephone: 808 545-2055
Facsimile: 808 545-2050

A part of GTE Corporation

**GTE Hawaiian Tel**

GTE Hawaiian Telephone Company Incorporated
P.O. Box 531 • Lihue, HI 96766 • (808) 241-5050

*Beyond the call*

August 27, 1999

Mr. Keith Nitta
County of Kauai
Department of Planning
4444 Rice St., Suite 473
Lihue, HI 96766

Subject: **KAPALAWAI RESORT, WAIMEA, TMK 4-1-7-5:1**

Thank you for the opportunity to comment on the Environmental Impact Statement Preparation Notice for Kapalawai Resort. GTE Hawaiian Tel will provide telephone service to the proposed development in accordance with our Line Extension and Service Connection Tariff.

An easement site may be required to locate electronic equipment cabinets for the Kapalawai Resort. Such cabinets bring service closer to the customer resulting in improved service and enhanced provisioning capability. The requirement for an easement will depend on the number of telephone lines and the type of services required.

We would appreciate a copy of the final EIS when it becomes available. Should you have any questions, call Jimmy Sone at 241-5052 or Paul Tegicka at 241-5054.

Sincerely,

Gary K. Heu
Section Manager-Kauai

c: File
J. Sakasegawa
Tony Lau

Helber Hastert
Planners

November 5, 1999

Mr. Gary K. Heu
Section Manager-Kauai
GTE Hawaiian Tel
P.O. Box 591
Lihue, HI 96766

Dear Mr. Heu:

**Environmental Impact Statement Preparation Notice**
**Kapalawai Resort**
**Kapalawai, Kaua'i, Hawaii**

Thank you for your letter of August 27, 1999 on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared.

We note your statement that GTE Hawaiian Tel will provide telephone service to the proposed development in accordance with your Line Extension and Service Connection Tariff. We also note your comment that an easement site may be required to locate electronic equipment cabinets for the Kapalawai Resort. We look forward to working with you as the project moves through the development approval process.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kaua'i County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

Helber Hastert & Fee
Grosvenor Center, Mauka Tower

733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813

Telephone: 808 545-2055
Facsimile: 808 545-2050

COPY

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION

August 25, 1999

Mr. Dee Crowell, Director
Planning Department
County of Kauai
4444 Rice Street, Suite 473
Lihue, Kaua'i, Hawaii 96766

LOG NO: 23928
DOC NO: 9908NM05

Dear Mr. Crowell:

SUBJECT: Chapter 6E-42, Historic Preservation Review - EISPN Kapalawai Resort Waimea, Kauai TMK: 1-7-05: 01

We are currently reviewing the archaeological report for this project and will submit a copy of our review letter on this work once it is complete.

From initial review of the report and from the EIS Prep Notice, it appears that 5 historic sites (rock walls and terraces, oval platform, main house complex, inland fishpond and a Portugese Oven) are in the project area. The mitigation proposal is to preserve all these sites, and possibly restore some.

In concept, we agree with the plan, but we must withhold comment until our review of the report is completed.

If you have any questions, please call Nancy McMahon at 742-7033.

Aloha,

DON HIBBARD, Administrator
State Historic Preservation Division

NM:lm

cc: Gary Gill, Director, Office of Environmental Quality Control 235 South Beretania St., Honolulu, HI 96813
Scott Ezer, Helber, Hastert and Fee Planners, 733 Bishop Street, Suite 2590, Honolulu, HI 96813

Helber Hastert
Planners

November 5, 1999

Mr. Don Hibbard, Administrator
Historic Preservation Division
State of Hawaii
Department of Land and Natural Resources
Kakuhihewa Building, Room 555
501 Kamokila Boulevard
Kapolei, HI 96707

Dear Mr. Hibbard:

Environmental Impact Statement Preparation Notice
Kapalawai Resort
Kapalawai, Kauai, Hawaii

Thank you for your letter dated August 25, 1999 on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared.

We note that your office is currently reviewing the archaeological report for this project and you will submit a copy of your review letter on this work once it is complete. We also point out that your office is also in receipt of a traditional customs and practices report, and has concurred with the findings of an architectural analysis of structures on the property (LOG NO: 24198; DOC NO: 9910co05), for the same project.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

Helber Hastert & Fee — Grosvenor Center, Mauka Tower
733 Bishop Street, Suite 2590, Honolulu, Hawaii 96813
Telephone 808 545-2055
Facsimile 808 545-2050

Kauai Civil Defense Agency
4396 Rice Street 107
Lihue HI 96766
Bus: 808.241.8338
Fax: 808.241.8398
civdef@lava.net.hi.us

'99 AUG -4 P3 1

PLANNING DEPT.

# Memo

To: Department of Planning
County of Kauai
4444 Rice Street 473
Lihue, HI. 96766

Attn: Keith Nitta

From: Clifford Ueda, *Acting CD Administrator*

Subject: Comments – EISPN for Kapalawai Resort

1. Disaster Alerting and Notification

   Unit occupants at the proposed site appear to be at risk from tsunami, flooding, tropical cyclone and chlorine release (from STP).

   For the safety of the guests, there must be a system in place by which the resort is alerted of the aforementioned threats without depending on direct telephone notification from the local disaster preparedness agency.

   NOTE: *Does not the County of Kauai require speakers in each unit where broadcast may be made for delivering instructions to entire property?*

2. Units in Tsunami Inundation Zone

3. How do the occupants call for help (i.e. medical emergency, fire, crime in progress, etc.) without telephones in the units?

*"Emergency Preparedness, Everyone's Business"*

Helber Hastert
Planners

November 5, 1999

Mr. Clifford Ikeda, Acting Civil Defense Administrator
Kauai Civil Defense Agency
4396 Rice Street, 107
Lihue, HI 96766

Dear Mr. Ikeda:

**Environmental Impact Statement Preparation Notice**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared.

We note your concern about the ability to warn guests about disasters. A system will be included in the design of the resort that will allow communication with the cottages to alert guests about emergency situations. For your information, the Director of the State Office of Civil Defense has requested that the project should install an outdoor warning siren, and an Emergency Alert System as part of the development.

There is a reference in your letter to units in the tsunami inundation zone. Only a small portion of the property is affected by the VE Flood Zone, and no buildings will be located in this area.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

Helber Hastert & Fee
Grosvenor Center, Mauka Tower
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813
Telephone: 808 545-2055
Facsimile: 808 545-2050

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
Pacific Islands Area Office
1601 Kapiolani Boulevard, Suite 1110
Honolulu, Hawaii 96814-0047

OCT 1 - 1999

Mr. Keith Nitta
County of Kauai
Department of Planning
4444 Rice St., Suite 473
Lihue, Kauai 96766

Re: Environmental Impact Statement Preparation Notice (EISPN) Prepared Pursuant to Chapter 343, HRS.

Dear Mr. Nitta:

Thank you for the opportunity to review the Environmental Impact Statement Preparation Notice for Kapalawai Resport. The notice was received by our office July 23, 1999. We've completed our review and various recommendations follow.

The proposed project involves the development of a 250-unit resort complex on the former homestead of the Robinson Family. The plans include the restoration of existing features of the property (a spring fed fishpond) and amendment of the complex with other facilities such as the proposed waste water treatment plant. One of the stated goals of the plan is to "provide for a maximum variety of outdoor recreational activities."

The National Marine Fisheries Service (NMFS) recommends that the draft Environmental Impact Statement (DEIS) address the development plans in terms of the potential effects it might have on protected marine species. Although the EISPN does contain a review of terrestrial flora and fauna potentially affected by the project, there are no marine flora or fauna discussed in the EISPN. To provide comprehensive information for the planning process, NMFS recommends that the applicant pay particular attention to the potential effects on sea turtles, Hawaiian monk seals and the potential effects on the habitat of these species.

Questions the applicant should consider are the effects of the construction activities on marine protected species. Breeding sea turtles and/or hatchlings in the area may become disoriented if bright lights shine on the water or beach at night during the breeding/hatching season. Accordingly, the applicants should tailor construction and/or administration of the resort facility so that lighting does not affect the normal behavior of sea turtles. Also, Hawaiian monk seals may haul out on the shore. Again, the development activities must consider methods of operation which do not disrupt the normal behavior of the monk seals.

As is often the case, resorts with ocean front access develop marine recreation activities designed to entertain resort visitors. NMFS recommends the EIS describe in full the planned ocean recreation uses that would be a part of the resort operation. Thus, the proposal of any

ocean recreation activities should take into consideration the potential effects on marine protected species and possible mitigation measures.

NMFS recognizes that it is early in the planning and review process, and that the applicant may have questions or require information from our office regarding the concerns raised above. Please feel free to contact Margaret Dupree of the Pacific Islands Area Office Protected Species Program at (808) 973-2935 (ext. 210) for more information or future correspondence.

Additionally, the applicant may wish to contact the Fish and Wildlife Service, and the Department of Land and Natural Resources, Divisions of Aquatic Resources and Forestry and Wildlife for recommendations for species under their jurisdiction.

Sincerely,

C. Karnella

Charles Karnella
Administrator, Pacific Islands Area Office

cc: USFWS - Pacific Islands Ecoregion
DAR - Hawaii
DOFAW - Hawaii
CZMP - Hawaii
Destination Villages Kauai, LLC
Helber Hastert & Fee, Planners

Helber Hastert
Planners

November 5, 1999

Mr. Charles Karnella, Administrator
Pacific Islands Area Office
National Marine Fisheries Service
2570 Dole Street
Honolulu, HI 96822

Dear Mr. Karnella:

**Draft Environmental Impact Statement**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated October 1, 1999 on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared.

The DEIS will contain several studies related to the native fish, wildlife, and plant resources that exist in the affected environment. These include a botanical survey (Char & Associates), a terrestrial faunal survey (Philip Bruner), and a marine biological survey (Marine Research Consultants). Each of these reports will be summarized in the DEIS and attached to the document as a technical appendix.

As you state in your letter, we are still early in the planning and review process, and we have not yet determined the full range of activities that will be provided for on the property. However, we believe that most ocean-oriented recreation (snorkeling, diving, windsurfing, kayaking, etc.) will take place off-site.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

Helber Hastert & Fee
Grosvenor Center, Mauka Tower
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813
Telephone 808 545-2055
Facsimile 808 545-2050

DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM

BENJAMIN J. CAYETANO
GOVERNOR
SELBY F. MAYA
BRADLEY J. MOSSEGUE
DEPUTY DIRECTOR

ENERGY, RESOURCES, AND TECHNOLOGY DIVISION
235 South Beretania St., 5th Flr., Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel.: (808) 587-3807
Fax: (808) 586-2536

July 29, 1999

Mr. Keith Nitta
County of Kauai
Department of Planning
4444 Rice St., Suite 473
Lihue, HI 96766

Dear Mr. Nitta:

Subject: Environmental Impact Statement Preparation Notice (EISPN)
Kapalawai Resort, Waimea, Kawai
Tax Map Key: (4) 1-7-05:01

Thank you for the opportunity to comment on the EISPN for Kapalawai resort. Our comments are addressed to (1) State energy conservation goals, (2) energy saving design practices and technologies, and (3) recycling and recycled-content products.

(1) Energy conservation goals. Project buildings, activities, and site grounds should be designed with energy saving considerations. The mandate for such consideration is found in Chapter 344, HRS ("State Environmental Policy") and Chapter 226 ("Hawaii State Planning Act"). In particular, we would like to call to your attention HRS 226 18(c)(4) which includes a State objective of promoting all cost-effective energy conservation through adoption of energy-efficient practices and technologies.

The County of Kauai has an Energy Code and we would suggest that you consider that in implementing your project. Kauai Electric may also have demand-side management programs that offer rebates for energy efficient technologies.

(2) Energy saving design practices and technologies. We recommend that you specifically address energy efficient design practices and technologies in this project. Some of the methods and technologies that could be considered during the design phase of the project include:

a. Use of site shading, orientation, and use of naturally ventilated areas to reduce cooling load;
b. Maximum use of day lighting;
c. Use of high efficiency compact fluorescent lighting;
d. Use of high wattage metal halide lighting for sports and recreational areas;



e. Exceed Energy Code requirements; and
f. Technologies such as solar water heating systems, roof insulation, radiant barriers, and energy efficient windows.

(3) Recycling and recycled-content products.
a. Develop a job-site recycling plan for the construction phase of the project and recycle as much construction and demolition waste as possible;
b. Incorporate provisions for recycling into the built project – a collection system and space for bins for recyclable;
c. Specify and use products with recycled-content such as: steel, concrete aggregate fill, drywall, carpet and glass tile; and
d. Specify and use locally produced products such as plastic lumber, hydromulch, soil amendment and glass tile.

Sincerely,

Maurice H. Kaya
Energy, Resources, and Technology
Program Administrator

c: OEQC
Destination Villages Kauai, LLC
Helber Hastert & Fee, Planners (Attn: Scott Ezer)

Helber Hastert
Planners

November 5, 1999

Mr. Maurice H. Kaya
Energy, Resources, and Technology
Program Administrator
Department of Business, Economic Development & Tourism
Energy Resources, and Technology Division
P.O. Box 2359
Honolulu, HI 96804

Dear Mr. Kaya:

Draft Environmental Impact Statement
Kapalawai Resort
Kapalawai, Kauai, Hawaii

Thank you for your letter dated July 29, 1999, on the above draft environmental impact statement (DEIS). Your letter and this response will be included in the final environmental impact statement (FEIS) being prepared. For your ease of reference, we will respond to your comments in the order they appear in your letter.

1. Energy Conservation Goals

   The philosophy of the project developer strongly supports the use of cost-effective energy conservation and energy-efficient practices and technologies. In support of these objectives, solar water heating, energy-efficient pumps, appliances and lighting, and daylighting techniques for larger buildings will be incorporated into the design of the proposed resort. This philosophy is embodied in a decision to design the 250 cottages without air conditioning systems. Ceiling fans, building orientation, appropriate materials, exterior colors, and landscaping will all contribute to keeping the cottages cool.

2. Energy Saving design practices and technologies

   The developer intends to construct the 250 cottages without air conditioning. This will make it essential to carefully develop a landscape plan that is not only attractive, but functional in the provision of adequate site shading and ventilation. All appropriate technologies and appliances that provide reduced energy consumption will be considered for incorporation into the project.

Helber Hastert & Fee
Grosvenor Center, Mauka Tower
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813
Telephone: 808 545-2055
Facsimile: 808 545-2050



3. Recycling and recycled-content products

   Recycling is also an important objective pursued by the project developer. In addition to recycling during construction, it will be very important to devise and implement an aggressive operational recycling program for the resort, including green waste. We have already decided to use reclaimed wastewater as an irrigation source on the property.

If you have any additional questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

United States Department of the Interior

U.S. GEOLOGICAL SURVEY
WATER RESOURCES DIVISION
677 Ala Moana Boulevard, Suite 415
Honolulu, Hawaii 96813

August 20, 1999

Mr. Keith Nitta
Department of Planning
County of Kauai
4444 Rice St., Suite 473
Lihue, HI 96766

Dear Mr. Nitta:

Subject: Environmental Impact Statement Preparation Notice (EISPN), Kapalawai Resort, Island of Kauai, Tax Map Key: (4) 1-7-05:01,Waimea

The staff of the U.S. Geological Survey, Water Resources Division, Hawaii District Office, has received the EISPN. We regret however, that due to prior commitments and lack of available staff, we are unable to review the document and are returning it for your future use.

Thank you for allowing us the opportunity to review and comment on this document.

Sincerely,

John M. Klein
Acting District Chief

Enclosure

cc w/o enclosure: Mr. Lewis Geyser
Destination Villages Kauai, LLC
4439 Via Abrigada
Santa Barbara, CA 93110

Mr. Scott Ezer
Helbert Hastert & Fee, Planners
733 Bishop Street, Suite 2590
Honolulu, HI 96813

Helber Hastert
Planners

November 5, 1999

Mr. John M. Klein
United States Department of the Interior
U.S. Geological Survey
Water Resources Division
677 Ala Moana Boulevard, Suite 415
Honolulu, HI 96813

Dear Mr. Klein:

Environmental Impact Statement Preparation Notice
Kapalawai Resort
Kapalawai, Kauai, Hawaii

Thank you for your letter dated August 20, 1999 on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared.

We note that due to prior commitments and lack of available staff, you are unable to review the EISPN.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

Helber Hastert & Fee
Grosvenor Center, Mauka Tower
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813
Telephone 808 545-2055
Facsimile 808 545-2050

**DEPARTMENT OF WATER**
County of Kauai

*"Water has no Substitute – Conserve It!"*

August 9, 1999

Keith Nitta
Planning Department
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

Subject: Environmental Impact Statement Preparation Notice for Kapalawai Resort on TMK:1-7-5:1, Kaumualii Highway, Kauai.

We have no comments to the proposed Environmental Impact Statement Preparation Notice for the Kapalawai Resort, provided the applicant is made aware that the proposed project is outside general planned development area for the Waimea water system. Domestic water service for this project will not be available from the Department of Water, County of Kauai.

If you have any questions, please call Edward Doi at 245-5417.

Sincerely,

Ernest Y.W. Lau
Manager and Chief Engineer

cc: a. Office of Environmental Quality Control
235 S. Beretania St., Suite 702, Honolulu, HI 96813
b. Destination Villages Kauai, LLC
4439 Via Abrigada, Santa Barbara, CA 93110, attn: Lewis Geyser
c. Helber Hastert & Fee, Planners
733 Bishop Street, Suite 2590, Honolulu, HI 96813, attn: Scott Ezer

EdYh
A:\Kapalawai-EISPNed

– 4398 Pua Loke Street, Lihue, Kauai, Hawaii or P. O. Box 1706, Lihue, HI 96766-5706 –
Phone No. (808) 245-5400 – Administration FAX No. (808) 246-8628 – Engineering/Fiscal/Shop FAX No. (808) 245-5813

Helber Hastert
Planners

November 5, 1999

Mr. Ernest Y.W. Lau
Manager and Chief Engineer
Department of Water
County of Kauai
4398 Pua Loke Street
Lihue, HI 96766

Dear Mr. Lau:

Environmental Impact Statement Preparation Notice
Kapalawai Resort
Kapalawai, Kauai, Hawaii

Thank you for your letter dated August 9, 1999 on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared.

We note that other than pointing out that domestic water service for the proposed project will not be provided by the Department of Water, you have no other comments on the EISPN.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

Helber Hastert & Fee
Grosvenor Center, Mauka Tower
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813
Telephone: 808 545-2055
Facsimile: 808 545-2050

FACILITIES COPY

BENJAMIN J. CAYETANO
GOVERNOR

PAUL G. LeMAHIEU, Ph.D.
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

August 4, 1999

Mr. Dee M Crowell
Planning Director
County of Kauai Planning Department
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

Dear Mr. Crowell:

Subject: Kapalawai Resort EISPN

The Department of Education has no comment on the subject environmental impact statement.

Thank you for the opportunity to respond.

Very truly yours,

Paul G. LeMahieu

Paul G. LeMahieu, Ph.D.
Superintendent of Education

PLeM:el (56)

cc: Gary Gill, OEQC
Lewis Geyser, Destination Villages Kauai, LLC
Scott Ezer, Helber Hastert & Fee Planners

AN AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY EMPLOYER

Helber Hastert
Planners

November 5, 1999

Dr. Paul G. LeMahieu
Superintendent of Education
State of Hawaii
Department of Education
P.O. Box 2360
Honolulu, HI 96804

Dear Dr. LeMahieu:

**Environmental Impact Statement Preparation Notice**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated August 4, 1999 on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared.

We note that you have no comment on the EISPN.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

Helber Hastert & Fee
Grosvenor Center, Mauka Tower

733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813

Telephone: (808) 545-2055
Facsimile: (808) 545-2050

(P)1600.9

AUG 27 1999

Department of Planning
County of Kauai
4444 Rice Street, Suite 473
Lihue, Kauai, Hawaii 96766

Attention: Mr. Keith Nitta

Gentlemen:

Subject: Kapalawai Resort
Haimea, Kauai, Hawaii
Draft Environmental Impact Statement Preparation
Notice

Thank you for the opportunity to review the subject document. The proposed project will have no impact on our facilities. Therefore, we have no comments to offer.

Should you have any questions, please have your staff contact Mr. Ralph Yukumoto of the Planning Branch at 586-0737.

Sincerely,

GORDON MATSUOKA
Public Works Administrator

RY:mo
c: OEQC
Destination Villages Kauai, LLC
Helber, Hastert & Fee, Planners

Helber Hastert
Planners

November 5, 1999

Mr. Gordon Matsuoka
Public Works Administrator
Department of Accounting and General Services
Division of Public Works
P.O. Box 119
Honolulu, HI 96810

Dear Mr. Matsuoka:

Environmental Impact Statement Preparation Notice
Kapalawai Resort
Kapalawai, Kauai, Hawaii

Thank you for your letter dated August 27, 1999 on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared.

We note that the project will have no impact on your facilities.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

Helber Hastert & Fee
Grosvenor Center, Mauka Tower
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813
Telephone 808 545-2055
Facsimile 808 545-2050

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, HONOLULU
FT. SHAFTER, HAWAII 96858-5440

REPLY TO ATTENTION OF

August 10, 1999

Civil Works Technical Branch

Mr. Keith Nitta
County of Kauai
Department of Planning
4444 Rice Street, Suite 473
Lihue, Kauai, Hawaii 96766

Dear Mr. Nitta:

Thank you for the opportunity to review and comment on the Environmental Impact Statement Preparation Notice (EISPN) for the Kapalawai Resort Project, Waimea, Kauai (TMK 1-7-5: 1). The following comments are provided in accordance with Corps of Engineers authorities to provide flood hazard information and to issue Department of the Army (DA) permits.

a. Based on the information provided, a DA permit may be required for the project. For further information, please contact Mr. William Lennan of our Regulatory Branch at 808) 438-9526 (extension 15) and refer to file number 990000433.

b. The flood hazard information provided on page 21 of the EISPN is correct.

Sincerely,

James Pennaz

James Pennaz, P.E.
Acting Chief, Civil Works
Technical Branch



Copies Furnished:

Mr. Gary Gill
State of Hawaii
Office of Environmental Quality Control
235 South Beretania Street, Suite 702
Honolulu, Hawaii 96813

Mr. Lewis Geyser
Destination Villages Kauai
4439 Via Abrigada
Santa Barbara, California 93110

Mr. Scott Ezer
Helber Hastert and Fee, Planners
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813

Helber Hastert
Hanson

November 5, 1999

Mr. James Pennaz, P.E.
Acting Chief, Civil Works Technical Branch
Department of the Army
U.S. Army Engineer District, Honolulu
Fort Shafter Hawaii 96858-6440

Dear Mr. Pennaz:

Environmental Impact Statement Preparation Notice
Kapalawai Resort
Kapalawai, Kauai, Hawaii

Thank you for your letter dated August 10, 1999 on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared.

We acknowledge that a Department of the Army permit may be required for some activities associated with the proposed resort. This would include clearing the fishpond of silt and noxious vegetation, and constructing a vehicular and pedestrian bridge over Mahaikona Stream. We also note your statement that the flood hazard information provided in the EISPN is correct.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

Helber Hastert & Fee
Grosvenor Center, Mauka Tower
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813
Telephone 808 545-2055
Facsimile 808 545-2050

MARYANNE W. KUSAKA
MAYOR

WALLACE G. REZENTES, SR.
ADMINISTRATIVE ASSISTANT

CESAR C. PORTUGAL
COUNTY ENGINEER
TELEPHONE 241-6600

IAN K. COSTA
DEPUTY COUNTY ENGINEER
TELEPHONE 241-6640

AN EQUAL OPPORTUNITY EMPLOYER
COUNTY OF KAUAI
DEPARTMENT OF PUBLIC WORKS
4444 RICE STREET
MOIKEHA BUILDING, SUITE 275
LIHUE, KAUAI, HAWAII 96766

July 28, 1999

Mr. Dee Crowell, Planning Director
Department of Planning
County of Kauai
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

Attention Mr. Keith Nitta

Dear Mr. Crowell.

SUBJECT: EISPN, KAPALAWAI RESORT, TMK 1-7-05: 01

We would like to offer the following comments on the project.

1. The project will access to Kaumualii Highway which is under the jurisdiction of the State of Hawaii, Department of Transportation, Highway Division. Comments relative to access should be solicitated from the Highway Division.

2. The notice refers to the FEMA Flood Insurance Rate Maps and flood studies conducted by Wagner Engineering Services for flood zones and elevations. We will need to review Wagner Engineering Services flood studies for the Mahaikona and Aakukui Stream. We will also need to review the study and drainage proposals for the Nonopahu Ridge Drainage Basin. County Flood Plain Management Ordinance requires structures to be protected from the 100-year storm.

Thank you for the opportunity to offer our comments.

Please contact Kenneth Kitabayashi at 241-6622 if there are questions.

Very truly yours,

CESAR C. PORTUGAL
County Engineer

KK/cu

cc OEQC
Destination Villages Kauai, LLC
Heber Hastert & Fee, Planners

Helber Hastert
Planners

November 5, 1999

Mr. Cesar C. Portugal, County Engineer
County of Kauai
Department of Public Works
4444 Rice Street
Mo'ikeha Building, Suite 275
Lihue, HI 96766

Dear Mr. Portugal:

Environmental Impact Statement Preparation Notice
Kapalawai Resort
Kapalawai, Kauai, Hawaii

Thank you for your letter dated July 28, 1999 on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared.

We note that Kaumualii Highway is under the jurisdiction .of the State of Hawaii, Department of Transportation (DOT). We have also transmitted a copy of the EISPN to the DOT. Their comment letter on the EISPN will also appear in the DEIS.

A drainage study conducted by Wagner Engineering Services will be appended to the DEIS in its entirety, for your review. We will also encourage representatives of Wagner Engineering Services to maintain close coordination with your agency during the EIS review process, and any subsequent permit applications through the County of Kauai.

We acknowledge that the County Flood Plain Management Ordinance requires structures to be protected from the 100-year storm. All areas of the project affected by flooding will be identified in the DEIS.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

Helber Hastert & Fee
Grosvenor Center, Mauka Tower
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813
Telephone: 808 545-2055
Facsimile: 808 545-2050

BENJAMIN J. CAYETANO
GOVERNOR

MAJOR GENERAL EDWARD V. RICHARDSON
DIRECTOR OF CIVIL DEFENSE

ROY C. PRICE, SR.
VICE DIRECTOR OF CIVIL DEFENSE

STATE OF HAWAII
DEPARTMENT OF DEFENSE
OFFICE OF THE DIRECTOR OF CIVIL DEFENSE
3949 DIAMOND HEAD ROAD
HONOLULU, HAWAII 96816-4495

PHONE (808) 733-4300
FAX (808) 733-4287

August 2, 1999

Mr. Keith Nitta
Department of Planning
County of Kauai
4444 Rice Street, Suite 475
Lihue, Kauai, Hawaii 96766

Dear Mr. Nitta:

ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE
(EISPN), KAPALAWAI RESORT

We appreciate the opportunity to comment on the Kapalawai Resort EISPN for Destination Villages Kauai, LLC.

State Civil Defense (SCD) recommends that a 121 DBc omnidirectional, solar powered outdoor warning siren be provided by the developer. The siren should be installed near the northeast corner of the 200 stall parking lot.

SCD also requests that an Emergency Alert System (EAS) receiver be purchased as a backup to the siren and installed near the telephone operator or in the security office. When installed, they could call the individual guest facilities or the complex; security officers may be able to warn or assist the elderly and disabled.

Just as parks, schools, fire hydrants, underground/overhead utilities and sidewalks are planned as integral parts of planned developments, an emergency warning system and support infrastructure must be purchased and installed by the developer for the safety and well-being of the residents and/or guests.

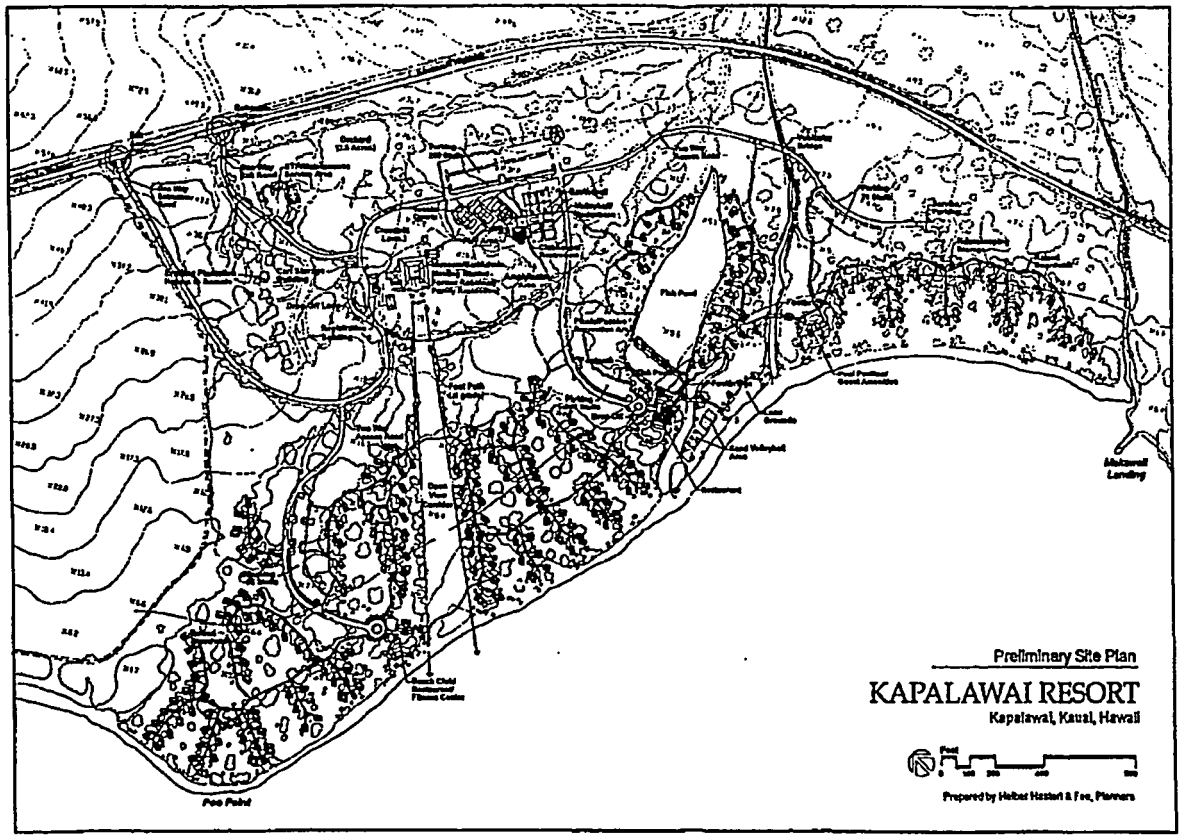


We appreciate your consideration and interest on this matter. Our SCD planners and technicians are available to discuss any concerns your staff may have. Please contact Mr. Norman Ogasawara of my staff at (808) 733-4300.

Sincerely,

ROY C. PRICE, SR.
Vice Director of Civil Defense

c: Destination Villages Kauai, LLC
Helber Hastert & Fee, Planners
Kauai Civil Defense Agency


Preliminary Site Plan
KAPALAWAI RESORT
Kapalawai, Kauai, Hawaii
Prepared by Helber Hastert & Fee, Planners

Helber Hastert
Planners

November 5, 1999

Mr. Roy C. Price, Sr.
Vice Director of Civil Defense
State of Hawaii
Department of Defense
Office of the Director of Civil Defense
3949 Diamond Head Rd.
Honolulu, HI 96816-4495

Dear Mr. Price:

**Environmental Impact Statement Preparation Notice**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated August 2, 1999 on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared.

We note your request that the project include one 121 Db omnidirectional, solar-powered siren, and an Emergency Alert System (EAS) receiver. We look forward to working with you on the siting and selection of appropriate equipment.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

Helber Hastert & Fee
Grosvenor Center, Mauka Tower
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813
Telephone 808 545-2055
Facsimile 808 545-2050

BENJAMIN J. CAYETANO
Governor

GENEVIEVE SALMONSON
Director

STATE OF HAWAII
OFFICE OF ENVIRONMENTAL QUALITY CONTROL
235 SOUTH BERETANIA STREET
SUITE 702
HONOLULU, HAWAII 96813
TELEPHONE (808) 586-4185
FACSIMILE (808) 586-4186

July 21, 1999

Dee Crowell
Kauai Planning Department
4444 Rice Street, #473
Lihue HI 96766

Attn: Keith Nitta

Dear Mr. Crowell:

Subject: Environmental Impact Statement (EIS) Preparation Notice for Kapalawai Resort, Makaweli

In order to reduce bulk and conserve paper, we recommend printing on both sides of the pages in the draft EIS. In addition, please discuss the following in the draft EIS:

1. Capacity: The development will have 250 cottages. What is the anticipated maximum occupancy? A total of 465 parking spaces is indicated on the site plan. How many will be for guests and how many for staff?

2. Shoreline setback: What is the shoreline setback for this section of the coast? Will any of the development encroach upon it?

3. Historic features: Will any of these features be listed on the state or Federal registers?

4. Site plan: The site plan needs to be labelled as Figure 4.

5. Resource conservation measures:

   - Please consider applying sustainable building techniques presented in the enclosed "Guidelines for Sustainable Building Design in Hawaii" in the construction of the facilities. In the draft EIS include a description of any of the techniques you will implement.

- Will composting be used to reduce the volume of generated green waste that would otherwise go to the landfill? What measures will be taken to reduce or reuse other solid wastes generated?

6. Landscaping: Describe the landscaping that is planned for this development. We encourage the use of native Hawaiian trees and plants.

If you have any questions, call Nancy Heinrich at 586-4185.

Sincerely,

GENEVIEVE SALMONSON
Director

Enc.

c: Scott Ezer, Helber Hastert & Fee
Lewis Geyser, Destination Villages Kauai

Helber Hastert
Honolulu

November 5, 1999

Ms. Genevieve Salmonson, Director
State of Hawaii
Office of Environmental Quality Control
235 South Beretania Street, Suite 702
Honolulu, Hi 96813

Dear Ms. Salmonson:

**Environmental Impact Statement Preparation Notice**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated July 21, 1999 on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared.

For your ease of reference, we will respond to your comments in the order they appear in your letter.

1. Capacity. Occupancy statistics for other similar facilities in Hawaii indicate an average room occupancy of 1.95 persons. If 100 percent of the cottages were to be occupied with an average occupancy of 1.95 persons, the number of guests at the resort would equal about 487. However, the number of vehicles used by these guests would be close to 1 vehicle per cottage, leaving about 215 spaces available for employees and the public who wish to reach the beach through the property.

2. Shoreline Setback. The minimum shoreline setback for the County of Kauai is 40 feet. However, there is a strip of property along the shoreline that lies within the State Conservation District. There are no plans to amend the State Land Use District designation for this portion of the property. At this time, we are unable to specifically report the depth of this strip of property. We have asked the State Land Use Commission for a boundary interpretation for this area. Final resolution of the boundary will be dependent on the results of a Shoreline Survey Certification, which is currently pending.

3. Historic Features. Although many of the historic features found on the property are eligible for listing on the State and Federal Registers of Historic Places, there is no plan to have them listed at this time. All historic resources will either be repaired and restored and incorporated

Into the design of the resort as functional structures, or will be left in place "as-is."

4. Site Plan. The Site Plan will be labeled as Figure 4 in the DEIS.

5. Resource Conservation Measures. Resource conservation will be a fundamental component of the resort. The cottages will not be air conditioned, and will be sited to take maximum advantage of shade provided by the many large trees on the property. The boardwalk system will be constructed with recycled building products, and alternative energy systems (such as solar water heaters) will be employed for use in the cottages. Green waste will be composted to reduce the volume of generated solid waste. In addition, an aggressive recycling program will be instituted at Kapalawai, to reduce the volume of other solid waste.

6. Landscaping. At this time, a landscaping plan for the resort has not been drafted. However, the site has a significant number of mature trees (milo, kiawe, monkeypod, etc.) that can be incorporated into the design of the project. Other native landscaping will be selected to be compatible with the dry environment of the Waimea District to reduce irrigation and maintenance requirements. Vegetation that is more suited to a particular environment will be healthier in the long run.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Pacific Islands Ecoregion
300 Ala Moana Boulevard, Room 3122
Box 50088
Honolulu, Hawaii 96850

AUG 23 1999

In Reply Refer To: LLLW

Mr. Keith Nitta
County of Kauai
Department of Planning
4444 Rice St. Suite 473
Lihue, HI 96766

Re: Environmental Impact Statement Preparation Notice for the Kapalawai Resort, Kauai, Hawaii

Dear Mr. Nitta:

The U.S. Fish and Wildlife Service (Service) has reviewed the referenced June 1999 Environmental Impact Statement (EIS) Preparation Notice, which was received in our office on July 23, 1999. The project sponsor is Destination Villages Kauai, LLC. The Service offers the following comments for your consideration as you assist the project sponsor in planning the proposed project.

The proposed project involves the development of a 250-unit resort with accessory facilities including the restoration of several existing features. These features include a residence, a fishpond, and grounds that incorporate streams, springs, and beachfront.

The Service recommends that the draft EIS address potential project-related impacts to Federal trust resources, including species and habitats protected under the Endangered Species Act, migratory birds, wetlands, and coral reef ecosystems. The draft EIS should also address potential impacts to other native Hawaiian species and habitats. For instance, the draft EIS should discuss whether any of the construction activities or proposed lighting for the project may pose a nuisance to any sea turtles, monk seals, or seabirds that may utilize the area. For the endangered bat and waterbirds mentioned in the Preparation Notice, the draft EIS should assess the extent and type of impacts expected to occur to these species from the proposed project, including discussions of whether these species use the project area for nesting or breeding, or simply as feeding and loafing areas. The extent of the impacts may depend heavily on when and how long these species occupy the area. We recommend you contact both the National Marine Fisheries Service and the Department of Land and Natural Resources, Division of Aquatic Resources, and the Division of Forestry and Wildlife for

recommendations concerning resources under their jurisdiction.

The draft EIS should propose mitigation measures to avoid unnecessary impacts and minimize unavoidable impacts to these resources. For example, we recommend that consideration be given to avoidance of the primary breeding seasons of listed species in the area to reduce adverse project-related impacts to their successful reproduction. If lighting may prove to be a potential nuisance, we recommend that minor adjustments such as light poles no higher than 25 feet or shielded or subdued lighting be used.

The Service appreciates the opportunity to provide this early technical assistance, and we look forward to reviewing a copy of the draft EIS when it is available. If you have questions regarding these comments, please do not hesitate to contact Fish and Wildlife Biologist Lorena Wada by telephone at (808) 541-3441 or by facsimile transmission at (808) 541-3470.

Sincerely,

Robert P. Smith
Pacific Islands Manager

cc: USEPA - Region IX, Honolulu
NMFS-PIAO, Honolulu
DAR, Hawaii
DOFAW, Hawaii
CZMP, Hawaii
CWB, Hawaii
Destination Villages Kauai, LLC
Helber Hastert & Fee, Planners



Helber Hastert
Planners

November 5, 1999

Mr. Robert Smith
United States Department of the Interior
Fish and Wildlife Service
Pacific Islands Ecoregion
300 Ala Moana Blvd., Room 3-122
Box 50088
Honolulu, HI 96850

Dear Mr. Smith:

Environmental Impact Statement Preparation Notice
Kapalawai Resort
Kapalawai, Kauai, Hawaii

Thank you for your letter dated August 23, 1999 on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared.

The DEIS will contain several studies related to the native fish, wildlife, and plant resources that exist in the affected environment. These include a botanical survey (Char & Associates), a terrestrial faunal survey (Philip Bruner), and a marine biological survey (Marine Research Consultants). Each of these reports will be summarized in the DEIS and attached to the document as a technical appendix. We did forward copies of the EISPN to the National Marine Fisheries Service (NMFS) and Department of Land and Natural Resources for their review. Only NMFS provided comments on the EISPN.

The DEIS will include mitigation measures to avoid impacts to biological resources, including the need to direct lighting away from the shoreline area.

We look forward to working with the Service during the planning for this project.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

Helber Hastert & Fee
Grosvenor Center, Mauka Tower
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813
Telephone 808 545-2055
Facsimile 808 545-2050

BENJAMIN J. CAYETANO
GOVERNOR
STATE OF HAWAII

RAYNARD C. SOON
CHAIRMAN
HAWAIIAN HOMES COMMISSION

JOBIE M. K. M. YAMAGUCHI
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
P.O. BOX 1879
HONOLULU, HAWAII 96805

August 4, 1999

Mr. Keith Nitta
Department of Planning
County of Kauai
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

Dear Mr. Nitta:

Subject: Kapalawai Resort Environmental Impact Statement
Preparation Notice; TMK 1-7-05:01, Waimea, Kauai

Thank you for allowing our review of the subject report dated June 1999.

The proposed resort is located within three miles of a 47-unit housing subdivision being developed on Hawaiian home lands at Hanapepe. More information as to the types and numbers of jobs that will be available at the resort would be of interest to our homesteaders and other West Kauai residents. Resort prices would be of general interest.

Emergency communication needs should be assessed in view of the statement on Page 2 that no cooking facilities, phones, or televisions will be provided to the 250 visitor cottages.

If there are any questions regarding our comments, please call Joe Chu at 587-6421.

Aloha,

Raynard C. Soon, Chairman
Hawaiian Homes Commission

c: Destination Villages Kauai, LLC
Helber Hastert & Fee, Planners

Helber Hastert
Planners

November 5, 1999

Mr. Raynard C. Soon, Chairman
State of Hawaii
Hawaiian Homes Commission
Department of Hawaiian Home Lands
P.O. Box 1879
Honolulu, HI 96805

Dear Mr. Soon:

Environmental Impact Statement Preparation Notice
Kapalawai Resort
Kapalawai, Kauai, Hawaii

Thank you for your letter dated August 4, 1999 on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared.

An economic and fiscal impact assessment was prepared for the project, and is appended to the DEIS in its entirety. The report estimates that about 200 full time equivalent positions will be created by the resort, in a wide variety of job categories. The estimated annual payroll for the resort is approximately $5.3 million.

In terms of resort prices, an underlying assumption of the fiscal impact assessment was that the achieved room rate would be about $195 (this takes into consideration rack rates and discounted rates, such as kama'aina rates).

We note your comment concerning emergency communication. We received similar comments from others. We also believe it is essential to include some communication system to ensure that guests can be adequately warned about impending disaster situations.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

Helber Hastert & Fee
Grosvenor Center, Mauka Tower
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813
Telephone: 808 545-2055
Facsimile: 808 545-2050

TO: Planning Department

FM: Fire Department

RE: Comments for EIS
Kapaiwai Resort
Waimea, Kauai, Hawaii
TMK: 1-7-05:01

Thank you for the opportunity to comment on this proposed development as the size of the project does have significant impact on the resources available to the Fire Department with regards to emergency access and response. We would have no objection to the project as proposed if the Applicant addresses and resolves the following areas of concern:

1. There is no mention in the EIS preparation document of the development of fire protection infrastructure for the proposed project. Although the Applicant submits that the overall structure density will (only) be 1.5 units per acre, the cottage units are configured and clustered in such manner that a situation of conflagration may result with a fire within any of the units. The Applicant also proposes to provide generous landscaping around each unit which would exuberate these conditions of conflagration, creating a connective path for fire to spread from one structure to another and so forth.

- The development of an approved, private fire protection system having a reliable and potable water source, tank storage supply, pipelines, and fire hydrants is required and necessary to provide adequacy of fire protection facilities in the event of a fire emergency.

- The landscaping on the project site shall be planned to minimize or eliminate conditions where fire from one unit can spread to another through the surrounding shrubbery by selecting the following alternatives:

  (A) Provide and maintain adequate separation set-backs from the landscaping to each of the units to minimize connective paths for fire to travel;
  (B) Plant fire-resistant vegetation so that the circumstances for connective fire travel is eliminated;
  (C) Construct units using fire-resistive or non-combustible materials;
  (D) Install automatic fire sprinkler systems in each of the units;
  (E) Any approved alternative that would meet the intent of these considerations;
  (F) Multiple selections of the above options.

2. The Applicant represents that a main pedestrian arterial (raised boardwalk) would connect cottages to adjacent parking areas and activity centers and vehicular access would be restricted to registration, parking areas, and restaurants located on the property. The proposed configuration of vehicular access routes do not take into account emergency access to units. Fire apparatus are generally heavy vehicles with limited maneuverability, thus have special requirements for access.

- Provide an approved circulation route into or around clusters of cottages for emergency access. The route shall be a designated 20-foot wide fire lane closed to general traffic and designed with an all-weather surface that would accommodate the weight of fire apparatus loads, upward of 20-tons. The fire lane turning radiuses and degree of slope shall also be approved. Construction of the all-weather surface may be any of these or another approved alternate method: asphalt paving, concrete, gravel, grass-crete, grass-rings, etc. The fire lane shall be equipped with approved turnarounds and/or areas for fire-fighting operations (turn-offs).

  Other alternatives for such emergency access may be considered. Private fire hydrants shall be positioned along the emergency access route in locations approved by the Fire Department. The Applicant shall install Knox Boxes to provide emergency access in lieu of providing keys to gates. The fire lane could also serve as a "fire break" between clusters of cottages.

3. Since cottages will not be equipped with phones, a means of alerting the Project's Registration Office or calling 911 directly in the event of an emergency, be it fire or medical or rescue is required.

- Install a fire alarm and/or call-alert system for notification in the event of an emergency. Any delay in notification increases the danger to persons and multiple structures, resulting in greater risk of liability to the Applicant.

  Usually single-station smoke detectors would be installed within these cottages, however, the Applicant could install an addressable system to a centrally-located and monitored fire alarm control station.

- A phone system may also be installed.

We advise the Applicant to make an appointment with the Fire Prevention Bureau at their earliest convenience to begin discussions in addressing and resolving these critical issues to protect the health and safety of employees and guests, and preserve the value of the proposed and existing improvements on the property.

08/18/99

For: Fire Prevention Bureau
(808) 241-6511

Fire Chief

Helber Hastert
Planners

November 5, 1999

Mr. David K. Sproat, Fire Chief
Fire Department
County of Kauai
4444 Rice Street, Suite 295
Lihue, HI 96766

Dear Chief Sproat:

**Environmental Impact Statement Preparation Notice**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared.

For your ease of reference, we will respond to your comments in the order they appear in your letter.

1. The potable system proposed for the Kapalawai Resort will provide fire protection, and are included as part of the overall infrastructure required. A well will be constructed off-site, about ¼ mile mauka of the project site. A storage tank will also be included as part of the project's water system. The volume of the storage tank will provide the maximum day rate plus fire flow for the duration of the fire with the reservoir ¾ full at the start, and with credit for will inflow. Based on RR-10 zoning, fire flow requirement is 1500 gpm for two hours. This translates to a storage requirement of 172,550 gallons. A 0.20 million gallon storage tank is proposed. This information will be included in Appendix J of the DEIS.

   We appreciate all your comments concerning appropriate design considerations, landscaping requirements, and building setbacks. All of these concerns will be incorporated into detailed plans for the project.

2. We recognize the need to provide adequate fire vehicle access throughout the property. These facilities, as well as fire hydrants, will be incorporated into more detailed planning for the project.

3. Several letter writers pointed out the need to have an emergency communication system installed in the cottages. We note this comment

Helber Hastert & Fee
Grosvenor Center, Mauka Tower
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813
Telephone: 808 545-2055
Facsimile: 808 545-2050



and pledge to provide an adequate warning system for employees, guests and others on the property.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

**STATE OF HAWAII**
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
**LAND USE COMMISSION**
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

August 3, 1999

Mr. Keith Nitta
Planning Department
County of Kauai
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

Dear Mr. Nitta:

Subject: Environmental Impact Statement Preparation Notice (EISPN) for Kapalawai Resort, Kapalawai, Kauai, Hawaii

We have reviewed the EISPN for the subject project and have the following comments:

1) We confirm that the project site, as represented on Figure 13, is designated within the State Land Use Agricultural and Conservation Districts. We note that the figure incorrectly refers to the Agricultural District as the "Agriculture" District. As noted on the figure, our office is currently processing a boundary interpretation to delineate the location of the district boundary relative to the project site.

2) We acknowledge that a boundary amendment petition for the subject project will be filed with our office in the future. Clarification should be provided regarding the specific area that will be the subject of the petition.

3) We request that a copy of the Draft Environmental Impact Statement be forwarded to our office for review and comment as soon as it becomes available.

We have no further comments to offer at this time. We appreciate the opportunity to comment on the subject EISPN.

Should you have any questions, please feel free to call me or Bert Saruwatari of our office at 587-3822.

Sincerely,

ESTHER UEDA
Executive Officer

EU:th

cc: OEQC
Lewis Geyser
Scott Ezer

Helber Hastert
Planners

November 5, 1999

Ms. Esther Ueda, Executive Officer
State of Hawaii
Department of Business, Economic Development & Tourism
Land Use Commission
P.O. Box 2359
Honolulu, HI 96804-2359

Dear Ms. Ueda:

**Environmental Impact Statement Preparation Notice**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated August 3, 1999 on the above environmental impact statement preparation notice (EISPN). Your letter will be included in the draft environmental impact statement (DEIS) being prepared.

We note that you have confirmed the project site is within the State Land Use Agricultural and Conservation Districts. The graphic representation of these districts in the DEIS (Figure 6) will include correct designations. We also acknowledge receipt of your boundary interpretation (dated July 28, 1999). We are in the process of certifying a shoreline survey for the property, and will notify your office after certification is complete.

Completion of the shoreline survey certification will also allow determination of the specific area that will be the subject of our future State Land Use Boundary Amendment.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

Helber Hastert & Fee
Grosvenor Center, Mauka Tower
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813
Telephone 808 545-2055
Facsimile 808 545-2050



# 13

## PARTIES CONSULTED DURING THE PREPARATION OF THE FINAL ENVIRONMENTAL IMPACT STATEMENT

# 13.0 PARTIES CONSULTED DURING THE PREPARATION OF THE FINAL ENVIRONMENTAL IMPACT STATEMENT

Notice of the availability of the DEIS prepared for this project appeared in the *Environmental Notice* on November 23, 1999, commencing a 45-day public comment period which ended on January 7, 2000. A copy of the draft environmental impact statement was mailed to the agencies and organizations listed below.

A total of 25 agencies, organizations, or individuals provided written comments on the DEIS. The parties who responded to the DEIS are identified by an asterisk (*) and their respective comments are reproduced in the following pages, along with response letters to the comments. Parties identified by a double asterisk (**) were not on the original mailing list but sent in comments or requested to be considered a consulted party.

## Elected Representatives

The Honorable Avery B. Chumbley, Hawaii State Senator District 6
The Honorable Jonathan Chun, Hawaii State Senator, District 7
The Honorable Hermina Morita, Hawaii State Representative, District 12
The Honorable Ezra Kanoho, Hawaii State Representative, District 13
The Honorable Bertha Kawakami, Hawaii State Representative, District 14
The Honorable Maryanne W. Kusaka, Mayor, County of Kauai
The Honorable Ronald Kouchi, Chair, Kauai County Council
The Honorable Bryan J. Baptiste Kauai County Council
The Honorable Gary Hooser, Kauai County Council
The Honorable Daryl Kaneshiro, Kauai County Council
The Honorable William Swain, Kauai County Council
The Honorable James Kunane Tokioka, Kauai County Council
The Honorable Randal Valenciano, Kauai County Council

## Federal Agencies

Department of Agriculture, Soil Conservation Service
Department of Defense
  Department of the Army, Army Corps of Engineers
  **Department of the Navy, Pacific Missile Range Facility, Barking Sands*** ✓
Department of the Interior
  **Fish and Wildlife Service***
  Geological Survey
Department of Commerce
  National Marine Fisheries Service

## State Agencies

**Department of Accounting and General Services*** ✓ ϕ
Department of Agriculture
Department of Business, Economic Development, and Tourism
  **Land Use Commission*** ✓

Librarian, DBEDT Library
**Office of Planning***
State Energy Office
Department of Defense
**Department of Education**
**Superintendent***
Hawaii State Library
Hanapepe Public Library
Waimea Public Library
Koloa Library
Kapaa Library
Princeville Library
Lihue Regional Library
Hawaii Kai Regional Library
Kaimuki Regional Library
Hilo Regional Library
Kaneohe Regional Library
Kahului Regional Library
Pearl City Regional Library
Department of Hawaiian Home Lands
**Department of Health**
**Office of Environmental Quality Control***
Department of Land and Natural Resources
**Historic Preservation Division***
**Department of Transportation***
**Office of Hawaiian Affairs***
Legislative Reference Bureau
**University of Hawaii**
**Environmental Center***
Hamilton Library
Water Resource Research Center

## County of Kauai Agencies

Office of the County Attorney
**Fire Department***
**Department of Planning***
Chair, Planning Commission
Historic Preservation Review Commission
Police Department
**Department of Public Works***
**Department of Water***
**Civil Defense Agency***
**Office of Economic Development***
**County Energy Coordinator***

## Public Utilities

GTE Hawaiian Tel
Kauai Electric Company

## Community Organizations/Individuals

Amfac Sugar Company
Hanapepe Business Association
Hanapepe Bay Association
Hanapepe Professional Businessmen's Association
Hanapepe Economic Alliance, Inc.
ILWU (Kauai Division)
Judy Naumu Stewart
Kauai Chamber of Commerce
Kauai Economic Development Board
Kauai Visitors Bureau
Kiklaola Land Co., Ltd.
**Life of the Land***
**Sierra Club, Hawaii Chapter***
**Kauai Group of the Hawaii Chapter****
West Kauai Development Corporation
West Kauai Main Street
Dorothea Hayashi
**Arius Hopman****
**Richard Knobel****
**Warren Scoville****
**James Powell****

## Newspapers

The Garden Island Newspaper
Kauai Business Report
Honolulu Advertiser
Honolulu Star-Bulletin

DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM

OFFICE OF PLANNING
235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

BENJAMIN J. CAYETANO
GOVERNOR
SEIJI F. NAYA, PH.D.
DIRECTOR
BRADLEY J. MOSEMAN
DEPUTY DIRECTOR
DAVID W. BLANE
DIRECTOR, OFFICE OF PLANNING

Telephone: (808) 587-2846
Fax: (808) 587-2824

Ref. No. P-8410

December 29, 1999

Mr. Dee Crowell
Planning Director
Planning Department
County of Kauai
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

Dear Mr. Crowell:

Subject: Draft Environmental Impact Statement (DEIS)
Kapalawai Resort, Waimea, Island of Kauai
TMK: (4) 1-7-05: 01

We have reviewed the subject DEIS and offer the following comments for your consideration.

It is our understanding that the proposed Kapalawai Resort, containing 250 visitor cottages dispersed throughout the 170-acre site, will target "ecotourism" or "nature-based tourism". Based on an occupancy of 1.95 people per unit, and an average overall occupancy rate of 75 percent after three years, the DEIS estimates an average of about 365 visitors per day by 2004. In addition, about 143 operational employees would be present on an average day. During the year of construction, there could be about 240 construction workers on-site on any given day.

Given these numbers, it is our recommendation that other proposed developments at Waimea/Kekaha be included in the discussions to update the Waimea-Kekaha Regional Development Plans prepared for the County of Kauai in 1977. The land use designations for the project site at that time were Agriculture and Open Space. The significance of the Koloa-Poipu resort area should also be discussed in relation to the proposed resort at Kapalawai.

Thank you for the opportunity to comment.



Should you have any questions, please call the Land Use Division at 587-2842.

Sincerely,

David W. Blane
Director
Office of Planning

cc: Seiji F. Naya
Ms. Esther Ueda, LUC
Office of Environmental Quality Control
Destination Villages Kauai, LLC
Helber Hastert & Fee

Helber Hastert
Hawaii

March 9, 2000

Mr. David W. Blane', Director
Office of Planning
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, HI 96804

Dear Mr. Blane:

**Draft Environmental Impact Statement**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter of December 29, 1999 on the above draft environmental impact statement preparation notice (DEIS). Your letter will be included in the final environmental impact statement (FEIS) being prepared.

Comments in your letter suggest that other proposed developments in Waimea/Kekaha, and the significance of Koloa-Poipu resort area should be included in the discussions to update the Waimea-Kekaha Regional Development Plan. As explained in the DEIS, the County of Kauai is now in the process of updating the General Plan, not the Waimea-Kekaha Regional Development Plan. The General Plan update involves the entire island, including Waimea/Kekaha and Poipu. In early December, draft recommendations for the General Plan update were released, including a change in the designation for the Kapalawai property to "Resort."

The review of these recommendations, and the entire General Plan update, by the County Planning Commission and County Council, will take place later this year.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

MARYANNE W. KUSAKA
MAYOR

DEE M. CROWELL
PLANNING DIRECTOR
SHELAH N. MIYAKE
DEPUTY PLANNING DIRECTOR

PLANNING DEPARTMENT

January 3, 2000

Scott Ezer
Helber Hastert & Fee, Planners
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813

SUBJECT: Kapalawai Resort Draft Environmental Impact Statement (DEIS)
Kapalawai, Kauai, Hawaii

We have the following comments to offer regarding the DEIS:

- Please be aware that this project will be subject to the review and recommendations of the Kauai Historic Preservation Review Commission (KHPRC). We recommend that our office be contacted to obtain more information concerning this matter. Rick Tsuchiya is the contact person for the Planning Department on this matter.
- A list of native plants which will be used to landscape the project should be included in the information provided at the Public Hearings with the Planning Commission.
- Will the water system remain private?
- Likewise, will the sewer system remain private?
- Because the property is currently restricted to the public for general access (with the exception of the shoreline access adjacent to the existing stream), it is important that public access be allowed within the project. It is recognized that public access throughout the entire project presents concerns about security and vandalism. However, there should be provision for access within the project site. It would be prudent to have an access plan available since this matter will be come up throughout the process of obtaining entitlements and permits.
- We note that a beach access/public facilities plan has yet to be developed. Our concern is that the burden of developing such a plan not be placed on the County. The developer should have a proposal prior to Planning Commission action on the General Plan amendment. This matter could be incorporated into the access plan.

Kapule Building • 4444 Rice Street, Suite 473 • Lihu'e, Kaua'i, Hawai'i 96766
AN EQUAL OPPORTUNITY EMPLOYER

- According to the proposal, 170 acres of Agricultural (State Land Use District) lands are proposed to be redistricted into the Urban State Land Use District to accommodate 250 visitor units which amounts to approximately 1.5 units per acre in comparison to the standard 20 to 40 visitor units per acre. This vast amount of acreage to accommodate 250 units is of concern since an Urban District designation will allow for other types of zoning permitted within the Urban District to occur within the 170 acres. Therefore, it is extremely important that controls be incorporated to ensure that the other Urban uses beyond the hotel use not occur prematurely.

- As a matter of information, our office is in the process of updating our current General Plan. At this point it appears that the General Plan Update (GPU) project will run concurrently with this application. There may be overlap, and as a result the timing aspects of this application with our GPU project should be discussed further.

- Should the outcome of the General Plan Amendment and State Land Use District Boundary Amendment process be favorable, an updated project completion schedule along with an updated economic impact analysis should be submitted at the time of Zoning Amendment.

- Please be aware that the Kikiaola Land Co., Ltd. is also applying for a General Plan change to their mauka lands. Because there are now two large scale projects being proposed on the west side which has experienced very little growth in comparison with the rest of the island throughout the years, we will have to evaluate both applications on a concurrent basis.

- Buildings should be setback from the shoreline due to hazard mitigation and visual impact concerns. The extent of the building setback should be addressed at the time of Zoning Amendment.

Thank you for the opportunity to comment, and should you have any questions, please feel free to contact Keith Nitta of my staff at 241-6677.

DEE M. CROWELL
Planning Director



March 9, 2000

Mr. Dee M. Crowell, Director
County of Kauai
Planning Department
4444 Rice Street, Suite 473
Lihue, HI 96766

Dear Mr. Crowell:

**Draft Environmental Impact Statement**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated January 3, 2000 on the above draft environmental impact statement (DEIS). Your letter will be included in the final environmental impact statement (FEIS) being prepared. For your ease of reference, we will respond to your comments in the order they appear in your letter.

Kauai Historic Review Commission (KHPRC). We recognize that KHPRC will review the proposed project. In fact, representatives of the applicant appeared at a recent meeting of the KHPRC (January 6, 2000) to discuss the Kapalawai Resort. Future meetings with KHPRC, including a site inspection, are contemplated as the permit processing continues.

Native Plants. Specific native species to be used in the landscaping for the Kapalawai Resort will not be identified until landscape plans are prepared at a later date. However, we will be prepared with a list of potential species appropriate for use at Kapalawai.

Water/Wastewater Systems. All aspects of these utility systems will remain private.

Public Access Plan. We acknowledge the need to develop a clear plan identifying public access through the property to the shoreline, and within the property to the fishpond. We also understand that public facilities should also be identified. We will be discussing these issues within the West Kauai community in the next few months, and will have a plan available for discussion during public hearings on the applicable General Plan Amendment and Zoning Amendment.

**Control of Urban Uses.** We share your concern about the potential for expanded use of Urban-designated portions of the project site. We wish to make it clear that the scale of the proposed resort is the limit of development sought by the applicant.

**General Plan Update.** We note that the County of Kauai is in the process of updating the General Plan and that public discussion and hearings on the update may overlap with the petition for a General Plan Amendment filed by Destination Villages, LLC for the Kapalawai Resort. We pledge our commitment to continued discussions with the Planning Department during the review of these two matters.

**Project Schedule/Economic Impact Analysis Update.** If petitions for a General Plan Amendment and State Land Use District Boundary Amendment are favorable, we shall submit updates to the project schedule and economic impact analysis.

**Kikiaola Land Company.** We are aware that Kikiaola Land Company has also submitted a petition for a General Plan Amendment, and that both applications will be evaluated concurrently.

**Shoreline Building Setback.** We agree that it is most appropriate to determine building setbacks due to hazard mitigation and visual impact concerns at the time of Zoning Amendment.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Lewis Geyser, Destination Villages Kauai, LLC

LIFE OF THE LAND

*Ua Mau Ke Ea O Ka 'Aina I Ka Pono*
Hawai'i's own local Community Action Group
Protecting our Fragile Natural & Cultural Resources
through Research, Education, Advocacy & Litigation

January 5, 2000

Scott Ezer
Helber Hastert & Fee, Planners
733 Bishop Street, Suite 2590
Honolulu, HI 96813

Keith Nitta
Department of Planning
County of Kauai
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

re: Kapalawai Resort Draft Environmental Impact Statement

We can not understand why the developer will not discuss the ramifications of proposing to build resorts on agricultural lands on two different islands. The state constitution, which covers the entire state, promotes the preservation of agricultural lands. Kapalawai and Puaena are both planned resorts on non-resort zoned lands.

Zoning Laws are designed to bring about an orderly, well-defined change. Planning allows for adequate development of infrastructure. The alternative is spot zoning where developers build whatever they want wherever they want.

The Kaua'i 2020 Vision Plan (CAC Draft 3: 1/27/99) states:

"Land use regulations specifically provide for rural residential communities, with design standards to preserve open space and landscape features. Regulations and tax incentives are structured to promote legitimate agriculture enterprises and to increase opportunities for small farmers. ... We support our farm entrepreneurs in helping to keep Kaua'i green. Large- and small-scale agriculture and aquaculture operations occupy substantial tracts of prime agricultural land throughout the island. Forest plantations are maturing on large and smaller tracts of land. County land use regulations and property tax incentives promote active agricultural and forestry use of agricultural lands."

Comprehensive planning and sound reasoning should be used to develop General Plans, Regional Plans and Development Plans. Comprehensive planning forces the municipality to focus on sound planning reasons when it makes its decision. As the Hawaii Supreme Court has noted: "Zoning ordinances are in derogation of the common law, and their provisions must be strictly construed."

"The current [Kauai] General Plan designations for the project site are Open and Agriculture" (EISPN page 36) "The land use map of the *Waimea-Kekaha Regional Development Plan* was intended to establish a 10 to 15 year policy on moderate growth and development of the region. Land use designations for the project site were identified as Agriculture and Open Space." (EISPN page 38) "The Comprehensive Zoning Ordinance for the County of Kauai (CZO) define the allowable uses of land within Kauai County. ... the project site is a mix of "Open," and "Agriculture" zoning. Resort uses are not permitted in either the Open or Agriculture zoning districts." (EISPN page 39) "Approximately 80 percent of the property lies within the SMA" (EISPN page 39)

* 76 North King Street * Suite 203 * Honolulu, Hawai'i 96817 * phone: 533-3454 * fax: 533-0993 *
* email: <lifeoftheland@hotmail.com> *

"Agriculture is keeping Kaua'i green and economically healthy through a variety of crops and products from both large corporate and small farms. Aquaculture is also a strong and growing industry contributing to local markets and exports. ... The market for organically- grown crops is increasing. ... Kaua'i now produces 50 percent of its own food, reducing food imports and keeping more money in the community. ... Small farmers on Kaua'i are thriving and profitable. ... Kaua'i's larger corporate agriculture and aquaculture businesses are volume exporters for niche markets. ... Their ability to weather varying market conditions lends stability to the Kaua'i economy. ... State and county government support diversified agriculture by offering tax incentives; maintaining the agricultural irrigation and road infrastructure on State-owned lands; and managing affordable agricultural parks." The Kaua'i 2020 Vision Plan (CAC Draft 3: 1/27/99)

"Noted for its low-key development, dry and sunny climate, and laid-back lifestyle, the West Side offers surprising diversity. It includes small-town communities; vast agricultural lands; the unique resources of Waimea Canyon, Kokee and other mauka wilderness areas; and the high-technology Pacific Missile Range Facility. ... Agricultural lands have been preserved from sprawling subdivisions." Vision for the West Side Planning District (Draft 1/99)

The Kapalawai project has far more restrictive zoning than the Pua'ena project. Both projects test the same principle. Can a developer propose a project which directly violates zoning laws that were just enacted or are in the process of being enacted. The Kapalawai project goes one step further: can the developer propose to look only at alternatives which violate the current zoning for the property? These are heavy issues. The DEIS MUST look at the CUMULATIVE IMPACT of proposing a series of eco-camps that propose altering the way agricultural lands are used. Agricultural lands are protected by the State Constitution. This must be part of the analysis.
1. How are the projects in line with court rulings, Land Use Commission rulings, and Administrative rulings?

The land is zoned agricultural. Why were only four Resort alternatives looked at? Life of the Land would like to see fully developed alternatives reviewed. These alternatives should include ALL less intense uses for the land such as: (1) AG-2 Agricultural Lot Subdivision; (2) Livestock Options; (3) Diversified Agricultural Operations; (4) Agricultural Service Center; (5) Historical Site; and (6) Rural/Residential.

"Elements of a healthy economy: Preservation of our special environment and culture; Expanding and building local markets and reducing imports, resulting in more money remaining in the local economy; More jobs, with higher wages reflecting a variety of profitable businesses seeking qualified employees; A strong education system which prepares Kaua'i's children, teens, college students and adults to work in the diversified economy." The Kaua'i 2020 Vision Plan (CAC Draft 3: 1/27/99)

How can the public pass meaningful zoning laws if anyone can easily overturn them?
Please explain the non-conformance of the project with each section of the General Plan, Regional Plan and CZO.

Will Kapalawai Resort help diversify the economy? How? Please be specific.
Will the county economy be more or less diversified if your project is approved? How?

Mahalo.

Henry Curtis

Henry Curtis
Executive Director

Heller Hastert
Planners

March 9, 2000

Mr. Henry Curtis, Executive Director
Life of the Land
76 North King Street
Honolulu, HI 96813

Dear Mr. Curtis:

**Draft Environmental Impact Statement**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated January 5, 2000 on the above draft environmental impact statement (DEIS). Your letter and this response will be included in the final environmental impact statement (FEIS) being prepared

We note your reference to the Constitution of the State of Hawaii, and its requirement to preserve agricultural lands. Article XI, Section 3, of the State Constitution includes the pertinent language in regard to agricultural land. While you correctly assert that preservation of agricultural land is important, you fail to apply the conditions under which land should be deemed to be worth preservation. The State Constitution also requires the Legislature to develop standards and criteria to determine which lands should be deemed important. As you are aware, since the adoption of this language in 1978, no such standards and criteria have been developed.

Further, agricultural preservation is actually one of the primary reasons the Robinson Family decided to seek resort use of the Kapalawai property. It is significant to note that this property has been one of the primary residences for the family since the latter part of the 19th century, and has never been included in the lands used for agricultural production. The instability in sugar markets has caused the Family to consider other sources of income to offset this instability, thereby supporting continued agricultural use elsewhere in the region.

In addition, the dual purpose of preservation of the historic resources on the property is accomplished. Without development of the property, which includes the integration of historic resources into site planning, valuable cultural assets will suffer from lack of attention and maintenance.

You also contend that the proposed project is not based in sound planning principles, and somehow violates zoning laws. In our earlier letter to you (November 5, 1999), we said that land use approvals for the resort will include a State Land Use District Boundary Amendment, a County of Kauai General Plan Amendment and Zoning Amendment, in addition to a Special Management Area Use Permit, among

others. All procedures and land use requirements will be strictly adhered to, including the provision for public hearings before State and County agencies and bodies with jurisdiction over land use matters. Adherence to these requirements reinforces accepted land use laws, rather than ignoring them.

To support your claim that the proposed resort contravenes current planning efforts underway to update the County of Kauai General Plan, you liberally excerpt language from the *Kauai 2020 Vision Plan*. One section of this plan also deals with the visitor industry. This section of the plan specifically suggests that additional visitor units, residential in style, are intended to be developed in West Kauai. In addition, the current draft General Plan Update report contains recommendations to designate the Kapalawai site "Resort."

The development of the Kapalawai Resort will diversify the economy of West Kauai, and the entire island. In the case of West Kauai, the only visitor units (a total of 50) presently in the region are found at the Waimea Plantation Cottages property. The addition of visitor units at Kapalawai will broaden the presence of the visitor in industry in West Kauai, thus diversifying its economy. In addition, the style of development, and the emphasis on the historic features of the property will appeal to visitors who might not otherwise choose to travel to Kauai. The visitor market is not homogeneous, and is actually made up of many different markets. The Kapalawai Resort will help to broaden the diversity of product type found on Kauai, thus diversifying the overall appeal of the Kauai market.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII

BRUCE S. ANDERSON, Ph.D., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer to
File

January 7, 2000

99-166A/epo

Mr. Keith Nitta
Department of Planning
County of Kauai
Kapule Building
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

Dear Mr. Nitta:

Subject: Draft Environmental Impact Statement (DEIS)
Kapalawai Resort
Kapalawai, Waimea District, Kauai
TMK: 1-7-05: 1

Thank you for allowing us to review and comment on the subject document. We do not have comments to offer at this time.

Sincerely,

GARY GILL
Deputy Director for
Environmental Health

c: Destination Villages Kauai, LLC
Helber Hastert & Fee, Planners
KDHO

Helber Hastert
Planners

March 9, 2000

Mr. Gary Gill
Deputy Director for Environmental Health
State of Hawaii
Department of Health
P.O. Box 3378
Honolulu, HI 96801

Dear Mr. Gill:

**Draft Environmental Impact Statement**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated January 7, 2000 on the above draft environmental impact statement preparation notice (DEIS). Your letter will be included in the final environmental impact statement (FEIS) being prepared.

We note that you have no comments on the DEIS to offer at this time.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Pacific Islands Ecoregion
300 Ala Moana Boulevard, Room 3122
Box 50088
Honolulu, Hawaii 96850

In Reply Refer To: LLLW

JAN 11 2000

Mr. Keith Nitta
County of Kauai
Department of Planning
4444 Rice St. Suite 473
Lihue, HI 96766

Re: Draft Environmental Impact Statement for the Kapalawai Resort, Kauai, Hawaii

Dear Mr. Nitta:

The U.S. Fish and Wildlife Service (Service) has reviewed the referenced October 1999 Draft Environmental Impact Statement (DEIS), which was received in our office on November 23, 1999. The project sponsor is Destination Villages Kauai, LLC. The Service offers the following comments for your consideration.

The proposed project involves the development of a 250-unit resort with accessory facilities including the restoration of several existing features. These features include a residence, a fishpond, and grounds that incorporate streams, springs, and beachfront.

In general, the Service believes that the DEIS adequately describes the proposed action and the primary fish and wildlife resources located at the proposed project site. The Service believes that among the alternatives considered in the DEIS, the preferred alternative is the action least likely to impact fish and wildlife resources. Potential impacts to fish and wildlife resources have been adequately addressed in the DEIS, and the mitigation that is proposed is adequate to minimize anticipated unavoidable impacts to fish and wildlife resources. The Service recommends that the Final Environmental Impact Statement (FEIS) confirm that each of the stated mitigation measures in the DEIS will be implemented as part of the project. We also recommend that each individual "best management practice" that will be implemented be identified in the FEIS as well.

The Service appreciates the opportunity to provide comments on the DEIS. If you have questions regarding these comments, please do not hesitate to contact Fish and Wildlife Biologist Lorena Wada by telephone at (808) 541-3441 or by facsimile transmission at (808) 541-3470.

Sincerely,

Paul Henson
Field Supervisor
Ecological Services

cc: USEPA - Region IX, Honolulu
NMFS-PIAO, Honolulu
DAR, Hawaii
DOFAW, Hawaii
CZMP, Hawaii
CWB, Hawaii
Destination Villages Kauai, LLC
Helber Hastert & Fee, Planners



Helber Hastert
Planners

March 9, 2000

Mr. Paul Henson, Field Supervisor
Ecological Services
U.S. Department of the Interior
Fish and Wildlife Service
300 Ala Moana Blvd., Room 3122
Honolulu, HI 96850

Dear Mr. Henson:

Draft Environmental Impact Statement
Kapalawai Resort
Kapalawai, Kauai, Hawaii

Thank you for your letter dated January 11, 2000 on the above draft environmental impact statement (DEIS). Your letter and this response will be included in the final environmental impact statement (FEIS) being prepared.

You suggest that the FEIS confirm that each of the stated mitigation measures will be implemented. A main purpose of the EIS process is to develop actions that can be implemented that will wither eliminate or reduce anticipated impacts of project development. To this end, it is intended that these mitigation measures be implemented. Ordinarily, these mitigation measures are included in final approvals granted by approving agencies. We would support and encourage the mitigation measures discussed in the EIS to be adopted as conditions of approval by these approving agencies.

In regard to best management practices (BMPs), we cannot identify each such practice that will be implemented for Kapalawai at this time. We can however, identify a range of BMPs that could be implemented depending on final design.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION
Kakuhihewa Building, Room 555
601 Kamokila Boulevard
Kapolei, Hawaii 96707

December 14, 1999

Mr Keith Nitta
Planning Department
County of Kauai
4444 Rice Street, Suite 473
Lihue, Kaua'i, Hawaii 96766

LOG NO: 24575
DOC NO: 9912NM05

Dear Mr Nitta

SUBJECT: Chapter 6E-42, Historic Preservation Review -DEIS for Kapalawai Resort
TMK: 1-7-05: 01
Waimea, Kauai

We have reviewed the archaeological inventory survey report for this project, and revisions are needed before it is acceptable We have attached our review comments to this letter (9908NM14). We will let you know in writing once we receive an acceptable report

At this time 5 historic sites are in the project area -- one inland fishpond apparently dating back to precontact times and rock walls, a clearing platform, the main Robinson house complex, and a Portugese Oven all associated with late 1800s-early 1900s times. One of our concerns with the report is that it clarify more definitively that subsurface precontact archaeological deposits are unlikely to be present Apparently they are not, but this needs to be clearer.

It appears that the important historic sites will be preserved, and some of these preserved sites will be restored In concept, we agree with this mitigation commitment, although we cannot finalize our comments until we receive the revised report which is to clarify some concerns For example, we think that one site (a late 1800s-early 1900s clearing mound) may not need preservation. At that time, we can recommend specific mitigation conditions to your agency to ensure that the development will have "no adverse effect" on significant historic sites

Eventually, detailed mitigation plans for interpretation and restoration will need to be developed and be reviewed by our staff.

If you have any questions, please call Nancy McMahon at 742-7033.

Aloha,

DON HIBBARD, Administrator
State Historic Preservation Division

NM lm

ATTACHMENT 9908nm14.doc

c Lewis Geyser, Destination Villages Kauai, LLC, 4439 Via Abrigada, Santa Barbara, CA 93110
Scott Ezzo, Helber, Hastert and Fee Planners, 733 Bishop Street, Suite 2590, Honolulu, HI 96813

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION
Kakuhihewa Building, Room 555
601 Kamokila Boulevard
Kapolei, Hawaii 96707

December 8, 1999

Mr. David Shideler
Cultural Surveys Hawaii
733 N. Kalaheo Avenue
Kailua, Hawaii 96734

LOG NO: 24087
DOC NO: 9905NM14

Dear Mr. Shideler:

SUBJECT: Historic Preservation Review -- Archaeological Inventory Survey for the Proposed Kapalawai Resort- Kapalawai, Koloa, Kaua'i
TMK: 1-7-05: por.1

This letter reviews the survey report which you sent July 30, 1999 (Zulick et al 1999. Archaeological Inventory Survey Report for 170 Acres Including a 6-Acre Inland Fishpond . Cultural Surveys Hawaii ms.).

We agree that the survey is likely to have found all historic sites, if your firm clarifies that subsurface testing is likely to have found any major subsurface archaeological deposits of precontact to early 1800s age that might have been present. Five historic sites were found. Most are associated with the late 1800s-early 1900s residence in the project area (e.g., 762 - rock walls, 763- stone platform, 764-House complex, 766- Portuguese oven ). One site (765-Kekupua Fishpond) seems to have been used back into precontact times.

The background section needs some minor correction, but it also needs two major additions (an analysis of Mahele era land use patterns and a summary of the ahupua'a settlement pattern and likely site pattern in the project area ). Thus, this section needs some revision (see attachment). We request some minor clarification's on the descriptions and interpretations of the sites (see attachment). Also, we request a summary paragraph or two on general site patterns in the Conclusion (see attachment).

The significance evaluation section needs some revisions before it will be acceptable. Please see the attachment for specifics. Generally, we agree with the evaluations, but we request clarification on one or two sites.

The mitigation commitments also need clarification. Your firm seems to be recommending that all the sites be preserved, but this is not clear to us.

Thus, the report needs some revisions and needs to be re-submitted for our review, before we can evaluate significance of the sites and mitigation proposals. However, the revisions are all relatively minor – predominantly being clarification's. As always if you disagree with our comments or have any questions, please contact our review staff right away. Nancy McMahon is our contact for this review (742-7033).

Aloha,

DON HIBBARD, Administrator
State Historic Preservation Division

NM:amk

c. Scott Elder
Dee Crowell, County of Kauai



*ATTACHMENT*

***Needed Revisions to Archaeological Inventory Survey Report***
***Proposed Kapalawai Resort***

***CSH***

---

**Historical Background -- Summarizing the Ahupua'a Settlement Pattern and Predicting the Likely Site Patterns in the Project Area**

1. p. 10. It would be good to have a map clearly showing the ahupua'a borders, as this is a less commonly studied ahupua'a. Perhaps Figure 4 and 7 could have the borders shown as bold black lines.

2. p. 16, par. 3. There were 116 Mahele land claims (apparently), but you have not sampled these claims to indicate specific land use patterns at this time -- where the houses were, where the fields were, etc. This is a requirement of our minimal standards. It is important to document these patterns, because these are verified land use patterns present in 1840s and help supply a context for predicting archaeological sites that still might be present and for evaluating significance. Again, a sample would be sufficient.

3. p. 19 Here you indicate some history on the Kapalawai house. It would be good to mention if it has been recorded in the statewide inventory.

4. It was interesting reading the Robinson Family history. It appears oral interviews were conducted for one site. Where there other oral interviews conducted? This information should be clarified in the report. Are there still residents who lived where the workers houses are that could be interviewed? Were the Robinson and heirs interviewed? This clearly is a line for mitigation work, but you could address this. It could go in the background or in the methods section.

5. The Bennett map is included, and the sites presented in the report should be readable and presented on page 7 or 4.

6. Page 27. There is no summary of the ahupua'a settlement pattern at different points in time, nor of the sites likely to be present in the project area. This is required and needs to be added. You have compiled a fair amount of information and that (with the Mahele information to be added) should help you easily do this task. Clearly, you have a fishpond in the project area dating to 1840 times and earlier, but the general context for the ahupua'a and likely patterns in the project area must be clear. Similarly, you have some information on the late 1800s and the house construction, but you need the context briefly summarized for that period also.

*Methods (pp. 5-6)*

1. What kind of oral history did you do? Are there still camp workers who could tell you about the rock walls and terraces in the camp area? Some background on oral history done and also possible is needed here to clarify what you did.

2. Why were controlled excavations not done to try to date the walls. Our staff did talk to you about this and you felt no information could be gathered. You need to state in the methods section how and why you choose your test excavation locations..

*Findings -- Site Descriptions, Functions, Age & Conclusions*

1. Site 763.

a. p. 31, Feature F. You need to include an evaluation of function and age.
b. you need to include an evaluation of age of this site with the site discussion.

2 Site 763. Why the conclusion that the function is not clear. Your oral history seems to be quite clear what this site was. Your testing showed nothing to the contrary, correct. Please re-evaluate your conclusion. If you wish to stay with your conclusion fine, but reconsider.

3. Site 764.

a. It seems clear that an architect or architectural historian needs to document this site area. You recommend it for mitigation and recommend preservation, so that is acceptable. In the future, when finding such sites, they should be documented by professionals with expertise in that area.

b. What about the workers area? There is no description apparently of this area. Please include.

c. Technically, many of the walls seem to really be a part of this site. You could collapse them into this site if you wish, or you can leave them as is.

4. Site 766. Where was the Rita's house in relation to the oven, specifically? Also, approximately when was it built. Please include.

5. Summary, pp. 53 area. Somewhere here you need to summarize what precontact to early 1800s sites were found and how this compares to expectations, and you need to summarize late 1800s-1900s sites that were found and how this compares to expectations. The fishpond fits the former, and no housing deposits were present. (Do you feel confident enough with your testing to concluding no major subsurface housing deposits?) For the late 1800s-1900s, you have the house and workers houses and Rita's house and oven beyond, and clearing piles and boundary walls -- probably more details than expected.

6. The iron try pot is listed in appendix but not mentioned in the report.



*Significance Evaluations*

Please separate your Significance Evaluations and your Mitigation Recommendations into two sections. This is a request that we repeatedly make. Please do separate them always in the future. These are two separate steps in the historic preservation process.

1. p. 55, Significance. Please provide a significance table, following common practice. You can show proposed mitigation on it too.

2. The iron try pot Is it considered significant?

*Mitigation Recommendations*

1. The iron try pot. What is the proposed mitigation?

2. If Site 763 is simply a late 1800s-early 1900s clearing mound (as oral history indicates), why preserve it? Please clarify.

3. Site 762. You cannot make a vague recommendation like "Preserve to the extent possible". Are you recommending it (or some features of it) be preserved, and why?

4. Site 764. Are you (as your client's representative) recommending that all features of this site be preserved? Be clear.

5. Site 765. You say the "fishpond is expected to be cleaned and revived". We need more than an expectation. Is the commitment to preserve the fishpond?

**CULTURAL SURVEYS HAWAI'I**
Archaeological Studies
Hallett H. Hammatt, Ph.D.
733 N. Kalaheo Avenue
Kailua, Hawaii 96734
FAX: (808) 262-4950, Fax: 262-9972
e-mail exh@aloha.net

**COVER SHEET FOR TRANSMITTAL**

TO: Ms. Nancy McMahon
State historic Preservation Division, Kauai Office
5532 Tapa Street
Kolea, Kauai 96756

PROJECT: Archaeological Inventory Survey Report for 170 Acres Including a 6-Acre Inland Fish Pond for the Proposed Kapalawai Resort, Kapalawai, Kaua'i, Hawai'i (TMK 1-7-05:por. 1)

DATE/TIME SENT: February 10, 2000

FROM: Matt McDermott

REMARK: Thank you for your review letter of December 8th, 1999, addressed to David Shideler (Log no: 24087 Doc no: 9908NM14) of an earlier version of this report (July 1999). Here is a draft copy of the revised report. All comments from your December 8th, 1999 review letter have been addressed and the report has been substantially augmented and reworked. Attached is an item by item list of the revisions and additions that were made. Also please note that 2 radiocarbon samples from Site 50-30-09-792 (newly discovered traditional-Hawaiian cultural layer) have been sent off to Beta Analytic, Inc., for analysis. The results should arrive any day and you will be sent the information as it is available. The $^{14}C$ dating results are not expected to affect the site description, significance, or recommendations, however. The dating results will be discussed and presented graphically in Appendix 6. Please contact me if you have any questions.

Sincerely,

Matt McDermott.



The revisions you requested in your Dec. 8th, 1999, review letter, addressed to David Shideler (Log no: 24087 Doc no: 9908NM14) are discussed here by the item numbers you gave them in your letter. Please refer to a copy of that letter for the following discussion.

**Under Historic Background you had 6 items.**

Regarding item 1, we have included a Tax Map Key map showing the boundaries of the ahupua'a of Makaweli--this is Figure 6 in the revised report.

Regarding item 2, Section III, F., 1., beginning on page 18 of the revised report, was added to addresses the Mahele land claims.

Regarding item 3, this information about the Kapalawai House was added to the section on the Sinclair-Robinson-Gay Legacy on page 25, paragraph 4.

Regarding item 4, the information you requested regarding the oral interviews was added to the oral interview Methods section, on pages 10 and 11 of the revised report.

Regarding item 5, it is true the map from Bennett is almost illegible. This Figure (#7) could not be improved upon and was left "as is" (page 30 in revised report). However, the information from Bennett that pertains to the project area, including the site numbers and their locations, was plotted on Figure 8 (page 34 of revised report), the previous archaeology figure.

Regarding item 6, summaries of settlement patterns at various points in time have been added to the Historic Background section, see sections III. F. 1. and III. K. 1 (pages 18 and 27, respectively, of the revised report.

**You had two items under the Methods section.**

Regarding item 1, this information was added to the oral histories methods section, on pages 10 and 11 of the revised report.

Regarding item 2, in the methods section for the hand excavated trenches (page 9 in the revised report), there is discussion why excavations were not conducted in the project area walls.

**You had 6 items under the Findings--Site Descriptions, Functions, Age & Conclusions**

Regarding items 1 and 2, the site description for site 763 includes added discussion of site function and age (see pages 38-41 in the revised report). The conclusions regarding site function are still inconclusive, however.

Regarding items 3a, 3b, and 3c for site -764:

3a--Mason Architects, Inc. are documenting and evaluating this site.

3b--a brief description of Features G-N of Site -764 is included on page -764. Based on SHPD's request for better documentation of these workers cottages, Mason Architects, Inc. is documenting and evaluation these features.

3c--The walls were left with their original site/feature designations.

Regarding item 4, the information about Rita's house in relation to the oven and its construction date were added to the -766 site description (see page 46 of the revised report).

Regarding item 5, the summary section has been augmented to include your suggestions (see pages 117-119 of the revised report). The subsurface testing summary (page 116 of the revised report) also includes discussion of results in relation to expectations.

Regarding item 6, the iron try pot has been designated Feature G of site 50-30-09-762. The feature description, significance evaluation, and mitigation recommendations for this feature are included in their perspective sections of the report.

**You had 2 items under Significance Evaluations:**

Regarding item 1, a significance table was prepared (page 120 of the revised report). A separate mitigation recommendations table was prepared (page 123 of the revised report).

Regarding item 2, the iron try-pot has been designated Feature G of site 50-30-09-762. The feature description, significance evaluation, and mitigation recommendations for this feature are included in their perspective sections of the report.

**You had 6 items under Mitigation Recommendations:**

Regarding item 1, the iron try-pot has been designated Feature G of site 50-30-09-762. The feature description, significance evaluation, and mitigation recommendations for this feature are included in their perspective sections of the report.

Regarding item 2, our recommendation to preserve site -763 has been clarified (see page 124 of the revised report).

Regarding item 3, the wording of the recommendations for site -762 has been changed. The site is not recommended for preservation, with the exception of iron try-pot (Feature G). The information content of these features has been adequately recorded with inventory survey documentation. However, to maintain the ambiance of the historic parcel, the project developers are urged to incorporate the features of this site into their project



designs. The iron try-pot is recommended for preservation (see pages 123 and 124 of the revised report).

Regarding item 4, the recommendations for site -764 are based on the work of Mason Architects, Inc. The recommendations for these features are listed in the mitigation table (page 123 of the revised report) and briefly discussed on page 124 of the revised report.

Regarding item 5, the landowner is committed to the preservation, cleaning and restoration of Kekupua Fishpond. See discussion at the top of page 125 of the revised report.

**Subsurface Testing Results**

The documentation and analysis of 23 backhoe test excavations are present in this revised report. This work was done in late January of 2000. Appropriate Methods, Summary, and Site Descriptions, Significance evaluations, and Mitigation Recommendation sections have been added to this revised report. One additional state site number was assigned to the project area based on backhoe testing findings. Site -792 consists of a traditional-Hawaiian cultural layer and a most likely prehistoric/early historic Native-Hawaiian burial. Two charcoal samples from features of site for radiocarbon dating analysis. These results are still not in.

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION
Kakuhihewa Building, Room 555
601 Kamokila Boulevard
Kapolei, Hawaii 96707

January 26, 2000

Mr. Scott Ezer
Helber, Hastert and Fee Planners
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813

LOG NO: 24650
DOC NO: 9912HM01

Dear Mr. Ezer:

Subject: Comments on the Hawaiian Traditional Customs and Practices Study and Sections of the Draft Environmental Impact Statement, Kapalawai Resort
TMK: 1-7-05: 1, Makaweli, Waimea, Kauai

Thank you for submitting for our review the study entitled *Hawaiian Traditional Customs and Practices, Study for Kapalawai, Ahupua'a of Makaweli, District of Kona, Kaua'i* (McGuire, Pyle, Shideler and Hammatt, July 1999). In considering this report we have also reviewed sections of the Draft Environment Impact Statement for the Kapalawai Resort (October 1999) and the archaeological inventory survey report (Zulick et al., July 1999) conducted for the project. The following comments were prepared by the History and Culture Branch of the Historic Preservation Division and may, to some degree, overlap with other comments submitted by our office. You have already received comments from our Architecture Branch (Ltr. Hibbard to Slocumb, October 6, 1999) and from the Archaeology Branch (Ltrs. Hibbard to Shideler, December 8, 1999; Hibbard to Nitta, Dec. 14, 1999). This letter contains our major comments while more detailed comments on specific sections of these documents are included in Attachment 1.

Before discussing the cultural impact assessment, we need to point out that the Historic Preservation Division only has the authority to comment on those customs and practices which are associated with features or specific places that can be considered historic properties as defined in Chapter 6E (HRS) or those practices which could adversely affect identified historic properties. We do not have the authority to evaluate a report or a report's findings if they only address Hawaiian customs, gathering rights, and access issues.

In the case of the Kapalawai assessment, there are three general areas of concern in which we feel we can comment because they, potentially, have a direct bearing on the historic preservation compliance process. The first is the methodology used to identify and interview individuals potentially knowledgeable of past and current Hawaiian customs and practices in the project area. The general methods used to identify traditional customs and



practices are essentially the same as those used to identify historic properties which are significant because of their association with customs, beliefs, and traditions (i.e., those often call traditional cultural properties). The second is assessing whether any features or places identified during the assessment qualify as historic properties and if there is sufficient information to evaluate the significance of these properties. Third, these interviews can be a valuable source of information for describing the recent history of the project area and in developing interpretive themes for individual historic properties or the project area as a whole.

Within our areas of concern, we believe some sections of the cultural assessment need to be revised and expanded and that this could be accomplished in two ways. In general the methods and approaches used during the study appear to represent a good faith effort to identify potentially knowledgeable individuals and to ask the kinds of questions that would elicit information about historic properties and topics applicable to the historic preservation process. We need, however, more specific information on how the interviews were conducted, who was interviewed, and some summary and characterization of what was learned during the interviews. Please indicate if the interviews were taped and transcribed. The report indicated the results of the interviews were negative regarding specific topics, but there is no solid characterization of what was learned from these individuals. Without being able to compare what these individuals knew and didn't know, the results of the interviews appear simply negative and potentially inadequate.

The interviews appear to have identified one historic property that is associated with native Hawaiian traditions, but this is not stated explicitly in the text nor is this association considered when the significance of the property is discussed. This is the association of a *mo'o wahine* with the fishpond. Although there is not much information on this particular *mo'o*, such associations are common in Hawaiian traditions and the proper treatment of *mo'o* was viewed as important to the health and productivity of ponds. We ask that those sections of the inventory survey report and the DEIS which discuss the fishpond and evaluate its significant include this tradition. Some background on the nature and function of *mo'o* in Hawaiian traditions should also be added. Currently, only the *mo'o*'s association with a stone at the pond's edge is noted. While specific stones were known elsewhere to be used to conduct rituals for a resident *mo'o*, the entire pond was generally seen as the *mo'o*'s domain. If this is the only historic property to which a tradition was associated, then this should be specifically mentioned in the report.

If you have any questions, please call Nathan Napoka (587-0040) or Holly McEldowney (692-8028).

Aloha,

DON HIBBARD, Administrator
State Historic Preservation Division

HM:amk

c. Ka'ohulani McGuire, Cultural Surveys Hawaii

**Attachment 1**
**Specific Comments**
**Hawaiian Traditional Customs and Practices Study for Kapalawai, Ahupua'a of Makaweli, District of Kona, Kaua'i;**
**Draft Environmental Impact Statement, Kapalawai Resort;**
**and**
**Archaeological Inventory Survey Report for 170 Acres including a 6-Acre Inland Fishpond for the Proposed Kapalawai Resort, Kapalawai, Kaua'i, Hawai'i**

*Hawaiian Traditional Customs and Practices Study for Kapalawai, Ahupua'a of Makaweli, District of Kona, Kaua'i*

page i, para. 3. In discussing who could have had access to the property, you might want to mention that, potentially, Robinson employees may have had access to some resources on land or in the off-shore waters.

page 5, Synopsis of Interviews. The individuals participating in the interviews should be characterized in more detail and, preferably, named. These kinds of studies and the DEIS are essentially disclosure documents and interested members of the public should be able to reach their own conclusions on the adequacy of the effort. If the individuals interviewed would prefer that their names not be mentioned, then their backgrounds should be characterized in even more detail. In addition to knowing their ages, the gender of the individuals interviewed should be mentioned (e.g., how many were men and how many are women?). What were the occupations and work experiences of these individuals, including their responsibilities as Robinson family employees. Were they all of Hawaiian ancestry or are other ethnic groups represented and were most of them raised in this region of Kaua'i? If the individuals were not prior employees of the Robinsons, what kinds of expertise and experience did they bring to the study?

page 6, para. 3. The interviews are said to have provided useful information on the project area and its history, but very little of this information appears to be incorporated in the existing studies. This paragraph should, instead, tell the reader where this information appears in the various documents that have been or will be prepared.

pages 7 and 8 (Legal Background). A summary of the PASH decision itself should probably be presented here under its own heading as it is the document that ties all these laws and the legal precedents together and reinforces their legitimacy in the modern planning process.

page 10 (Project Area Description). We believe that off-shore areas and marine resources should be more specifically addressed because on-shore developments and access issue could affect any customs and practices potentially associated with off-shore areas. It seems inconsistent for the DEIS to address the project's potential impact on marine resources and then appear to limit the cultural assessment to on-shore areas. As the DEIS commits to providing ocean and shoreline access, addressing the potential of off-shore customs and practices does not seem to introduce any new, unresolvable issues in the planning process. Fishing was mentioned in at least one of the interviews (p. 28) and in the ethnohistorical record (p. 32).



page 19, para. 1. Our understanding of how use rights are generally applied to economically beneficial trees in Polynesia differs somewhat from the statements made here and we do not think, in theory, that known customs necessarily preclude planted trees from being subject to gathering rights by the appropriate families. Economically beneficial trees that were deliberately planted are generally owned by the individuals or families that plant them and it is the act of planting that gives these individuals long-term and often exclusive rights to gather the products of these trees. This includes rights to trees planted on lands that are not under their control. If this were the case here (and we realize this is theoretical), native Hawaiian families could claim customary gathering rights to trees specifically planted by their ancestors. In this case, the coconuts are more likely to have been planted by the Robinsons.

page 25, para. 1. Here and elsewhere there is no clear depiction of what the settlement and landuse patterns were in this region during the early historic period. There is only a general reference to numerous claims being made "inland" and a pattern of there being a high population density inland. How far from the coast are these inland populations and are they located sufficiently far inland to hinder the residents from frequently using the off-shore waters and lands immediately adjacent the shoreline? How far up the valleys in Makaweli do the claims go?

page 27, para. 2. Did anyone know if the particular seaweed found in the fishpond was edible or of some use?

page 29 (Burials). The authors should specifically argue why they believe there are no burials in the project area. An assessment of the probability of burials is not thoroughly discussed in the archaeological inventory report either. Given the presence of substantial sand deposits in the project area, one test pit and surface surveys are not necessarily proof that no burials are present. If the nature of the sand deposits suggest a low probability of burials, this should be argued.

page 29 (Trails). Given the population of Makaweli suggested by the LCA claims and the size of the project area, it seems unlikely that there were "no ancient Hawaiian trails" in the project area. We suggest that this section be reworded. An 1891 map is not particularly early and many smaller trails may not have been depicted on a map of that scale. It may be fair to say that no record of trails was found and to point out that such a record is unlikely given the early acquisition of the property Robinson family and the possibility that they cut off access along any ancient trails when they acquired the property in 1865. When Eliza Sinclair purchased as many LCAs as possible, she may have assumed that she was extinguishing the native tenant access rights of the former LCA owners and their families.

page 29 (*Heiau* and Shrine Sites). The statement that "there are no previously recorded *heiau* within the present project area" should be restated as there were apparently three *heiau* known to have existed in Makaweli which have not been located and, in addition, two unallocated *heiau* are recorded as being somewhere in Kekupua. The conclusions should be worded with more caution. Conceivably, they could have been in the project area unless some evidence suggests otherwise. Is there any evidence to suggest that the stone associated with the *mo'o wahine* was a shrine?

page 32 (Fishing Grounds). In the archaeological inventory report, there is reference to *o'opu* in the streams of Makaweli being considered "sacred" (perhaps *kapu*?). Shouldn't this be added here as part of the known history of streams in or adjacent to the project area?

page 35 (Summary). In a number of respects, we feel the conclusions are stated too strongly and should probably be reworded with less certainty. Paragraph 1 says that there was "no evidence of traditional customs and practices formerly or presently exercised" in the project area. We think it can be assumed that native Hawaiians did "formerly" practice customary gathering and use rights in the project area and in the off-shore waters. Even though there were no native tenant claims within the project area, native tenants living in the *ili* or in Makaweli were likely to have had some rights to gather resources within this portion of the *ili* and to fish in the waters off-shore. This would be particularly true if an *ali'i* had control over all the *ili* within Makaweli. The 1857 lease document discussed in the archaeological inventory report (p. 15), indicates which resources were exempted from the lease of *kuleana* lands, including resources in Kekupua. To us this indicates that the 120 individuals holding the lease had gathering and use privileges for all the other resources which were not exempted. This document could, therefore, be evidence that some form of customary resource use was occurring before Eliza Sinclair acquired the property. Is there some reason this historical document was not included in the cultural impact statement when it seems to contain appropriate evidence that the *kuleana* lands of Makaweli were being used during this time period? The argument that any continuity in the practice of these customs was disrupted by the Robinson's ownership of the land and their management style appears to have merit with the possible exception of off-shore fishing.

We also find it difficult to believe that there were no settlements in the project area in the period prior to the Robinson's acquisition of Makaweli. If we understand correctly, there were residential complexes along the coastal areas at Waimea and Hanapepe regardless of there being greater numbers inland. Is there some reason why this would not be the case in the project area? The conclusion presented here seems to contradict that drawn in the archaeological inventory report (p. 12) which states the following: "Interpretations of pre-contact land use within Makaweli can be extrapolated from Waimea. Coastal occupation and river valley settlement patterns would have mirrored those in Waimea only on a small scale." If nothing more, the fishpond would probably have had a caretaker residing nearby. Archaeological evidence would probably not confirm or deny the absence of settlements given that most of the project area has been heavily altered in recent times. Again, we suggest that these conclusion be reworded.

*Draft Environmental Impact Statement, Kapalawai, Kauai, Hawaii*

page 1-8, para. 2. A mitigation plan will be required for the restoration of the fishpond and it is this plan that would be reviewed by the Historic Preservation Division. It would be clearer if this paragraph makes a commitment to that plan.

page 1-14. As stated in our comments on the cultural impact statement (see comments for page 35, Summary), we feel this conclusion should be stated with more caution and qualifications.



page 1-22 (1-7 Necessary Permits and Approvals). If appropriate, you may want to mention that obtaining an Army Corps permit to clear the fishpond will entail compliance with Section 106 of the National Historic Preservation Act.

page 3-12 (Discussion). In committing to future actions concerning identified historic properties, it would be clearer to state that, as part of the mitigation plan, a preservation plan and interpretive plan will be prepared and reviewed before the plans are implemented.

page 4-27. It should be acknowledged here that interviews with knowledgeable individuals were conducted for the purpose of identifying and evaluating historic properties and this aspect of the study was conducted in conjunction with the cultural impact study.

page 4-35 (Site #50-30-9-765). The association of a *mo'o wahine* with the fishpond should be added to this description of the fishpond.

page 4-42 (Mitigation). This section should state that a mitigation plan will be prepared and implemented for all historic properties identified in the project area. This plan would include interim mitigation measures to protect historic properties during construction and development related activities, a long-term preservation plan, and an interpretive plan.

page 5-10, para. 1. As we commented previously, these conclusions should probably be stated with more caution, particularly the implication that there were no *kuleana* tenants using the project area and that there were no settlements of any kind in the project area.

*Archaeological Inventory Survey Report for 170 Acres Including a 6-Acre Inland Fishpond for the Proposed Kapalawai Resort, Kapalawai, Kaua'i, Hawai'i (TMK: 1-7-05: Por. 1)*

page 1, para. 2. The pond is said to be fed by a natural spring. Elsewhere the pond is said to be fed by three natural springs or multiple springs.

page 56 (State Site #50-30-9-765). In discussing the significance of this fishpond, it should be stated that the association between the pond and the *mo'o wahine* contributes to its significance.

**CULTURAL SURVEYS HAWAI'I**
Archeological Studies
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## COVER SHEET FOR TRANSMITTAL

TO: Mr. Don Hibbard

PROJECT: Hawaiian Traditional Customs and Practices Study for Kapalawai, *Ahupua'a* of Makaweli, District of Kona, Kaua'i (TMK 1-7-05:por. 1)

DATE/TIME SENT: February 25, 2000

FROM: Ka'ohulani Mc Guire

REMARK: Thank you for your review letter of January 26, 2000, addressed to Scott Ezer (Log no: 24650 Doc no: 9912HM01), of an earlier version of this report. Enclosed is a draft copy of the revised report. All comments from your January 26 review letter have been addressed and the report has been substantially augmented. Attached is an item by item list of the revisions and additions that were made. Please contact me if you have any questions.

cc: Holly McEldowney



The revisions you requested in your Dec. 8th, 1999, review letter, addressed to Scott Ezer (Log no: 24650 Doc no: 9912HM01) are discussed here by the item numbers you gave them in your letter. Please refer to a copy of that letter for the following discussion.

Hawaiian Traditional Customs and Practices Study for Kapalawai, *Ahupua'a* of Makaweli, District of Kona, Kaua'i

**Attachment 1 - page 3: you had five items**

Regarding item 1, page i, para. 3: the information regarding the likelihood of employees accessing land and near off-shore resources has been added and can be found on page i, para. 3.

Regarding item 2, page 5: Synopsis of Interviews - This section has been reworked to include the information you requested, i.e., biographical information of the informants, ethnicity and expertise. This can be found under the section, *Methodology for Oral Interviews*, on pages 6-7. (The actual *Synopsis of Interviews*, which includes interview excerpts, is now in its own section and can be found on pages 35-62.)

Regarding item 3, page 6, para. 3: information regarding where the full transcripts and interview excerpts can be found was added to page 6, par. 4.

Regarding item 4, page 7-8 (Legal Background): because the legal interpretations of PASH lie beyond our expertise, it was decided to remove this section from the report completely.

Regarding item 5, page 10 (Project Area Description): information on off-shore areas and marine resources has been added and is found on page 8, par. 3 and also on page 67-69 under "Fishing Grounds, Marine Resources and Shoreline Access".

**Attachment 1 - page 4: you had six items**

Regarding item 1, page 19, para. 1: This paragraph was reworded to incorporate the suggested revision and can be found on page 17, para. 2.

Regarding item 2, page 25, para. 1: A section on settlement and land use patterns has been added and is found on pages 27-30.

Regarding item 3, page 27, para. 2: information that the seaweed was not edible was added and can be found on page 41, par. 1 (after interview excerpt) and page 32, top - in excerpt from interview.

Letter to Don Hibbard
February 25, 2000
Page 3

Regarding item 4, page 29 (Burials): the paragraph on burials has been rewritten based on additional sub-surface testing and information in the Archaeological Inventory Survey (Zulick, *et al.*, 1999 [Draft]). This can be found on page 63, para. 1-2.

Regarding item 5, page 29 (Trails): This section was reworded to incorporate suggested revisions and can be found on page 63, para. 3-4.

Regarding item 6, page 29, para 1 (*Heiau* and Shrine Sites): Revisions to this section were made which disclose that Bennett was unable to locate three *heiau* in Makaweli. This can be found on page 63, para. 6, page 70, para 1. An additional paragraph was added on page 64, par. 1 stating that Goodwin's daughter, Aletha Ka'ohi had no knowledge of *heiau* in the project area. The lack of information regarding the *mo'o* stone being used as a shrine was added and is found on page 65, para 7.

**Attachment 1 - page 5: you had two items**
Regarding item 1, page 32 (fishing grounds): information that *'o'opu* were *kapu* was added and can be found on page 67, para 1 and page 72, para. 1

Regarding item 2, page 35 (Summary) This section was reworded and rewritten to incorporate the suggested revisions and can be found on page 72-73.

ARTUS HOPMAN
Bac. Cum Laude, MAT 2915, Cert, Ed. Kinesiology
ARTUS HOPMAN GALLERY
PO Box 1032, Hanapepe, HI 96713, USA
808-335-0227

TESTIMONY, KAPALAWAI RESORT
1-6-2000

I am opposed to the Kapalawai Resort project as it is now planned, but would be open to it if it were re-planned to fit the communities' needs and the environments' dictates.

—Most of the planned development is makai of the SMA Boundary. It is in a flood zone and is endangered by tsunami--it should be relocated-mauka of the -- SMA Boundary. Special Management is an important designation.

—The planned development is too massive and could disrupt the ethnic flavor of the west side and the comfortable pace of life.

—It would encourage the development of tacky tourist traps and strip businesses.

—Such a massive development this close to the ocean is unecological for *several* reasons and amounts to a private *monopoly* of a public beach. It is not fair to local surfers, fishermen and beachgoers.

—Development out of harmony with the local community results in mounting local frustration and inevitable crime. Such a development could divide the community. Maui and the North Shore are examples of such splintering and escalating crime.

—As a Hanapepe businessman I feel the priority for the West Side is to preserve it's peaceful, local lifestyle. In the long run, that is a far greater asset than development.

—The basic idea of cluster villages is viable and has worked well in Kona Village, Big Island, where the huts are made of bamboo and thatch...and rent for $300/nite. In Kapalawai, more emphasis needs to be placed on sustainability and using natural building materials.

—If the community were involved in the planning and maintainance, rather than a top-down proposal that the owners then have to defend in hearings, a much more dynamic and integrated plan would emerge.

The Robinson family is to be commended for preserving their holdings and development of some kind must be considered reasonable. Public input may result in a much better plan integrated with the general plan of the West Side.
Mahalo.
Artus Hopman, Hanapepe Businessman

Helber Hastert
Fee

March 9, 2000

Mr. Arius Hopman
P.O. Box 1032
Hanapepe, HI 96716

Dear Mr. Hopman:

**Draft Environmental Impact Statement**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated January 6, 2000 on the above draft environmental impact statement (DEIS). Your letter and this response will be included in the final environmental impact statement (FEIS) being prepared.

For your ease of reference, we will respond to your comments in the order they appear in your letter.

SMA boundary. Portions of the property are affected by flood hazards. However, with the exception of small portions of the north-makai portion of the property, Flood Insurance Rate Maps (FIRM) indicate that flooding is not related to tsunami activity, but is the result of streams overtopping their banks. Some of these same areas have been affected by the storm surge from Hurricane Iniki. No development will occur in areas affected by the hurricane storm surge. Buildings located in other areas affected by flooding will be elevated above base flood heights, in compliance with flood hazard regulations.

Project scale. The overall density of the proposed resort is approximately 1.5 visitor units per acre, which is a low density for a resort project. Buildings will be limited to two stories in height, and all of the cottages will be one story. None of the buildings will be visible from Kaumualii Highway. The overall design concept for the resort is intended to complement the existing character of West Kauai.

Encourage poorly designed businesses. Any new development in the region will require review by the County of Kauai Planning Department, and public hearings for community input. The character of Kauai is important to all its residents. Any new development should, and must, be reviewed in the context of design suitability.

Development will increase crime. The resort will employ its own security staff 24 hours a day. This should reduce impacts related to crime on the property.

Helber Hastert
Fee



Preservation of peaceful lifestyle. The Kapalawai Resort is intended to appeal to visitors who enjoy the same peaceful ambience now found in West Kauai. The project's low density, simple design, and historic flavor are suited to Kauai's low-key lifestyle.

Sustainability/natural building materials. The design and building materials for the Kona Village Resort were conceived to create a feeling of traditional Pacific Island construction. Hence, the use of thatch and bamboo The concept for Kapalawai is meant to convey a design that is more contemporary with the former Robinson Family residence which is a centerpiece of the property.

Community involvement in planning and maintenance. Before the applicant submitted any materials related to permit requests to the County of Kauai, several meetings were held to informally present a proposed plan to West Kauai residents. We are always ready and willing to listen to any input from the community. If you would like to arrange a meeting to discuss the project, please contact Mr. Michael Belles, at 247-2405, extension 228.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

SIERRA CLUB
Kaua'i Group of the Hawai'i Chapter
Post Office Box 3412
Lihu'e, Kaua'i, Hawai'i 96766

January 6, 2000

Keith Nitta
County of Kaua'i, Planning Department
4444 Rice Street, Ste 473
Lihue, Hawaii 96766

COUNTY OF KAUAI
'00 JAN -7 P3:50
PLANNING DEPT.

Comments on Kapalawai Resort
Draft Environmental Impact Statement

To the Planning Department:

We have serious reservations about the proposed Kapalawai Resort development. While the developers are to be complimented on their efforts to create a resort that is low density and aims to minimize environmental impacts, we find that the proposed construction of the resort is inappropriate at the present time, and more seriously is inappropriately located.

The change of zoning and the construction of the resort is inappropriate at this time. Kaua'i already has at present more than enough zoning for resort development. This together with the recent approval of the Kukui'ula development, as well as other existing resorts that are to planned to be reopened, means that we will soon exceed out island's carrying capacity.

The location of the resort is inappropriate. There is no compelling public benefit or reason for extending the resort into the SMA zone. Most of the structures would be visible from the beach, thereby not complying with the following policies and objectives of the Coastal Zone Management CZM 205A-2:

CZM 205A-2 b 3 A "Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources",
The plan to locate structures within close proximity to the beach as the project proposes does not protect and preserve the quality of coastal scenic and open space resources, therefore the project does not comply with this guideline.

CZM 205A-2 b 3 B "Ensure that new developments are compatible with their visual environment by designing and locating such developments to *minimize* the alteration of natural landforms and existing public views to and along the shoreline",
While the cottages are nicely designed to blend in with the environment, their mere placement close to the shoreline would interefere with public views to and along the shoreline.

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CZM 205A-2 b3 D "Encourage those developments which are not coastal dependent to locate in inland areas".
In reference to 3D the Kapalawai Resort Draft Environmental Impact Statement explains on page 3-13, "Although the proposed use *is not coastal dependent*, many other successful resorts on Kauai, and throughout the State are typically located on ocean front parcels." Our comment is: since it is not coastal dependent then this project must be encouraged to locate in inland areas to be in compliance with the Coastal Zone Management program.

Since the project as presented is located within the Special Management Area and therefore within SMA jurisdiction, to be exempt from the SMA rules and CZM guidelines the project must be located mauka of the SMA boundary. (Boundary depicted in Figure 7 on page 3-18.)

It is also inappropriate at this time to preempt the present long range planning process of the General Plan Update and all of the citizen input that has gone into it for the past two years.

Thank you for considering these comments.

Monte S. Hall
Monte Hall
Conservation Chair
Kaua'i Group of the Hawai'i Chapter Sierra Club

Helber Hastert
Planners

March 9, 2000

Mr. Monte Hull
Conservation Chair
Kauai Group of the Hawaii Chapter Sierra Club
P.O. Box 3412
Lihue, HI 96766

Dear Mr. Hull:

**Draft Environmental Impact Statement**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated January 6, 2000 on the above draft environmental impact statement (DEIS). Your letter and this response will be included in the final environmental impact statement (FEIS) being prepared.

For your ease of reference, we will respond to your comments in the order they appear in your letter.

**The change of zoning and the construction of the resort are inappropriate at this time.** The County of Kauai's General Plan Update, and the applicant's petition for a General Plan Amendment are actually running a parallel course. This allows the public, the Planning Commission, and the County Council the opportunity to review the proposal in more detail than would otherwise have been available for consideration during the General Plan Update. For your information, the Kauai County Planning Department and its Citizen's Advisory Committee are now in the process of reviewing drafts of the General Plan Update Report (including map changes), and the Kapalawai Resort is included in the current draft of the General Plan recommendations.

**The location of the resort is inappropriate.** A large portion of the project site lies within the Special Management Area (SMA). The area outside of the SMA includes the Robinson Family's former residence and associated accessory buildings. In consideration of the desire to maintain the integrity of this historically significant group of buildings, the central elements of the remainder of the resort buildings were located away from this area, and fall within the SMA. Contrary to your assertions that the public will suffer because of the construction of these buildings, it is precisely because these buildings are within the SMA, that the public will be guaranteed access to the shoreline through the property. It is arguable that the presence of the low-rise simple cottage units will intrude on the quality of coastal scenic and open space resources. The design



of the resort (low-density, low-profile structures), and its landscaping will serve to blend the built environment with the natural environment as seen from the shoreline.

In reference to your concern that the project be located to inland areas, it should be pointed out there is no prohibition of oceanfront development. If oceanfront development does occur, it needs to be undertaken in a manner that is sensitive to all appropriate environmental considerations and mitigation efforts. It has never been suggested that the Kapalawai Resort be exempted from the requirements of the County of Kauai procedures and regulations for the SMA. The EIS is the first step toward achieving necessary government approvals, including a Special Management Area Use Permit (SMP).

You also suggest that the proposed resort preempts the ongoing General Plan Update now underway, with the assistance of a citizen's advisory committee (CAC). It should be pointed out, that from the outset of this process the Robinson Family has indicated its desire to develop the Kapalawai properly as a resort. The Kauai 2020 Vision Plan includes language that supports additional visitor units on the West Side, and recommendations now before the CAC include designating the Kapalawai property for resort development. Rather than preempting the General Plan Update, this EIS is supporting the process in a parallel fashion.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

MARYANNE W. KUSAKA
MAYOR

VIRGINIA M. KAPALI
DIRECTOR

COUNTY OF KAUAI
OFFICE OF ECONOMIC DEVELOPMENT
4444 Rice Street, Suite 300 Lihue, Hawaii 96766
Tel (808) 241-6390 Fax (808) 241-6399

December 28, 1999

Mr. Dee Crowell, Planning Director
Kauai Planning Director
4444 Rice Street
Lihue, HI 96766

ATTN: Keith Nitta, Planner

RE: Kapalawai Resort - Draft Environmental Impact Statement, October 1999

Thank you for the opportunity to comment on the Draft EIS for the Kapalawai Resort project planned to be developed in West Kauai. As the County Office of Economic Development, we promote economic opportunities towards the development of a healthy and balanced economy for Kauai's residents. We offer the following comments:

In review of the Draft EIS, the development of Kapalawai is projected to infuse in the local community a welcomed economic stimulus. By year 2001, an anticipated 240 construction workers will be on site with a multiplier effect of $30.2 million in the purchase of goods and services. The projected long-term ecoonomic impact is far reaching to the west side community, as Kapalawai should offer an opportunity for a stabilized workforce in the resort operations.

The new revenue source in terms of direct visitor expenditures, creation of business enterprises, increased property valuation, and increased personal income for our local residents will provide an economy of scale in a rural area. Most importantly, the applicant has committed that Kapalawai Resort will preserve the historic and cultural value of the property and achieve a unique hospitality product symbolic of the natural rural character of West Kauai.

Although 1999 has been a benchmark year in Kauai's economy, our unemployment rate at 6.9% (Nov. 1999) still show that we are nearly double than the national average. To this end, we continue to strive and seek solutions to stimulate our Island economy and promote job opportunities for Kauai's residents.

Should you have any further questions, please call our office for assistance.

Sincerely,

Virginia M. Kapali

Virginia M. Kapali
Director

cc: Mayor Maryanne Kusaka
Office of Environmental Quality Control
Lewis Geyser, Destination Villages Kauai, LLC
Scott Ezer, Helber Hastert & Fee, Planners

Helbert Hastert
Planners

March 9, 2000

Ms. Virginia M. Kapali, Director
County of Kauai
Office of Economic Development
4444 Rice Street, Suite 200
Lihue, HI 96766

Dear Ms. Kapali:

**Draft Environmental Impact Statement**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated December 28, 1999 on the above draft environmental impact statement (DEIS). Your letter will be included in the final environmental impact statement (FEIS) being prepared.

We note that your comments reflect the projected long-term economic impacts of the proposed resort, and the opportunity for a stabilized work-force in the resort operations. We also appreciate your recognition that the applicant has committed to the preservation of the historic and cultural value of this important property, and that Kapalawai Resort will achieve a unique hospitality product that complements the existing character of West Kauai.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

PHONE (808) 594-1888 FAX (808) 594-1865

**STATE OF HAWAI'I**
**OFFICE OF HAWAIIAN AFFAIRS**
711 KAPIOLANI BOULEVARD, SUITE 500
HONOLULU, HAWAI'I 96813

December 14, 1999

Mr. Keith Nitta
Department of Planning
County of Kaua'i
4444 Rice Street, Suite 473 (EIS #353)
Lihu'e, HI 96766

Subject: Draft Environmental Impact Statement (DEIS)
For Kaplawai Resort, Waimea, Kaua'i
TMK: (4) 1-7-05:01

Dear Mr. Nitta,

Thank you for the opportunity to comment on the above referenced project. At this time, the Office of Hawaiian Affairs have no comments to the proposed project. If you have any questions, please contact Mark A. Mararagan, Policy Analyst-Government Regulations at 594-1945.

Sincerely,

Colin C. Kippen, Jr.
Deputy Administrator

cc: OHA Board of Trustees
Kaua'i CRS
Office of Environmental Quality Control (OEQC)
Mr. Lewis Geyser, Destination Villages Kaua'i, LLC
Mr. Scott Ezer, Helbert Hastert & Fee, Planners

Helber Hastert
Planners

March 9, 2000

Mr. Colin Kippen, Deputy Administrator
State of Hawai'i
Office of Hawaiian Affairs
711 Kapiolani Boulevard, Suite 500
Honolulu, HI 96813-5249

Dear Mr. Kippen:

**Draft Environmental Impact Statement**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated December 14, 1999 on the above draft environmental impact statement (DEIS). Your letter will be included in the final environmental impact statement (FEIS) being prepared.

We note that at this time the Office of Hawaiian Affairs has no comments regarding the proposed project.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

61-748 Papalina Road, Haleiwa, Hawaii 96712
Telephone: 808-637-4076; Fax: 808-637-2382

**Richard F. Knobel**

# Fax

| | | | |
|---|---|---|---|
| To: | Destination Villages Kauai | From: | Richard F. Knobel |
| Fax: | 805-687-8206 | Pages: | 2 (Hard copy by U.S. mail) |
| Phone: | 805-687-8788 | Date: | 6 January 2000 |
| Re: | Kapalawai Resort | CC: | County of Kauai Planning Department<br>Helber Hastert & Fee, Planners<br>Office of Environmental Quality Control<br>William Saunders, Esq |

☐ Urgent √ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

**• Comments:**

Dear Mr. Geyser:

I am writing you to comment on the Draft Environmental Impact Statement (DEIS) for your proposed Kapalawai Resort on the island of Kauai. Since I have been unable to obtain a copy of the draft EIS, I am replying to the Office of Environmental Quality Control's summary of the DEIS that was included in "The Environmental Notice" of November 23, 1999.

The proposed Kapalawai Resort appears very similar to the DEIS for your proposed "Pua'ena Eco-Camp" dated October 1998. Both projects are approximately the same scale: 250 visitor units (or cottages) on 170 acres of land with 465 parking spaces for the proposed Kapalawai Resort on Kauai, versus 252 "eco-tents" on 145 acres of land with 400 parking spaces for the proposed "Pua'ena Eco-Camp" on Oahu. However, the permits required for the two proposed resorts are different: State land use, SMP, zoning amendment and general plan amendment for the proposed Kapalawai Resort on Kauai versus a Special Management Area Use Permit and a Conditional Use Permit for the proposed project on Oahu.

January 6, 2000

Since both projects are proposed resorts intended primarily for overseas visitors, the use of language to describe the two projects is markedly different in the two Draft Environmental Impact Statements:

| Kauai Resort DEIS | Oahu Resort DEIS |
|---|---|
| "Resort" | "Camp" |
| "Visitor units" or "cottages" (250) | "Eco-Tents" (252) |
| "Restaurants" (2) | "Cafeterias" (2) |

Both projects are indeed resorts for visitors from overseas primarily. The use of different terminology to describe the Oahu and Kauai resorts is intended to misleadingly and narrowly meet the zoning and land use requirements of the City and County of Honolulu. Whereas the DEIS for the proposed project on Kauai correctly calls that project a resort containing cottages or visitor units (as the DEIS for the resort at Pua'ena Point on Oahu should have called it). On the other hand, the DEIS for the proposed Oahu project misleadingly calls it a camp with tents.

Thank you for this opportunity to comment on the DEIS for the proposed Kapalawai Resort on Kauai. Please send me a copy of the Final Environmental Impact Statement when it is completed.

Sincerely yours,

Richard F. Knobel



Helber Hastert
Fees

March 9, 2000

Mr. Richard F. Knobel
61-746 Papailoa Road
Haleiwa HI 96712

Dear Mr. Knobel:

**Draft Environmental Impact Statement**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated January 6, 2000 on the above draft environmental impact statement (DEIS). Your letter and this response will be included in the final environmental impact statement (FEIS) being prepared.

The balance of your letter deals with your comparison of the proposed resort at Kapalawai to another project planned by the developer at Kawailoa on Oahu. There are no comments pertaining to specific points or information contained in the DEIS for the Kapalawai project. We respectfully submit that any comments or questions you have concerning the proposed development on Oahu are inappropriate and therefore, not relevant to the consideration of the DEIS for this project, and should be addressed to appropriate agencies with jurisdiction on Oahu.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

**DEPARTMENT OF WATER**
County of Kauai

*"Water has no substitute – Conserve it!"*

December 3, 1999

Department of Planning
County of Kauai
Attn: Mr. Keith Nitta
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

Dear Mr. Nitta:

Subject: Draft Environmental Impact Statement (DEIS) for Kapalawai Resort, TMK: 1-7-05:001, Waimea, Kauai, Hawaii

We have no comments to the proposed Draft Environmental Impact Statement for the Kapalawai Resort, provided the applicant is made aware that the proposed project is outside general planned development area for the Waimea water system. Domestic water service for this project will not be available from the Department of Water, County of Kauai.

for Ernest Y. W. Lau
Manager and Chief Engineer

12/3/99
Date

cc: Office of Environmental Quality Control
Destination Villages Kauai, LLC
Helber Hastert & Fee, Planners

KA:lm
A:\EIS-KapalawaiResortAd.MI

— 4398 Pua Loke Street, Lihue, Kauai, Hawaii or P. O. Box 1706, Lihue, HI 96766-5706 —
Phone No. (808) 245-5400 – Administration FAX No. (808) 246-8629 – Engineering/Fiscal/Shop FAX No. (808) 245-5813

Helber Hastert
Planners

March 9, 2000

Mr. Ernest Y.W. Lau
Manager and Chief Engineer
Department of Water
County of Kauai
4398 Pua Loke Street
Lihue, HI 96766

Dear Mr. Lau:

**Draft Environmental Impact Statement**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated December 3, 1999 on the above draft environmental impact statement preparation notice (DEIS). Your letter will be included in the final environmental impact statement (FEIS) being prepared.

We note that other than pointing out that domestic water service for the proposed project will not be available from the Department of Water, you have no other comments on the DEIS. Further, it should be noted that the developer intends to implement a private water system to service the resort project.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

Helber Hastert & Fee — 1111 Bishop Street, Suite [illegible] — [illegible]
Attorneys at Law, Multi-Island — Honolulu, Hawaii 96813 — [illegible]

EZER

BENJAMIN J. CAYETANO
GOVERNOR

PAUL G. LeMAHIEU, Ph.D.
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

December 9, 1999

Mr. Dee M. Crowell
Planning Director
County of Kauai Planning Department
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

Dear Mr. Crowell:

Subject: Kapalawai Resort Draft EIS

The Department of Education has no comment on the subject draft environmental impact statement.

Thank you for the opportunity to respond.

Very truly yours,

Paul G. LeMahieu, Ph.D.
Superintendent of Education

PLeM:hy(sp)

cc: OBS
L. Geyser, Destination Villages Kauai, LLC
S. Ezer, Helber Hastert & Fee Planners

AN AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY EMPLOYER

Helber Hastert
Planners

March 9, 2000

Dr. Paul G. LeMahieu
Superintendent of Education
State of Hawaii
Department of Education
P.O. Box 2360
Honolulu, HI 96804

Dear Dr. LeMahieu:

Draft Environmental Impact Statement
Kapalawai Resort
Kapalawai, Kauai, Hawaii

Thank you for your letter dated December 9, 1999 on the above draft environmental impact statement preparation notice (DEIS). Your letter will be included in the final environmental impact statement (FEIS) being prepared.

We note that you have no comment on the DEIS.

If you have any questions regarding this project, please call me at 545-2055

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

(P)1882.9

JAN - 4 2000

Department of Planning
County of Kauai
4444 Rice Street, Suite 473
Lihue, Kauai, Hawaii 96766

Attention: Mr. Keith Nitta

Gentlemen:

Subject: Kapalawai Resort
Waimea, Kauai, Hawaii
Draft Environmental Impact Statement

Thank you for the opportunity to review the subject document.

The proposed project does not impact any of our facilities.

Should there be any questions regarding the above, please have you staff contact Mr. Ralph Yukumoto of the Planning Branch at 586-0488.

Sincerely,

GORDON MATSUOKA
Public Works Administrator

RY:mo
c: Destination Villages, Kauai, LLC
Helber Hastert & Fee, Planners
Office of Environmental Quality Control

Helber Hastert
[illegible]

March 9, 2000

Mr. Gordon Matsuoka
Public Works Administrator
Department of Accounting and General Services
Division of Public Works
P.O. Box 119
Honolulu, HI 96810

Dear Mr. Matsuoka:

Draft Environmental Impact Statement
Kapalawai Resort
Kapalawai, Kauai, Hawaii

Thank you for your letter dated January 4, 2000 on the above draft environmental impact statement preparation notice (DEIS). Your letter will be included in the final environmental impact statement (FEIS) being prepared.

We note that the proposed resort does not impact any of your facilities.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

[illegible]

# SIERRA CLUB, HAWAI'I CHAPTER

P.O. Box 2577
Honolulu, HI 96803
tel: 538.6616

Director Jeffrey Mikulina
jeff.mikulina@sierraclub.org
fax: 537.9019


*Mālama i ka Honua*

6 January 2000

Helber, Hastert & Fee, Planners
Attn: Scott Ezer
733 Bishop St. Suite 2590
Honolulu, HI 96813

Destination Villages Kauai, LLC
Attn: Lewis Geyser
4439 Via Abrigada
Santa Barbara, CA 93110

County of Kauai Department of Planning
Attn: Keith Nitta
4444 Rice St. Suite 473
Lihue, HI 96766

RE: Kapalawai Resort

The Sierra Club, Hawai'i Chapter, is concerned with the proposed resort construction in the undeveloped Makaweli area. Most alarming is the fact that the land is zoned agriculture and conservation—with 30% of the agricultural land identified as "prime." Building large resorts away from urbanized areas is inappropriate—it is sprawl and destroys open space. Resort uses should be confined to those areas slated for growth. The Makaweli area should remain rural.

The Sierra Club, Hawai'i Chapter heartily endorses the principles of eco-tourism, and the Kapalawai proposal has many outstanding features, such as the restoration of the fishpond. Nevertheless, because of the location, we oppose the Kapalawai Resort.

We ask that the following issues be better discussed in the final EIS.

1. ZONING. In November 1999, the County Council approved 700 resort units in Kukuiula—against the General Plan Citizen Advisory Committee's determination that such new zoning would overextend the visitor carrying capacity. Shouldn't the County wait for hotels damaged by hurricane Iniki to reopen before more resort zoning is approved? Shouldn't the new General Plan be completed and its recommendations examined before additional resorts are planned and built?

2. AGRICULTURE LAND. Prime agricultural land is protected by the Hawai'i State Constitution. How do you reconcile the destruction of prime agricultural land for the construction of a 250-unit resort?

3. ECONOMY. According to a poll done by KPMG for the Hawaii Tourism Authority, 77% of Hawaii residents believe the economy is too dependent on tourism. How will the Kapalawai Resort, as a tourist destination, actually *diversify* Kauai's economy?

Recycled Content



4. SOLID WASTE. The EIS states that the Kekaha municipal solid waste landfill has only 5-1/2 years of capacity remaining. Will that lifespan be shortened with the addition of up to 90 cubic yards of weekly resort waste?

5. ENDANGERED TURTLES. Endangered green sea turtles were spotted in waters off the proposed project site, but no nests were found on the beach, according to the EIS. If the green sea turtles do nest there, how will the nests be protected from the estimated 365 daily Kapalawai visitors?

6. LIGHTING. No lighting should be used near or facing the shoreline. Artificial lighting interferes with the nesting of threatened green sea turtles and seabirds.

7. SHORELINE PROCESS. Coastal retreat is occuring statewide, due to island subsidence and climate change. It appears from the EIS that cottages will be located as close as 40 feet from the shoreline. This is unacceptable—no structures should be built within 150 feet of the shoreline and none should be built on or makai of the dune. By setting structures back far enough, the need to build seawalls is reduced and property protected.

8. AIRPORT PRESSURE. If Kapalawai is constructed, will there be greater pressure to expand the Lihue airport to accommodate the anticipated 365 daily visitors?

9. ENERGY. The Kapalawai Resort EIS claims to be environmentally-sensitive. Will the resort conform or exceed the Hawaii Model Energy Code? Will solar hot water be used? Will photovoltaics or other renewable electric energy sources be used? What will be the average and peak load electricity demand be for the resort? How will this impact the need for construction of new generating capacity on Kauai?

10. COASTAL DEVELOPMENT. Chapter 205A of the Hawaii Revised Statutes has a policy to "concentrate coastal development in appropriate areas." On page 3-14 of the EIS, you claim that "the proposed resort is not a coastal development." Why isn't Kapalawai, with cottages mostly in the SMA and as close as 40 feet from the shoreline, a coastal development? Shouldn't such a coastal development be concentrated in previously urbanized areas?

11. WETLAND. The proposal to enhance the wetland by removing alien species and planting natives is a great idea.

12. ALTERNATIVES. The only alternatives investigated were a golf course, residential, high density resort, mixed use commercial, and no action. Why wasn't agricultural production, such as organic produce, investigated?

We appreciate the opportunity to offer these comments and look forward to your response.
Sincerely,

Jeff Mikulina
Director, Sierra Club, Hawai'i Chapter

cc: Office of Environmental Quality Control

Helber Hastert
Planners

March 9, 2000

Mr. Jeffrey Mikiluna
Director
Sierra Club, Hawaii Chapter
P.O. Box 2577
Honolulu, HI 96803

Dear Mr. Mikiluna:

**Draft Environmental Impact Statement**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated January 6, 2000 on the above draft environmental impact statement (DEIS). Your letter and this response will be included in the final environmental impact statement (FEIS) being prepared.

For your ease of reference, we will respond to your comments in the order they appear in your letter.

Zoning. The County of Kauai's General Plan Update, and the applicant's petition for a General Plan Amendment are actually running a parallel course. This allows the public, the Planning Commission, and the County Council the opportunity to review the proposal in more detail than would otherwise have been available for consideration during the General Plan Update. For your information, the Kauai County Planning Department and its Citizen's Advisory Committee are now in the process of reviewing drafts of the General Plan Update Report (including map changes), and the Kapalawai Resort is included in the current draft of the General Plan recommendations.

Agricultural land. We note your reference to the Constitution of the State of Hawaii, and its requirement to preserve agricultural lands. Article XI, Section 3, of the State Constitution includes the pertinent language in regard to agricultural land. While you correctly assert that preservation of agricultural land is important, you fail to apply the conditions under which land should be deemed to be worth preservation. The State Constitution also requires the Legislature to develop standards and criteria to determine which lands should be deemed important. As you are aware, since the adoption of this language in 1978, no such standards and criteria have been developed.

We would not characterize the development of the Kapalawai Resort as the "destruction of prime agricultural land," as you suggest. The only area on the





property possessing high agricultural value (according to ALISH and Land Study Bureau mapping), is the area that contains the former Robinson Family residence and associated buildings. Agricultural preservation is one of the primary reasons the Robinson Family decided to seek resort use of the Kapalawai property. It is significant to note that this property has been one of the primary residences for the family since the latter part of the 19th century, and has never been included in the lands used for agricultural production. The instability in sugar markets has caused the Family to develop other sources of income to offset this instability, thereby supporting continued agricultural use elsewhere in the region.

Economy. The development of the Kapalawai Resort will diversify the economy of West Kauai, and the entire island. In the case of West Kauai, the only visitor units in the area are found at the Waimea Plantation Cottages property. The addition of visitor units at Kapalawai will broaden the presence of the visitor in industry in West Kauai, thus diversifying its economy. In addition, the style of development, and the emphasis on the historic features of the property will appeal to visitors who might not otherwise have chosen to travel to Kauai. The visitor market is not homogeneous, and is actually made up of many different markets. The Kapalawai Resort will help to broaden the diversity of product type found on Kauai, thus diversifying the overall appeal of the Kauai market.

Solid Waste. The volume of solid waste that would be placed in the Kekaha Landfill from Kapalawai represents significantly less than one percent of its volume. As such, the life span of the landfill will not be adversely impacted I a significant manner.

Endangered sea turtles. If any nests are discovered on the beach, they will be marked and fenced for protection until the eggs hatch. Currently, there is no such protection for any nests that may exist.

Lighting. Any lighting necessary in the vicinity of the shoreline will be designed so as not to interfere with green sea turtles and seabirds.

Shoreline process. We share your concern about construction too close to the shoreline. All structures will be setback from the certified shoreline at least 100 feet. As you are aware, there is a strip of land on the shoreline that lies within the State Conservation Use District. No construction will occur in this area.

**Airport pressure.** The total of 365 daily visitors at Kapalawai represents about two percent of the current average daily visitor census (about 17,000) that is present on Kauai. Decisions regarding the expansion of the Lihue Airport will be made on considerations unrelated to the Kapalawai Resort. In fact, Governor Ben Cayetano recently announced that the State of Hawaii will abandon its intent to the lengthen the runway at the Lihue Airport. It should also be pointed out, that market assessments prepared for the project indicate that about 20% to 25% of the total visitors to Kapalawai will be from Oahu, who will travel to Kauai whether the airport is expanded or not.

**Energy.** To the greatest extent possible, alternative energy sources will be utilized at Kapalawai. Solar water heating is an ideal use of alternative energy at Kapalawai because of the local climate (where it rarely rains, and has an abundance of sunshine). The average demand for electricity at Kapalawai is anticipated to be about 800 KVA. The determination of need for additional future generating capacity on Kauai was made independent of the demand likely at Kapalawai.

**Coastal Development.** The EIS says that Kapalawai is "not coastal dependent," instead of "coastal development," as you suggest in your letter. The reference to "coastal dependent" in Chapter 205A, HRS is geared more toward harbors and ports. The objective this language falls under is "Economic Uses." The language in this section recognizes that visitor industry facilities are "coastal related," and suggests that such facilities be "located, designed, and constructed to minimize adverse...impacts in the coastal zone management area." The design of the Kapalawai Resort takes this language to heart. No cottages at Kapalawai will be as close to the shoreline as you suggest in your letter (40 feet). There is a strip of land mauka of the shoreline that falls within the State Conservation Land Use District. Cottages will be set back a minimum of 100 feet from the shoreline, and will also respect inundation lines established by Hurricane Iniki.

**Wetland.** We assume your reference here is to the fishpond area, which we propose to restore, which will provide more open-water habitat for Hawaii's endangered water birds.

**Alternatives.** One of the primary goals established by the Robinson Family for their property at Kapalawai was the establishment of a long-term maintenance program that would take care of the former Family residence and the fishpond.



Because of the cost involved in such an endeavor, agricultural revenue was considered insufficient to ensure these historic treasures are protected.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

University of Hawai'i at Mānoa

Environmental Center
A Unit of Water Resources Research Center
2550 Campus Road • Crawford 317 • Honolulu, Hawai'i 96822
Telephone: (808) 956-7361 • Facsimile: (808) 956-3980

January 7, 2000
RE:0700

Mr. Lewis Geyser
Destination Villages Kauai, LLC
4439 Via Abrigada
Santa Barbara, California 93110

Dear Mr. Geyser:

Draft Environmental Impact Statement
Kapalawai Resort
Waimea, Kauai

The Kapalawai Resort project involves the development of a 170 acre low-intensity and low density, eco-tourism focused resort on a former homestead of the Robinson family. The emphasis of the development will be on maintaining the character and historic traditions of the site.

We have been assisted in this review by University of Hawaii faculty members: Marshall Mock, Physical Sciences , Kauai Community College; Mark Merlin, Geography; Blon Griffin, Anthropology; Michael Graves, Anthropology; Victor Moreland, Water Resources Research Center; and James Moncur, Economics.

General Comments

In general, the Draft EIS adequately characterizes many of the potential impacts that can be anticipated to occur with this project, and correctly finds in many cases that the impacts are not likely to be significant. In particular, our reviewers concurred that significant impacts to botanical resources or the fishpond are unlikely and that the discussions regarding the social and economic consequences of the development are reasonable. However, there are several key areas where additional information is needed. Our reviewers have identified these areas in the paragraphs to follow and we offer some possible sources of information that may be useful in addressing the concerns and drafting the Final EIS.







Relationship of the Proposed Project to Existing Public Plans, Policies, and Controls

The DEIS provides a review of the various Land Use Plans and policies for the state of Hawaii and Kauai in particular, and then concludes with the acknowledgment (pg. 3-24) that the project site is located in an area zoned for Agriculture and Open and that resort development, such as is proposed, is not a permitted use. While we appreciate the interests of the project proponents and their attempts to develop an ecologically compatible resort on this parcel, nevertheless, we do feel obliged to ask what justifies an amendment to the existing land use plans? Why should such an amendment be granted? If the Kauai citizen representatives have developed, after considerable diligence and discussion, certain land use policies, then what is the rationale to permit such a major modification of those plans and policies? What precedent will this action create for future land use zoning requests? The impact of this decision is perhaps the most significant impact that must be discussed in the Final EIS.

Flora

Our reviewers have concurred with the DEIS regarding the description of the flora on the project site and the probable lack of endangered species on the former ranch lands. One point that we would like to stress however, is the use of native species when landscape plans are being developed for the graded and cleared areas. The use of native species in open areas will significantly augment the cultural and ecological focus of the development. It is our understanding that some members of the Robinson family have considerable expertise in the culturing and raising of native species. This would be an ideal opportunity to use this expertise.

Marine Environment

We note that both the National Marine Fisheries Service and the U.S. Fish and Wildlife Service have raised concerns for the effects of the development on endangered turtles and Monk seals. The DEIS mentions these concerns (pg 4-25) but concludes that, *the potential for impacts to marine communities as a result of development of the Kapalawai Resort appear to be minimal or nonexistent*. There does not appear to be any evidence to substantiate this conclusion. Present use of the beach at Kapalawai was not indicated in the DEIS. Mention is made (pg. 6-33) that current access to the shoreline is used primarily by surfers, but there is no indication of the number or frequency of beach/surfer "users". The suggested daily average of about 365 persons per day at the Resort (pg. 6-32) would appear to lead to a substantial number of people using the beach. Whether this is significantly more beach users than at present can not be determined from the information provided in the DEIS. The concern here is that additional beach use, particularly of the beach itself rather than just surfing, may pose a significant deterrent to turtle nesting or Monk seal haul out. We strongly suggest that you contact Drs. George Balazs (turtles) and William Gilmartin (monk seals) of the National Marine Fisheries Service, Honolulu Office for their assessment of the significance of the development on these endangered species and ways to mitigate potential impacts.

Archaeology

It appears that the archaeological reconnaissance of the area was reasonably thorough with two exceptions: areas of dense vegetation and subsurface reconnaissance. Our reviewers noted that the report mentions avoiding areas of dense vegetation, yet those may be the exact areas where least disturbance has taken place, hence a greater opportunity for the retrieval of archaeological information. Furthermore, they have expressed considerable concern that the areas that will be excavated for utilities, i.e. power, water, and sewage, or house footings/postholes have not been adequately examined. We note that significant time delays in construction can be experienced if burials or other significant artifacts are unearthed during excavations for roads, utilities, or cabin footings. Because this area has an abundance of fresh water, excellent coastal access, and generally friendly environment, it would appear highly likely that burials or other significant archaeological remains from prehistoric populations may be present throughout the area and particularly in the vicinity of the shoreline. We urge that additional, subsurface excavations be undertaken in the areas that will house the various utilities, particularly water and waste, including manholes, so that damage to potential sites will be minimized as well as delays in construction avoided.

The shovel test pits around the stone structure (described in Appendix D, pg. 46) were of insufficient depth to provide an accurate estimate of archaeological significance. The pits were much to shallow to provide adequate archaeological information and the conclusions as to the geologic features encountered, i.e. bedrock, are highly questionable given the described, "*loose fragments of stone and dirt.*" The stone pile described on pages 31 and 32 of Appendix D, appears to have somewhat of a star-shaped design similar to the stone features found elsewhere in Polynesia. Has this been considered? Our reviewers concurred with the conclusions expressed in the report that the stone pile may well have some archaeological significance, and not just be the result of field clearing. This stone pile site, 50-30-9-763, deserves more examination and comment. Is it possible that this site could be one of the 3 heiau sites which were told to Bennett but which could not be located by him?

Traditional Cultural Practices Report

There are numerous misspellings of Hawaiian terms throughout this report, apparently the result of incorrectly printing the diacritics used in representing Hawaiian words. These mistakes should be corrected in the Final EIS.

Tsunami Hazard

There appears to be a misprint or sentence missing on page 4-44 regarding flood hazard from tsunami inundation. We note that the tsunami run-up estimates for this area are approximately 11 feet above MSL (Loomis, 1980). Thus, a major portion of the coastal region of the Kapalawai resort is subject to flooding by tsunamis (fig. 20). Presumably this potential has been taken into account in the design of the buildings and their base structures to avoid structures floating off their bases.



Wastewater Systems and Drainage

The DEIS contained very little information on the design of the wastewater treatment system that will be used for this project. While we appreciate the information as to the volumes of wastewater that will be produced and are pleased to see the plan to recycle much of the treated effluent for irrigation, there is almost no information on the specific design and engineering that will be undertaken to carry out the wastewater treatment plans. Similarly, relatively few specifics are provided on the drainage plans. The Final EIS should present a more complete overview of the wastewater treatment and drainage systems for the project.

The DEIS mentions that the nearshore water receives significant amounts of silts, clays, and muds from run-off. To avoid further degradation of the coastal environment, we would strongly suggest that extra precautions be taken to eliminate or at least significantly minimize erosion and loss of soils to the near shore during house and road construction.

In closing, the Robinson family is to be commended for their attempts to consider the natural and cultural environment in their plans. However, we remain concerned about the long term ramifications of the issuance of an amendment to the existing land use plans for this project. We appreciate the opportunity to offer our comments on the Draft EIS and look forward to your response in the Final EIS.

Sincerely,

Jacqueline N. Miller

Jacqueline N. Miller, Ph.D.
Associate Environmental Coordinator

cc: Planning Department, Kauai
Helber Hastert & Fee, Planners
OEQC
James Moncur
Marshall Mock
Bion Griffin
Victor Moreland
Michael Graves
Mark Merlin
Peter Rappa

Helber Hastert
Fleming

March 9, 2000

Ms. Jacquelin N. Miller
Associate Environmental Coordinator
University of Hawaii at Manoa
Environmental Center
2550 Campus Road
Crawford 317
Honolulu, HI 96822

Dear Ms. Miller:

**Draft Environmental Impact Statement**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated January 7, 2000 on the above draft environmental impact statement (DEIS). Your letter and this response will be included in the final environmental impact statement (FEIS) being prepared.

For your ease of reference, we will respond to your comments in the order they appear in your letter.

**Relationship of the Proposed Project to Existing Public Plans, Policies and Controls.** The County of Kauai is presently completing an update of its General Plan (last done in 1981). The County's General Plan Update, and the applicant's petition for a General Plan Amendment are actually running a parallel course. This allows the public, the Planning Commission, and the County Council the opportunity to review the proposal in more detail than would otherwise have been available for consideration during the General Plan Update. For your information, the Kauai County Planning Department and its Citizen's Advisory Committee are now in the process of reviewing drafts of the General Plan Update Report (including map changes), and the Kapalawai Resort is included in the current draft of the General Plan recommendations.

**Flora.** We acknowledge your concurrence concerning the use of native species in the landscaping for the resort.

**Marine Environment.** In response to your comments, we contacted Dr. George Balazs and Margaret Dupree of the National Marine Fisheries Service (NMFS) (William Gilmartin no longer works for NMFS). Dr. Balazs was familiar with the green sea turtles which frequent the coast of West Kauai and indicated that these turtles are known to haul out at French Frigate Shoals for nesting

[illegible]



purposes. He indicated that development of the shoreline in the manner proposed would not present a problem for these turtles. In regard to monk seals, Ms. Dupree related that NMFS is currently working on protocols to guide human activity in the vicinity of monk seals that have hauled out. These protocols will include guidance on appropriate separation distances between human and monk seals and who to call when a monk seal is observed on the beach. Ms. Dupree also indicated her support of proposals on behalf of the developer to provide marine education during training for resort employees, so that they will be able to react appropriately when monk seals (or green sea turtles) are encountered. Similarly, information will be developed for guests at the resort to orient them to the marine environment (including green sea turtles and monk seals.

In regard to the U.S. Fish and Wildlife Service, we received a letter dated January 11, 2000 from the Service commenting on the DEIS. Their letter includes the following observations:

> *"In general, the Service believes that the DEIS adequately describes the proposed action and the primary fish and wildlife resources located at the proposed project site. The Service believes that among the alternatives considered in the DEIS, the preferred alternative is the action least likely to impact fish and wildlife resources. Potential impacts to fish and wildlife resources have been adequately addressed in the DEIS, and the mitigation that is proposed is adequate to minimize anticipated unavoidable impacts to fish and wildlife resources."*

**Archaeology.** We are happy to report that we have conducted additional subsurface excavations within the project site, including 23 trenches. The results of these excavations will be included in Section 4.9 of the FEIS. In regard to your comment regarding the shovel test pits around the stone structure, the archaeologist reports that additional excavation was not necessary because a sterile layer was encountered at the point that digging ceased. This was the case for all eight test shovel pits in the vicinity of the platform.

The archaeologist also considered the possibility of similarity to other stone features in Polynesia. This consideration was made in two contexts: (1) as a Russian fort; and (2) as similar to star-shaped structures in Western Samoa. In the case of the former, it is quite unlikely that this structure is a Russian fort, because the location of such structures were well known, and there is a

proximal fort about ½ mile to the west and the structure does not conform to defense fortifications. In any event, there was no other evidence to suggest that such a use was made of the site. In the case of the star-shaped design, such a structure has been mapped in detail in Western Samoa, and the shape of the Kapalawai structure is not consistent with this design.

It is also highly unlikely that this structure is one of the heiau mentioned to Bennet, but not located by him. The absence of any midden, charcoal, and artifacts in the vicinity of the structure argue against such a theory. In spite of the foregoing discussion the developer intends to preserve the platform and establish a reasonable buffer around it to avoid damage and unwarranted intrusion by the public.

**Traditional Customs and Practices Report.** We apologize for the inaccurate use of diacritics and other Hawaiian terms that appear in the DEIS. These errors occurred as a result of the incompatibility of software which uses Hawaiian fonts, and the printing process. These errors will be corrected in the FEIS.

**Tsunami Hazard.** Only a small portion of the north-makai corner of the property is affected by tsunami hazard (VE zone). The remainder of the area subject to flooding lies within the AE zone. All structures within this area will comply with flood hazard requirements, including certification by an engineer.

**Wastewater Systems and Drainage.** You correctly point out that specific design elements for the wastewater treatment plant and drainage facilities are not included in the EIS. The detailed engineering required to provide these plans will be undertaken at a later stage of the design process, and will be reviewed by appropriate agencies as to their efficacy, including the Department of Health, and the County Department of Public Works. No building permits can be issued until these issues are resolved to meet very specific engineering and performance requirements.

All appropriate precautions and best management practices will be utilized to minimize impacts related to sediments reaching receiving waters. Although drainage design features have not been specifically engineered, conceptual drainage plans do indicate areas of the property where runoff will be detained and allowed to settle before reaching the marine environment.



If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

DEPARTMENT OF THE NAVY
PACIFIC MISSILE RANGE FACILITY
P.O. BOX 128
KEKAHA, HAWAII 96752-0128

IN REPLY REFER TO
5090.11A
Ser 7031.5/0010
07 Jan 2000

County of Kauai
Department of Planning
Attn: Mr. Keith Nitta
4444 Rice St., Suite 473
Lihue, HI 96766

Gentlemen:

SUBJECT: DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE KAPALAWAI RESORT

Thank you for the opportunity to review the subject draft Environmental Impact Statement.

After review of the document, our operations and surrounding lands, Pacific Missile Range has concluded there will be no impact to our operations.

In light of our desire to continue as good neighbors in the West Kauai community, we offer the following specific comments: On page 1-8, paragraph 6, line 4, a new exit drive from the property is mentioned, but was not clearly identified in Chapter 6. On page 1-9 and page 4-48, grassing as a mitigation for fugitive dust control is not mentioned. Page 6-16, paragraph 2, line 1, "A right-turn deceleration lane is recommended on westbound Kaumualii Highway at the entrance driveway for the Project for safety purposed and to minimize delays to through traffic." Should this read "left-turn" vice "right-turn"? Also, correct the spelling of the word "purposed".

If there are any questions regarding this matter, please contact Mr. Robert Inouye at 335-4632.

Sincerely,

BRIAN W. MOSS
Captain, U. S. Navy
Commanding Officer

Copy to:
Office of Environmental Quality Control
Destination Villages Kauai, LLC
Helber Hastert & Fee, Planners

Helber Hastert
[illegible]

March 9, 2000

Capt. Brian W. Moss
Commanding Officer
Department of the Navy
Pacific Missile Range Facility
P.O. Box 128
Kekaha, HI 96752-0128

Dear Capt. Moss:

Draft Environmental Impact Statement
Kapalawai Resort
Kapalawai, Kauai, Hawaii

Thank you for your letter dated January 7, 2000 (5090.11A, Ser 7031 5/0010), on the above draft environmental impact statement (DEIS). Your letter and this response will be included in the final environmental impact statement (FEIS) being prepared.

We note that you have concluded that the Kapalawai Resort will have no impact to your operations, and we appreciate your observations and recommended changes for the FEIS. These changes will be incorporated into the FEIS.

If you have any questions regarding this project, please call me at 545-2055

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

MARYANNE W. KUSAKA
MAYOR

WALLACE G. REZENTES, SR.
ADMINISTRATIVE ASSISTANT

CESAR C. PORTUGAL
COUNTY ENGINEER
TELEPHONE 241-4880

IAN K. COSTA
DEPUTY COUNTY ENGINEER
TELEPHONE 241-4840

AN EQUAL OPPORTUNITY EMPLOYER
COUNTY OF KAUA'I
DEPARTMENT OF PUBLIC WORKS
4444 RICE STREET
MOIKEHA BUILDING, SUITE 275
LIHU'E, KAUA'I, HAWAI'I 96766

November 30, 1999

Mr. Dee Crowell, Director
Planning Department
4444 Rice St., Suite 473
Lihue, Hawaii 96766

Attention: Mr. Keith Nitta

Dear Mr. Crowell:

SUBJECT: KAPALAWAI RESORT DEIS
TMK: 1-7-05: 01

We are offering our comments on the draft environmental impact statement for the captioned project per your request.

1. Response to our comments on the Environmental Impact Statement Preparation Notice mentions that flood studies conducted by Wagner Engineering Services for flood zones and elevation is to be included in its entirety in the DEIS. The response also mentions that all areas of the project affected by flooding will be identified in the DEIS.

   Appendix I in the DEIS includes a summary of a Civil Engineering Report prepared by Wagner Engineering Services and is not considered complete nor acceptable "flood study in its entirety". Additionally, no other areas in the site have been identified that may be subject to flooding.

   It may not be necessary to submit, review and accept the flood study at this time. However, we certainly hope that complete flood studies with hydrologic and hydraulic maps, data, and calculations will be submitted and accepted prior to developing any plans for structures and facilities especially next to watercourses.



2. The Civil Engineering Report in Appendix I, Flood Hazard, mentioned that structures constructed in the floodways must be elevated to or above the 100-year flood elevation. County of Kauai, Flood Plain Management Ordinance prohibit development of the floodway zone which is reserved to convey the regulatory flood. No structures, fills, or encroachment of any obstructions should be proposed in the floodway zone.

3. The DEIS includes a preliminary drainage plan that proposes onsite drainage system that will drain into Hoamuanu Bay and Mahaikona Stream. Our concern would be the discharge of sediments and other pollutants directly into the stream and ocean. We believe that measures to minimize discharge of sediments and other pollutants into the stream and ocean must be proposed and implemented. Additionally, permits from other Agencies are required for structures in or at the stream and beach.

Thank you for the opportunity to offer our comments.

Very truly yours,

CESAR C. PORTUGAL
County Engineer

KK/cu

cc: OEQC
Destination Villages of Kauai, LLC
Helber Hastert & Fee, Planners

Helber Hastert
Planners

March 9, 2000

Mr. Cesar C. Portugal, County Engineer
County of Kauai
Department of Public Works
4444 Rice Street
Mo'ikeha Building, Suite 275
Lihue, HI 96766

Dear Mr. Portugal:

**Draft Environmental Impact Statement**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated November 30, 1999 on the above draft environmental impact statement (DEIS). Your letter will be included in the final environmental impact statement (FEIS) being prepared.

For your ease of reference, we will respond to your comments in the order they appear in your letter.

1. Drainage Study. The report prepared by Wagner Engineering Services for the DEIS should be identified containing a summary of the results of a "Preliminary Drainage Study," and is not, as you point out, a complete flood study. This report, which appears as Appendix I, will be correctly referenced in the FEIS. You also point out that a complete flood study, with hydrologic and hydraulic maps, data, and calculations should be accepted prior to developing any plans for structures and facilities. We pledge that this work will be completed in a timely manner.

2 Areas Subject to Flooding. You note that no additional areas within the project site have been identified affected by flooding (comparing the EISPN to the DEIS). Figure 20 in the DEIS identifies the flood hazards affecting the property. The areas identified as "Zone X," "Zone AE" are found on the Flood Insurance Rate Map, Community Panel 150002 0160D (September 30, 1995). The areas identified with cross-hatching are the result of the Preliminary Drainage Study prepared by Wagner Engineering Services. These are the "additional" areas we referred to.

3. Floodways. The DEIS and the Civil Engineering Report incorrectly identify certain areas as "floodways." These areas should be identified as



"flood fringe." The report and Section 4.11 of the FEIS will be amended accordingly.

4. Discharge to Streams. We share your concern about the discharge of sediments and other pollutants directly into the stream and ocean. At this time, we are considering several best management practices (BMPs) that would mitigate potential impacts to streams and the ocean. These include: grass channels; filter strips; and bioretention areas. Other more direct options such as sand filters will also be considered. Selection of final BMPs, which could include a combination of those listed, will be made at the time of detailed design for the project. Section 6.4 of the FEIS will include identification of these BMPs We acknowledge that permits from other agencies are required for structures in the vicinity of streams. We do not intend to design structures in or near the ocean.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

January 4,1999

Keith Nitta
Kauai Planning Commission
Re: Kapalawai resort

I wish to express several concerns regarding the proposed Kapalawai Resort on Robinson property near Waimea.

1. The proposed number of units.
2. The failure to include facilities for local residents that enjoy the Pakala beaches.
3. The modification of the environment to the detriment of the very rare Hawaiian Bat.
4. The probable existence of native Hawaiian sites on the property.
5. The preservation of the fishpond on the property.

COUNTY OF KAUAI
PLANNING DEPT
'99 JAN -5 P1:35

Regarding #1 the proposed number of units seems out of line when considering the recreational and visitor facilities on this side of the island. The number of units should be reduced to lessen the impact of people and automobiles in the area. While there appears to be plenty of open space much of it is unavailable for public use. The two lane highway, already crowded, during certain periods of the day may become another Kapa'a nightmare with an additional 250 cars, one car per cabin, that the resort could add.

If both Waimea Plantation and Kapalawai are projected to be 70% occupied what is to prevent the mainland type of development similar to Kapa'a and Hanalei to service the needs of these visitors.

Concerning #2; If the proposed resort can provide amenities to so many guests I would hope that they also feel obliged to enhance the experience of island residents and neighbors who have been using this beach for years. Providing a dedicated beach access, a parking lot, shower and toilet facilities, at the Hanapepe end of the property could do this.

Beach access along Nakukui Stream to Makaweli Landing has been used for years with vechile parking along Kaumualii highway. The lack of off street parking creates a very dangerous situation. Traffic along this stretch of the highway is always doing at least the posted 50-mph if not more. As it is now people are limited to a narrow strip on either side of the highway to unload their families and beach toys. Traffic approaching this area has a limited view of people crossing the highway and a limited area in which to react if a problem should develop in or along the highway. This is compounded by the variety of large trucks that use this portion of the highway. On a nice summer day as many as 40 vehicles might be parked along the road, some spending as long as several hours at the beach and others coming and going every 15 minutes. People are now forced to shower, change clothes and organize themselves along this narrow strip prior to going to and coming from the beach. It doesn't take much of an imagination to see a car swerving to avoid a child or dog and crashing into cars and people by the highway.

A dedicated beach access with toilet and showers would eliminate a health problem. As it is now there are no toilets here and people use the pasture and woods to relieve themselves. The closest public restroom is at the Russian Fort. With the addition of a sewer treatment facility on the property a public toilet and shower would be a welcome addition for local residents.

Point #3 concerning wildlife in the area. I have only read that the Hawaiian Bat was observed in the area. But I have seen the Black-Crowned Night-Heron feeding along the streams that cross the property. Efforts should be made to insure that this majestic and solitary, indigenous bird continue to be a resident in the area.

In addressing point #4 while the majority of the area may have been altered by agricultural activities evidence of Hawaiian sites may still exist below the surface. It is well known that Hawaiians buried their dead in sand and it appears that this coastal area is entirely sand. I would hope that the state would require archaeological monitoring of construction activities that might impact burials and sites below the surface.

The pre-historic fishpond on the property should be considered a monument to Hawaiian environmental engineering skills. Its reconstruction will be expensive and time consuming. But its completion will provide a vital focal point to understanding the lifestyles of ancient Hawaiians on this side of the island. Its restoration in a timely manner should be a condition for granting permits for the resort.

In conclusion, I feel that my concerns are legitimate and if addressed a compromise could be reached that would allow visitors, residents and birds to safely enjoy this unique area. Please do your best while discussing this matter to consider everyone's needs.

James Powell
222 Lulo Rd.
Kapa'a, HI
823-8892

P J. Powell 222 Lulo Rd Kapaa HI 96746-1340

Helber Hastert
[illegible]

March 9, 2000

Mr. James Powell
222 Lulo Road
Kapaa, HI 96746-1260

Dear Mr. Powell:

**Draft Environmental Impact Statement**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated January 4, 2000 on the above draft environmental impact statement (DEIS). Your letter and this response will be included in the final environmental impact statement (FEIS) being prepared.

For your ease of reference, we will respond to your comments in the order they appear in your letter.

**Proposed number of units.** The overall density of the proposed resort is approximately 1.5 visitor units per acre, which is a low density for a resort project. As you note in your letter, the completed development will enjoy a significant amount of open space. The development will provide access opportunities to the shoreline and the fishpond for the public.

In regard to traffic, a traffic impact report was prepared for the project by Wilbur Smith Associates, and is attached to the EIS as Appendix H. The findings of their report do not indicate significant impacts to traffic flow along Kaumualii Highway. Recommendations to mitigate traffic impacts include construction of a left-turn storage lane for vehicles turning into the property travelling in a northerly direction (toward Waimea), and a right-turn deceleration for vehicles entering the property travelling in a southerly direction (toward Hanapepe).

You also suggest that the resort will encourage "mainland type of development." Kapalawai Resort is intended to complement the character of West Kauai. Any new development in the region will require review by the County of Kauai Planning Department, and public hearings for community input. The character of Kauai is important to all its residents. Any new development should, and must, be reviewed in the context of design suitability.

**Beach access/facilities.** As stated in #1, above, the proposed resort will provide public access to the shoreline. Access adjacent to Aakukui Stream is of particular importance because it is now the only means of public access to the

[illegible]



shoreline through the property. The developer will be working with the West Kauai community to determine appropriate support facilities in this area, including parking, restrooms, and showers.

**Wildlife.** The Kapalawai Resort will not limit habitat for either the Hawaiian Hoary Bat or the Black-crowned Night-Heron. In fact, restoration of the fishpond and regular maintenance of the two streams that flow through the project site will actually provide additional habitat for these species.

**Archaeological monitoring.** Your suggestion to require archaeological monitoring during construction is a good one, and we wholeheartedly support it. We expect that this requirement will be included as a condition of approval in most, if not all, land use permits for the project.

**Fishpond.** We also agree with your observations concerning the fishpond. The developer is committed to the enhancement and preservation of the fishpond, and recognizes its historic importance.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

BENJAMIN J. CAYETANO
GOVERNOR

GENEVIEVE SALMONSON
DIRECTOR

STATE OF HAWAII
OFFICE OF ENVIRONMENTAL QUALITY CONTROL

December 15, 1999

Dee Crowell
Kauai Planning Department
4444 Rice Street, #473
Lihue HI 96766

Attn: Keith Nitta

Dear Mr. Crowell:

Subject: Draft Environmental Impact Statement (EIS) for Kapalawai Resort, Makaweli, West Kauai

We have the following comments to offer:

1. Permits and approvals: Section 1.7 lists permits and approvals but a timetable indicating status, submission dates or expected submission dates needs to be included.

2. Regional perspective: In the final EIS give a brief description of the area from a regional perspective. This would include a discussion of the physical, economic and social conditions.

3. Related projects: Mention is made of a high technology center and a seed corn operation in Waimea. The Ceatech Shrimp Farm is another recent, and very large, Waimea project. Include a discussion and analysis of the cumulative impacts of Kapalawai and of these and any other projects in the area.

4. Unavoidable adverse effects: In a separate section, give a brief discussion of all adverse effects which are unavoidable.

5. Figure 13: This figure, *Detailed Land Classification*, needs a legend.



6. Recycling: According to Article 7 (*Landfills*), Section 21-7.3 (*Prohibited Materials*) of the Kauai County Code, the following materials from non-residential sources are not allowed:

   - corrugated cardboard;
   - ferrous and non-ferrous metal objects;
   - loads with more than 20% greenwaste; and
   - liquid waste.

   In the final EIS, indicate the recycling program that will be put into effect, considering the above restrictions.

If you have any questions, call Nancy Heinrich at 586-4185.

Sincerely,

GENEVIEVE SALMONSON
Director

Enc.

c: Scott Ezer, Helber Hastert & Fee
Lewis Geyser, Destination Villages Kauai

Helber Hastert
Planners

March 9, 2000

Ms. Genevieve Salmonson, Director
State of Hawaii
Office of Environmental Quality Control
235 South Beretania Street, Suite 702
Honolulu, HI 96813

Dear Ms. Salmonson:

**Draft Environmental Impact Statement**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated December 15, 1999 on the above draft environmental impact statement (DEIS). Your letter will be included in the final environmental impact statement (FEIS) being prepared.

For your ease of reference, we will respond to your comments in the order they appear in your letter.

1. Permits and approvals. Section 1.7 will be amended to include information indicating status and (expected) submission dates for the respective permits.

2. Regional perspective. Section 2.1 will be amended to include a brief description of the area from a regional perspective.

3. Related projects. The Ceatech Shrimp Farm began operations in 1998 and has increased its operations to about 100 acres and 45 employees. It's characterization as a "very large" project is not accurate, at this time. Certainly the company has the potential for further growth, but that potential must be realized with production increases and management stability.

4. Unavoidable adverse effects. A separate section will be added to the FEIS (1.10) that includes a brief discussion of adverse effects that are unavoidable.

5. Figure 13. Figure 13 will be amended to simplify its information content for easier interpretation.



6. Recycling. The FEIS will discuss the recycling program in the context of Article 7 (*Landfills*), Section 21-7.3 (*Prohibited Materials*) of the Kauai County Code.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

MARYANNE W. KUSAKA
MAYOR

VIRGINIA M. KAPALI
DIRECTOR

COUNTY OF KAUAI
OFFICE OF ECONOMIC DEVELOPMENT
4444 Rice Street, Suite 473, Lihue, Hawaii 96766
TEL: 808-241-6390 FAX: 808-241-6399

December 30, 1999

Mr. Dee Crowell
Planning Director
4444 Rice Street, Suite 473
Lihue, HI 96766

ATTN: Keith Nitta, Planner

RE: Kapalawai Resort – Draft Environmental Impact Statement, October 1999

This is in response to the request for comments to the DEIS for the Kapalawai Resort project. As the County's Energy Coordinator, I have been an advocate for the use of energy conservation and efficiency practices, as well as the use of renewable energy in new and existing projects. In reviewing the DEIS, I have the following comments that relate specifically to energy use at the resort:

1. Solar Energy

   West Kauai is blessed with the highest daily solar insolation on the Island. The project area is ideal for solar hot water heating and photovoltaic-powered lights that should be considered as it relates well to the ecotourism concept.

2. Heat Gain Reduction

   The abundant solar resource is a double-edged sword because it also creates a need for cooling. Natural ventilation, fans, appropriate building materials, exterior colors and landscaping can reduce heat gain and have been mentioned in previous comments. Other technologies such as solar roof fans and ceiling/roof insulation to reduce heat gain in the buildings should be considered in the building design's life cycle cost analysis.

3. Proper Equipment Design

   The pumps and motors for the water and wastewater treatment plants and supporting infrastructure should not be over-designed. In past pump and motor efficiency workshops conducted on Kauai, experts from the U.S. Department of



Energy's Motor Challenge Program concluded that a large number of existing pumping systems around the country have been over-designed to offer engineers a safe margin of error, in terms of operational capacity. New and improved technologies, including variable speed motors, control systems and new diagnostic software have made pump optimization more of an exact science. Designing pumping systems closer to actual requirements will save energy and reduce overhead costs, thus making the project more economically viable.

Please call me at (808) 241-6393 if you have any questions regarding my comments.

Sincerely,

Glenn H. Sato

Glenn H. Sato

Copy: Virginia Kapali, OED Director
Office of Environmental Quality Control
Lewis Geyser, Destination Villages Kauai, LLC
Scott Ezer, Helber Hastert & Fee, Planners

Helber Hastert
[illegible]

March 9, 2000

Mr. Glenn H. Sato
County of Kauai
Office of Economic Development
4444 Rice Street, Suite 200
Lihue, HI 96766

Dear Mr. Sato:

Draft Environmental Impact Statement
Kapalawai Resort
Kapalawai, Kauai, Hawaii

Thank you for your letter dated December 30, 1999 on the above draft environmental impact statement (DEIS). Your letter will be included in the final environmental impact statement (FEIS) being prepared.

We appreciate your comments regarding the potential to incorporate energy conservation and efficiency practices, as well as renewable energy technologies to achieve energy savings at the proposed Kapalawai Resort. You will be pleased to know that Mr. Mike Nelson, Vice President of Destination Villages Kauai, LLC (the applicant), has a bacelor's degree in Environmental Engineering and 10 years professional experience with the use of alternative energy solutions. Mr. Nelson intends to maximize these opportunities at Kapalawai.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

FRIENDS · i PRESERVE PUA'ENA POINT, INC.
c/o Wax · i M. Scoville (Co-Chair)
61-795 · nalua Rd.
Haleiwa · I 96712

January 2000

County of Kauai, Planning Dept.
Attn: Mr. Keith Nitta
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

By FAX, to: 1(808)241-6699...(this page ily)
(&) By First Class Mail (posted today)

RE: KAPALAWAI RESORT (Draft E.I.S.) --

Dear Mr. Nitta,

I'm pleased to read that the Applicant/· veloper, Mr. Lewis Geyser,
and the Consultant/Planner, Mr. Scott E · , appear to be properly
forthcoming with their requests, applic ons, Environmental Impact
Statements, etc., for their Kapalawai R· ct project.

This is a pleasant surprise compared to at they did (& are still
trying to do) with their Pua'ena Camp p osed development (formerly
known as the Pua'ena Eco-Camp), here on e North Shore of Oahu.

Specifically,
(1) They are calling their Kauai prope l project a RESORT (which
it actually IS...just like their propos· project on Oahu).
Although the proposed Kapalawai RE· it is reportedly similar
to their proposed Pua'ena Camp project · it was initially configured),
they chose to call their Oahu project a 'Eco-Camp" (recently changed
to only a "Camp") because they know tha · RESORT operation is not
a permitted use on the proposed Oahu si which is currently zoned
Lyticultural (AG-2).

(2) They are calling their overnight-a· modation "structures"
COTTAGES (which they actually ARE...jus like the ones for their
proposed project on Oahu).
for their proposed project on Oahu owever, they had to call
these similar structures TENTS (for whi · there is no definition
in the Land Use Ordinance) because they ow that Vacation CABINS,
Transient Vacation Units, nor Hotel (ro· /units) are permitted
on AG-2 zoned land.

(3) They are actually requesting the p· er/required amendments
in order to obtain a Special Management ea Use Permit (SMP),
such as a ZONING AMENDMENT and a GENERA· LAN AMENDMENT!
Although they should have requested ame for their proposed
Oahu development (inasmuch as AG-2 zoni · does not allow for a
RESORT (or hotel) operation, and, the N· h Shore Sustainable
Communities Plan ("Development Plan") d· s NOT envision a hotel/
resort operation ANYWHERE on the north · re of Oahu), they are
STILL trying to have their Oahu project pproved WITHOUT the proper
AMENDMENTS (a change in the zoning to "· el/resort mixed use"
AND an amendment (exception) to the Nor Shore's "Development Plan").

Finally, I sincerely hope that their ve· us "informational meetings"
with the neighboring communities on Kau· will be properly promoted/
advertised and available to the ENTIRE · munity, especially to those
who reside closest to the proposed deve· ment. If so, this would
be quite different than the way they pr· eded (and are still proceeding)
with their dissemination of information out their proposed project
on Oahu, where many of their community · ngs were NOT publicized
sufficiently and/or simply not known ab· by many of the neighboring
residents.

Please send me a copy of the Final E.I.· when it is available.

Sincere
Warren · Scoville

Copies FAX'd to: Applicant (Mr. Lewis · ser) @ 1(805)687-8206;
Consultant(Mr. Scott · r) @ 545-2050;
O.E.Q.C. @ 586-4186;
William W. Saunders, @ 533-2667

Helber Hastert
Planners

March 9, 2000

Mr. Warren Scoville
61-795 Papailoa Road
Haleiwa HI 96712

Dear Mr. Scoville:

**Draft Environmental Impact Statement**
**Kapalawai Resort**
**Kapalawai, Kauai, Hawaii**

Thank you for your letter dated January 6, 2000 on the above draft environmental impact statement (DEIS). Your letter and this response will be included in the final environmental impact statement (FEIS) being prepared.

The balance of your letter deals with your comparison of the proposed resort at Kapalawai to another project planned by the developer at Kawailoa on Oahu. There are no comments pertaining to specific points or information contained in the DEIS for the Kapalawai project. We respectfully submit that any comments or questions you have concerning the proposed development on Oahu are inappropriate and not relevant to the consideration of the DEIS for this project, and should be addressed to appropriate agencies with jurisdiction on Oahu.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

MARYANNE W. KUSAKA
MAYOR

DAVID K. SPROAT
FIRE CHIEF

COUNTY OF KAUAI
FIRE DEPARTMENT
MO'IKEHA BUILDING
4444 RICE STREET, SUITE 295
LIHU'E, KAUA'I, HAWAI'I

COUNTY OF KA...
DEC -3 P2:2...

December 2, 1999

Keith Nitta
Planning Department
County of Kauai
4444 Rice St., Suite 473
Lihue, Hawaii 96766

RE: Fire Department Comments
Kapalawai Resort - DEIS
Waimea, Kauai, Hawaii

Appendix J – Pages 9 & 10 - Elements of the Potable Water System:

The Applicant proposes to construct a nominal 200,000 gallon (0.2 million gallon) storage tank for the private water system which would be used to supply the maximum daily use consumption as well as the required fire protection for the RR-10 zoning per Department of Water requirements (minimum of 1500 GPM for 2-hours duration). The tank was so sized following two criteria: (1) The volume must be equivalent to the maximum daily use without credit for inflow from the well pump; and, (2) The volume must provide the maximum day rate plus fire flow for the duration of the fire with the reservoir ⅔ full at the start and credit for well inflow. The maximum daily use is estimated to be 0.177 MG.

The Applicant's storage requirement of 172,550 gallons is substantially less than our calculations assumed by their data. The formula for calculating Storage Volume is:

$$V = 4/3\ T_f(Q_m + Q_f - Q_p)$$

| | | | |
|---|---|---|---|
| $V$ | = | required storage volume, mil. gal. | |
| $T_f$ | = | fire duration, day | (2-hours/day = 0.083) |
| $Q_m$ | = | maximum day demand, mgd | (.177 mg) |
| $Q_f$ | = | fire flow, mgd | (1500 gpm = 2.16 mgd) |
| $Q_p$ | = | pump input, mgd | (200 gpm @ 16-hours = .192 mdg)<br>(200 gpm @ 24 hours = .288 mgd) |

AN EQUAL OPPORTUNITY EMPLOYER

The Applicant sized the storage tank at 200,000 gallons, which is approximately 16% larger than their calculated value of 172,550 gallons. Our calculations on the other hand resulted in the following:

Assuming 24-hours pump operations: V = 226,700 gals. + 16% = 263,000 gallons
Assuming 16-hours pump operations: V = 237,300 gals. + 16% = 275,268 gallons

Therefore, storage tank capacity should be a minimum of 0.275 MG or may be rounded to 0.3 MG rather than the 0.2 MG as reported. The private water system shall comply with the installation/testing/maintenance standards of NFPA 22, Water Tanks for Fire Protection; NFPA 24, Private Fire Service Mains; NFPA 25, Water-Based Fire Protection Systems; and the appropriate installation/testing/maintenance standards of the County Department of Water; State Department of Health; etc.

Other than the above, we have found no other representation in the DEIS that addresses or resolves the other areas of concern as described in our comments reply dated 08/18/99. We await review of the Applicant's proposal to incorporate these features into detailed plans.

In addition, the fire alarm system for the cottages shall be incorporated into the Museum Building and other major structures. We also recommend that the Museum be fire sprinklered to further protect and preserve the historical structure.

Sincerely,

David K. Sprout
Fire Chief

Mike Kano, Captain
Fire Prevention Bureau

Heller Hastert

March 9, 2000

Mr. David K. Sproat, Fire Chief
Fire Department
County of Kauai
4444 Rice Street, Suite 295
Lihue, HI 96766

Dear Chief Sproat:

Draft Environmental Impact Statement
Kapalawai Resort
Kapalawai, Kauai, Hawaii

Thank you for your letter of December 2, 1999 on the above draft environmental impact statement preparation notice (DEIS). Your letter will be included in the final environmental impact statement (FEIS) being prepared.

For your ease of reference, we will respond to your comments in the order they appear in your letter.

1. Storage Tank Capacity. Based on the calculations presented in your letter, we acknowledge a storage tank requirement of approximately 0.3 million gallons.

2. EISPN Comments. As we stated in our letter of November 5, we appreciate all of your comments concerning appropriate design considerations, landscape requirements, and recommended building setbacks. We believe these issues will be most appropriately addressed during the review of detailed plans for the project. At this time, the project design is at more of a conceptual level. We hope to work closely with the Fire Department during the design of these detailed plans.

3. We agree with your recommendation that the fire alarm system shall be incorporated into the Museum and other major structures, to further protect and preserve historic resources.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc. Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

BENJAMIN J. CAYETANO
GOVERNOR

ESTHER UEDA
EXECUTIVE OFFICER

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359
Telephone: 808-587-3822
Fax: 808-587-3827

December 6, 1999

Mr. Dee Crowell
Planning Director
County of Kauai
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

Dear Mr. Crowell:

Subject: Draft Environmental Impact Statement (DEIS) for Kapalawai Resort, Kapalawai, Kauai, Hawaii

We have reviewed the DEIS for the subject project and have the following comments:

1) The timeframe for obtaining the various Federal, State, and County land use entitlements should be clarified.

2) Pages 5-4 to 5-5 reference a market study prepared by Mikiko Corporation dated June 1999 in connection with a discussion on the economic impacts from the project. We suggest that said study be included in the Final EIS.

3) Clarification should be provided regarding the social impacts generated from the project upon the neighboring communities, the region, and the island as a whole. Was a social impact assessment prepared? If so, it should be included in the Final EIS.

4) We suggest that a boundary interpretation request be submitted to our office upon certification of the current shoreline. An interpretation based on a valid

certified shoreline survey would more precisely determine the location of the Agricultural/ Conservation District boundary along the property's shoreline and clarify the specific area of the boundary amendment petition that will be filed with our office in the future.

We have no further comments to offer at this time. We appreciate the opportunity to comment on the DEIS.

Should you have any questions, please feel free to call me or Bert Saruwatari of our office at 587-3822.

Sincerely,

ESTHER UEDA
Executive Officer

EU:aa

cc: OEQC
Lewis Geyser
Scott Ezer



March 9, 2000

Ms. Esther Ueda, Executive Officer
State of Hawaii
Department of Business, Economic Development & Tourism
Land Use Commission
P.O. Box 2359
Honolulu, HI 96804-2359

Dear Ms. Ueda:

Draft Environmental Impact Statement
Kapalawai Resort
Kapalawai, Kauai, Hawaii

Thank you for your letter dated December 6, 1999 on the above draft environmental impact statement (DEIS). Your letter will be included in the final environmental impact statement (FEIS) being prepared.

For your ease of reference, we will respond to your comments in the order they appear in your letter.

1. Section 1.7 of the EIS will be amended to include estimated timetables for the various required entitlements.

2. The market study prepared for the Kapalawai Resort by Mikiko Corporation will be submitted to the Land Use Commission as an exhibit to accompany the boundary petition for the project.

3. Various elements which are found as part of a social impact assessment are included in the Economic and Financial Impact Assessment (prepared by Mikiko Corporation) and the Traditional Customs and Practices Assessment (prepared by Cultural Surveys Hawaii), and are discussed in Chapter 5 of the EIS. An issues analysis will also be prepared and submitted as an exhibit to accompany the boundary petition for the proposed project.

4. In a July 28 letter (with attached map), you delineated an approximate location for the State Land Use Agricultural/Conservation District boundary. You also indicated that a more precise boundary determination would require a valid certified shoreline survey of the property. Since that time, we have submitted the certified shoreline to your office, and the boundary interpretation has been completed.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC

BENJAMIN J. CAYETANO
GOVERNOR

KAZU HAYASHIDA
DIRECTOR

DEPUTY DIRECTORS
BRIAN K. MINAAI
GLENN M. OKIMOTO

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO
STP 8.9392

January 28, 2000

Mr. Dee M. Crowell
Director
Department of Planning
County of Kauai
Suite 473, Building A
4444 Rice Street
Lihue, Hawaii 96766

Attention: Keith Nitta

Dear Mr. Crowell:

Subject: Kapalawai Resort
Draft Environmental Impact Statement (DEIS)
TMK: (4) 1-7-05: 01

Thank you for your transmittal requesting our comments on the subject project.

Our comments are as follows:

1. The proposed two one-way driveways should be consolidated into one two-way driveway. The consolidated access should have a channelized intersection with left-turn storage lane and acceleration and deceleration lanes. The costs of the improvements should be borne by the developer.

2. Drainage improvements should be provided at the existing box culvert crossing Kaumualii Highway.

3. The Kauai Long Range Land Transportation Plan includes widening of Kaumualii Highway from two to four lanes. The developer will need to coordinate the setback requirements for roadway widening with our Highways Division. In addition, the right-of-way should be notated as being "No Access Permitted" except at existing driveways.

4. Plans for construction work within the State highway right-of-way must be submitted for our review and approval.

We appreciate the opportunity to provide comments.

Very truly yours,

Kazu Hayashida

KAZU HAYASHIDA
Director of Transportation

c: Mr. Lewis Geyser, Destination Villages Kauai, LLC
Mr. Scott Ezer, Helber Hastert & Fee, Planners
Ms. Genevieve Salmonson, OEQC

Helber Hastert
Planners

March 9, 2000

Mr. Kazu Hayashida
Director of Transportation
State of Hawaii
Department of Transportation
869 Punchbowl Street
Honolulu, HI 96813-5097

Dear Mr. Hayashida:

Draft Environmental Impact Statement
Kapalawai Resort
Kapalawai, Kauai, Hawaii

Thank you for your letter dated January 28, 1999 on the above draft environmental impact statement (DEIS). Your letter will be included in the final environmental impact statement (FEIS) being prepared.

For your ease of reference, we will respond to your comments in the order they appear in your letter.

1. We note your comment suggesting that the proposed two one-way driveways be consolidated onto one two-way driveway. We look forward to working with your department to develop appropriate ingress/egress solutions for the resort.

2. We acknowledge the need to provide improvements at the existing box culvert crossing Kaumualii Highway.

3. We will work closely with your Highways Division to coordinate the setback requirements for any future widening of Kaumualii Highway.

4. We understand that all plans for construction work within the State highway right-of-way must be submitted to the Department of Transportation for review and approval.

If you have any questions regarding this project, please call me at 545-2055.

Sincerely,

HELBER HASTERT & FEE, Planners

Scott Ezer
Senior Associate

cc: Dee Crowell, Kauai County Planning Department
Lewis Geyser, Destination Villages Kauai, LLC



# APPENDICES



# A

## BOTANICAL SURVEY

CHAR & ASSOCIATES

# BOTANICAL SURVEY
# KAPALAWAI RESORT
# KAPALAWAI, WAIMEA DISTRICT, KAUA'I

by

Winona P. Char
CHAR & ASSOCIATES
Botanical Consultants
Honolulu, Hawai'i

Prepared for: HELBER HASTERT & FEE

April 1999

BOTANICAL SURVEY
KAPALAWAI RESORT
KAPALAWAI, WAIMEA DISTRICT, KAUA'I

## INTRODUCTION

The proposed Kapalawai Resort consists of about 170 acres of land located makai of Kaumuali'i Highway, near Waimea Town. It is bounded by the ocean to the south, Kaumuali'i Highway to the north, A'akukui Stream to the east, and agricultural lands (hybrid seed corn and sunflower fields) to the west.

Destination Villages Kauai, LLC proposes to construct a 250 unit resort on the site. The proposed project would consist of individual stand-alone and/or duplex type units scattered throughout the Kapalawai site. The former Robinson family residence, built around 1897, would be refurbished and serve as the focal point of the resort. The resort will also offer dining, swimming pools, tennis courts, a crouquet lawn, and other activities and amenities for its guests.

Field studies to assess the botanical resources found on the Kapalawai project site were conducted on 06 to 08 March 1999 by a team of three botanists. The primary objectives of the survey were to:

1) describe the vegetation on the site;
2) inventory the flora;
3) search for threatened and endangered species as well as species of concern; and
4) identify areas of potential environmental problems or concerns and propose appropriate mitigation measures.

## SURVEY METHODS

Prior to undertaking the field studies, a search was made of the pertinent literature to familiarize the principal investigator with other botanical studies conducted in the general area. Topographic maps and soil maps as well as a colored aerial photograph (1' = 300') were examined to determine vegetation cover patterns, terrain characteristics, access, boundaries, and reference points.

A walk-through (pedestrian) survey method was used. Notes were made on plant associations and distribution, substrate types, drainage, exposure, disturbances, topography, etc. Plant identifications were made in the field; plants which could not be positively identified were collected for later determination in the herbarium (Bishop Museum), and for comparison with the recent taxonomic literature.

The species recorded are indicative of the season ("rainy" vs. "dry") and the environmental conditions at the time of the survey. A survey taken at a different time of the year and under varying environmental conditions would no doubt yield slight variations in the species list, especially of the weedy, annual plants.

## DESCRIPTION OF THE VEGETATION

The vegetation on the Kapalawai site is dominated by introduced or alien plants. This is not surprising as the site was the primary residence of the Robinson family at one time. Old family photographs show the property extensively landscaped and maintained (S. Ezer, pers. comm.). Portions of the site were used for employee housing, stables and corrals, fruit orchards, and vegetable gardens. Kapalawai Fish Pond provided water for much



of the landscaped areas; the old pump and siphon can be found on the mauka end of the fish pond. A Portuguese bread oven is also found near the pond. Throughout the property, there are massive, old thickets of the purple-flowered bougainvillea (Bougainvillea spectabilis) and remnant patches of other ornamental species.

Today, the majority of the site is covered by scrub vegetation which is used for grazing cattle. Wetland vegetation is found along the two streams (Mahaikona and A'akukui) which cross the site, in and around the fish pond, and in a low lying spot where irrigation runoff water from the agricultural fields mauka of the highway is diverted. A very narrow band of coastal vegetation is found behind the white sand beach on the seaward side of the property.

A more detailed description of the three vegetation types follows. An inventory of all the plants found during the field studies is presented in the checklist at the end of the report.

The former Robinson family residence, employee housing, and other actively maintained areas near the northwest corner of the property were not included in the survey. These areas were not expected to harbor remnant native plant-dominated communities.

### Scrub Vegetation

This vegetation type is basically open to closed canopy kiawe (Prosopis pallida) scrub forest with scattered shrubs such as lantana (Lantana camara), hairy abutilon (Abutilon grandifolium), and koa haole (Leucaena leucocephala), and patches of Guinea grass (Panicum maximum) and buffelgrass (Cenchrus ciliaris). There are several variants of this vegetation type, depending primarily on how recent the disturbance and to a lesser degree on substrate type.

Much of the area covered by scrub vegetation and identified as Fill land, "Fd", on the soil maps (Foote et al. 1972) has recently been opened up. These sections support patches of grasses and mostly weedy annual species; scattered about are large, old trees of kiawe, 'opiuma (Pithecellobium dulce), and monkeypod (Samanea saman) which have been left standing. Commonly observed plants on these areas include swollen fingergrass (Chloris barbata), buffelgrass, Guinea grass, spiny amaranth (Amaranthus spinosus), lion's-ear (Leonotis nepetifolia), 'aheahea (Chenopodium murale), coffee senna (Senna occidentalis), and cocklebur (Xanthium strumarium). Golden crown-beard (Verbesina encelioides), a member of the daisy family with large yellow flowers and up to 2 ft. tall, is locally abundant. Large patches of barren soil are also common.

Along the makai perimeter of the property, there is a dense band of kiawe and 'opiuma trees which have not been disturbed. In this area there are scattered groves of coconut (Cocos nucifera) and date (Phoenix sylvestris) palms, and small stands of milo trees (Thespesia populnea). Lantana (Lantana camara) and wild basil (Ocimum gratissimum) shrubs are locally common under the trees.

In the area between the two streams, the scrub vegetation consists of rather dense stands of 'opiuma trees, 6 to 20 ft. tall. Scattered about are older kiawe trees, 25 to 40 ft. tall and 2 to 3 ft. in diameter. The soil in this area is Jaucus loamy fine sand, 0 to 8% slopes; "JfB" on the soil maps (Foote et al. 1972). Bermuda grass or manienie (Cynodon dactylon) and buffelgrass form extensive patches on this sandy substrate. Shrubs of 'ilima (Sida fallax), a native species with orange flowers, are also common.

Along the western portion of the property is an area with much surface stones, mapped as Nonopahu stony clay, "NoC", 2 to 12%



slopes (Foote et al. 1972). This area has not been cleared and supports a closed canopy kiawe forest with Guinea grass understory.

Along the mauka portion of the property on soils of the Makaweli series ("MgC, MgB, MhC"), the scrub vegetation, in places, is composed of koa haole thickets, 12 to 15 ft. tall, with a ground cover of dense Guinea grass clumps up to 3 ft. tall. There are also areas with open kiawe and Guinea grass scrub. These areas with Makaweli soils often have a few large trees of mango (Mangifera indica), Java plum (Syzygium cumini), Chinese banyan (Ficus microcarpa), monkeypod, royal palm (Roystonea sp.), and many large thickets of bougainvillea. There is also a large patch of the spineless or cochineal cactus (Opuntia cochenillifera) near the dirt road which accesses the employee's housing.

Wetland Vegetation

The banks of Mahaikona and A'akukui streams are well-defined with no low lying overflow areas. The top of the stream banks support scrub vegetation. Along the bottom banks, next to the water's edge, there are mats of California grass (Brachiaria mutica) and shrubs of Indian pluchea (Pluchea indica). Wetland vegetation is denser and more varied along A'akukui Stream especially in the area just behind the beach. There are dense mats of California grass and thickets of Indian pluchea as well as clumps of bulrush or kaluha (Schoenoplectus californicus) -- up to 7 ft. tall, umbrella sedge (Cyperus alternifolius), and Napier grass (Pennisetum purpureum). Further upstream, honohono (Commelina diffusa) is locally common.

A grove of coconut trees lines the perimeter of Kapalawai Fish Pond. Along the north side of the pond, there are dense thickets of purple and rose-red (Bougainvillea glabra) bougainvillea. Bulrush, 3 to 12 ft. tall, has filled in most of the pond. A few

open water areas are found mostly along the north side of the pond. These patches of open water support California grass along their margins and floating aquatics such as water hyacinth (Eichhornia crassipes) and duckweed (Lemna aequinoctialis). The drainage canal which runs from the pond to the beach is covered by dense floating mats of water hyacinth and water lettuce (Pistia stratiotes).

The low lying area where water from the fields mauka of the highway are directed supports dense clumps of umbrella plant, 2 to 4 ft. tall, and standing water 6 inches to about a foot deep. Job's tears (Coix lachryma-jobi), and primrose willow or kamole (Ludwigia octovalvis) are locally abundant. Along the northern half of the low lying area, there are low, open, grassy patches of Bermuda grass with scattered plants of primrose willow, false daisy (Eclipta prostrata), green kyllinga (Kyllinga brevifolia), honohono, and jungle rice (Echinochloa colona). A few mats of the aquatic azolla fern (Azolla filiculoides) are found in the areas with small pools of water. There are a few large trees in and around the low lying area, some of which have died back due to the water-logged soils and anaerobic conditions.

Coastal Vegetation

A white sand beach is found along most of the shoreline on the Kapalawai project site. There is a small rocky section along the southwest corner, where it nears the agricultural fields. The narrow band of coastal vegetation is composed primarily of pohuehue or beach morning glory vine (Ipomoea pes-caprae), Bermuda grass, and 'aki'aki or beach dropseed grass (Sporobolus virginicus). Scattered here and there are low, windswept clumps of koa haole shrubs and trees of kiawe, 'opiuma, and milo.



Unfortunately, a long-spined algaroba or mesquite species, Prosopis juliflora, has become established in the coastal vegetation. This sprawling large shrub to medium-sized tree has thick spines up to 2 inches long. Several large plants on the site had numerous clusters of pale yellowish brown pods. A number of saplings were also found. No plants were observed inland of the coastal vegetation.

## DISCUSSION AND RECOMMENDATIONS

The 170-acre Kapalawai project site has been disturbed for a long period of time. The Robinson family home was constructed around 1897 and the site was extensively landscaped. Remnant plantings of ornamental species are commonly encountered throughout the site. Almost all of the property appears to have been managed by human activity during some point in time.

A total of 145 plant species were found during the field studies. Of these, 130 (89.6%) are introduced or alien species. Introduced plants are all those species which were brought to the Hawaiian Islands by humans, intentionally or accidentally, after Western contact, that is, Cook's discovery of the islands in 1778. Two plants (1.4%) are originally of Polynesian introduction and 13 plants (9%) are native. Of the natives, 12 are indigenous, that is, they are native to the islands and elsewhere, and one is endemic, that is, it is native only to the islands. The one endemic is the kupala (Sicyos sf. pachycarpus), a member of the gourd or squash family.

None of the plants inventoried on the site is a threatened and endangered species; nor is any plant a species of concern (U.S. Fish and Wildlife Service 1999). All of the plants can be found

in similar environmental habitats throughout the Hawaiian Islands.

Improvements to the Kapalawi Fish Pond are planned. This would create more open water areas for the endangered Hawaiian waterbirds which use the pond. The irrigation runoff water which is being diverted into the low lying area on the property will cease when a reservoir mauka of the highway is constructed sometime soon. Once the water flow has been discontinued, wetland vegetation is expected to die back and be replaced by scrub vegetation.

From a botanical perspective, the large numbers of Prosopis juliflora plants are of primary concern. To date, the plants have only been known from O'ahu at Sand Island and vicinity (Wagner et al. 1990). Their appearance and somewhat prolific reproduction on Kaua'i is troubling. If not eradicated, the plants could form large, impenetrable, spiny thickets in low land, dry habitats throughout Kaua'i. Slippers, boots, and tires are no match for the numerous, thick spines up to 2 inches long.

It is recommended that all plants be eradicated -- cut and burned on site. Stumps should be treated with herbicide to prevent resprouting. The areas where the plants were found should be periodically checked for any seedlings which might appear. A search should also be made of the adjacent shoreline properties for additional plants.



## LITERATURE CITED

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Foote, D.E., E.L. Hill, S. Nakamura, and F. 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, Washington, D.C.

Lamoureux, C.H. 1988. Draft checklist of Hawaiian pteridophytes, "Kupukupu O Hawai'i Ne'i". Lyon Arboretum, University of Hawai'i, Manoa.

Staples, G. and D.R. Herbst. In prep. "In Gardens of Hawai'i, Revised and Updated". B.P. Bishop Museum, Honolulu.

U.S. Fish and Wildlife Service. 1999. U.S. Fish and Wildlife Service species list, plants. March 23, 1999. Pacific Islands Ecoregion Office, Honolulu, HI.

Wagner, W.L., D.R. Herbst, and S.H. Sohmer. 1990. Manual of the flowering plants of Hawai'i. 2 vols. University of Hawai'i Press and B.P. Bishop Museum Press, Honolulu. B.P. Bishop Museum Special Publication 83.

## PLANT SPECIES LIST -- Kapalawai Resort

The following checklist is an inventory of all the plants observed on the project site during the field studies. The plant names are arranged alphabetically by families within each of four groups: Ferns, Gymnosperms, Dicots, and Monocots. The taxonomy and nomenclature of the Ferns follow Lamoureux (1988), while the Gymnosperms are in accordance with Staples and Herbst (in prep.). The flowering plants, Dicots and Monocots, follow Wagner et al. (1990). The few recent name changes for the flowering plants are those reported in the Hawaii Biological Survey series (Evenhuis and Miller, eds., 1995-1998).

For each species, the following information is provided:

1. Scientific name with author citation.
2. Common English and/or Hawaiian name(s), when known.
3. Biogeographic status. The following symbols are used:
   - E = endemic = native only to the Hawaiian Islands.
   - I = indigenous = native to the Hawaiian Islands and also elsewhere.
   - I? = questionably indigenous = data not clear if dispersal by natural or human-related mechanisms, but weight of evidence suggests probably indigenous.
   - P = Polynesian = plants originally of Polynesian introduction prior to Western contact, that is, Cook's discovery of the Hawaiian Islands in 1778.
   - P? = questionably Polynesian = may be a Polynesian introduction, or possibly introduced early in historical times (after 1778).
   - X = introduced or alien = all those plants brought to the Hawaiian Islands by humans, intentionally or accidentally, after Western contact.
   - X? = questionably introduced = dates of introduction very early; may possibly be indigenous or of Polynesian introduction.



4. Presence (+) or absence (-) of a particular species within each of three vegetation types recognized on the project site (see text for discussion):
   - s = Scrub Vegetation
   - w = Wetland Vegetation
   - c = Coastal Vegetation

| Scientific name | Common name | Status | Vegetation type S | W | C |
|---|---|---|---|---|---|
| FERNS | | | | | |
| AZOLLACEAE (Azolla family) | | | | | |
| Azolla filiculoides Lamk. | azolla | X | - | + | - |
| NEPHROLEPIDACEAE (Sword fern family) | | | | | |
| Nephrolepis multiflora (Roxb.) Jarrett ex Morton | hairy sword fern, 'okupukupu | X | - | + | - |
| THELYPTERIDACEAE (Wood-fern family) | | | | | |
| Christella parasitica (L.) Lavl. | wood-fern | X | - | + | - |
| GYMNOSPERMS | | | | | |
| ARAUCARIACEAE (Araucaria family) | | | | | |
| Araucaria columnaris (G. Forst.) Hook. | Cook pine | X | + | - | - |
| FLOWERING PLANTS | | | | | |
| DICOTS | | | | | |
| ACANTHACEAE (Acanthus family) | | | | | |
| Barleria cristata L. | barleria | X | - | + | - |
| AMARANTHACEAE (Amaranth family) | | | | | |
| Amaranthus spinosus L. | spiny amaranth, pakai kuku | X | + | + | + |
| ANACARDIACEAE (Mango family) | | | | | |
| Mangifera indica L. | mango, manako | X | + | - | - |
| APOCYNACEAE (Dogbane family) | | | | | |
| Cascabela thevetia (L.) Lippold | be-still-tree | X | - | + | - |
| ARISTOLOCHIACEAE (Birthwort family) | | | | | |
| Aristolochia littoralis Parodi | Dutchman's pipe | X | + | + | - |



| Scientific name | Common name | Status | Vegetation type S | W | C |
|---|---|---|---|---|---|
| ASCLEPIADACEAE (Milkweed family) | | | | | |
| Calotropis gigantea (L.) W.T. Aiton | crown flower, puakalaunu | X | - | - | + |
| ASTERACEAE (Daisy family) | | | | | |
| Ageratum conyzoides L. | maile hohono | X | - | + | - |
| Bidens pilosa L. | Spanish needle, ki, ki neke | X | - | + | - |
| Conyza bonariensis (L.) Cronq. | hairy horseweed, ilioha | X | + | + | - |
| Crassocephalum crepidioides (Benth.) S. Moore | | X | - | + | - |
| Cyanthillium cinereum (L.) H. Rob. | little ironweed | X | - | + | - |
| Eclipta prostrata (L.) L. | false daisy | X | - | + | - |
| Emilia fosbergii Nicolson | pualele | X | - | + | - |
| Pluchea carolinensis (Jacq.) G. Don | pluchea, sourbush | X | + | + | + |
| Pluchea indica (L.) Less. | Indian pluchea, Indian fleabane | X | - | + | - |
| Sonchus oleraceus L. | sowthistle, pualele | X | + | - | - |
| Synedrella nodiflora (L.) Gaertn. | nodeweed | X | + | + | - |
| Verbesina encelioides (Cav.) Benth. & Hook. | golden crown-beard | X | + | - | + |
| Wedelia trilobata (L.) Hitchc. | wedelia | X | - | + | - |
| Xanthium strumarium var. canadense (Mill.) Torr. & A. Gray | cocklebur, kikania | X | + | + | + |
| BIGNONIACEAE (Bignonia family) | | | | | |
| Macfadyena unguis-cati (L.) A. Gentry | cat's-claw climber | X | + | - | - |
| CACTACEAE (Cactus family) | | | | | |
| Hylocereus undatus (Haw.) Britton & Rose | night-blooming cereus | X | + | - | - |
| Opuntia cochenillifera (L.) Mill. | cochineal cactus | X | + | - | - |
| Opuntia ficus-indica (L.) Mill. | panini, papipi | X | + | - | - |
| CHENOPODIACEAE (Goosefoot family) | | | | | |
| Atriplex semibaccata R. Br. | Australian saltbush | X | + | - | - |
| Chenopodium murale L. | 'aheahea | X | + | - | + |
| COMBRETACEAE (Indian almond family) | | | | | |
| Terminalia catappa L. | tropical almond, false kamani | X | - | - | + |

| Scientific name | Common name | Status | Vegetation type s | w | c |
|---|---|---|---|---|---|
| CONVOLVULACEAE (Morning glory family) | | | | | |
| Ipomoea alba L. | moonflower, koali pahu | X | - | + | - |
| Ipomoea indica (J. Burm.) Merr. | koali 'awa, koali 'awahia | I | - | + | - |
| Ipomoea obscura (L.) Ker-Gawl. | field bindweed | X | + | + | - |
| Ipomoea pes-caprae ssp. brasiliensis (L.) Ooststr. | pohuehue, beach morning glory | I | - | - | + |
| Merremia aegyptia (L.) Urb. | hairy merremia, koali kua hulu | X? | + | - | - |
| Merremia tuberosa (L.) Rendle | wood rose, pilikai | X | - | + | - |
| CRASSULACEAE (Orpine family) | | | | | |
| Kalanchoe pinnata (Lam.) Pers. | air plant, life plant, 'oliwa ku kahakai | X | + | - | - |
| Kalanchoe tubiflora (Harv.) Raym.-Hamet | chandelier plant | X | + | - | - |
| CUCURBITACEAE (Gourd family) | | | | | |
| Cucumis dipsaceus Ehrenb. ex Spach | wild cucumber, hedgehog gourd, teasel gourd | X | + | - | - |
| Momordica charantia L. | wild bittermelon, balsam pear | X | + | + | - |
| Sicyos af. pachycarpus Hook. & Arnott | kupala | E | + | - | - |
| EUPHORBIACEAE (Spurge family) | | | | | |
| Ricinus communis L. | castor bean, koli | X | + | + | + |
| FABACEAE (Pea family) | | | | | |
| Acacia farnesiana (L.) Willd. | klu | X | + | - | - |
| Cassia af. fistula L. | golden shower | X | + | - | - |
| Cassia sp. | shower tree | X | + | - | - |
| Chamaecrista nictitans (L.) Moench | partridge pea, lauki | X | + | - | - |
| Crotalaria pallida Aiton | smooth rattlepod, pikakani | X | + | + | - |
| Desmanthus pernambucanus (L.) Thellung | virgate mimosa, slender mimosa | X | + | + | - |
| Desmodium sandwicense E. Mey. | Spanish clover, chili clover, pua pilipili | X | - | + | - |
| Erythrina sp. | | X? | + | - | - |
| Indigofera suffruticosa Mill. | indigo, 'iniko | X | + | + | - |
| Leucaena leucocephala (Lam.) de Wit | koa haole, ekoa | X | + | + | + |
| Macroptilium latyroides (L.) Urb. | wild bean, cow pea | X | + | - | - |
| Mimosa pudica var. unijuga (Duchass. & Walp.) Griseb. | sensitive plant, pua hilahila | X | - | + | - |



| Scientific name | Common name | Status | Vegetation type s | w | c |
|---|---|---|---|---|---|
| Peltophorum inerme (Roxb.) Naves | yellow poinciana | X | + | - | - |
| Phaseolus sp. | | X | + | - | - |
| Pithecellobium dulce (Roxb.) Benth. | 'opiuma | X | + | + | + |
| Prosopis juliflora (Sw.) DC | algaroba, mesquite | X | - | - | + |
| Prosopis pallida (Humb. & Bonpl. ex Willd.) Kunth | kiawe | X | + | + | + |
| Samanea saman (Jacq.) Merr. | monkeypod | X | + | + | - |
| Senna alata (L.) Roxb. | candle bush | X | - | + | - |
| Senna occidentalis (L.) Link | coffee senna, 'aukoi | X | + | + | - |
| Tamarindus indica L. | tamarind | X | + | - | - |
| GOODENIACEAE (Goodenia family) | | | | | |
| Scaevola sericea Vahl | naupaka kahakai, naupaka, beach naupaka | I | - | - | + |
| LAMIACEAE (Mint family) | | | | | |
| Leonotis nepetifolia (L.) R. Br. | lion's ear | X | + | + | + |
| Ocimum gratissimum L. | wild basil | X | + | - | + |
| Salvia occidentalis Sw. | West Indian sage | X | + | - | - |
| LYTHRACEAE (Loose strife family) | | | | | |
| Cuphea carthagenensis (Jacq.) Macbr. | tarweed, Colombian cuphea | X | - | + | - |
| MALVACEAE (Mallow family) | | | | | |
| Abutilon grandifolium (Willd.) Sweet | hairy abutilon, ma'o | X | + | + | - |
| Abutilon incanum (Link) Sweet | ma'o, hoary abutilon | I? | + | - | - |
| Hibiscus tiliaceus L. | hau | I? | + | - | - |
| Malva parviflora L. | cheese weed | X | + | - | - |
| Malvastrum coromandelianum (L.) Garcke | false mallow | X | + | + | - |
| Sida acuta ssp. carpinifolia (L.f.) Borssum Waalkes | acute-leaved sida | X | - | + | - |
| Sida fallax Walp. | 'ilima | I | + | - | + |
| Sida spinosa L. | prickly sida | X | + | - | - |
| Thespesia populnea (L.) Sol. ex Correa | milo | I? | - | + | + |
| MELIACEAE (Mahogany family) | | | | | |
| Melia azedarach L. | Chinaberry, pride-of-India, 'ina | X | + | - | - |

| Scientific name | Common name | Status | Vegetation type L | W | C |
|---|---|---|---|---|---|
| Swietenia mahogani (L.) Jacq. | West Indian mahogany | X | + | - | - |
| MORACEAE (Mulberry family) | | | | | |
| Ficus microcarpa L.f. | Chinese banyan, Malayan banyan | X | + | + | - |
| MYRTACEAE (Myrtle family) | | | | | |
| Eugenia uniflora L. | Surinam cherry | X | + | - | - |
| Syzygium cumini (L.) Skeels | Java plum | X | + | + | - |
| NYCTAGINACEAE (Four-o'clock family) | | | | | |
| Bougainvillea glabra Choisy | bougainvillea, pukanawila | X | + | - | - |
| Bougainvillea spectabilis Willd. | purple bougainvillea | X | + | + | - |
| Mirabilis jalapa L. | four-o'clock, nani ahiahi | X | + | - | - |
| ONAGRACEAE (Evening primrose family) | | | | | |
| Ludwigia octovalvis (Jacq.) Raven | primrose willow, kamole | P? | - | + | - |
| PASSIFLORACEAE (Passion flower family) | | | | | |
| Passiflora edulis forma flavicarpa Degener | passion fruit, liliko'i | X | - | + | - |
| PHYTOLACCACEAE (Pokeweed family) | | | | | |
| Rivina humilis L. | rouge plant, coral berry | X | + | - | - |
| PLUMBAGINACEAE (Leadwort family) | | | | | |
| Plumbago zeylanica L. | 'ilie'e, hilie'e | I | + | - | - |
| POLYGONACEAE (Buckwheat family) | | | | | |
| Antigonon leptopus Hook. & Arnott | Mexican creeper, chain-of-hearts | X | + | - | - |
| Polygonum sp. | knotweed | X | - | + | - |
| PORTULACACEAE (Purslane family) | | | | | |
| Portulaca oleracea L. | pigweed, common purslane, 'ihi | X | + | - | - |
| SAPINDACEAE (Soapberry family) | | | | | |
| Dodonaea viscosa Jacq. | 'a'ali'i, 'a'ali'i ku makani | I | - | - | + |



| Scientific name | Common name | Status | Vegetation type L | W | C |
|---|---|---|---|---|---|
| SOLANACEAE (Nightshade family) | | | | | |
| Capsicum frutescens L. | chili pepper, nioi | X | + | - | - |
| Physalis angulata L. | | X | + | - | - |
| Solanum americanum Mill. | popolo, glossy nightshade | I? | + | + | - |
| Solanum lycopersicon var. cerasiforme (Dunal) Spooner, Anderson & Jansen | currant tomato | X | + | - | - |
| Solanum seaforthianum Andr. | blue potato vine | X | + | - | - |
| STERCULIACEAE (Cacao family) | | | | | |
| Waltheria indica L. | 'uhaloa, hi'aloa, kanakaloa | I? | + | - | + |
| VERBENACEAE (Verbena family) | | | | | |
| Lantana camara L. | lantana, lakana | X | + | - | + |
| Verbena litoralis Kunth | weed verbena, owi, oi | X | - | + | - |
| MONOCOTS | | | | | |
| AGAVACEAE (Sisal family) | | | | | |
| Agave sisalana Perrine | sisal, malina | X | + | - | - |
| Furcraea foetida (L.) Haw. | Mauritius hemp | X | + | - | - |
| ARACEAE (Aroid family) | | | | | |
| Pistia stratiotes L. | water lettuce | X | - | + | - |
| ARECACEAE (Palm family) | | | | | |
| Cocos nucifera L. | coconut, niu | P | + | + | + |
| Livistona chinensis (Jacq.) Mart. | Chinese fan palm | X | + | - | - |
| Phoenix sylvestris (L.) Roxb. | wild date palm | X | + | + | + |
| Roystonea sp. | royal palm | X | + | + | - |
| COMMELINACEAE (Spiderwort family) | | | | | |
| Commelina diffusa N.L. Burm. | honohono | X | - | + | - |
| CYPERACEAE (Sedge family) | | | | | |
| Cyperus alternifolius ssp. flabelliformis (Rottb.) Kukenth. | umbrella plant, 'ahu 'awa haole, pu'uka'a | X | - | + | - |

| Scientific name | Common name | Status | Vegetation type s | w | c |
|---|---|---|---|---|---|
| Cyperus sp. | | X | - | + | - |
| Kyllinga brevifolia Rottb. | green kyllinga, kili'o'opu | X | - | + | - |
| Schoenoplectus californicus (C.A. Mey.) Palla | bulrush, kaluha | X? | - | + | - |
| LEMNACEAE (Duckweed family) | | | | | |
| Lemna aequinoctialis Welw. | duckweed | X | - | + | - |
| Spirodela polyrhiza (L.) Schleid. | greater duckweed | X | - | + | - |
| LILIACEAE (Lily family) | | | | | |
| Crinum sp. | | X | + | - | - |
| MUSACEAE (Banana family) | | | | | |
| Musa X paradisiaca L. | banana, mai'a | X | + | - | - |
| POACEAE (Grass family) | | | | | |
| Bambusa spp. | bamboo | X | + | - | - |
| Bothriochloa pertusa (L.) A. Camus | pitted beardgrass | X | + | - | - |
| Brachiaria mutica (Forssk.) Stapf | California grass | X | + | + | - |
| Cenchrus ciliaris L. | buffelgrass | X | + | + | + |
| Cenchrus echinatus L. | common sandbur, 'ume 'alu | X | - | - | + |
| Chloris barbata (L.) Sw. | swollen fingergrass, mau'u lei | X | + | - | + |
| Coix lachryma-jobi L. | Job's tears | X | - | + | - |
| Cynodon dactylon (L.) Pers. | Bermuda grass, manienie | X | + | + | + |
| Dichanthium sp. | | X | + | - | - |
| Digitaria ciliaris (Retz.) Koeler | Henry's crabgrass | X | + | - | - |
| Digitaria insularis (L.) Mez ex Ekman | sourgrass | X | + | + | + |
| Digitaria sp. | crabgrass | X | + | - | - |
| Echinochloa colona (L.) Link | jungle rice | X | - | + | - |
| Echinochloa crus-galli (L.) P. Beauv. | barnyard rice | X | - | + | - |
| Eleusine indica (L.) Gaertn. | wiregrass, goosegrass | X | - | + | - |
| Eragrostis amabilis (L.) Wight & Arnott | lovegrass | X | + | - | - |
| Leptochloa uninervia (K. Presl.) Hitchc. & Chase | leptochloa | X | - | + | - |
| Melinis repens (Willd.) Zizka | Natal redtop, Natal grass | X | + | - | - |
| Panicum maximum Jacq. | Guinea grass | X | + | + | + |



| Scientific name | Common name | Status | Vegetation type s | w | c |
|---|---|---|---|---|---|
| Panicum maximum var. trichoglume Eyles ex Robyns | green panicgrass | X | + | - | - |
| Paspalum conjugatum Bergius | Hilo grass, mau'u Hilo | X | - | + | - |
| Pennisetum purpureum Schumach. | Napier grass, elephant grass | X | - | + | - |
| Sacciolepis indica (L.) Chase | Glenwood grass | X | - | + | - |
| Setaria verticillata (L.) P. Beauv. | bristly foxtail, mau'u pilipili | X | + | - | - |
| Sporobolus virginicus (L.) Kunth | 'aki'aki, beach dropseed | I | - | - | + |
| Stenotaphrum secundatum (Walt.) Ktze. | St. Augustine grass, buffalo grass, 'aki'aki haole | X | - | + | + |
| PONTEDERIACEAE (Pickerel weed family) | | | | | |
| Eichhornia crassipes (Mart.) Solms | water hyacinth | X | - | + | - |



# B

## FERAL MAMMAL AND AVIFAUNAL SURVEY

PHILIP BRUNER

# SURVEY OF THE AVIFAUNA AND FERAL MAMMALS FOR THE PROPOSED KAPALAWAI RESORT, KAPALAWAI, KAUAI, HAWAII

Prepared for

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## INTRODUCTION

The purpose of this report is to summarize the findings of a bird and mammal field survey, conducted between 5-7 March 1999, of a 170 acre site at Kapalawai, Kauai (Fig. 2). Also included are references to pertinent literature and unpublished reports.

The objectives of the field survey were to:

1- Document what bird and mammal species occur on the property. Note other birds and mammals that potentially could be found in this area.

2- Provide some baseline data on the relative abundance of each species.

3- Note the presence or likely occurrence of any native fauna, particularly those that are listed as "Endangered" or "Threatened".

4- Determine if the property contains any special or unique resources important to native wildlife.

## SITE DESCRIPTION

This 170 acre beach front site contains a variety of habitats. Introduced vegetation dominates the property. Recent clearing of brush has opened up the understory. Cattle grazing has also impacted the vegetation. During one day of the survey Kiawe on the NE of the property was being cut for firewood.

Wetland habitat exists at several locations. Stream drainages and vegetation choked marshes are surrounded by dry parkland habitat. A sandy beach fronts the entire

property. Residential habitat with lawns and large fruit trees are to be found around the old plantation house.

The weather during the survey period was clear and calm. The dry dusty conditions suggested there had not been significant rain in this area for sometime.

## STUDY METHODS

The property was surveyed from 5-7 March 1999. The site was walked and all habitats were visited several times both early and late in the day. Field observations were made with the aid of binoculars and by listening for vocalizations.

At scattered locations throughout the site, eight minute counts were made of all birds seen or heard (Fig. 1). These data provide the basis for the relative abundance estimates given in Table One. Published and unpublished reports of birds known from similar habitat on Kauai were also consulted in order to acquire a better perspective of the possible fauna that could occur in this region and their potential relative abundance (Pratt et al. 1987, Hawaii Audubon Society 1993, Bruner 1990, 1991, 1992, 1993, 1996). Observations of feral mammals were limited to visual sightings and evidence in the form of scats and tracks. No attempts were made to trap mammals in order to obtain data on their relative abundance and distribution. Such an effort was not possible nor necessary within the time constraints of the field survey. Two evenings were devoted to looking for bats and owls.



Scientific names of birds and mammals used in this report follow those given in Checklist of the Birds of Hawaii (Pyle 1997) and Mammal Species of the World (Honacki et al. 1982).

## RESULTS AND DISCUSSION

Resident Endemic (Native) Birds:

No native landbirds were recorded on the survey. Given the location, elevation and type of habitats available at this site the absence of native landbirds was not unexpected. The Short-eared Owl or Pueo (Asio flammeus sandwichensis) forages in agricultural fields and pastures as well as in upland forested habitat (Hawaii Audubon Society 1993). This species is fairly common on Kauai. On Oahu it is listed as endangered by the State of Hawaii. Although this species was not recorded on this survey it could forage in this area. Pueo nest on the ground and prefer tall grass. The grazed and recently cleared understory at this site would not be preferred nesting habitat for Pueo.

Migratory Indigenous (Native) Birds:

Migratory shorebirds winter in Hawaii between the months of August through May. Some juveniles will stay over the summer months as well (Johnson et al. 1981, 1983, 1989). The most abundant shorebird species which winter in Hawaii is the Pacific Golden-Plover (Pluvialis fulva). Plover forage in open areas such as mud flats, lawns,

pastures, plowed agricultural fields and roadsides. Plover are extremely site-faithful and most establish winter foraging territories which they defend vigorously. Such behavior makes it possible to accurately census the plover population in a particular area (Johnson et al. 1989). A total of nine plover were recorded on the survey. These birds were seen in open cleared land, lawns and along the beach. The Ruddy Turnstone (Arenaria interpres) is the second most common migratory shorebird in Hawaii. They also forage in pastures and open ranch lands. A total of five turnstone were tallied on the survey. Three Wandering Tattler (Heteroscelus incanus) were seen on the beach. This species forages along beaches, rocky shorelines, streams, mudflats and wetlands. Neither the plover, tattler nor the turnstone are listed as endangered or threatened.

Resident Indigenous (Native) Seabirds:

No seabirds were recorded nor would any be expected at this location. Predators such as dogs and cats along with human disturbance limit seabird nesting to a few isolated locations on the main Hawaiian Islands (Hawaii Audubon Society 1993).

Resident (Native) Waterbirds:

Six Common Moorhen (Gallinula chloropus) were observed in the wetlands. They were seen in the open stream drainages and along the edges of the marsh habitats. This shy species is more often heard than seen. They quickly retreat into the vegetation when approached. This species is endangered in Hawaii. A pair of Hawaiian Duck (Koloa) (Anas wyvilliana) were flushed from a stream on 7 March. Koloa are endangered but are still relatively common on Kauai. The abundance of wetland habitats



on this island, plus the absence of the predacious Small Indian Mongoose (Herpestes auropunctatus) may be important reasons for its continued success on Kauai. A total of four Black-crowned Night Herons (Nycticorax nycticorax) were observed on the survey. This species is the only native waterbird that is not endangered. They are opportunistic foragers and take a wide variety of prey. These four herons were seen in the wetlands and flying over the property.

The three endangered wetland species that were not recorded include: Hawaiian Goose (Nene) (Branta sandvicensis), Hawaiian Coot (Fulica alai) and Black-necked Stilt (Himantopus mexicanus). All of these species might potentially occur in this area. However, the present vegetation choked marshes are not particularly attractive to these species. Coot prefer more open water habitat. Stilt need shallow areas for wading.

Exotic (Introduced) Birds:

A total of 17 species of exotic birds were recorded during the course of the field survey. This list compares favorably with that obtained on similar lands by Bruner (1990, 1991,1992, 1993, 1996). Table One shows the relative abundance of each species. In addition to these species other exotic birds which potentially could occur on the property include: Barn Owl (Tyto alba), Skylark (Alauda arvensis), and Greater Laughing-thrush (Garrulax pectoralis) (Pratt et al. 1987, Hawaii Audubon Society 1993).

Feral Mammals:

Several cats (Felix catus) were seen. Dog (Canis familiaris) tracks were also abundant. Pig (Sus scrofa) tracks were seen at several locations around the property. The endemic and endangered Hawaiian Hoary Bat (Lasiurus cinereus semotus) is frequently seen on Kauai (Tomich 1986, Kepler and Scott 1990). Three bats were observed foraging for flying insects just offshore on the evening of 5 March. On 6 March one bat was observed flying back and forth over the marsh. This species is known to roost solitarily in trees and forages for flying insects using echolocation (Jacobs 1993). They use a variety of habitats including native forest, ranchlands, ponds and bays as well as urban areas (Jacobs 1991). The life history of this species is not well known. The most recent bat research on the Big Island has yielded some new insights into their behavior (Reynolds et al. 1998). I was not surprised to find bats on this property. I have recorded bats on many sites I have visited on Kauai. Rats and mice undoubtedly occur on the property but were not seen.

## CONCLUSION

A short field survey can only provide a limited view of the wildlife that may use the site. The number of species and their relative abundance may vary throughout the year due to resource (food, water) availability and reproductive success. Species which are migratory will only be an important part of the faunal picture at certain times during the year. Exotic species sometimes prosper for a time only to later disappear or become a



less significant part of the faunal community (Williams 1987, Moulton 1990). Thus while only long term studies can provide a comprehensive view of the bird and mammal populations in a particular area, some general conclusions related to bird and mammal activity at this site can be made. Below is a summary of the findings of this survey.

1 The site was surveyed by walking the entire property. Census data on birds were obtained at random locations in all habitat types throughout the property and are reported in the text and in Table One.

2 No native resident landbirds were tallied on the survey. The native owl (Pueo) occurs on Kauai but was not recorded on this survey. They are listed by the State of Hawaii as endangered on the island of Oahu but not Kauai.

3 The migratory Pacific Golden-Plover, Ruddy Turnstone and Wandering Tattler were present on this site. These species are common migrants and are not endangered or threatened.

4 The list of exotic birds recorded on the survey (Table 1) was typical for this area and compared favorably with the data obtained by Bruner on other similar properties on Kauai.

5 Cats, dogs and pigs were recorded at this site. Rats and mice probably occur in this area but were not found on this survey. The endangered Hawaiian Hoary Bat was observed. This species is fairly common on Kauai. I have seen them at many sites around the island. The proposed development should not adversely impact foraging opportunities for bats. They forage in urban as well as forested habitats.

6 This property has been significantly altered by introduced vegetation and ranching. No unusual or unexpected species were recorded. The wetland habitats serve as foraging sites for native waterbirds. Presently the marshy areas are overgrown with emergent vegetation. This restricts their access to waterbirds. If these marshes were opened up by removal of some vegetation they would provide better habitat for waterbirds. A complete removal of vegetation leaving an open pond with a rock or dirt wall would not be attractive to native waterbirds. They require cover in the form of emergent vegetation to avoid predators or as a place to retreat when disturbed. One approach might be to clear the vegetation along the shoreline and in the water and retain vegetation on the pond's island. The advantage of this would be that the island would provide cover and nesting opportunities that would be protected from cats. Visually this would make the wetland more attractive while still providing safe habitat for native waterbirds.



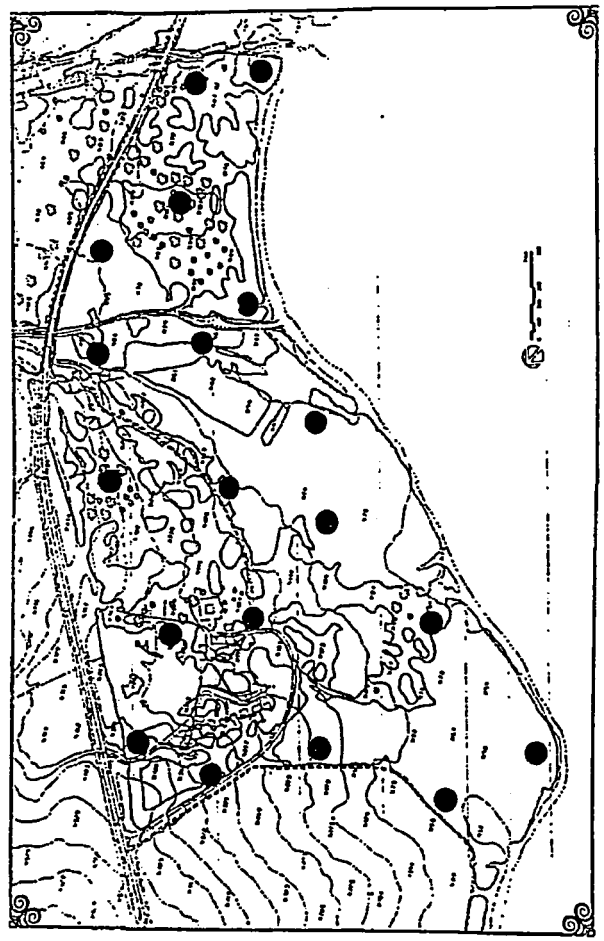


Fig. 1. Location of faunal survey. Solid circles indicate the sites of eight minute counts.

TABLE 1

Introduced species of birds recorded on the site of the proposed Kapaiwai Resort, Kapaiwai, Kauai

| COMMON NAME | SCIENTIFIC NAME | RELATIVE ABUNDANCE |
|---|---|---|
| Cattle Egret | Bubulcus ibis | U |
| Erckel Francolin | Francolinus erckelli | R=4 |
| Red Junglefowl | Gallus gallus | C |
| Ring-necked Pheasant | Phasianus colchicus | R=6 |
| Spotted Dove | Streptopelia chinensis | C |
| Zebra Dove | Geopelia striata | C |
| White-rumped Shama | Copsychus malabaricus | U |
| Hwamei | Garrulax canorus | R=2 |
| Northern Mockingbird | Mimus polyglottus | U |
| Common Myna | Acridotheres tristis | U |
| Japanese White-eye | Zosterops japonicus | A |
| Northern Cardinal | Cardinalis cardinalis | C |
| Red-crested Cardinal | Paroaria coronata | C |
| House Finch | Carpodacus mexicanus | C |
| House Sparrow | Passer domesticus | R=5 |
| Nutmeg Mannikin | Lonchura punctulata | U |
| Chestnut Mannikin | Lonchura malacca | U |



KEY TO TABLE 1

Relative abundance = Number of times observed during the survey or frequency on eight minute counts in appropriate habitat.

A = abundant ( ave. 10+)

C = common (ave. 5-10)

U = uncommon (less than 5)

R = recorded (seen or heard on one count only or at times other than on eight minute counts. Number which follows is the total number of individuals seen or heard).

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# C

## MARINE ENVIRONMENTAL ASSESSMENT

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**MARINE ENVIRONMENTAL ASSESSMENT,**
**KAPALAWAI RESORT**
**KAPALAWAI, KAUAI, HAWAII**

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## INTRODUCTION AND PURPOSE

Planning is underway for development of the Kapalawai Resort on a 170-acre site on the southwest shore of the island of Kauai (Figure 1). The site is bounded by Kaumauli Highway to the northeast, agricultural fields to the northwest, Makaweli Landing to the southeast, and the Pacific Ocean to the southwest. The shoreline area on the northern part of the property is known as Poo Point, and the southern region of the shoreline forms the northern part of Hoanuanu Bay. Mahaikona Stream bisects the property, and the Makaweli River enters the ocean approximately one kilometer north of the project site.

Planned facilities include an estimated 250 units for visitor accommodations, constructed as stand-alone cottages or duplexes. In addition two dining facilities and on-site recreational areas for swimming and tennis are planned. The present Robinson Family residence and related structures will be maintained as a museum to preserve the history of the western region of Kauai. None of the proposed plans call for any alteration of the shoreline or nearshore region.

While all planning and construction activities will place a high priority on maintaining the existing nature of the marine environment, it is nevertheless important to address any potential impacts that may be associated with the planned project. In order to evaluate the existing condition of the marine environment, as well as to assess the potential for impacts, a pre-construction baseline survey of the marine environment has been conducted. Presented below are methods and results from the assessment of marine water chemistry and biotic community structure conducted in March 1999 offshore of the proposed Kapalawai Resort project site.

## PHYSICAL STRUCTURE OF THE NEARSHORE ENVIRONMENT

A narrow sand beach stretches along the length of the project boundary. In the approximate center of the property, a pond with standing water extends from the back beach landward. At present the pond is densely populated with aquatic plants; however aerial photographs taken in past decades indicate that the pond once contained an expanse of open water.

Along the southern end of the property, from approximately the location of the stream to Makaweli landing, the nearshore marine environment consists of a shallow, gently sloping plain of fine-grained red mud. Near the shoreline, the mud grades into a mix of mud and sand. The mud zone extends uninterrupted from near the shoreline to a distance of approximately 1 km offshore. Within this area there is virtually no exposed solid bottom, as such there is no reef development. It is apparent that Hoanuanu Bay receives (or has received) substantial quantities of terrigenous sediment during periods of runoff. It also appears that the typography (shape) of the bay is such that sediments are retained within the coastal indentation, and are not rapidly flushed from the area. As a result, there is a substantial permanent depositional zone of mud within the bight of Hoanuanu Bay at the southern end of the Kapalawai property.

From the point where the stream would cross the shoreline northward, the nearshore area is made up of two zones; an inner reef flat and an outer reef front that are separated by a shallow reef crest. Long-period swells become breaking waves on reaching the reef crest. As a result of the high energy, few corals occur on the crest. Bottom composition of the reef flat consists of muddy sand and coral rubble; maximum water depth on the reef flat is approximately 2 meters (m). Because of the shallow depth, high terrigenous sediment content and vigorous water motion from wave energy, water clarity on the reef flat is highly turbid. However, living colonies of corals were observed on the reef flat, predominantly lobate hemispherical heads of *Porites lobata*, and sturdy, branching colonies of *Pocillopora meandrina*.

Seaward of the reef crest, the bottom slopes gradually downward with distance offshore. The underwater physiographic structure in the nearshore zone consists of a platform of lithified reefal limestone. While areas of the platform are relatively flat, other regions are characterized by substantial vertical relief in the form of deep grooves and undercut ledges in what appears to be ancient coral reef platform (Figure 3). Vertical relief of the reef structures is generally not more than one meter. Grooves and channels in the reef platform are generally filled with coarse sand and rubble. The surfaces of the reef platforms are heavily pitted, probably as a result of bioerosion, resulting in an extremely friable (breakable) upper surface. A ubiquitous feature of the reef platform



is a veneer of red mud sediment that appears to be bound to the limestone surface within a short layer of algal turf. The thickness of the muddy layer decreases with distance northward and offshore. The predominant biota on the inner reef platform are flat encrustations of several species of stony corals, and calcareous algae.

The entire area offshore of the proposed project is exposed to long-period swells generated by storms in the north Pacific during the winter months, and the south Pacific in the summer months. As a result of the physical forces associated with winter waves, the nearshore areas off Kapalawai are subjected to extreme stress from wave impact and scouring of sediment from wave action. As in many locations in the Hawaiian Islands, the composition of coral reef communities is structured primarily in response to physical forces of breaking waves (Dollar 1982, Dollar and Tribble 1993). In addition, the high loading and accumulation of terrigenous sediment in the areas offshore of Kapalawai appear to be a major factor in affecting biotic composition of the reef communities.

## WATER CHEMISTRY

### Methods

Two locations fronting the Kapalawai site were selected as sampling sites for evaluation of existing water chemistry. Site 1 lies at the northern end of the property off the southern side of Poo Point; Site 2 lies off the southern end of the property, originating near the point where the stream enters the ocean (Figure 1). Water chemistry was evaluated along sampling transects at each site. Each transect was oriented perpendicular to the shoreline, and extended from the highest wash of waves across the nearshore reef platform out to the open ocean, a distance of approximately 500 meters (m).

Water samples were collected at nine stations along each transect. Such sampling was intended to span the entire range of material input at the shoreline to the open coastal ocean. Sampling was more concentrated in the nearshore zone as this area is most likely to show the effects of shoreline modification. At each station a surface sample was collected within approximately 10 centimeters (cm) of the surface. With the exception of the stations located on the reef flat within 50 m from the shoreline, a bottom sample was collected within 1 m of the sea floor.

Surface water samples were collected by opening triple-rinsed, one-liter polyethylene bottles near the air-sea interface. Bottom samples were collected using a 1.8-liter Niskin-type oceanographic sampling bottle. These bottles were lowered to the desired depth in an open position, where

spring-loaded endcaps were triggered to close by a messenger released from the surface. Subsamples for nutrient analyses from both surface and deep samples were immediately placed in 125-milliliter (ml) acid-washed, triple rinsed, polyethylene bottles and stored on ice until returned to Honolulu.

Water quality constituents that were measured included the specific criteria designated for open coastal waters in Chapter 11-54, Section 06 (Open Coastal waters) of the State of Hawaii, Department of Health (DOH) Water Quality Standards. These criteria include: total nitrogen (TN), nitrate + nitrite nitrogen ($NO_3$ + $NO_2$, hereafter referred to as $NO_3$), ammonium ($NH_4^+$), total phosphorus, chlorophyll a (Chl *a*), turbidity, temperature, pH and salinity. In addition, orthophosphate phosphorus ($PO_4^{-3}$) and silica (Si) are also reported because these parameters are sensitive indicators of biological activity and the degree of freshwater input to the ocean, respectively.

Analyses for $NH_4^+$, $PO_4^{-3}$, and $NO_3$ + $NO_2$ were performed with a Technicon autoanalyzer using standard methods for seawater analysis (Strickland and Parsons 1968, Grasshoff 1983). TN and TP were analyzed in a similar fashion following oxidative digestion. Dissolved organic nitrogen (DON) and dissolved organic phosphorus (DOP) were calculated as the difference between total dissolved nitrogen (TDN) and dissolved inorganic N (DIN), and total dissolved phosphorus (TDP) and dissolved inorganic P (DIP), respectively. The level of detection for the dissolved nutrients is 0.2 µM for TN and Si, 0.02 µM for TP, $NO_3$ and $NH_4^+$, and 0.01 µM for $PO_4^{-3}$.

Water for other analyses was subsampled from 1-liter polyethylene bottles and kept chilled until analysis. Turbidity was measured on a Monitek Model 21 nephelometer, and reported in nephelometric turbidity units (NTU). Chl *a* was measured by filtering 300 ml of water through sub-micron glass-fiber filters (GF/F); pigments on filters were extracted in 90% acetone in the dark at -5° C for 12-24 hours, and the fluorescence before and after acidification of the extract was measured with a Turner Designs fluorometer. Salinity was determined using an AGE Model 2100 laboratory salinometer with a precision of 0.0003‰. TSS was determined gravimetrically.

In-situ field measurements included pH using a field meter with readability of 0.01 pH unit.

All analyses were conducted by Marine Analytical Specialists (Honolulu, HI). This laboratory possess the required approval ratings for the analyses.



## Results

### Environmental Conditions

Water samples were collected on March 13, 1999. Environmental conditions were sunny with light winds from the south. It is important to note that much of the rest of Kauai was experiencing heavy rainfall during the survey, while the weather was sunny at Kapalawai. Such a situation appears to be the norm, as the leeward side of the island is typically nearly arid in climate. Ocean conditions consisted of calm seas with small surf breaking on the reef crest. Water sampling was conducted during slack tide at approximately +0.2 feet above mean low water.

### Horizontal and Vertical Stratification

Tables 1 and 2 show the results of all water chemistry analyses for samples collected off of the Kapalawai site on March 13, 1999. Concentrations of dissolved nutrients are shown in micromolar (µM) units in Table 1, and in units of micrograms per liter (µg/L) in Table 2. The concentrations of dissolved nutrients, TSS, turbidity, salinity, and Chl *a* in surface and deep samples are plotted as functions of distance from the shoreline in Figures 2-5.

Examination of Figures 2-5 reveal several distinct patterns with respect to horizontal stratification of water chemistry. The plot of salinity vs distance reveal a sharp gradient of increasing salinity on the reef flat between the shoreline and 50 m offshore (Figure 2). As there was no streamflow reaching the ocean during the sampling, the freshwater input to the area appears to be from efflux of groundwater in the nearshore zone that mixes with oceanic water (~35‰). Freshwater efflux appears to be greater on the northern transect relative to the southern transect. Seaward of the reef flat, there was little evidence of variation in salinity between the samples collected 100 to 500 m from shore.

The plots of dissolved nutrients Si, $NO_3$, TN, $PO_4^{-3}$ and TP exhibit patterns that are mirror images of the patterns of salinity (Figures 2 and 3). Groundwater normally contains high concentrations of these nutrients and low salinity, while seawater typically contains low nutrient content and high salinity. While salinity is also generally low in surface runoff (i.e., rainfall), nutrients are also low; hence there is relatively little corresponding increase in nutrients with decreased salinity. Hence, the mirror images of salinity and concentrations of nutrients off Kapalawai indicate input of groundwater at the shoreline.

As freshwater is lower in density than seawater, there is also an indication of vertical stratification of nutrients and salinity. Salinity is consistently higher in bottom samples than surface samples, which nutrient concentrations are elevated in surface samples relative to bottom samples. However, at the sampling stations that exhibited the greatest variation in nutrient concentrations and salinity on the reef flat, the shallow depth of water precluded sampling at the surface and bottom.

The patterns of distribution of dissolved organic nutrients (DON, DOP) and $NH_4^+$ that are not present in relatively high concentrations in groundwater are distinctly different from the patterns for inorganic nutrients (Figure 4). The concentrations of $NH_4^+$ on the south transect are essentially constant in value across the entire transect. On the north transect the concentrations of $NH_4^+$ peak at the outer boundary of the reef flat.
Profiles of DON and DOP show little pattern throughout the sampling regime.

On both transects, TSS and turbidity peaked at the shoreline and decreased with distance from shore (Figure 5). TSS and turbidity were also higher on the northern transect compared to the southern transect from the shoreline to a distance of 300 m from shore. Chl *a* was also highest on the reef flat, peaking in concentration at the shoreline on the north transect and 25 m from shore on the southern transect.

Compliance with DOH Standards

DOH standards include specific criteria that are not to be exceeded during either 10% or 2% of the time, or as the geometric mean of the sampling set. With only one sample set collected to date from each sampling station, comparison of the 10% or 2% criteria or the geometric mean criteria for any sampling station are not statistically meaningful. However, comparing sample concentrations to these criteria provide an indication of whether water quality is near the stated specific criteria.

Table 2 shows samples seaward of the shoreline that exceed DOH water quality standards for open coastal waters under "wet" conditions. The criteria for wet conditions are applied to the Kapalawai area because this region probably receives at least 3 million gallons of groundwater input per mile per day. During the March 1999 survey, several constituents exceeded the 10% or 2% limits. On the north transects $NO_3^-$, turbidity and Chl *a* in samples within 50 m of the shoreline exceeded specific criteria. On the south transect, these constituents, as well as $NH_4^+$, exceeded specific criteria. The recorded concentrations of $NH_4^+$ and Chl *a* exceeded specific criteria from the shoreline to a distance of 300 m from shore on the southern transect.



As noted in the section above, $NO_3^-$ is a natural component of groundwater. In areas that receive substantial input of groundwater there is typically a zone of mixing near the shoreline where $NO_3^-$ concentrations may consistently exceed DOH criteria as long as physical mixing processes remain low. However, $NH_4^+$ is not a normal component of groundwater. It is apparent that some other source of $NH_4^+$ than groundwater input is responsible for the elevated concentrations along almost the entirety of the south transect off of Kapalawai.

## BIOTIC COMMUNITY STRUCTURE

### Methods

All fieldwork was carried out on March 13-14, 1999, and was conducted from both a 26-foot boat using SCUBA gear, and from the shoreline. Biotic structure of benthic (bottom dwelling) communities inhabiting the reef environment was evaluated by establishing a descriptive and quantitative baseline between the shoreline and the 10 meter (m) (~30 foot) depth contour. Initial qualitative reconnaissance surveys were conducted that covered the area off the proposed Kapalawai property from the shoreline out to the 10 m contour. These reconnaissance surveys were useful in making relative comparisons between areas, identifying any unique or unusual biotic resources, and providing a general picture of the physiographic structure and benthic assemblages occurring throughout the region of study.

Following the preliminary survey, four quantitative transect sites were selected offshore of the proposed development area near the same sites where water quality was evaluated (two sites near each of the north and south transects) (see Figure 1). Each transect was oriented parallel to depth contours so as to bisect a single reef zone. Care was taken to place transects in random locations that were not biased toward either peak or low coral cover.

Quantitative benthic surveys were conducted by stretching a 50-m long surveying tape in a straight line over the reef surface. A quadrat frame with dimensions of 1 m x 0.7 m was sequentially placed over 10 random marks on the transect tape so that the tape bisected the long axis of the frame. At each quadrat location a color photograph recorded the segment of reef area enclosed by the quadrat frame. In addition, a diver knowledgeable in the taxonomy of resident species visually estimated the percent cover and occurrence of organisms and substratum type within the quadrat frame. No attempt was made to disturb substrata to observe organisms, and no attempt was made to identify

and enumerate cryptic species dwelling within the reef framework. Only macrofaunal species greater than approximately 2 centimeters were noted.

Following the period of fieldwork, quadrat photographs were projected onto a grid and units of bottom cover for each benthic faunal species and bottom type were recorded. Results of the photo-quadrats were combined with the in-situ cover estimates and community structure parameters (percent cover, species diversity) were calculated. The photo-quadrat transect method is a modification of the technique described in Kinzie and Snider (1978), and has been employed in numerous field studies of Hawaiian reef communities (e.g., Dollar 1979, Grigg and Maragos 1974), and has proven to be particularly useful for quantifying coverage of attached benthos such as corals and large epifauna (e.g., sea urchins, sea cucumbers). While this methodology is quantitative for the larger exposed fauna, many coral reef invertebrates are cryptic or nocturnal. Coupled with the generally small size of cryptic invertebrates, quantitative assessment of these groups requires methodologies that are beyond the scope of the present baseline assessment program.

## Biotic Community Structure

### Coral Communities

The predominant taxon of macrobenthos (bottom-dwellers) throughout the reef off the Kapalawai area are Scleractinian (reef-building) corals and benthic macroalgae. Results of qualitative reconnaissance surveys indicated that reef coral occurrence did not occur in the area off the stream that bisects the property owing to deposition of substantial reservoirs of red mud. To the north of the stream bed, the mud bottom decreased, grading into a reef platform composed of pitted limestone. On the reef platform, living coral abundance was relatively consistent along the northern portion of the Kapalawai property. Coral abundance also peaked within a zone approximately 50-100 m seaward of the reef crest in the region of the high relief limestone platform. With distance seaward, bottom topography flattened to a relatively featureless platform with low coral abundance.

Results of quantitative line transects conducted in two typical reef zones provide an estimate of coral community structure. Table 3 shows the quantitative summary of individual quadrat results from the transects, while Table 4 shows a summary of statistics drawn from the benthic transects. In total, eight species of "stony" corals, were encountered on transects Total coral cover was substantially higher on the shallower transects (30-32%) compared to the deeper transects ((2-3%) (Figure 6). The dominant species on the two north transects and the deep southern transect was *Porites lobata*, which accounted for about 37% of total coral cover. The other dominant species, especially on the



shallow southern transect was an encrusting coral identified as *Leptoseris spp.* This coral is generally not found in abundance in shallow water on Hawaiian reefs, and is usually limited to deeper water. The anomalously high abundance of the species is likely a result of the consistently high sediment loads in the nearshore waters (Figure 6). Other coral species encountered on transects included several forms of the genera *Montipora (M. verrucosa and M. patula) and Pocillopora (P. meandrina and P. damicornis).*

The growth form of most of the corals that were present in the study area consisted of flat encrustations or low sturdy lobate structures. Branching and vertically plated species were observed primarily on the sides of channel cuts.

### Other Benthic Macroinvertebrates

The other dominant group of macroinvertebrates generally found on Hawaiian reefs are the sea urchins (Class Echinoidea). However, on the reefs surveyed off Kapalawai, urchins were very rare. The only urchin that was observed was *Echinometra matheai*, which are small urchins that are generally found within interstitial spaces bored into the limestone substrata. Several Crown-of-thorns starfish (*Acanthaster planci*) were observed on the reef. Nearby bleached skeletons of colonies of *Pocillopora meandrina* suggested that the starfish had been feeding on these corals. Numerous sponge were also observed under ledges and in interstitial spaces. Several spiny lobsters *(Panulirus spp.)* were also observed under ledges.

### Benthic Algae

Frondose benthic algae were common throughout the nearshore region. In addition, encrusting red calcareous algae (*Porolithon spp., Peysonellia rubra, Hydrolithon spp.*) were common on exposed limestone surfaces throughout the study area. Dominant species of frondose algae observed on the reef included the genera *Dictyopteris, Dictyota, Sargassum*, and *Turbinaria*, and the red alga, *Amansia, Asparagopsis, Corallina, Laurencia, Liagora, Martensia and Plocamium.* All of these plants occurred commonly on the limestone platform.

### Reef Fish Community Structure

In general, reconnaissance surveys indicated that the reef fish community off the Kapalawai area was limited in numbers of both species and individuals. However, reef fish community structure was largely determined by the topography and composition of the benthos. Table 5 shows results of fish

censuses in the transect areas. On the outer flat reef platform, fish abundance was substantially lower than on the inner zones characterized by high vertical relief which affords shelter to fish. The most abundant fish throughout the survey area was the blue-lined snapper (ta'ape, *Lutjanus kasmira*). Most of the other fish observed were Juveniles fish belonging mostly to the families Pomacentridae (damselfish), Acanthuridae (surgeonfish), with representatives from the families Labridae (wrasses), Mullidae (goatfish) and Chaetodontidae (butterfly fish). The complex habitat created by the eroded limestone reef provided limited shelter for small fish.

Overall, fish community structure off Kapalawai appeared depauperate when compared to assemblages found in relatively undisturbed Hawaiian reef environments. The lack of an abundant fish community suggests that either the area has been subjected to substantial amounts of fishing pressure, or the environmental conditions (e.g., suspended and deposited terrigenous sediments) result in a sub-optimal setting for fish.

### Endangered and Protected Species

Three species of marine animals that occur in Hawaiian waters have been declared threatened or endangered by Federal jurisdiction. The threatened green sea turtle (*Chelonia mydas*) occurs commonly throughout the island chain, and is known to feed on selected species of macroalgae. The endangered hawksbill turtle (*Eretmochelys imbricata*) also occurs, but is considered rare compared to the green turtle. Several green sea turtles were sighted on the surface and underwater during the surveys off Kapalawai. Many of the turtles sighted underwater were either swimming slowly near the bottom or resting within crevices or under ledges in the reef.

Populations of the endangered humpback whale (*Megaptera novaeangliae*) are known to winter in the Hawaiian Islands from December to April. Hawaiian monk seals (*Monachus schauinslandi*) also occur occasionally in waters off the high islands. No monk seals were observed during the surveys off Kapalawai.

## DISCUSSION and CONCLUSIONS

The ultimate purpose of marine baseline surveys is to estimate the potential for impact to marine environments from shoreline development. Implementation of the proposed plan for the Kapalawai Project would involve mass grading and vegetation removal associated with construction of the resort structures. Construction of roadways will also increase the amount of impervious surfaces compared to the present situation. However, there are no changes planned to the existing shoreline or



nearshore area. The overriding result of the marine environmental assessment is that at present, both water quality and biotic community composition are strongly influenced by terrigenous sediment in the nearshore ocean. This sediment appears to originate from runoff from the upland drainage basin, and maintains a long residence time within the shoreline bight known as Hoanuanu Bay. Hence, even if delivery of sediment is halted, it appears that the material presently on the bottom would remain in the system for an extended period of time. Water quality in the nearshore zone reflects high levels of suspended sediment that appears to be a consistent characteristic of the area regardless of season and weather. While coral communities occur in the outer reef area, it appears that the composition of the communities are strongly biased toward species that are sediment resistant. Similar variations in coral community structure have been documented by Roy and Smith (1971) who found that the presence of very turbid water and muddy bottom in the lagoon at Fanning Island did not prohibit the growth of corals. Reefs in the turbid water were different, in terms of species and growth forms, than reefs in the clear water but they were still living reefs.

Results of water chemistry surveys conducted off of the Kapalawai site reveal that a surface layer of low salinity, high nutrient groundwater occurs in the nearshore area as a result of efflux of groundwater. However, owing to rapid mixing, and the high level of suspended material in the nearshore zone, there is little response to the input of high nutrient water in terms of benthic algal growth. Plans for the Kapalawai Resort specify usage of an on-site wastewater treatment system that will employ an ultraviolet disinfecting process that will result in R-1 level effluent for use as an irrigation source on the property. As a result, none of the wastewater generated by the project will be discharged directly to the ocean.

It is anticipated that this method of wastewater disposal will have no impact to the marine environment for several reasons. In light of the observed substantial input of dissolved inorganic nutrients to the nearshore ocean as a result of existing groundwater fluxes that reflect current and past land uses, the small augmentation to groundwater from the proposed disposal of wastewater is likely to be undetectable or very small. In addition, the unrestricted circulation of the offshore zone by tidal and wind-driven currents, eddies, and wave action promotes rapid dilution and water exchange. While the residence time of deposited sediment appears relatively long, the residence time of a parcel of water fronting the development is probably on the order of hours to days, so long-term buildup of any dissolved constituent is unlikely.

While the planned project at Kapalawai may result in a temporary increase in exposed soil during the construction that could reach the ocean through runoff, it is likely that such an increase would be essentially undetectable when compared to the existing situation. The increased impervious

surfaces that will result from the construction of roadways on the property may actually reduce sediment delivery to the ocean as the roadways will replace erodable lands. Preliminary drainage calculations indicate that there are nearly 8,000 acres of off-site drainage within the basin containing the project property. Thus, the changes to the approximate 100 acres of the project site as a result of construction will have an insignificant impact to offshore water quality (see report by Wagner Engineering Services).

Potential Effects to Protected Species

As mentioned above, the threatened green turtle occurs in the nearshore areas off the project site. Because there is no plan for any work on the shoreline or in the nearshore region, there is no potential for activities that might affect health or behavior of turtles (or any other protected species). As discussed above, potential changes in water quality that might occur as a result of construction would be undetectable, and hence would not affect turtle behavior.

As the shoreline bordering the property is sand, it is possible that turtles could haul ashore. Because the beaches on the development area are presently being used as recreation sites on a regular basis, any human-induced effects to turtle populations have probably already occurred. While it has not been documented that the area serves as a turtle nesting ground, such activities are potentially possible. In order to ensure that land use activities do not alter such potential behaviors, it is suggested that project lighting is designed so as not to illuminate the beach strand.

Similarly, the beach presents the possibility as a haul out area for monk seals. Transplanted seals have been documented to frequent many areas in the high islands (J. Naughton, NMFS, personal communication). As such, human intervention to endangered species populations has resulted in increasing the potential for interactions between humans and the endangered species. As a result, it appears that the Kapalawai area has the same potential for monk seal habitation as any other beach locale on Kauai.

In summary, the potential for impacts to marine communities as a result of development of the Kapalawai Resort appear to be minimal or nonexistent. None of the developmental activities appear to have the potential to induce long-term changes in physic-chemical water quality parameters of a magnitude sufficient to cause changes in biological community structure. Careful design of the project structures in terms of lighting should cause no effect to possible turtle behavior. The marine environments off Kapalawai (as is the case around much of the island of Kauai in regions where sugar cultivation takes place) appear to have been subjected to substantial sediment stresses for a



sufficient period of time (many decades) to have influenced community structure. Such stresses are much more destructive than the small temporary changes that could result from construction of the proposed development activity. If some unexpected event related to development activities does occur, the resulting alterations to marine community structure would probably be reversible and recovery rapid once the stress factor is mitigated. Tolerance to such changes appears to already be part of the physiological range of the community. It can be concluded that as long as reasonable steps are taken in construction practices, and because operational procedures for the project do not involve substantial changes in material delivery to the nearshore ocean, there should be no adverse impacts to the marine environment.

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TABLE 1. Results of water quality analyses from samples collected off the site of the proposed Kapalawai Resort project. Nutrient concentrations are in micromolar (µM) units. For Transect and station locations, see Figure 1. DFS = distance from shoreline in meters. "S" indicates surface sample; "B" indicates bottom sample.

| TRANSECT | STATION NO. | DFS (m) | PO4 (µM) | NO3 (µM) | NH4 (µM) | Si (µM) | DOP (µM) | DON (µM) | TP (µM) | TN (µM) | TURB (ntu) | TSS (µg/L) | SALT (o/oo) | pH (rel) | Chl-a (µg/L) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| SOUTH | 1-S | 1 | 0.36 | 1.62 | 2.61 | 13.83 | 0.29 | 7.71 | 0.65 | 11.94 | 1.30 | 16.43 | 34.713 | 8.13 | 2.392 |
| | 2-S | 5 | 0.42 | 1.57 | 3.42 | 12.81 | 0.27 | 7.65 | 0.69 | 12.64 | 0.69 | 19.29 | 34.754 | 8.13 | 2.710 |
| | 3-S | 10 | 0.41 | 1.48 | 3.74 | 12.14 | 0.28 | 7.24 | 0.69 | 12.46 | 0.92 | 18.43 | 34.786 | 8.12 | 2.803 |
| | 4-S | 25 | 0.41 | 1.37 | 3.69 | 10.86 | 0.28 | 6.65 | 0.69 | 11.71 | 0.61 | 16.57 | 34.845 | 8.11 | 3.831 |
| | 5-S | 50 | 0.19 | 0.74 | 1.26 | 7.28 | 0.31 | 7.73 | 0.50 | 9.73 | 0.66 | 14.57 | 35.031 | 8.09 | 1.565 |
| | 5-B | 50 | 0.26 | 0.74 | 1.40 | 7.00 | 0.27 | 7.55 | 0.53 | 9.69 | 0.71 | 16.43 | 35.017 | 8.10 | 3.281 |
| | 6-S | 100 | 0.28 | 0.96 | 1.45 | 8.54 | 0.28 | 7.55 | 0.56 | 9.96 | 0.54 | 10.29 | 34.957 | 8.10 | 1.217 |
| | 6-B | 100 | 0.31 | 0.99 | 1.98 | 8.78 | 0.26 | 6.62 | 0.57 | 9.59 | 0.56 | 7.43 | 34.940 | 8.10 | 0.910 |
| | 7-S | 200 | 0.21 | 1.28 | 0.65 | 11.07 | 0.27 | 6.45 | 0.48 | 8.38 | 0.53 | 12.57 | 34.821 | 8.09 | 1.011 |
| | 7-B | 200 | 0.39 | 0.83 | 4.54 | 7.11 | 0.28 | 6.61 | 0.67 | 11.98 | 0.47 | 9.29 | 34.978 | 8.10 | 1.225 |
| | 8-S | 300 | 0.22 | 0.73 | 1.84 | 6.88 | 0.28 | 6.57 | 0.50 | 9.14 | 0.42 | 3.80 | 35.017 | 8.05 | 0.990 |
| | 8-B | 300 | 0.22 | 0.36 | 1.53 | 4.16 | 0.28 | 5.93 | 0.50 | 7.82 | 0.22 | 0.87 | 35.136 | 8.12 | 0.969 |
| | 9-S | 500 | 0.12 | 0.42 | 0.22 | 4.85 | 0.29 | 5.86 | 0.41 | 6.50 | 0.20 | 0.93 | 35.096 | 8.10 | 0.483 |
| | 9-B | 500 | 0.10 | 0.15 | 0.09 | 3.59 | 0.28 | 5.60 | 0.38 | 5.84 | 0.16 | 1.29 | 35.150 | 8.13 | 0.478 |
| NORTH | 1-S | 1 | 0.20 | 1.77 | 0.18 | 25.60 | 0.27 | 6.17 | 0.47 | 8.12 | 1.75 | 58.29 | 34.084 | 8.19 | 3.415 |
| | 2-S | 5 | 0.15 | 1.21 | 0.17 | 22.98 | 0.28 | 6.67 | 0.43 | 8.05 | 1.27 | 34.57 | 34.123 | 8.17 | 2.106 |
| | 3-S | 10 | 0.13 | 0.93 | 0.21 | 21.93 | 0.28 | 7.52 | 0.41 | 8.66 | 0.81 | 14.57 | 34.113 | 8.15 | 0.772 |
| | 4-S | 25 | 0.16 | 0.82 | 0.18 | 19.96 | 0.27 | 5.97 | 0.43 | 6.97 | 0.80 | 8.40 | 34.233 | 8.16 | 0.894 |
| | 5-S | 50 | 0.08 | 0.05 | 0.09 | 5.28 | 0.27 | 6.08 | 0.35 | 6.22 | 0.29 | 1.87 | 34.948 | 8.10 | 0.898 |
| | 5-B | 50 | 0.09 | 0.01 | 0.16 | 4.99 | 0.27 | 6.33 | 0.36 | 6.50 | 0.26 | 1.93 | 34.938 | 8.09 | 1.070 |
| | 6-S | 100 | 0.06 | 0.06 | 0.13 | 5.93 | 0.29 | 5.80 | 0.35 | 5.99 | 0.22 | 0.43 | 34.960 | 8.10 | 0.659 |
| | 6-B | 100 | 0.11 | 0.20 | 0.14 | 5.03 | 0.27 | 5.68 | 0.38 | 6.02 | 0.20 | 3.40 | 35.000 | 8.11 | 0.663 |
| | 7-S | 200 | 0.12 | 0.33 | 0.22 | 5.55 | 0.28 | 6.53 | 0.40 | 7.08 | 0.21 | 2.87 | 35.009 | 8.11 | 0.684 |
| | 7-B | 200 | 0.13 | 0.20 | 0.12 | 4.73 | 0.26 | 6.16 | 0.39 | 6.48 | 0.19 | 2.13 | 35.004 | 8.12 | 0.860 |
| | 8-S | 300 | 0.14 | 0.26 | 0.14 | 4.88 | 0.25 | 6.01 | 0.39 | 6.41 | 0.19 | 2.43 | 35.034 | 8.11 | 0.621 |
| | 8-B | 300 | 0.10 | 0.10 | 0.15 | 4.19 | 0.25 | 6.34 | 0.35 | 6.59 | 0.17 | 0.57 | 35.112 | 8.12 | 0.592 |
| | 9-S | 500 | 0.12 | 0.17 | 0.20 | 4.01 | 0.26 | 6.75 | 0.38 | 7.12 | 0.14 | 1.93 | 35.123 | 8.11 | 0.470 |
| | 9-B | 500 | 0.10 | 0.11 | 0.30 | 3.43 | 0.26 | 5.90 | 0.36 | 6.31 | 0.12 | 0.29 | 35.158 | 8.12 | 0.894 |

TABLE 2. Results of water quality analyses from samples collected off the proposed Kapalawai Resort project. Nutrient concentrations are in units of micrograms per liter (µg/L). For Transect and station locations, see Figure 1. DFS = distance from shoreline in meters. "S" indicates surface sample; "B" indicates bottom sample. DOH Water Quality Standards shown are for open coastal waters under wet conditions. Stipled values indicate exceedance of DOH 10% or 2% criteria.

| TRANSECT | STATION NO. | DFS (m) | PO4 (µg/L) | NO3 (µg/L) | NH4 (µg/L) | SI (µg/L) | DOP (µg/L) | DON (µg/L) | TP (µg/L) | TN (µg/L) | TURB (ntu) | TSS (µg/L) | SALT (o/oo) | pH (rel) | Chl-a (µg/L) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| SOUTH | 1-S | 1 | 11.16 | 22.68 | 36.54 | 387.24 | 8.99 | 107.94 | 20.15 | 167.16 | 1.90 | 16.43 | 34.713 | 8.13 | 2.392 |
| | 2-S | 5 | 13.02 | 21.08 | 47.88 | 358.68 | 8.37 | 107.10 | 21.39 | 176.96 | 0.69 | 19.29 | 34.754 | 8.13 | 2.710 |
| | 3-S | 10 | 12.71 | 20.72 | 52.36 | 339.92 | 8.68 | 101.36 | 21.39 | 174.44 | 0.92 | 18.43 | 34.788 | 8.12 | 2.603 |
| | 4-S | 25 | 12.71 | 18.18 | 51.66 | 304.08 | 8.68 | 93.10 | 21.39 | 163.94 | 0.61 | 16.57 | 34.845 | 8.11 | 3.831 |
| | 5-S | 50 | 5.89 | 10.36 | 17.64 | 203.84 | 9.61 | 108.22 | 15.50 | 136.22 | 0.66 | 14.57 | 35.031 | 8.09 | 1.565 |
| | 5-B | 50 | 8.06 | 10.36 | 19.60 | 196.00 | 8.37 | 105.70 | 16.43 | 135.66 | 0.71 | 16.43 | 35.017 | 8.10 | 3.281 |
| | 6-S | 100 | 8.68 | 13.44 | 20.90 | 239.12 | 8.68 | 105.70 | 17.36 | 139.44 | 0.54 | 10.29 | 34.957 | 8.10 | 1.217 |
| | 6-B | 100 | 9.61 | 13.86 | 27.72 | 245.84 | 8.06 | 92.68 | 17.67 | 134.26 | 0.56 | 7.43 | 34.940 | 8.10 | 0.910 |
| | 7-S | 200 | 6.51 | 17.92 | 9.10 | 309.96 | 8.37 | 90.30 | 14.88 | 117.32 | 0.53 | 12.57 | 34.821 | 8.09 | 1.011 |
| | 7-B | 200 | 12.09 | 11.62 | 63.56 | 199.08 | 8.68 | 92.54 | 20.77 | 167.72 | 0.47 | 9.29 | 34.978 | 8.10 | 1.225 |
| | 8-S | 300 | 6.82 | 10.22 | 25.76 | 192.64 | 8.68 | 91.98 | 15.50 | 127.96 | 0.42 | 3.80 | 35.017 | 8.05 | 0.990 |
| | 8-B | 300 | 6.82 | 5.04 | 21.42 | 116.48 | 8.68 | 83.02 | 15.50 | 109.48 | 0.22 | 0.87 | 35.136 | 8.12 | 0.668 |
| | 9-S | 500 | 3.72 | 5.88 | 3.08 | 135.80 | 8.99 | 82.04 | 12.71 | 91.00 | 0.20 | 0.93 | 35.096 | 8.10 | 0.483 |
| | 9-B | 500 | 3.10 | 2.10 | 1.26 | 100.52 | 8.68 | 78.40 | 11.78 | 81.76 | 0.16 | 1.29 | 35.150 | 8.13 | 0.478 |
| NORTH | 1-S | 1 | 6.20 | 24.78 | 2.52 | 716.80 | 8.37 | 86.38 | 14.57 | 113.68 | 1.75 | 58.29 | 34.084 | 8.19 | 3.415 |
| | 2-S | 5 | 4.65 | 18.94 | 2.38 | 643.44 | 8.68 | 93.38 | 13.33 | 112.70 | 1.27 | 34.57 | 34.123 | 8.17 | 2.106 |
| | 3-S | 10 | 4.03 | 13.02 | 2.94 | 614.04 | 8.68 | 105.28 | 12.71 | 121.24 | 0.81 | 14.57 | 34.113 | 8.15 | 0.772 |
| | 4-S | 25 | 4.96 | 11.48 | 2.52 | 556.88 | 8.37 | 83.58 | 13.33 | 97.58 | 0.80 | 8.40 | 34.233 | 8.16 | 0.894 |
| | 5-S | 50 | 2.48 | 0.70 | 1.26 | 147.84 | 8.37 | 85.12 | 10.85 | 87.08 | 0.29 | 1.87 | 34.948 | 8.10 | 0.898 |
| | 5-B | 50 | 2.79 | 0.14 | 2.24 | 139.72 | 8.37 | 88.62 | 11.16 | 91.00 | 0.26 | 1.93 | 34.938 | 8.09 | 1.070 |
| | 6-S | 100 | 1.86 | 0.84 | 1.82 | 166.04 | 8.99 | 81.20 | 10.85 | 83.88 | 0.22 | 0.43 | 34.960 | 8.10 | 0.659 |
| | 6-B | 100 | 3.41 | 2.80 | 1.96 | 140.84 | 8.37 | 79.52 | 11.78 | 84.28 | 0.20 | 3.40 | 35.000 | 8.11 | 0.663 |
| | 7-S | 200 | 3.72 | 4.62 | 3.08 | 155.40 | 8.68 | 91.42 | 12.40 | 99.12 | 0.21 | 2.87 | 35.009 | 8.11 | 0.684 |
| | 7-B | 200 | 4.03 | 2.80 | 1.68 | 132.44 | 8.06 | 88.24 | 12.09 | 90.72 | 0.19 | 2.13 | 35.004 | 8.12 | 0.660 |
| | 8-S | 300 | 4.34 | 3.64 | 1.96 | 138.64 | 7.75 | 84.14 | 12.09 | 89.74 | 0.19 | 2.43 | 35.034 | 8.11 | 0.621 |
| | 8-B | 300 | 3.10 | 1.40 | 2.10 | 117.32 | 7.75 | 88.76 | 10.85 | 92.26 | 0.17 | 0.57 | 35.112 | 8.12 | 0.592 |
| | 9-S | 500 | 3.72 | 2.38 | 2.80 | 112.28 | 8.06 | 94.50 | 11.78 | 99.68 | 0.14 | 1.93 | 35.123 | 8.11 | 0.470 |
| | 9-B | 500 | 3.10 | 1.54 | 4.20 | 96.04 | 8.06 | 82.60 | 11.16 | 88.34 | 0.12 | 0.29 | 35.158 | 8.12 | 0.894 |
| DOH WATER QUAL. STDS. | | | | | | | | | | | | | | | |
| NOT TO EXCEED 10% | | | | 14.00 | 8.50 | | | | 40.00 | 250.00 | 1.25 | | | | 0.900 |
| NOT TO EXCEED 2% | | | | 25.00 | 5.00 | | | | 60.00 | 350.00 | 2.00 | | | | 1.750 |

**TABLE 3. Percent cover of coral species on transect quadrats off the proposed Kapalawai Resort.**

| TRANSECT SITE: | Kapalawai - North | | | | | | MEAN CORAL COVER | | | | 30.4 % |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Transect 1 - 15' | | | | | | STD. DEV. | | | | 6.3 |
| DATE: | 3/13/99 | | | | | | SPECIES COUNT | | | | 7 |
| | | | | | | | SPECIES DIVERSITY | | | | 1.27 |

| SPECIES | QUADRAT | | | | | | | | | | SPECIES TOTAL |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | |
| Porites lobata | 14 | 28 | 4 | 26 | 6 | 28 | 63 | 6 | 2 | 6 | 18.3 |
| Porites compressa | | | 6 | 2 | | | 6 | 2 | 3 | 2 | 2.1 |
| Montipora patula | 6 | | | | | | | | | | 0.6 |
| Montipora verrucosa | | | | | | 2 | 2 | | | 1 | 0.5 |
| Pocillopora meandrina | | | 2 | 1 | 4 | | | | 2 | | 0.9 |
| Pavona duerdeni | 5 | | | | | 11 | 12 | | | 6 | 3.4 |
| Leptoseris spp | 10 | 4 | 2 | 6 | 8 | 4 | | 4 | | 8 | 4.6 |
| QUAD CORAL TOTAL | 35 | 32 | 14 | 35 | 18 | 45 | 83 | 12 | 7 | 23 | 30.4 |
| Limestone | 65 | 61 | 84 | 65 | 82 | 55 | 17 | 81 | 81 | 60 | 65.1 |
| Sand | | 7 | 2 | | | | | 7 | 12 | 17 | 4.5 |
| NON-CORAL TOTAL | 65 | 68 | 86 | 65 | 82 | 55 | 17 | 88 | 93 | 77 | 69.6 |

| TRANSECT SITE: | Kapalawai - North | | | | | | MEAN CORAL COVER | | | | 3.4 % |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Transect 2 - 24' | | | | | | STD. DEV. | | | | 1.9 |
| DATE: | 3/13/99 | | | | | | SPECIES COUNT | | | | 5 |
| | | | | | | | SPECIES DIVERSITY | | | | 1.40 |

| SPECIES | QUADRAT | | | | | | | | | | SPECIES TOTAL |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | |
| Porites lobata | | 1 | 2 | 1 | 1 | 1 | | 2 | 2 | 3 | 1.3 |
| Pocillopora meandrina | 3 | | | | 3 | 3 | | | | | 0.9 |
| Montipora patula | | | | | | | | 1 | | | 0.1 |
| Montipora verrucosa | | | 1 | 1 | 1 | 2 | 1 | | | 1 | 0.7 |
| Pocillopora damicornis | | 1 | | | | | | | | 3 | 0.4 |
| QUAD CORAL TOTAL | 3 | 2 | 3 | 2 | 5 | 6 | 1 | 3 | 2 | 7 | 3.4 |
| Limestone | 97 | 93 | 91 | 97 | 92 | 94 | 89 | 94 | 98 | 93 | 93.8 |
| Sand | | 5 | 6 | 1 | 3 | | 10 | 3 | | | 2.8 |
| NON-CORAL TOTAL | 97 | 98 | 97 | 98 | 95 | 94 | 99 | 97 | 98 | 93 | 96.6 |

| TRANSECT SITE: | Kapalawai - South | | | | | | MEAN CORAL COVER | | | | 31.9 % |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Transect 1 - 17' | | | | | | STD. DEV. | | | | 10.5 |
| DATE: | 3/14/99 | | | | | | SPECIES COUNT | | | | 6 |
| | | | | | | | SPECIES DIVERSITY | | | | 0.59 |

| SPECIES | QUADRAT | | | | | | | | | | SPECIES TOTAL |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | |
| Porites lobata | | | 1 | | | 1 | 4 | 1 | 31 | 4 | 4.2 |
| Porites compressa | | 2 | | | | | | | | | 0.2 |
| Montipora verrucosa | | | | | | 1 | | | | | 0.1 |
| Pocillopora meandrina | 3 | | | | | | | | | | 0.3 |
| Pavona duerdeni | 5 | | | | | | | | | | 0.5 |
| Leptoseris spp | 22 | 16 | 33 | 73 | 5 | 21 | 34 | 28 | 28 | 6 | 26.6 |
| QUAD CORAL TOTAL | 30 | 18 | 34 | 73 | 5 | 23 | 38 | 29 | 59 | 10 | 31.9 |
| Limestone | 45 | 82 | 62 | 27 | 72 | 77 | 62 | 66 | 41 | 88 | 62.2 |
| Sand | 25 | | 4 | | 23 | | | 5 | | 2 | 5.9 |
| NON-CORAL TOTAL | 70 | 82 | 66 | 27 | 95 | 77 | 62 | 71 | 41 | 90 | 68.1 |

| TRANSECT SITE: | Kapalawai - South | | | | | | MEAN CORAL COVER | | | | 1.7 % |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Transect 2 - 25' | | | | | | STD. DEV. | | | | 0.8 |
| DATE: | 3/14/99 | | | | | | SPECIES COUNT | | | | 5 |
| | | | | | | | SPECIES DIVERSITY | | | | 1.20 |

| SPECIES | QUADRAT | | | | | | | | | | SPECIES TOTAL |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | |
| Porites lobata | 1 | 1 | 1 | 2 | 1 | 1 | | 1 | 1 | 1 | 1.0 |
| Pocillopora meandrina | | | 1 | | 1 | 1 | | | | | 0.3 |
| Montipora patula | | | | | | | | 1 | | | 0.1 |
| Montipora verrucosa | | | | | | | 1 | | 1 | | 0.2 |
| Pocillopora damicornis | | | | | | 1 | | | | | 0.1 |
| QUAD CORAL TOTAL | 1 | 1 | 2 | 2 | 2 | 3 | 1 | 2 | 2 | 1 | 1.7 |
| Limestone | 97 | 98 | 98 | 98 | 98 | 97 | 93 | 93 | 94 | 94 | 96.0 |
| Sand | 2 | 1 | | | | | 6 | 5 | 2 | 3 | 1.9 |
| NON-CORAL TOTAL | 99 | 99 | 98 | 98 | 98 | 97 | 99 | 98 | 96 | 97 | 97.9 |

TABLE 4. Percent coral cover, non-coral cover, and coral community statistics calculated from transect quadrats surveyed off the proposed Kapalawai Resort. For Station locations, see Figure 1.

| CORAL SPECIES | TRANSECT N-15' | N-24' | S-17' | S-25' |
|---|---|---|---|---|
| Porites lobata | 18.3 | 1.3 | 4.2 | 1.0 |
| Porites compressa | | | 0.2 | |
| Pocillopora meandrina | 0.9 | 0.9 | 0.3 | 0.3 |
| Pocillopora damicornis | | 0.4 | | 0.1 |
| Montipora verrucosa | 0.5 | 0.7 | 0.1 | 0.2 |
| Montipora patula | | 0.1 | | 0.1 |
| Pavona duerdeni | 3.4 | | 0.5 | |
| Leptoseris spp. | 4.6 | | 26.6 | |
| TOTAL CORAL COVER | 30.4 | 3.4 | 31.9 | 1.7 |
| NUMBER OF SPECIES | 7 | 5 | 6 | 5 |
| CORAL COVER DIVERSITY | 1.27 | 1.40 | 0.59 | 1.20 |
| NON-CORAL SUBSTRATUM | 69.6 | 96.6 | 68.1 | 97.9 |

TABLE 5. Reef fish abundance on transects off the proposed Kapalawai Resort. For location of sampling station, see Figure 1.

| FAMILY | TRANSECT | | | |
|---|---|---|---|---|
| Species | N-15' | N-24' | S-17' | S-25' |
| CIRRHITIDAE | | | | |
| Paracirrhites arcatus | 2 | | | |
| P. forsteri | | | 1 | |
| MULLIDAE | | | | |
| Parupeneus multifasciatus | 7 | | 3 | |
| P. cyclostomus | | | | |
| LUTJANIDAE | | | | |
| Lutjanus kasmira | 40 | 4 | 35 | 3 |
| CHAETODONTIDAE | | | | |
| Chaetodon quadrimaculatus | 2 | 3 | | |
| C. unimaculatus | 2 | 11 | 2 | 2 |
| C. multicinctus | | 8 | 6 | 2 |
| POMACENTRIDAE | | | | |
| Plectro. johnstonianus | 2 | | | |
| Plectro. imparipennis | | | | |
| Stegastes fasciolatus | 7 | | | 2 |
| Chromis vanderbilti | 6 | 2 | 8 | 4 |
| C. hanui | 2 | | 1 | |
| C. agilis | 1 | | | |
| C. ovalis | 2 | | 2 | |
| LABRIDAE | | | | |
| Bodianus bilunulatus | 1 | 1 | 1 | |
| Thalassoma duperrey | 2 | | 1 | |
| Halichoeres ornatissimus | 1 | 1 | | |
| ACANTHURIDAE | | | | |
| Acanthurus olivaceus | 2 | 3 | | |
| A. nigrofuscus | 2 | 1 | | |
| A. blochii | 3 | | | 1 |
| A. triostegus | 2 | | 1 | |
| Ctenochaetus strigosus | 3 | 1 | 1 | |
| BALISTIDAE | | | | |
| Sufflamen bursa | 2 | 1 | 2 | 1 |
| Melichthys niger | 1 | | 1 | |
| TETRADONTIDAE | | | | |
| Canthigaster jactator | | 1 | | |
| NUMBER SPECIES | 21 | 12 | 14 | 7 |
| NUMBER INDIVIDUALS | 92 | 37 | 65 | 15 |
| SPECIES DIVERSITY | 2.26 | 2.08 | 1.72 | 1.84 |

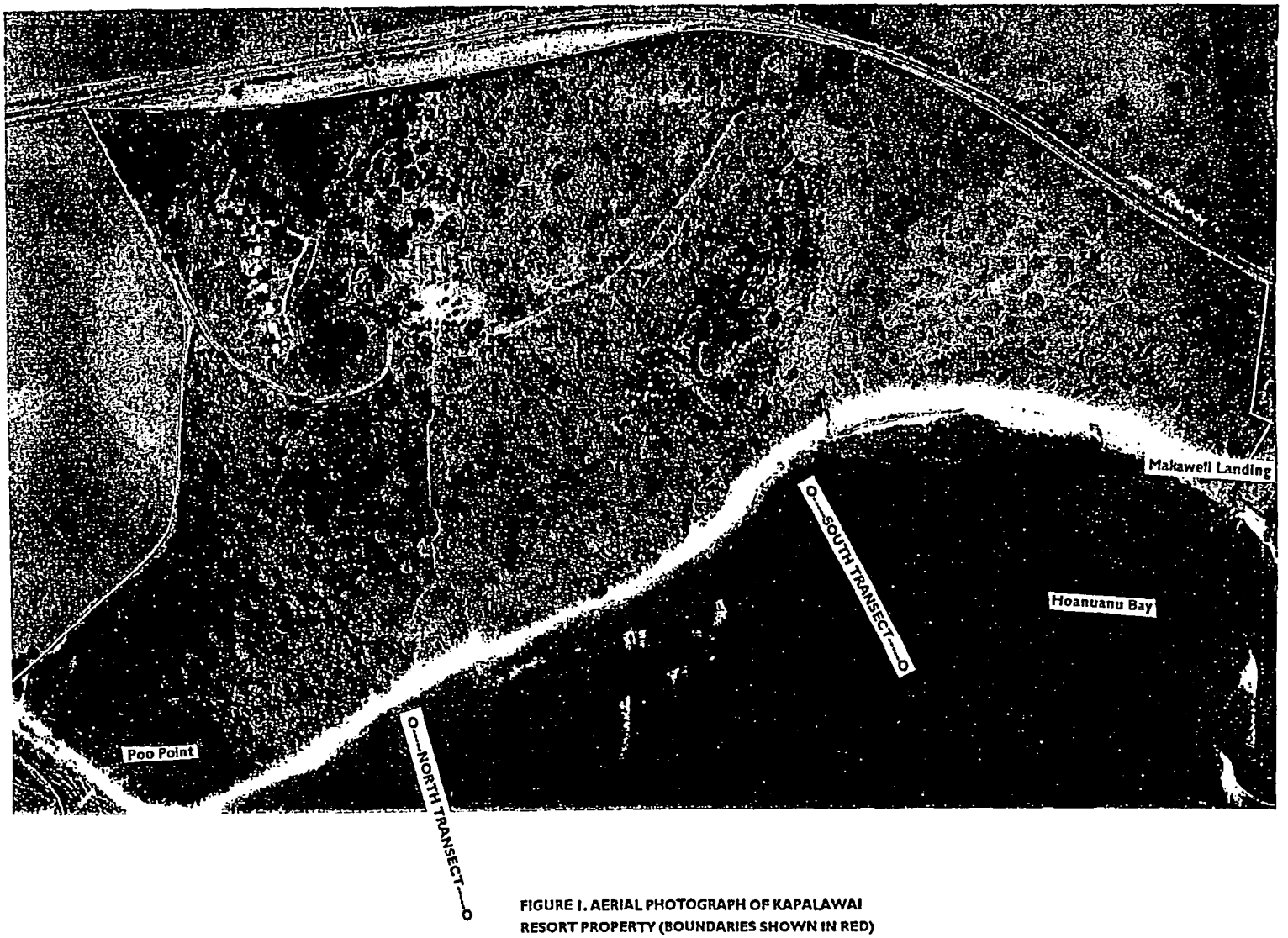



FIGURE 1. AERIAL PHOTOGRAPH OF KAPALAWAI RESORT PROPERTY (BOUNDARIES SHOWN IN RED) ALSO SHOWN ARE LOCATIONS OF NORTH AND SOUTH WATER QUALITY AND BIOTIC SURVEY TRANSECTS.

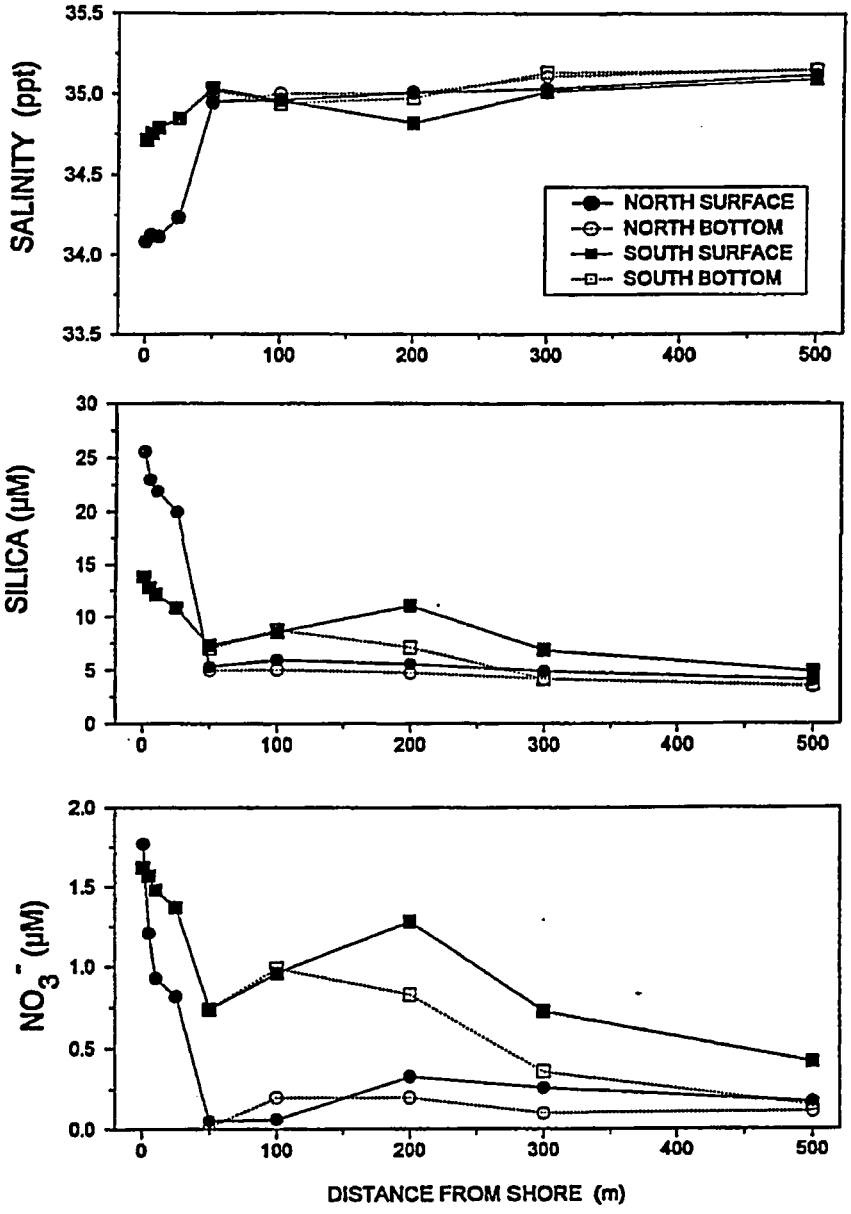



FIGURE 2. Plots of salinity, silica and nitrate nitrogen in surface and bottom samples collected on two ocean transects off the proposed Kapalawai Resort on the southwest coast of Kauai. For transect locations, see Figure 1.

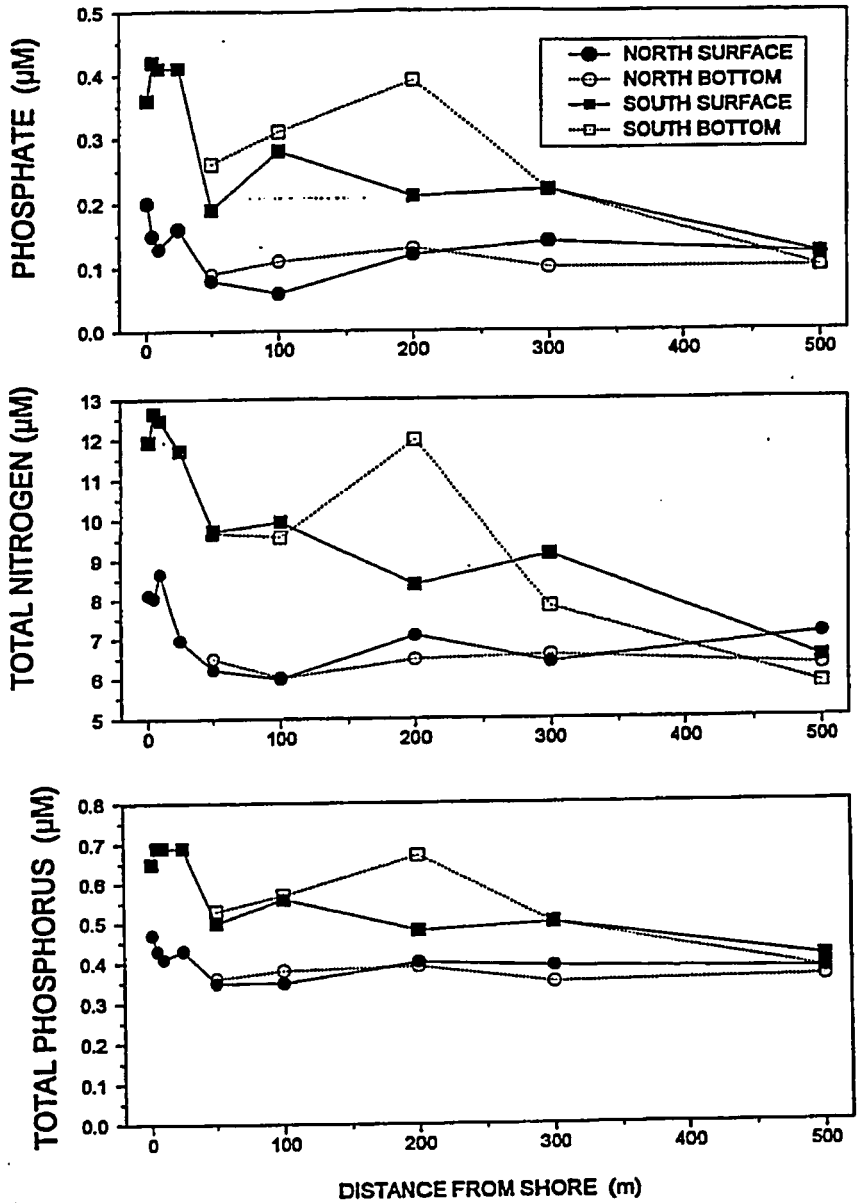



FIGURE 3. Plots of phosphate, total nitrogen and total phosphorus in surface and bottom samples collected on two ocean transects off the proposed Kapalawai Resort on the southwest coast of Kaual. For transect locations, see Figure 1.

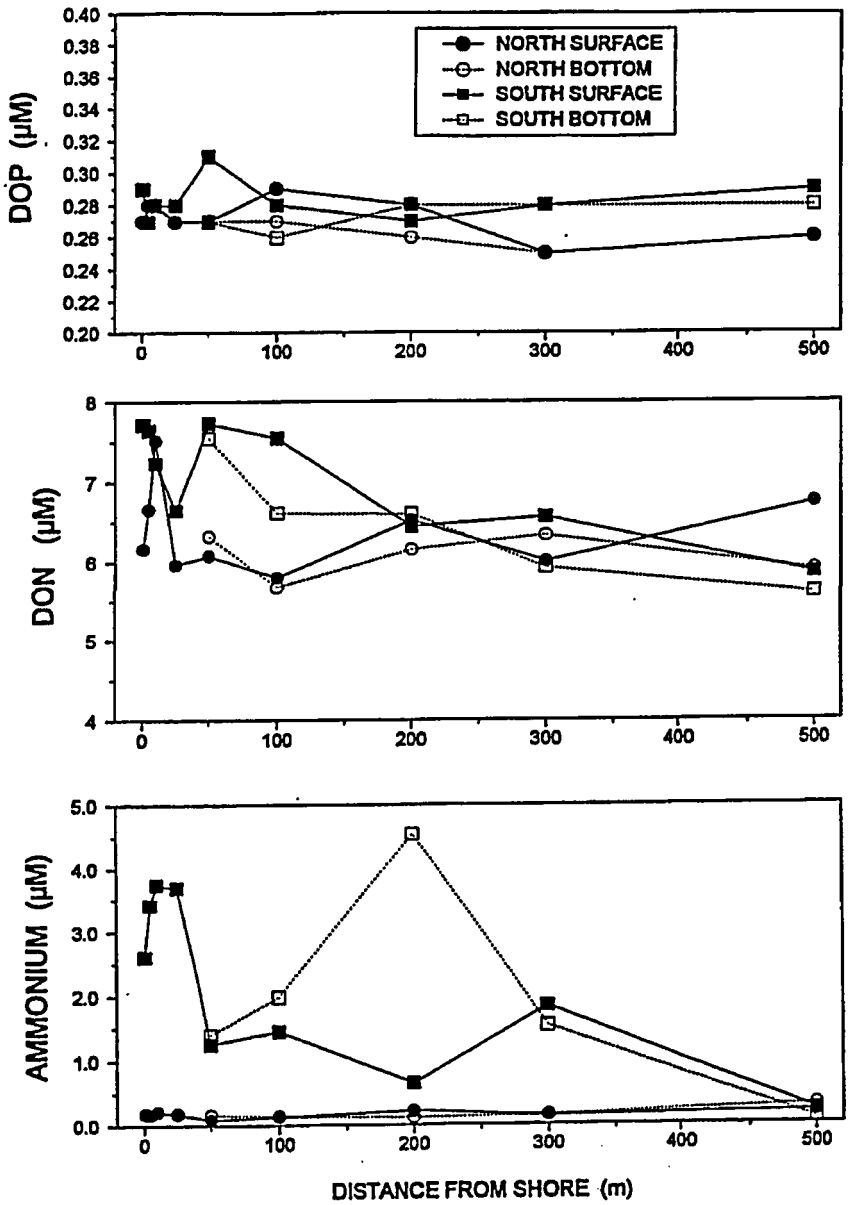



FIGURE 4. Plots of dissolved organic phosphorus and nitrogen (DOP, DON), and ammonium in surface and bottom samples collected on two ocean transects off the proposed Kapalawai Resort on the southwest coast of Kauai. For transect locations, see Figure 1.

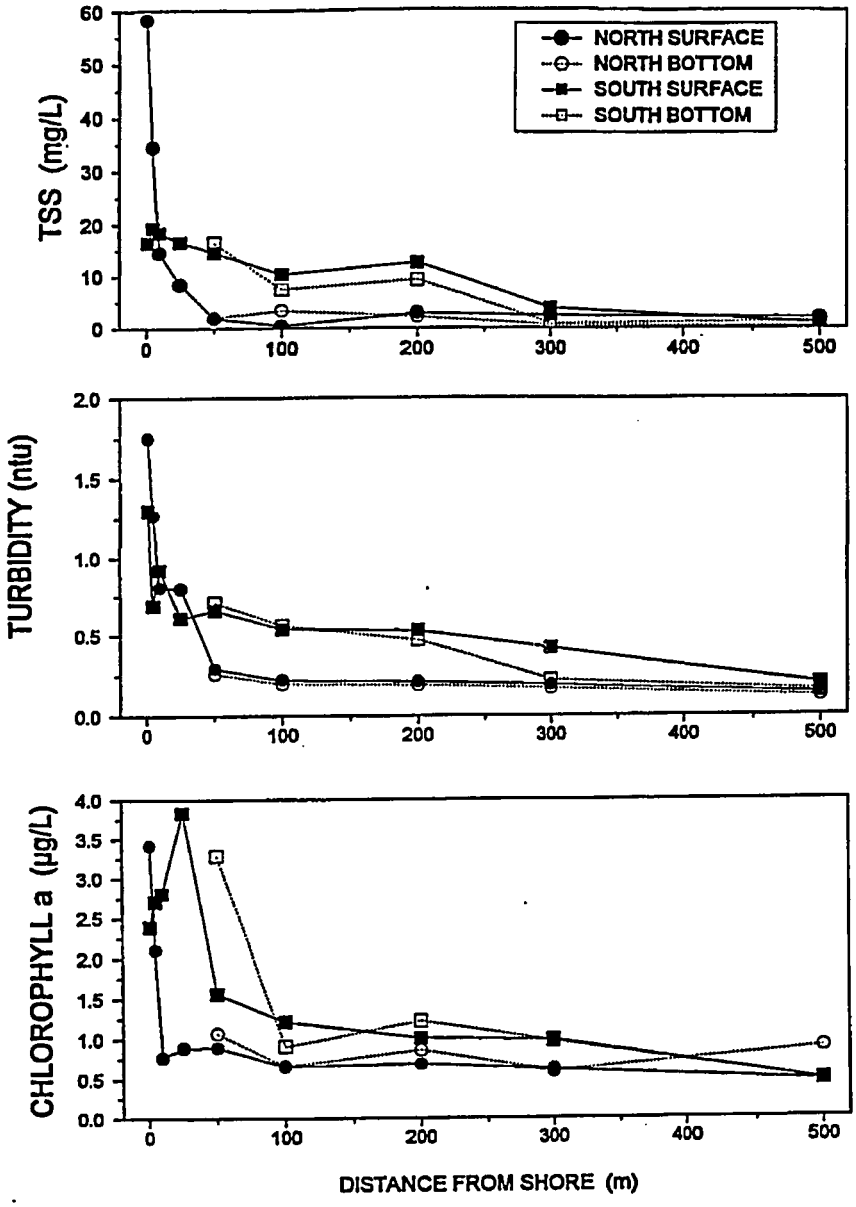



FIGURE 5. Plots of total suspended solids (TSS), turbidity, and Chlorophyll a in surface and bottom samples collected on two ocean transects off the proposed Kapalawai Resort on the southwest coast of Kauai. For transect locations, see Figure 1.

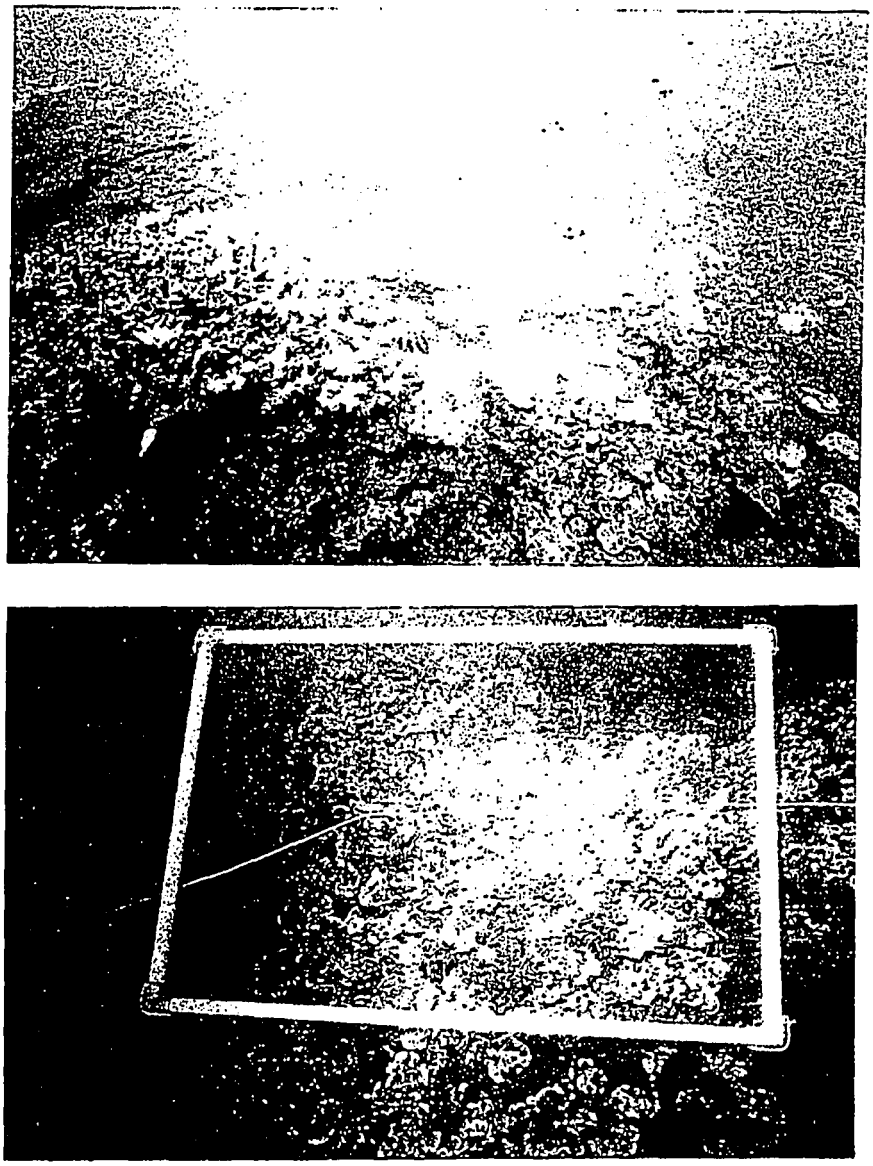


FIGURE 6. Oblique view of surface of reef platform off Kapalawai Kauai seaward of reef crest (top). Note Crown-of-thorns starfish in center of photo. Bottom photograph shows quadrat photograph from shallow south transect showing abundant growth of *Leptoseris spp.* Brown material between corals is layer of red mud.



# D

## ARCHAEOLOGICAL INVENTORY SURVEY

CULTURAL SURVEYS HAWAII

# ARCHAEOLOGICAL INVENTORY SURVEY REPORT FOR 170 ACRES INCLUDING A 6-ACRE INLAND FISH POND FOR THE PROPOSED KAPALAWAI RESORT, KAPALAWAI, KAUA`I, HAWAI`I (TMK 1-7-05:POR. 1)

by

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Prepared for

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Cultural Surveys Hawaii
July 1999
Revised February 2000

## ABSTRACT

At the request of Helber, Hastert & Fee, Planners, Inc., Cultural Surveys Hawai`i, Inc. performed an archaeological inventory survey of a property in Kapalawai, Kaua`i, Hawai`i (TMK 1-7-05: Por.1). The property is an approximately 170-acre parcel bounded to the north by Kaumuali`i Highway, to the south by the shoreline, to the east by A`akukui stream, and to the west by a rock wall which separates the parcel from a corn field. During the inventory survey, 6 sites were recorded and registered with the State Historic Preservation Division. State Site # 50-30-9-762 is a series of rock walls and a terrace. State Site # 50-30-9-763 is a 48.5m (155 ft.)[2] by 23m (73.5 ft.) stone platform. State Site # 50-30-9-764 is a housing complex consisting of 14 historic buildings. State Site # 50-30-9-765 is the 6-acre Kekupua Fishpond. State Site # 50-30-9-766 is a Portuguese brick oven. State Site # 50-30-9-792 is a subsurface cultural layer, which includes a human burial.

[1] an acre = 4,047m[2] or 43,560 square feet.

[2] All U.S. equivalents of metric units greater than one foot in length are rounded off to the nearest 6 inches where 1 inch = 2.5 cm.

Throughout this report the spelling of Hawaiian vocabulary and place names has been standardized according to present orthography.

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# I. INTRODUCTION

## A. Project Background

At the request of Helber, Hastert & Fee, Planners, Inc., Cultural Surveys Hawai'i, Inc. performed an archaeological inventory survey of an approximately 170-acre coastal parcel in Kapalawai, Kaua'i, Hawai'i (TMK 1-7-05: Por.1). The property belongs to the Robinson-Gay Family and has been used over the last 100 years primarily as a family residence and for cattle ranching. The parcel is proposed for resort development to include the renovation of existing structures and the construction of guest cottages. This inventory survey report documents and provides significance evaluations for the historic properties within the parcel. It also provides mitigation recommendations for all historic properties in light of the proposed development.

The field work and report writing for an earlier draft of this report was completed in the first half 1999. This earlier draft inventory survey report was reviewed by the Department of Land and Natural Resources/State Historic Preservation Division (DLNR/SHPD) and the Environmental Center at the University of Hawaii. All review comments and suggestions have been addressed in this version of the report, including the suggestion for additional testing to identify subsurface cultural deposits. Besides many minor clarifications and additions, this updated report contains the results of 3 days of subsurface backhoe testing, which was conducted at the end of January 2000.

## B. Project Area Description

The project area is a beachfront property located in the *'ili* of Kapalawai in the *ahupua'a* of Makaweli in the Kona district on the island of Kaua'i (Figures 1-5). It is a gently sloped piece of land between the shoreline and Kaumuali'i Highway. The shoreline is the southern boundary of the entire project area. Between the highway and the project area is a narrow strip of land currently planted in sugarcane. The old government road lies between this cane field and the property. The northern boundary is demarcated in part by a rock wall (State Site # 50-30-9-762 Feature C). This wall ends north of the bridge spanning the Waipao Stream (also called Mahaikona Stream, variously spelled Mahakona, Mahikona). This stream is commonly referred to as Mahikona Stream which it will be called in this report. The property north of the Mahikona Bridge is not visible from the highway due to a very dense and colorful bougainvillea growth covering the wall. The southern half of the *mauka* boundary (south of Mahikona Bridge) is marked by a barbed wire cattle fence. This fence crosses Mahikona Stream to the west and A'akukui Stream to the east. The A'akukui Stream is the eastern boundary of the project area. Mahikona Stream is perennial, while A'akukui flows year-round at the upper reaches and intermittently at lower levels. There is no native stream life listed at present for either of these streams (Wilcox *et al.*, 1990: 174). However, *'o'opu* were once considered sacred in the streams of Makaweli. (HEN Notes I, p 1582, Bishop Museum Archives). Between the two streams is the coastal plain of Kekupua Valley. The soil in this area is sandy, and mostly covered with old and new growth *kiawe* trees. The terrain is relatively flat. The

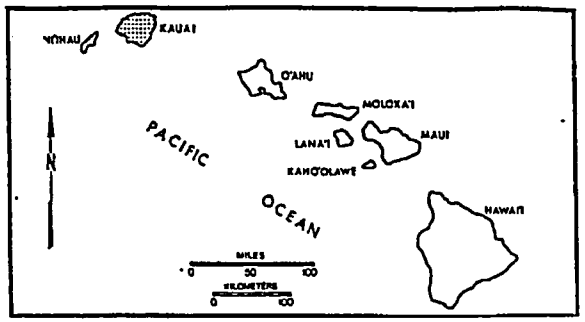



Figure 1 State of Hawai'i

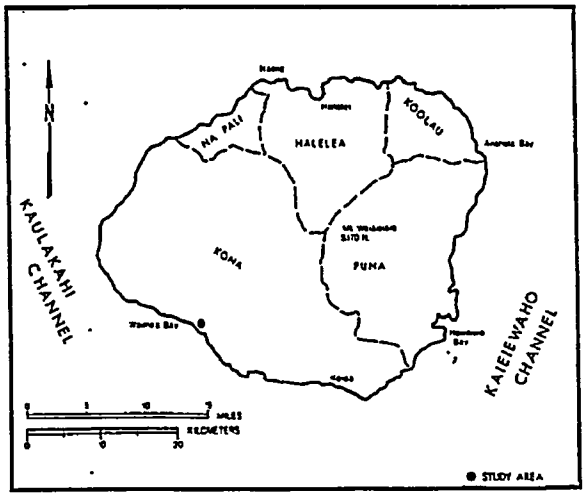
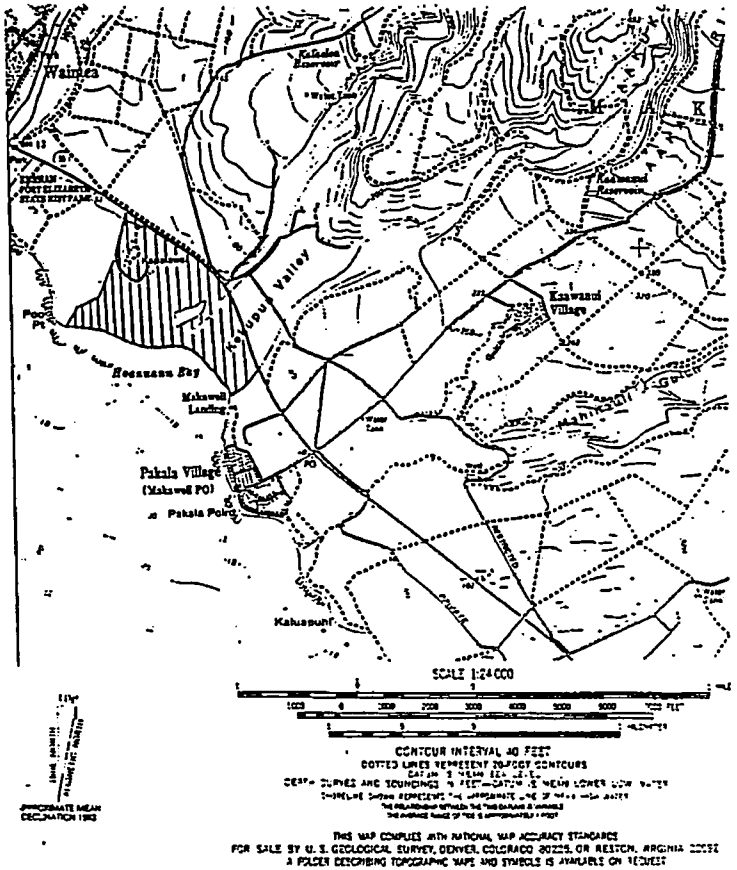



Figure 2 General Location Map, Kaua'i Island




Waimea
Kekaha
Kaumakani
Waimea Canyon State Park
Waimea Canyon
Kauai Forest Reserve
Kauai Forest Reserve
Kauai Forest Reserve

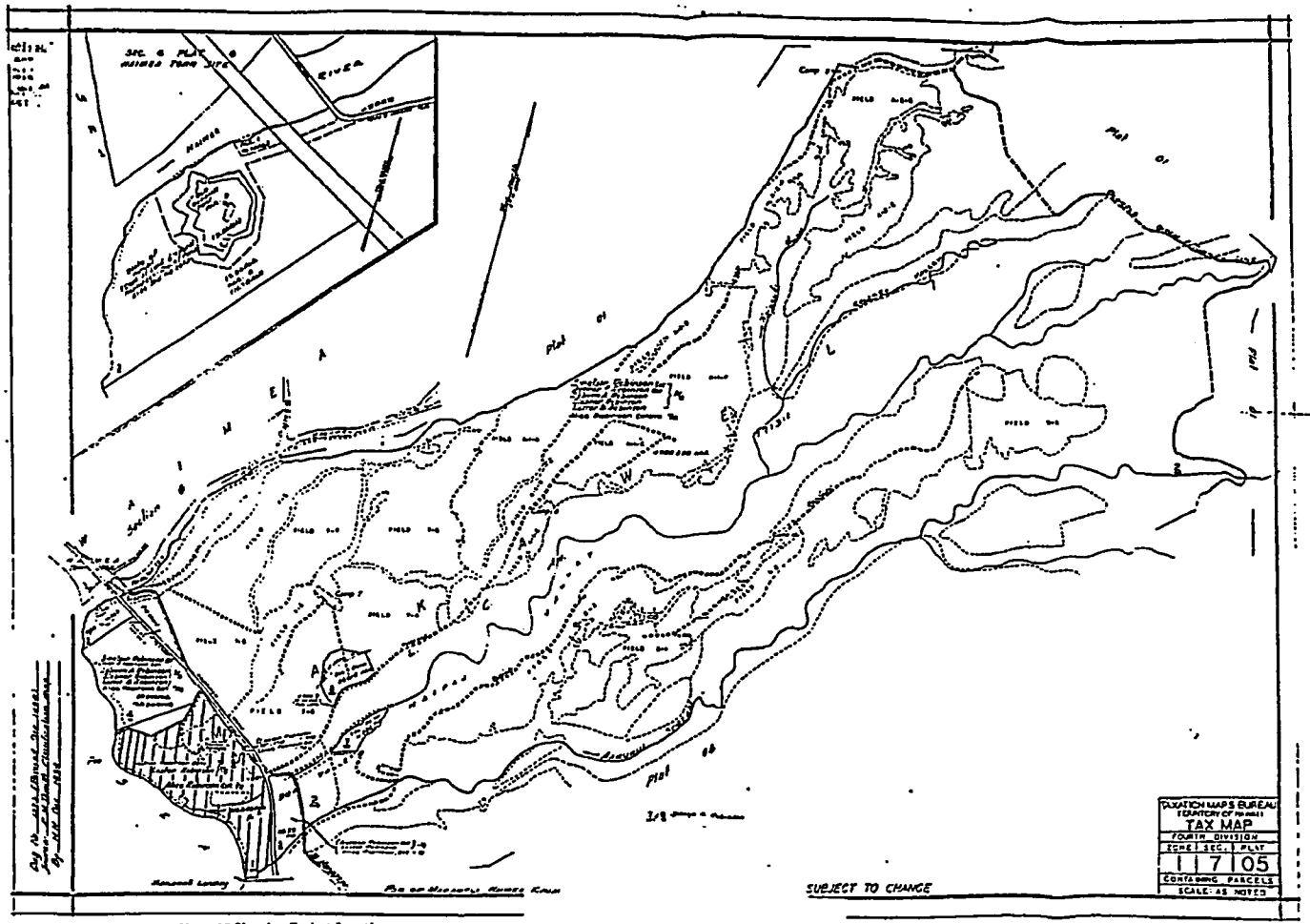



Figure 4 TMK 1-7-05 Showing Project Location

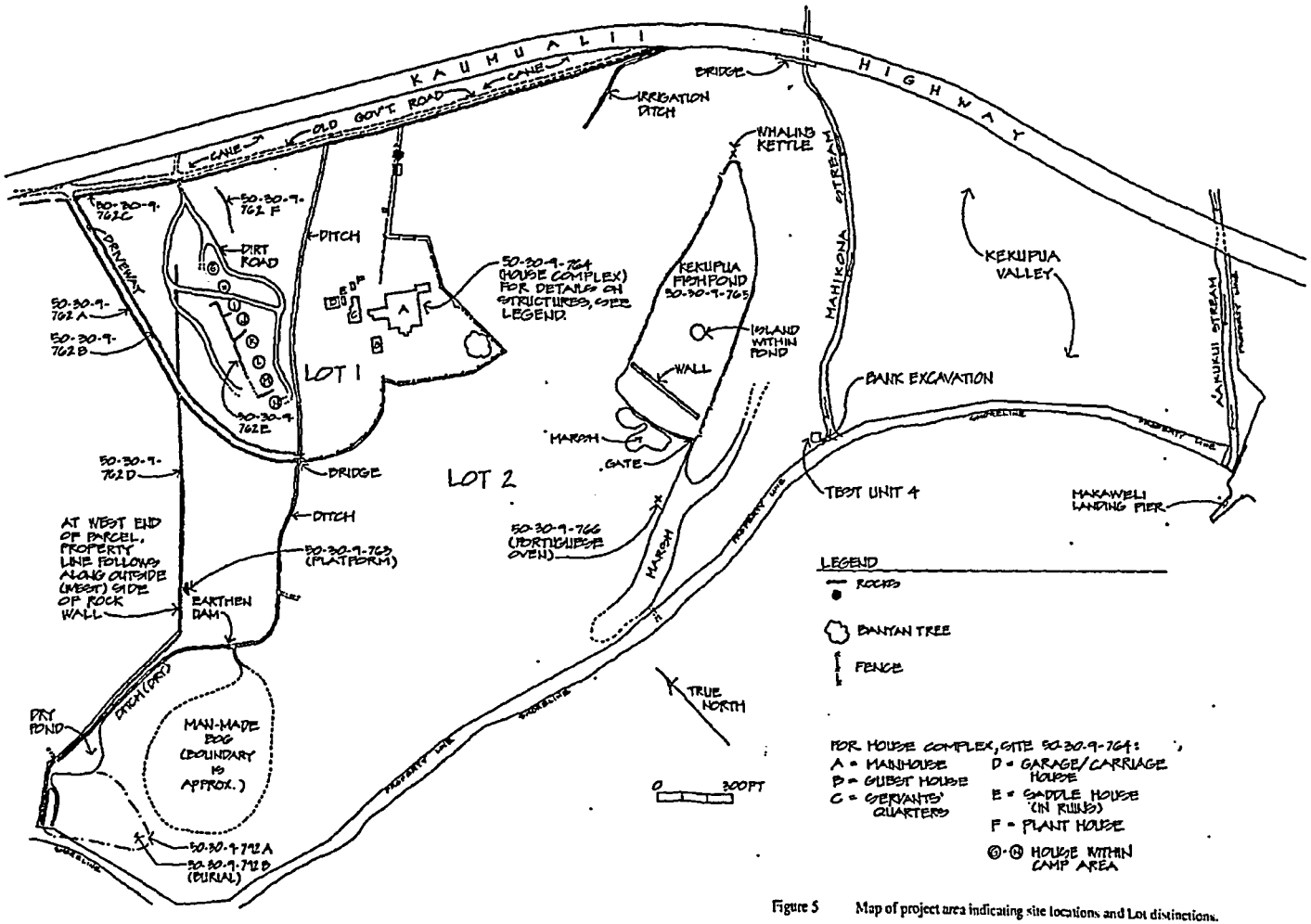



Figure 5 Map of project area indicating site locations and Lot distinctions.

area between the two streams from the highway to the ocean is currently used for cattle grazing. The many wallowing pits observed were checked during the inventory survey for cultural deposits. At the time of the inventory survey several bulls were encountered within this parcel (see Figure 22 below).

Outside of Kekupua Valley and to the west of Mahikona Stream the terrain has been clearly modified. There are dirt roads that traverse a cleared pasture (see Figure 23 below). At the time of the survey, the property was being cleared of hurricane-felled trees and selected vegetation to restore large open areas within the pasture (see Figures 24 & 25 below). Along the northern boundary, remnants of a cattle ranch can be observed. Collapsed wooden fences, a network of irrigation pipes, and remnants of historic structures are scattered across the terrain. Near here is a surface artifact of interest. A kettle that measures 1.10 m (3.5 ft.) wide by 1m (3 ft.) wide by .70 m (2 ft.) high rests on the ground. The artifact is known as an iron try-pot, and is in fair condition (see Figure 26 below & Appendix 1). West of and adjacent to Mahikona Stream is Kekupua Fishpond, a 6-acre inland fishpond (State Site # 50-30-9-765). Mahikona Stream runs along the eastern side of the fishpond and drains into the ocean. This pond is fed by natural springs (at least three are known), and drains to the southwest where it is currently obstructed from flowing into the ocean. The shoreline is beach sand with a slight rise at the back of the beach and enough of a depression behind the rise to cause water to collect from the fishpond area. This has created a marsh-like environment. On the bank above the lower marsh area is a brick oven (State Site # 50-30-9-766) that is in good shape. Along the shoreline behind the beach sand is a wide band of vegetation which creates a natural barrier between the public beach and the private property (see Figure 27 below). Further west across the project area the recent clearing is more pronounced. There is a clear line of sight from the main house across the pasture to the ocean (see Figure 28 below). Remaining in the pasture are clusters of old growth trees and vegetation covered with bougainvillea. It was pointed out that for a long time the lower branches of the trees were removed to allow for a person on horseback to pass more easily under them (see Figure 29 below). In the southwestern corner of the project area is a man-made bog. It is fed by a ditch that collected irrigation runoff from *mauka* sugar fields. This waterway used to flow along the westernmost portion of the project area, but is now dried up since a retention berm was constructed. The western boundary of the project area is a rock wall (State Site # 50-30-9-762 Feature D). This wall makes several turns, and does not run all the way to the ocean. Rather, a barbed wire fence extends the last section to the beach. To the west of the wall is an agricultural area of planted corn. The boundaries are clear around the entire perimeter of the project area. Further *mauka* along the wall is a large rock platform (State Site # 50-30-9-763).

The northwest corner of the project area is protected from the pasture surrounding it by a fence. It is delineated on the project area map by a solid line (fence line) and comprises approximately 26 acres. This section of the project area will be referred to as Lot 1. The rest of the project area (previously described) constitutes Lot 2 (see Figure 5 above). Lot 2 comprises approximately 144 acres. The purpose of the fence that surrounds Lot 1 is to keep the free range cattle in Lot 2 (only bulls were observed) from entering. Lot 1 is protected from the pasture because it is where people currently reside and garden. Within



Lot 1 is the main house complex with its landscaped grounds (State Site # 50-30-9-764). Part of the main house complex is the driveway which is lined with rock walls (State Site # 50-30-9-762 Features A&B). The ditch that feeds the bog runs through Lot 1 and under a bridge in the driveway. Alongside the driveway is a horse corral presently in use. Separated from the main house complex by dense vegetation is a workers camp (see Figure 30 below). This area is accessed from Kaumualiʻi Highway. Within the camp are 8 workers houses, a series of dirt roads, a series of rock walls (State Site # 50-30-9-762 Feature E), a rock terrace (State Site # 50-30-9-762 Feature F),modern *loʻi*, and gardens (see Figure 31 below).

### C. Scope of Work

The following Scope of Work applies to the present study:

1. A complete ground survey of the entire project area for the purpose of site inventory. All sites would be located, described, and mapped with evaluation of function, interrelationships, and significance. Documentation will include photographs and scale drawings of selected sites and complexes. All sites will be assigned State site numbers.

2. If warranted, limited subsurface testing to determine depth and quantity of cultural materials within archaeological sites and to obtain datable samples for chronological information if none is available for sites in the immediate area from previous studies.

3. Research on historic and archaeological background, including search of historic maps, written records, Land Commission Award documents. This research will focus on the specific area with general background on the *ahupuaʻa* and district and will emphasize settlement patterns.

4. Preparation of a survey report which will include the following:

   a. A map of the survey area showing all archaeological sites and site areas;

   b. Description of all archaeological sites with selected photographs, scale drawings, and discussions of function;

   c. Historical and archaeological background sections summarizing prehistoric and historic land use as they relate to the archaeological features;

   d. A summary of site categories, describing their significance in an archaeological and historic context;

e. Recommendations based on all information generated which will specify what steps should be taken to mitigate impact of development on archaeological resources - such as data recovery (excavation) and preservation of specific areas. These recommendations will be developed in consultation with the client and the State agencies.

This scope of work also includes full coordination with the State Historic Preservation Division (SHPD), and Kaua'i County relating to archaeological matters. This coordination takes place after consent of the owner or representatives.

## D. Methods

### *1. Pedestrian Inspection*

The entire project area was surveyed between Feb. 8 and 19, 1999. The daily field crew comprised four archaeologists and included, at various times: Kaipo Akana, Anthony Bush, Gerald Ida, Ka'ohulani McGuire, David Shideler, and Loren Zulick. The survey commenced in the northwest corner of Lot 2, and proceeded southwesterly following a 220° bearing in controlled sweeps. The archaeologists were spaced 15m (50 ft.) apart and followed the western rock wall boundary southwest to the ocean. The sweeps continued using the existing pasture fence and driveway as a northern boundary. As the crew moved across Lot 2 towards the southeast (to Hanapēpē) the fence around Lot 1 then a dirt road were used as northern boundaries. When the crew reached Mahikona Stream the practical northern boundary became Kaumuali'i Highway.

Between Mahikona Stream and A'akukui Stream the sweeps ran from Kaumuali'i Highway to the ocean. When the eastern boundary (A'akukui Stream) was reached, the crew went back to the central portion of the project area (east of Lot 1). Here, the sweeps were conducted from a dirt road, north to the bougainvillea-covered northern boundary wall. The rock wall parallels Kaumuali'i Highway. The eastern boundary of these sweeps was a dirt access road. The western boundary was the fence surrounding Lot 1. This concluded the archaeological survey of Lot 2. Next, the contents of Lot 1 were inventoried. Lot 1 is an area at the north corner of the parcel that is bounded by a cattle fence and includes the main house complex, and the inhabited workers camp. Again, sweeps were performed within existing man-made boundaries (walls and fences) to get as much coverage as possible within lot 1. Some areas within this parcel could not be accessed. Specifically, the dense bougainvillea could not be penetrated so it was spot-checked in accessible areas. The majority of the rock wall paralleling Kaumuali'i Highway is covered with bougainvillea; as a result, the wall and its condition are mostly hidden from inspection. There were dense concentrations of elephant grass and flooded ground along the eastern side (interior) of the rock wall on the Hanapēpē side of the driveway. The flooding was the result of modern *lo'i* cultivation within the camp compound. Also within Lot 1 were large concentrations of prickly pear cactus on a rock terrace (State Site # 50-30-9-762 Feature F). This vegetation was skirted and its interior viewed from the perimeter since visibility was good around this plant. There were other areas within the project



parcel where accessibility was limited due to natural obstacles. Inside Lot 2 there were a number of large bougainvillea bushes. Due to the thorny nature of the flowering plant these areas were spot-checked where access was feasible. Several large vegetation clearing piles were located within the western edge of the project area. These piles varied in size, but contained felled trees and assorted vegetation rubbish. It was not possible to view the ground surface beneath these piles even when climbed over. Adjacent to the clearing piles was a man-made bog. This area was circumambulated and spot-checked for remaining archaeology. Another area of inaccessibility was the fishpond drainage. The existing runoff has been cut off from draining into the ocean, resulting in an abundance of dense vegetation and deadfall along the coast.

In addition to the surface features recorded, the ground was examined for any cultural indicators, including soil depressions (possible *imu*), midden scatters, or exposed artifacts. Flagging tape was used to mark ends of transect lines and features. Upon completion of the survey, identified sites were mapped and described.

### *2. Hand Excavations Including Coring Samples from the Six-Acre Fishpond*

Excluding the coring samples taken from the fish pond, a total of nine hand excavated test excavations were performed within the project area. Eight of these were related to Site # 50-30-9-763 (rock platform) to determine function, age, and to search for midden or other cultural deposits. One test unit was excavated at the shoreline to test for cultural remains. See section "VI Testing Results" of this report.

Based on oral interviews, it was determined that Site # 50-30-9-762 (rock walls and terrace) which are all located in Lot 1 (Figure 5) are historic and related to the Robinson era of occupation, which spans 135 years. Thus, no test excavations were performed on the walls. The issue of testing to date the walls was discussed in advance with SHPD staff who seemed amenable to the argument that test excavations on the walls and terrace would not yield any favorable results and, therefore, would not be necessary.

Random coring samples of the 6-acre fish pond was conducted for Cultural Surveys Hawai'i by Dr. David Burney of Fordham University. Seven samples were taken approximately every 40 cm. to a depth of 220 cm. where the thickest deposit was found.

### *3. Backhoe Testing*

The backhoe subsurface testing of the project area consisted of the excavation of 23 backhoe trenches. Backhoe trenches provided a means to rapidly investigate subsurface deposits. Trenches were dug to investigate specific questions regarding expected subsurface deposits. They were also dug to give a representative coverage throughout the entire project area so that unexpected deposits would not be missed. Once a subsurface cultural layer was identified, subsequent trenches were excavated in an attempt to circumscribe and define the horizontal extent of the layer.

Trenches were excavated to sterile sediments or bedrock. Trenches were generally one bucket width (0.75 m) wide and between 1.0 and 2.5 m deep. Length varied from 5 to 12 meters. The generally loose calcareous sand sediments were prone to collapse. Excavations were sometimes limited by repeated sidewall collapse.

Excavation sections were documented with scale section profiles, photographs, sediment descriptions, and, where useful, sediment samples. Sediment descriptions included Munsell color designations, texture, compactness, structure, and lists of inclusions and cultural material present. Representative samples of cultural material were collected from sediment samples sifted through 1/8th inch mesh screens. Screened samples were either sorted in the field or brought back to the laboratory for sorting. All collected material was catalogued, see Appendix 5.

*4. Oral History Interviews*

Interviews for this report were not part of the actual proposed *Scope of Work*. However, interviews were conducted for a separate report, "*Hawaiian Traditional Customs and Practices Study for Kapalawai*" (Mc Guire *et al.*, 1999 [Draft]) which was written for the proposed development under discussion. As part of this "Traditional Customs and Practices" study, interviews with knowledgeable informants were conducted regarding traditional and cultural uses of the land during the pre-contact and the historic periods. Any information regarding land use, sites and structures which might pertain to this report was diligently pursued.

The following agencies, organizations and people were asked to help identify and recommend any potentially knowledgeable individuals and/or give any information which might be useful to the proposed project area and development: the Office of Hawaiian Affairs, Kaua'i Community College, Kaua'i Historical Society, Kaua'i Museum, University of Hawai'i at Mānoa - Dept. of Indo-Pacific Languages, *kumu hula*, respected *kūpuna* in the community, Warren Robinson and Bruce Robinson. Inquiries were not limited solely to the above organizations and people but any possible leads were followed up on as well.

Seven formal in-depth interviews were conducted with a total of nine people. Except for Warren Robinson and Bruce Robinson, all of the people interviewed were prior employees of the Robinson family and they had all worked and/or lived at the Kapalawai project area at some time during their employment. The interviews generally lasted about two hours. All formal interviews were taped and transcribed and releases were obtained from the informants. Pertinent excerpts are included throughout this report to substantiate data.

In addition to the formal interviews, there were many "informal" phone calls and "talk-story" sessions with people in the community to follow up on leads and to substantiate and confirm information which was obtained.

Currently, there are still several residents living in the "camp area" portion of the project area. Some of these residents were informally approached and asked questions regarding



the historic rock walls and terraces. There was some reluctance to "talk story" openly or be interviewed formally.

## II. NATURAL SETTING

### A. Makaweli Ahupua'a

The present study area is located in the *ahupua'a* of Makaweli within the Waimea District of Kaua'i. This large *ahupua'a* of 21,844 acres is situated between latitudes 21°.54'.30"S and 22°.04'.30"N and longitudes 159°.40' West and 159°.30' East. It is bounded on the west by Waimea *Ahupua'a* and on the east by Hanapēpē *Ahupua'a*. At its northern edge it includes part of the Alakai Swamp and runs along the Waimea-Hanalei District border including Mt. Wai'ale'ale and at its southern edge is the open ocean. A large part of the upper part of Makaweli *ahupua'a* lies in the Nā Pali - Kona Forest Reserve.

The Island of Kaua'i is made up of a large shield volcano. "At the top of the shield was a caldera 15 to 20 kilometers across - the largest in the Hawaiian Islands. The southern flank of the shield collapsed to form a fault-bounded trough, the Makaweli graben, or depression, some 6.5 kilometers wide. Lavas erupted in the caldera gradually filled it, except on the higher northwestern side, and eventually spilled over its low southern rim into the graben, down which they flowed into the sea" (Macdonald *et al.*: 453). "The lavas that filled the main caldera make up the Olokele Formation and those that accumulated on the Makaweli graben are called the Makaweli Formation" (*Ibid.*: 455). A later post erosional series of eruptions occurred 1.5 million years after the original Waimea Canyon Volcanic Series. This late eruption is called the Koloa Volcanic Series and about 40 vents were scattered widely over the eastern two-thirds of Kaua'i (*Ibid.*: 458-9). The lavas filled many valley floors in eastern Kaua'i, including valleys in Makaweli *Ahupua'a*.

The soils of Makaweli consist of Makaweli-Waiawa-Niu Association in the lower (south) portion, Rough broken land-Mahana-Koke'e Association in the middle elevation section, and Rough mountainous land-Rough broken land-Rock outcrop Association in the higher elevations (Foote *et al.*: General Soil Map for Kaua'i).

### B. Project Area Soils

The soils of the project area in front of the main house begin at the ocean edge with beach sand and going inland are sand mixed with filled in materials. It is classified as Fill Land by the Soil Survey (Foote *et al.*: 31). On the eastern edge of the property the soils are classified as Jaucas Series, which "consists of excessively drained calcareous soils that occur as narrow strips on coastal plains adjacent to the ocean" (*Ibid.*: 48). More specifically the soils are classified on this part of the property as "Jaucas loamy fine sand, 0 to 8% slopes which occur on old beaches and on windblown sand deposits in the western and southern parts of Kaua'i" (*Ibid.*: 49).



### C. Project Area Vegetation

The project area has a variety of vegetative habitats including open areas with little or no vegetation, grassed areas, wetland areas, and heavy *kiawe (Prosopis)* forest. The area in front of the main house has been cleared to the ocean for the view. On either side of the view is a thinning forest of *kiawe*. The vegetative zones are described in the *Manual of Flowering Plants of Hawai'i, Volume I*, as "Coastal Dry Forest - *Kiawe* (Prosopis) Forest, subtype inland *kiawe* forest" which "often has a open woodland aspect. It occurs in low, warm areas, especially in dry situations near the coasts on all of the main islands, primarily below 300m in elevation. This community is usually very species-poor and consists almost exclusively of species introduced since the 19th Century" (Wagner *et al.*, 1990: 62).

Because of the wetlands caused by drainage of Kekupua Fishpond (and perhaps ground water seepage) there is also a Coastal Wet Community zone in the project area. "Native examples of these communities were much disturbed by the ancient Hawaiians because nutrient-rich flood plains, marshes, and lowland riparian areas were largely converted into fishponds or irrigated farmlands for cultivation of *kalo* (*Colocasia esculenta*)"(*Ibid.*: 64). This particular area is referred to as Coastal Wet Shrublands-Marsh Fleabane (*Pluchea* sps). Shrubland Pluchean was recorded near the "man-made bog".

Coconut trees (*Cocos nucifera*) are scattered throughout the property. They are most noticeable around the perimeter of Kekupua Fishpond, and on the dividing wall. There are also monkeypod trees (*Samanea saman*) around the main house and opiuma trees (*Pithecellobium dulce*). Colorful bougainvillea vines (*Bougainvillea spectabilis*)are planted on walls and are found in clusters throughout the project area.

## III. PRE-CONTACT AND HISTORICAL BACKGROUND

### A. Pre-contact

To the west of Makaweli is the *ahupua'a* of Waimea, which is the largest *ahupua'a* on the island of Kaua'i. Early accounts within this *ahupua'a* indicate a coastal settlement pattern. Cultural layers and burials have been recorded along the shore around the project area. This is a typical pattern throughout the Hawaiian Islands. In addition to coastal settlement, the fertile Waimea River Valley has the resources to support a substantial population. As such, it too has early agricultural settlements. Hammatt and Ida (1993) identified a prehistoric cultural layer (State Site # 50-30-05-4012) in present-day Waimea Town. The layer was charcoal carbon dated to A.D. 910-1275. There has not been as much development within the *ahupua'a* of Makaweli. Therefore, previous archaeology does not reveal the settlement pattern as clearly. Interpretations of pre-contact land use within Makaweli can be extrapolated from Waimea. Coastal occupation and river valley settlement patterns would have mirrored those in Waimea only on a smaller scale.

Clearly Kaua'i in general and the Kona District in particular was largely isolated from the political intrigues and strife that marked much of late pre-contact Hawai'i. Studies of Kaua'i's political history (Hommon 1976 and Fornander 1969) indicate that 18 out of 24 transfers of political rule were cases of orderly succession. Prior to Cook's arrival, there may have been only two military conflicts in the history of Kaua'i: a raid by a Big Island chief, circa 1460, and a dynastic struggle between the cousins Kawelo'aikanaka and Kawelo-a-Maihunali'i (who was aided by O'ahu forces), circa 1680. Life at Kapaiwai was peaceful.

To some extent, Cook's arrival coincided with an increase in Hawaiian political and military aggression. In 1779 there were the "Goat Wars" with Ni'ihau. In 1791, Kaua'i forces were involved in fighting at O'ahu (death of the Kaua'i chief Ka'eokūlani) and in the "Red-Mouth Gun" fighting against Kamehameha I at Hāmākua, Hawai'i. In 1796, Keawe, the son of Kamakahelei and Kiha, led a revolt against Kaumuali'i from which Keawe emerged *ali'i nui* (Kuykendall 1968:48, f. n. 51a). From 1796 to 1804 a state of war existed with Kamehameha I which was rekindled in the Kaua'i rebellion of 1824.

From Captain Cook's landing, western impact exacerbated native political tensions. Cook's own lieutenants (Portlock, Dixon, Vancouver) returned to Waimea repeatedly and established it as a major port and entrepot. While Waimea may have always been a royal center for the *ali'i* of Kaua'i, this position was greatly reinforced after western contact.

### B. Kaua'i at Contact

Written accounts of Hawai'i began when Captain James Cook anchored a mile off shore at Waimea Bay on the southwest side of Kaua'i on January 20, 1778. The squadron consisted of two ships, the *Resolution* and the *Discovery*. Cook went ashore to investigate the availability of water and the temperament of the people to see if they were friendly and if a trade for supplies could be negotiated:



> The very instant I leaped ashore, they all fell flat on their faces, and remained in that humble posture till I made signs to them to rise. They then brought a great many small pigs and gave us without regarding whether they got any thing in return or no indeed the most of them were present[ed] to me with plantain trees, in a ceremonious way as is usual on such like occasions, and I ratified these marks of friendship by presenting them with such things as I had with me. (Beaglehole, 1967: 269)

The Hawaiians afforded Captain Cook the same respect they would have given one of their high chiefs. It is believed by many that they took him to be the personification of one of their gods, Lono (Kuykendall, 1938:16).

The previous day, a "large pond" had been seen beyond the shore and, on the second day, a watering party was sent to replenish the ships' supplies. Cook reports:

> We no sooner landed, that a trade was set on foot for hogs and potatoes, which the people gave us in exchange for nails and pieces of iron formed into some thing like chisels. We met with no obstruction in watering on the contrary the Natives assisted our people to roll the Casks to and from the pond.

Captain Cook took a short walking tour of the immediate area and comments:

> ...[I] took a walk up the Valley, accompanied by Dr. Anderson and Mr. Webber; conducted by one of the Natives ... Our road lay in the plantations, which were chiefly of Taro [taro], and sunk a little below the common level so as to contain the water necessary to nourish the roots. As we ranged down the coast from the East in the Ships, we observed at every Village one or more elevated objects, like Pyramids and we had seen one in this valley that we were desireous of going to see. Our guide understood us, but as this was on the other side of the river, he conducted us to one on the same side we were upon; it proved to be in a Morai which in many respects was like those of Otaheite.

This "Morai" on the west side of the river, is thought to be Keaalii *heiau*. The *heiau* "on the other side of the river" was probably Mahaihai *heiau*, whose location is noted on a map by Francis Gay (Bennett, 1931: 104, 111). Waimea Village during this time has been estimated to have consisted of about sixty houses close to shore and about forty more houses behind the main settlement (Ronck, 1985: 29). Cook goes on to say:

> ... We returned to the beach by a different rout to the one we came. Besides the Taro [taro] plantations before mentioned we met with some plantations of plantain, Sugar cane and the Chinese paper Mulbery tree or cloth plant, as it is more generally called by us, there were also a few low cocoanut trees but we saw but one bread fruit and but very few of any other sort. (Beaglehole, 1967)

While provisioning on this particular excursion, Cook's party acquired nine tons of water, 60 to 80 pigs, some fowl, potatoes, a small quantity of plantains and taro — all this in exchange for nails and iron pieces (*Ibid.*). Captain Cook's first visit to Waimea was brief, but it left a major impact on the small village.

**C. Population**

The population of the Hawaiian Islands at contact has been generally estimated to be between 200,000 to 400,000 but some estimates range as high as 800,000 to 1,000,000 (Stannard, 1989). Fifteen years after Captain Cook's arrival, Captain George Vancouver makes a comment that reflects the loss of life attributed to Western disease:

> ...a decrease in the population of the country and in the number of chiefs since the time of the arrival of Cook, who reported the land covered with people and the chiefs numerous (Kamakau, 1992: 162-63).

The missionaries are responsible for taking the first census in 1831. The total count for Kaua'i in 1831 was given as 10,977. Many Hawaiians died as a result of foreign diseases. Twenty-two years later, in 1853, the count for Kaua'i had dropped to 6,991- a decrease of 36 % (Schmitt, 1977: 3,11,12).

**D. The Russian Arrival**

After Cook's death at Kealakekua on February 14, 1779, Charles Clerke took charge and headed for Waimea once again. After provisioning at Waimea and Ni'ihau, he sailed for Kamchatka, and finally anchored at Petropavlovsk. Clerke was dying of tuberculosis and, anticipating that he might never reach England, he entrusted Captain Cook's journal, maps and reports with the Russian governor, Major Behm, who was returning to St. Petersburg. Behm was to pass the documents on to the British ambassador who would in turn hand them over to the proper authorities in London. These events led to the Russians being the first to learn about Cook's discovery of the Hawaiian Islands before the rest of Europe and the world (Joesting, 1984: 41). This set the stage for Russian involvement in the Hawaiian Islands.

The Russians recognized the importance of Hawai'i for provisioning their ships along the fur trade route between the Northwest and China. In 1815, a Russian-owned ship full of furs hit a reef and sank off Waimea Bay, Kaua'i. The crew abandoned ship and was left stranded on Kaua'i for 2-½ months. Meanwhile, Kaumuali'i, paramount chief of Kaua'i, retrieved the ship's goods (furs included) and kept them, in spite of the Russians' objections. Georg Schäffer was sent to Hawai'i under Russian orders to retrieve the goods as diplomatically as possible. It has been debated whether Schäffer was following orders or whether he acted on his own behalf when he raised the Russian flag on Kaua'i. An agreement was reached when Kaumuali'i asked for protection in exchange for a Russian monopoly of the sandalwood trade. Kaumuali'i agreed to provide 500 men as an army to conquer the other islands and Schäffer was to provide the ships, ammunition, and



weapons. An important part of the agreement was that Schäffer would oversee all construction of future forts and trading posts. The Russian fort at Waimea was built by the Russian-American Company in 1816 under the direction of Schäffer. Kamehameha I, hearing of Schäffer's plans and feeling intimidated by the threat of Russian invasion, sent a message to Kaumuali'i asking that Schäffer be deported. By June of 1817, Schäffer and his men were forced to leave Kaua'i (Mills, 1996: 30-37).

**E. The Kaua'i Rebellion of 1824**

In 1824, Kaumuali'i got very ill. Gathered around him were his sisters; his wife, Ka'ahumanu; his daughter, Kapo; and the prime minister of the Kingdom, Kalanimōkū. When Kalanimōkū asked him how the lands were to be redistributed after his death, Kaumuali'i answered:

> "Let the lands be as they are; those chiefs who have lands to hold them, those who have not to have none." (Kamakau, 1992: 265)

Kalanimōkū decided to disregard Kaumuali'i's wish that the land not be redistributed. All Kaua'i lands were seized. Some of the Kaua'i chiefs, unsatisfied with the lands they currently held, rebelled and stormed the Russian Fort, where Kahalai'a had been left in charge. News of the rebellion reached Honolulu and companies of soldiers were sent to Kaua'i as backup. In the end, the rebel chiefs were defeated and Kalanimōkū agreed to redistribute the lands. It was at this time that Kaua'i and the rest of the islands were turned over to the child king, Kauikeaouli Kamehameha III (Liholiho Kamehameha II's younger brother), and Kalkio'ewa was appointed the new governor (*Ibid.*: 265-269). Kalkio'ewa was an old warrior chief who was the guardian (*kahu*) of Kauikeaouli.

> ... Sometime before Kahalai'a left the fort, the *'ili* of Kaho'omano in the *ahupua'a* of Makaweli was given by Ka'ahumanu to Kahalai'a for the use of soldiers stationed at the fort. This land belonged with the fort since the days of Kaumuali'i and continued to be used by soldiers, or "*koa*" into the early 1850s. (Mills, 1996: 198-199)

**F. The Mahele**

At the *Mahele* of 1848, Victoria Kamāmalu, younger sister of Kamehameha IV and V, was awarded LCA 7713. The award consisted of 50 *'āpana* or parcels, most of which were whole *ahupua'a*. Included in the award was the *ahupua'a* of Makaweli. Because she was only 7 years old at the time of the *Māhele*, her guardians, Mataio Kekuanaō'a and Ioane 'Ī'ī, acted on her behalf. In 1857, Kekuanaō'a and 'Ī'ī, acting as guardians of Victoria Kamāmalu, agreed to a *Palapala Ho'olimalima Kula* (lease for *kula* lands) to a *hui* (group) of people from Makaweli and Waimea. The group consisted of 120 people who all signed the lease. The lease reads:

> *Eia nā mea i koe ma kāa ho'olimalima 'ana o ka loko nui i Kekupua a me nā loko lī'ilī'i, 'o ka i'a ho'omalu, 'o ka lā'au kapu o nā kumu 'alani i Waikae, 'o nā lo'i Pōalima a me nā kumu nui o Mahaihai a me Kekupua, 'o nā kulcana'o nā kānaka a me ka Pāpā kapu, ka wahie inā he mea kū'ai koe no ia ma kāa ho'olimalima 'ana.*

Translation: Here are the things exempt from this lease. The large pond in Kekupua and the small ponds, the protected [by taboo] fish, the sanctioned wood of the orange trees at Waikae, the Pō'alima taro fields and the large trees of Mahaihai and Kekupua, the *kuleana* of the people and the reserved fort, the firewood, if it is for sale, is exempted by this lease.

The "large pond in Kekupua" is the fishpond recorded in the current project area.

The above exemptions are obviously a carry over of the ancient *kapu* system. The lease indicates the kinds of items that were *kapu*. Traditionally, large ponds were often reserved for the *ali'i*. The lease also indicates that even though the *kapu* system was done away with in 1819, certain provisions were still being observed by the *ali'i* and their people as late as 1857.

At the time of the Māhele in 1848, Waimea Town was the largest settlement on the island. There were 196 land claims registered for Waimea while to the east of Makaweli, in the *ahupua'a* of Hanapēpē, 93 land claims were registered. In Makaweli, there were 117 land claims. So as the distance increases from Waimea toward Kōloa the population and number of claims diminish. However, there is a sizable population in Makaweli of soldiers at the fort in Waimea.

*1. Settlement Pattern for Makaweli Ahupua'a based on the Māhele Claims*

The pattern of settlement for Makaweli *Ahupua'a* is far from clear. *Māhele* land claims of the mid 1800's often offer a good approximation of traditional patterns of land use but this is not the case at Makaweli owing to the nature of *Māhele* records for this area and changes in land tenure patterns which occurred in the early 1800's.

The enumeration of *Māhele* land claims for Makaweli is unusually complicated. In this portion of Kaua'i, many people claimed lands in more than one *ahupua'a*. There are 117 claims made by 85 claimants which either describe or award claims in Makaweli *Ahupua'a*. Of these 117 claims, 83 are awarded but some of the awarded parts are located in Waimea or even Hanapēpē.

It should also be noted that there is more than one Kapalawai on the island of Kaua'i. There is a Kapalawai in Waimea and also one in Hanapēpē, which are clearly different lands than the Kapalawai of Makaweli which comprises the proposed project area. Of the 117 claims made for Makaweli, nine claims were for Kapalawai in Waimea and four claims were for Kapalawai in Hanapēpē. There were no *kuleana* claims made within the proposed project area of Kapalawai, Makaweli. There is an *ali'i* claim specifically for the fishpond within the project area but it is not awarded.

The *Māhele* land documents suggest a pattern of the extensive exploitation of the Waimea-Makaweli-Mokuone river basin. The *ahupua'a* of Makaweli is bounded by the Waimea River on the western side at the shore. The Waimea River is fed by the Makaweli River tributary a short distance up the river, and the Makaweli River, in turn, is fed by other



streams such as the Mokuone Stream. These are the stream valleys where, at the time of the *Māhele*, people were settled. Waimea, at this same time, had the greatest population on the island of Kaua'i and Makweli's land use is closely linked to Waimea, with some claimant's living in one place and farming in the other or vice versa. There is a slight preference for a house lot in Waimea, but several have house lots in both *ahupua'a*. Visiting ships were probably supplied with food from both districts when they stopped at Waimea Bay.

The fort, at the mouth of the Waimea River on the Makaweli side of the river, had seen action in the rebellion of 1824, when O'ahu forces put down the uprising against the Kamehameha dynasty. The *koa* or soldiers at the fort were given *lo'i* lands nearby the fort so they could help raise their own food. Twenty-two of the Makaweli claims are for fort soldiers, who generally claim a single *lo'i* or *mo'o*. Most fort soldiers were given land in the *'ili* of Kaho'omano, with some others in Hakioa both located quite close to the fort.

There are 119 (*'āpana* or pieces) in Makaweli awarded claims. Awarded *'āpana* can be seen on the tax maps for the *'ili* of Hakioa, Kaho'omano, Kakalae, Kaloulu, Kapalawai, Koleakalo Manawai, Pu'ulimu, Wai'awa'awa and Waikaia all located along the Waimea River, the Makaweli River or a major western tributary of the Makaweli River (Figure 6).

A major problem in reconstructing *Māhele* era settlement patterns is that tax maps and other readily available historic maps do not show *'ili* areas for claims or awards in Huakaule, Kahalai, Kahana, Kahola, Kaikolu, Kalā'au'ōkala, Kamaka'eli'eli, Kamo'ouli (Kamo'aali'i), Kaneli, Kaohuilihau, Kapuemanu, Kaunuloa, Kicle, Kohiana, Kukuihoehoe, Kula'amokusiuli, Kumuiki, Mahaihai (Mahaemae), Manini, Mokuone, Nonopahu, Ololokaiau, Olokele, Palaloa, Piliamo'o, Puleiwale, Uhilau, Waikui or Wailele. It is difficult to understand the entire *ahupua'a* settlement pattern when so many of the geographic areas of settlement are unknown. Perhaps these *'ili* were all along the western-most margin of Makaweli as is the case with the geographically identifiable *'ili* but for all we know they may have been widely spread out over Makaweli *Ahupua'a*.

There frequently, however, is some location data for these "lost" *'ili*. Ka Lā'au'ōkala is a canoe landing, and we presume it is at the shore or on the Waimea-Makaweli drainage. Kahana is described in the claims as being at the *muliwai* or mouth of the river. The Mahaihai Ditch is shown on maps running alongside the Makaweli River at the junction of the Makaweli River with the Waimea River and we presume the Mahaihai claims would be along that ditch. Olokele *'ili* may have been the entire Olokele Valley. The Nonopahu claim is in the same areas as those for Koleakalo, up the river.

Of these 117 claims with 119 *'āpana*, there are 223 *lo'i* or *mo'o* (which presumably included *lo'i*) enumerated. The majority of these *lo'i 'āpana* are in Hakioa (28), Kaho'omano (26), and Kakalae (23). Thus the vast majority of *lo'i* claims were in seaward portions of the Waimea and Makaweli Rivers. There are claims for 31 house lots, and presumably, some or all of the 22 soldiers were still garrisoned at the fort. The house lots tend to be in *'ili* closer to the shore, and some along the rivers. There are 19 claims for *kula* and these are pastures or gardens scattered in among the *lo'i*. Gardens are very

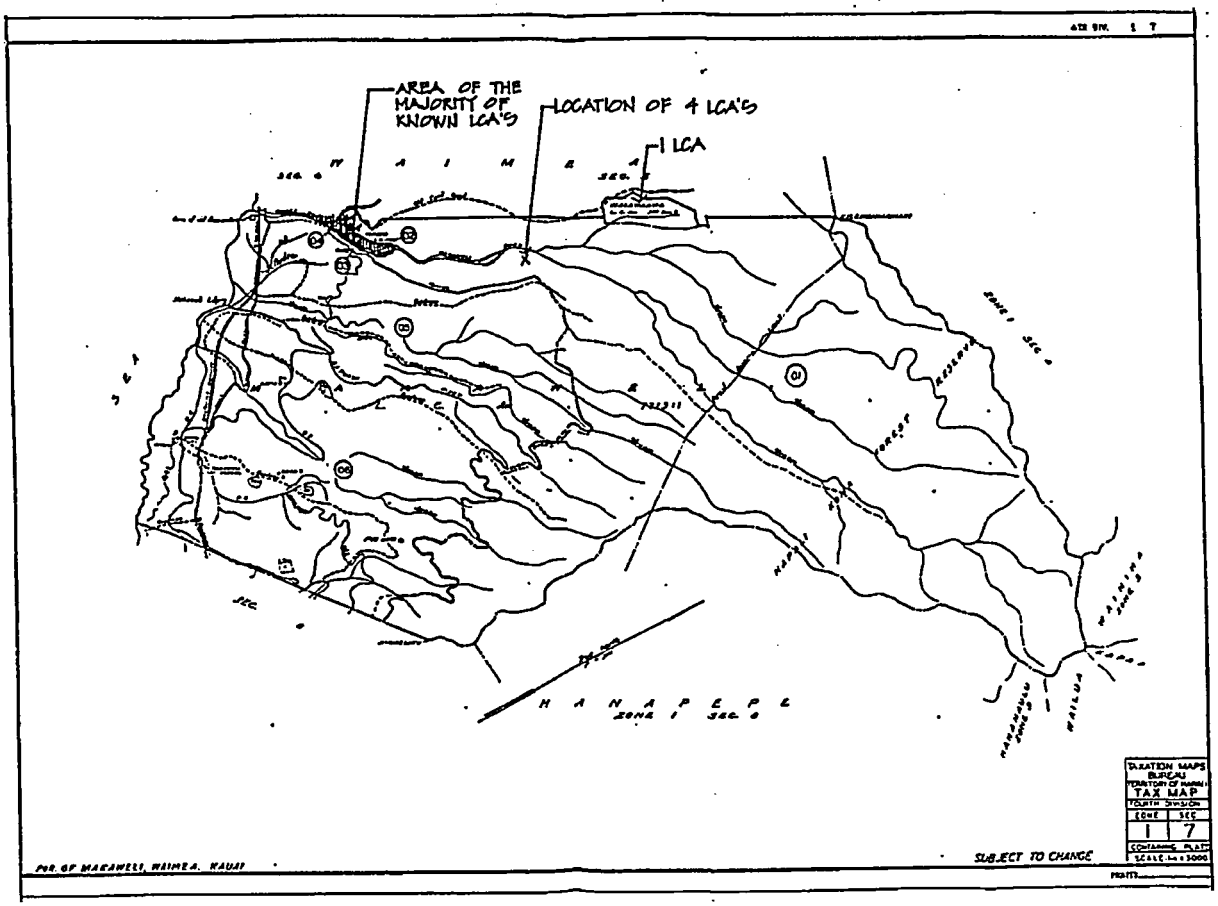



Figure 6 Map of Makaweli *Ahupua'a* (TMK 1-7) showing areas of known mid-1800s settlement

much a part of the Makaweli landscape and appear in the claims in several different guises. There are twelve claims for *kīhāpai*, for a *kula* garden, three others for gardens in house lots, three for a *pā kanu* (cultivated garden), and one for a taro *kīhāpai*. Many claims mention the various *'auwai* or ditches, and the ditches carry the name of the nearby *'ili* or the *'ili* is named for the *'auwai*. Three claimants claim four *'auwai*. There is also a claim for a pig pen in Kaikolu and a gobey fish enclosure in Manawai.

A potato planting claim is made by a soldier in an unknown location, but presumably near the fort. Many of the *kula* may also have contained plantings for sweet potatoes. There is a claim in Kakalua for coconut and fig trees (236F) and a coconut grove (4291B) in Mahulhai. Both mentions of coconut groves occur as markers for boundaries.

There are no *Māhele* claims for *wauke*, *olonā*, bananas, *hala*, orange or lemon trees as there are in most of the Kaua'i *ahupua'a*. Although these cultigens may have existed, they have not been mentioned. This lack of diverse cultigens may also be the result of this Makaweli River area being so closely linked with Waimea, almost as a suburb. This Makaweli area was a large food factory probably for both Makaweli and Waimea, and in fact, perhaps even more for Waimea. There is much more diversity in cultigens claimed in both neighboring ahupua'a (Waimea and Hanapēpē) suggesting that, at the time of the *Māhele*, Makaweli primarily produced food staples.

Within the Waimea-Makaweli-Mokuone valleys, area paths, *pali* and *'auwai* or neighbor's patches are the usual limit to the land claimed. A government road is mentioned several times and represents the cross-*ahupua'a* transit area. The paths go along the rivers and up through the different *'ili* providing access between the higher lands and the shore.

Claimants of large tracts, such as the *ahupua'a* or the 298+ acres for the Mission lands provide information about highly prized fish ponds and salt ponds, but little else about the land within these large areas. Three *ali'i* have claims to the entire *ahupua'a*, Ahukai wahine, Emelia Keaweamahi, widow of Kaikioewa, and M. Kekūanaō'a for Victoria Kamāmalu. Victoria receives the land of Makaweli as well as a small *'āpana* within Kaho'omano, the latter claim is slightly unusual, since usually all land not claimed by the *kuleana* tenants belonged to the chief/chiefess who was awarded the land. Both Ahukai and Keaweamahi speak about the fish pond, Kahe (also known as Kekupua Fishpond), in Kapalawai and the reader is referred to other sections of this report for that discussion.

Fishing is mentioned in the Mission claim #387, which can be seen on Tax Map Key 1-7, (Figure 6) some distance up a Makaweli River tributary. Kaumuali'i, former reigning chief of Kaua'i, gave Mr. Whitney the land of Kakalae near the juncture of the Waimea and Makaweli Rivers and the food fish *auhau* ["tax"] and all other appurtenances, with which he took possession of in the *'ili* of Kakalae and held it in peace under Kaumuali'i and all his successors until his death.

From our knowledge of Waimea and Hanapēpē, it is probably likely that the land just *mauka* of the shore provided *pili* grass for housing and that there were possibly even wetland terraces in other valleys to the west of the Makaweli River, but we have no



records. The *ali'i* used the Kekupua Fishpond and the Kapalawai area. There were a few salt ponds along the shore. The *Māhele* records leave us in ignorance about the eastern and central part of the *ahupua'a*, but provide us with a very detailed record of the western end of Makaweli, which was extensively cultivated along the Waimea-Makaweli-Mokuone river valleys.

The *Māhele* land use pattern at Makaweli was very strongly focused along the seaward portion of the Waimea-Makaweli-Mokuone river valleys. In the general absence of historic or archaeological accounts about the eastern and central part of the *ahupua'a* we are left only with conjecture. It seems likely that the creation of a Waimea mission station, a major trade center and a fortification at Waimea drew people in from the surrounding country. It seems probable that habitation and agriculture were more spread out throughout Makaweli *Ahupua'a* in pre-contact times. It does appear likely, however, that the westernmost margin of Makaweli was always the most populous portion of the *Ahupua'a* owing to the well-watered flatlands of the Waimea-Makaweli-Mokuone river valleys. Thus, to the extent that the historic record truly reflects settlement patterns, we can only assume that there was remarkably little Hawaiian activity at Kapalawai other than use of the fishpond.

### G. Ranching on Kaua'i

In 1793, Captain Vancouver gave Kamehameha a gift of a longhorn bull and a heifer, which were pastured on the island of Hawai'i. A ten-year sanction was put on the cattle to ensure their survival and growth. These strange looking animals were called *pua'a bipi* (pig-beef) because of their strange stare. Kamakau notes that "this was the beginning of the wild herds of Waimea and Mauna Kea"(*Ibid.*: 164). By the 1820s, the unchecked cattle population had used up their grazing lands and were attacking the farmlands. In 1832, Kamehameha III recruited Spanish vaqueros to teach Hawaiians how to ride horses and rope cattle (Ronck, 1985: 57).

In 1803, Richard Cleveland brought the first horses to Kaua'i. Kamehameha did not see much use in them since they were not used for food like cattle were (*Ibid.*).

In 1831, ranching was introduced to Kaua'i when Richard Charlton, the British consul, leased some land in the Hanalei district. He started with a herd of about 100 head of cattle. Other ranchers followed suit and in 1848 the practice of registering brands to distinguish ownership of cattle was started on Kaua'i. Kaumuali'i's favorite wife, Deborah Kapule, kept a large herd along the Wailua River (*Ibid.*).

It's apparent, according to articles in Hawaiian language newspapers of the time, that "wild cattle" were still a problem on all the islands even in the late 1800's. In 1874, G. K. Maka from Waiolama, Hilo writes a letter asking support for a bill of complaint to the Legislature:

> In these days in which we are living here, we are surrounded by cattle and live together ...Therefore, you people who are so fond of your lands that you hold them

> back, do not lease them. We are living in trouble. O my fellow representatives, from Hawai'i to Kaua'i ...Perhaps now our king will agree, just as he promised to here in Hilo, to let you fence in your patches and homes and if cattle enter take the (creature) to the Pound. Here is a good idea, let the lease holder put up the fences... (*Nūpepa Kū'oko'a*; June 13, 1874).

By 1899, "wild cattle" as well as goats had become a big problem on Kaua'i. Notes from Henry Pratt Judd of a hunting trip to Makaweli indicate that over a 2-day period a total of 180 goats and 11 cattle were shot (Judd manuscript, Kaua'i Historical Society).

**H. Sugar**

In 1835, Ladd and Company started the first successful sugar plantation in Hawai'i at Kōloa, Kaua'i. William Ladd, William Hooper and Peter Brinsmade took out a fifty-year lease on 980 acres of land at Kōloa from Kamehameha III. As other sugar plantations were organized, more labor was needed to work the fields. Plantation owners began recruiting laborers from outside the Hawaiian Islands. The Chinese were the first to arrive in 1852, followed by the Japanese in 1868 and Portuguese workers in 1878.

The Hawaiian Sugar Company was founded at Makaweli *Ahupua'a* shortly after the signing of the Reciprocity treaty of 1875 by representatives of the Scottish Mirlees, Watson & Yaryan Company. Samuel T. Alexander and Henry P. Baldwin took over the plantation, incorporating it in 1889 (Conde and Best 1973:134). A large mill was established at present day Kaumakani Town and approximately a dozen camps for sugar workers were scattered amongst the fields.

**I. Rice**

The influx of Asian immigrants brought new changes and new demands. At Hanapēpē, rice farming was introduced by the Chinese in the late 1800s, in part, to support the demand of the large immigrant population. On Kaua'i, the Chinese seemed to take over as much land as possible. Coulter, quoting Damon, writes that:

> In Hanalei valley, with the exception of a small portion devoted to sugar, the bottom lands were "turned into one waving field of rice." Some Chinese "had crept far up into the recesses of the side valleys." ...On the opposite side of the island Chinese had found their way up to the head of the winding valley of Waimea. (Coulter 1937: 20)

By 1892, 2,055 acres of Kaua'i land were planted in rice (*Ibid.*: 21).

**J. The Sinclair-Robinson-Gay Legacy**

The matriarch and pillar of the Sinclair family was Elizabeth (Eliza) McHutchison Sinclair, born April 26, 1800 in Glasgow, Scotland. Eliza, as she was called, hailed from an influential Scottish family. At the age of 18 she accompanied her father on a business trip



where she had the good fortune to meet Francis Sinclair, a captain in the Royal Navy. About one year later, in 1819, they were married (Appendix 2). Captain Sinclair resigned from his post in the Navy and took a position at the Inland Revenue Office in Edinburgh, the city of his birth. Here at Edinburgh, all six of their children were all born.

Eliza was ambitious and wanted to provide a firm inheritance for her children. It just so happened that the Royal Navy was offering generous portions of land to retired officers in the newly developing colony of New Zealand. Eliza must have been a very self-reliant and progressive woman for her time to embark on such an adventure at her age (39 years) and with six children, no less — the youngest being seven months old. So in October of 1839, the family bade farewell to their native Scotland bound for adventure and a new life in New Zealand.

Upon arriving in New Zealand in 1841, the family learned they were unable to settle on their lands due to disputes with the native Maori, so they settled temporarily in Wellington instead. During this time, Captain Sinclair built a ship from hand-hewn logs and traveled up and down the coast trading along the way. In 1843, the family settled in Pigeon Bay at Craigforth, the home Captain Sinclair and his sons had built. The family was very resourceful and were pioneers in the truest sense of the word. They raised cattle and sheep and the "men" of the family became adept at boat building.

In 1846, a tragedy occurred. Captain Sinclair, along with his oldest son, George, and daughter Jane's fiancé, Alfred Wallace, sailed to Wellington for supplies. With him, he had taken the family earnings and the year's harvest. The ship and its passengers were lost at sea and were never recovered. Eliza Sinclair was left on her own with little money to support her remaining five children in a rugged and far-off land.

Eliza Sinclair must have been a resourceful and strong woman to survive this tragedy in her life. She had a level head on her shoulders and in time was able to turn things around and prosper again. In 1848, daughter Jean married Captain Thomas Gay, a whaling captain. In 1850, another daughter, Helen, married Charles B. Robinson, a prominent gentleman who lived fifteen miles away in Akaroa. Two years later, Helen left her husband Charles Robinson never to return again. She and son, Aubrey, returned to Craigforth to live with the rest of the family.

Seeking excitement and new adventure, the family decided to set sail for British Columbia or California in search of new land and a change in lifestyle. It was convenient that Jean's husband, Thomas Gay could sail a ship. Along with the family's personal possessions, the 'Bessie' was well-supplied with food, livestock, and everything needed to start up a new home again on a new frontier. In April of 1863, the Sinclair-Robinson-Gay families said good-bye to their New Zealand home for good. Eliza Sinclair was 63 years old at the time. It is not clear whether the 'Bessie' stopped in Honolulu enroute to Victoria on Vancouver Island. At any rate, British Columbia did not suit the families' plans, so upon a suggestion from a family acquaintance, they set sail for the Pacific and Hawai'i.

The 'Bessie' arrived in Honolulu on September 17, 1863. The Sinclair's immediately began looking for large tracts of land to purchase. Disappointed with what they saw, the family decided to head for California in search of better prospects. King Kamehameha IV, hearing of their plans to leave, offered them the island of Ni'ihau. Unusually heavy rainfall was recorded for 1861-63 and Ni'ihau was exceptionally lush and green when the two Sinclair brothers, Francis and James, did a site inspection of the island. Excited at their discovery, they hoped to re-establish the cattle and sheep business they had left behind in New Zealand. The two brothers accepted the King's offer and purchased the island of Ni'ihau for $10,000 in gold.

Supposedly, the King was happy to sell Ni'ihau because it had become a financial burden for him. In the middle of the business negotiations, Kamehameha IV died and Lot Kamehameha V became the next king. This explains why Kamehameha V's name (rather than Kamehameha IV) is on the land documents.

In 1865, Eliza Sinclair purchased the *ahupua'a* of Makaweli (21,844 ac.) from Victoria Kamāmalu Ka'ahumanu for $15,000. A new home was built in the cool uplands of Makaweli and sometime in the early 1870's the Sinclair family moved from Ni'ihau to settle there. This home, situated at about 1800 ft. elevation became known as the 'Makaweli house' that is mentioned in so many of the early journals of visitors to Kaua'i.

The Kapalawai house was built by Aubrey Robinson for his wife Alice Gay Robinson. The exact date of construction is not known, but the house was probably built around the mid-1890's. The original house plans do not show a date, but the Robinsons have a photo of the house with the date 1897 written on the back (Ed Rice 5/19/99: pers. comm.), thus making the house at least 103 years old. The Kapalawai house was recorded with the State Historic Preservation Division in April of 1999 and was assigned State Site Number 50-30-9-764/A.

Speaking of the family's use of Kapalawai, Bruce Robinson says:

> Well, for the family, this was truly a family farm... this is not to be included as the ranch... the ranch got started up in the mountains ...they had milk cows, they had lots of horses... We had fruits and vegetables... flowers... pigs, goats... and a fish pond, plus the ocean where they could catch fish... (Interview 5/21/99).

Warren Robinson's memories of Kapalawai include:

> So the children would come every Sunday for dinner. And after dinner, we'd usually sing hymns and my grandmother would read from the prayer book... I was more connected with getting into mischief as a kid than anything else. You know, running all over, playing tag. Can you imagine growing up in that house? ...it was a super place to play in as a kid (*Ibid.*).



The Sinclairs began ranching in Hawai'i when they bought the island of Ni'ihau in 1865. There they raised Merino sheep and Shorthorn cattle from the continental United States, Australia, and New Zealand. Aubrey Robinson was the first to bring purebred Arabian horses to Hawai'i in 1884, and he maintained stables at Kapalawai. He imported game birds (pheasant and quail) as well as trout and bass which were placed in Waimea and Makaweli streams.

In 1889, Francis Gay and Aubrey Robinson formed the family partnership known today as Gay and Robinson (G&R). Through this partnership, the various family businesses, i.e., Makaweli Ranch and Makaweli Plantation were managed. By the early 1880's the Robinsons got involved in the sugar business not only by planting their own crops, but also by leasing large tracts of land to Hawaiian Sugar Company. The Robinsons were always looking for new and creative ways to utilize their land. For many years, they raised bees for honey and experimented with other agricultural crops.

The Robinson Family Partners is a separate business entity which represents the land owners of the family lands. This partnership was set up to protect the lands and ensure that all lands stay within the family, as well as to preserve these lands for future generations of Robinsons. Today, Warren Robinson, son of Selwyn Robinson, and grandson of Aubrey Robinson, is the family patriarch and President of the Board.

In speaking of the Robinson legacy, Ed Rice, retired CEO for the Robinsons, talks about the Robinson work ethic and their attitude toward the land,

> ...it was a love of the work and the land that drives these guys. It's what drives that young man who just drove away [Alan Robinson], and his father, and his father['s father]. In a bigger sense, and this has to do with what the Robinson empire means to the family, it was a way to husband the land. You didn't walk away and leave it with no usefulness... even if it cost you money, you put it to some kind of constructive use. That's what ranching is. (Interview 5/18/99)

The Sinclair-Robinson-Gay family heritage is rich in history. Their pioneering spirit is still evident in their determination to preserve the past and the legacy that Eliza Sinclair started.

### K. 1900's to Present

Rice farming declined sharply throughout the Hawaiian Islands after the first decade of the 20th century: Total acreage dropped from a high of 9,425 acres in 1909 to 1,130 acres in 1935. By the 1930s the rice industry had ceased entirely on the islands of Hawai'i, Maui and Moloka'i (Coulter and Chun, 1937:62). Though rice continued to be grown at Waimea into the 1930s, many of the rice fields were being reclaimed for sugar planting. Population figures up to World War II reflect the continued growth of the Waimea District as the sugar industry prospered. In 1910 the population total was 8,195 and by 1940 it had grown to 10,852 (Schmitt, 1977: 13-14).

By the early 1930s, about 670 acres of land was cultivated by the Waimea Sugar Mill Company. Most of Waimea Town's commercial buildings were constructed during this period of the sugar industry's growth.

Following World War II, the fortunes of the Waimea Company changed. The Waimea mill stopped operating in 1945, though the Waimea Sugar Company continued to cultivate cane on its lands until 1969. After the company closed, its fields were leased to the Kekaha Sugar Company.

During recent decades, growth in Waimea has focused on development of the former sugar plantation lands and structures into tourist-oriented facilities. Nearby, on the current project area, land use has remained much the same since the turn of the century. Cattle ranching continues. Surrounding lands are used either as cattle pasture or are under corn or sugarcane cultivation.

*1. Settlement Pattern for Makaweli Ahupua'a in the late Nineteenth and Early Twentieth Centuries*

As discussed previously, the settlement pattern in the mid-nineteenth century, as far as we can reconstruct it from *Mahele* land documents, was remarkably focused on the westernmost margin of Makaweli along the well-watered flatlands of the Waimea-Makaweli-Mokuone river valleys. The Robinson's residences in the uplands (the "Makaweli house" was built circa 1870) and along the coast (the "Kapalawai house" was built circa 1890) were two small population foci but the major habitation areas of the last hundred years were the result of the development of the sugar industry.

The Hawaiian Sugar Company established eleven or twelve small "camps" scattered among their fields in Makaweli *Ahupua'a* around the turn of the century (including camps numbered 1-10, Makaweli Camp and Pakara Camp. The town of Kaumakani grew up from the settlements around the sugar mill known as "Makaweli Camp" and "Camp 1". Pakala Village grew up from "Pakara Camp". Kaawanui Village grew up from "Camp 6". All trace of most of the other camps has disappeared from modern maps.

During the late nineteenth and twentieth centuries the Robinson residences were islands in a sea of commercial agriculture, isolated from the flux in settlement patterns and modernity in general.



## IV. PREVIOUS ARCHAEOLOGICAL RESEARCH

### A. Bennett

An early archaeological site survey of Kaua'i was performed by Wendell Bennett. His findings were published in *The Archaeology of Kaua'i* in 1931. Bennett credits the earlier work performed by Thomas Thrum, who identified *heiau* sites throughout the Hawaiian Islands; much of Bennett's efforts were focused on relocating the sites noted by Thrum. While Bennett did locate several sites in the vicinity of the current project area it should be pointed out that most of these sites were further inland. The sites identified by Bennett performed a variety of functions.

*1. Heiau*

Bennett discusses the source of stones for use in *heiau* construction. In this passage reference is made to Makaweli:

> There is considerable mythological and some traditional evidence that the stones for building *heiaus* were carried great distances. Rice (46, p. 35.) records the legends that the *heiaus* of Elekuna, Polihale, Kapa-ula, Malae and Poliahu were all built by the Menehunes with stones brought from Makaweli. The archaeological evidence, however, does not substantiate these beliefs. Although some of the stones of a famous temple might have been taken to be built into a new temple, a practice recorded for other parts of Polynesia, especially Tahiti, most of the *heiaus* were constructed from the stones in their immediate vicinity. In fact no *heiau* examined was constructed of stones foreign to its locality. (Bennett, 1931:40)

In another passage a reference to Makaweli as a place of refuge is established.

> The following sites, all associated with *heiaus*, are described as "places of refuge" *(puuhonua)*: (1) Hikinaakala in Waimea (p. 152), regarding which Thrum (53, p. 39) says, "Some report it as a place of refuge, while others assert that the crossing of the river to Makaweli was the only *pu'uhonua* of this section of ancient Kaua'i." (It is interesting to note that a *pu'uhonua* could possibly be a river crossing.) *(Ibid.:* 49)

The four sites Bennett identified closest to the project area are listed below:

> Site 43. Mahaihai heiau, now completely destroyed. The location was taken from an old map made by Frances Gay. (*Ibid.*: 111)
>
> Site 44. Askukui heiau, located in Makaweli at east branch of Kekupua valley near junction. Described by Thrum as, "A paved and walled heiau in good preservation." (*Ibid.*)

Site 45. Kaunumelemele heiau, located in Makaweli on the ridge near junction of Hikilei and Kunalele valleys. Described by Thrum as, "An open platform heiau in good condition." (*Ibid.*)

Site 48. Kuwiliwili heiau.
Said to have been located just below Makaweli Camp 3, which site is now in the cane fields. Thrum describes this *heiau* as, "A large, high walled enclosure of *pookanaka* class now destroyed." At the location mentioned there is nothing to indicate a structure but a pile of rocks gathered from a cane field. (*Ibid.*: 112)

While the map in Bennett's volume is not very detailed, it does not seem likely that any remaining features within the project area are sites identified by him (Figure 7). Several *heiau* recorded by Thrum on Kaua'i could not be relocated by Bennett:

Site 8. Peeamoa heiau, in Makaweli. Described by Thrum as "An unwalled heiau." (*Ibid.*: 152)

Site 9. Kapakaniau heiau, in Makaweli. Described by Thrum as "A paved, open platform heiau; in good condition." (*Ibid.*)

Site 10. Naulili heiau, in Makaweli. Described by Thrum as, "An unwalled sacred place; flat ground." (*Ibid.*)

With the exception of Aakukui heiau, three *heiau* that had been identified in 1888 by a local informant in 1888 named Kanakahelela, were not located by Bennett.

1. Aakukui was a heiau that stood at Kekupua.
2. Kaumuloa was another.
3. Kuanalili was another.

These were heiaus in which human sacrifices were offered, but Kuanalili had a lele altar, that is, a high place on which to lay the victims. When the kahuna thought that it was the proper time, then the victims were carried to Aakukui or to Kaunuloa. Kapuahi and Aimoku were priests who officiated in these heiaus. There were more priests but these were the principal ones. Kaumualii was the chief to whom these heiaus belonged. There are no other places of importance there. (Lahainaluna Student Papers)

*2. House Sites & Agriculture*

House sites were a common feature lining the rivers in Makaweli and Waimea. The houselots located by Bennett were found further up the valleys close to agricultural sites, and away from the present project area.



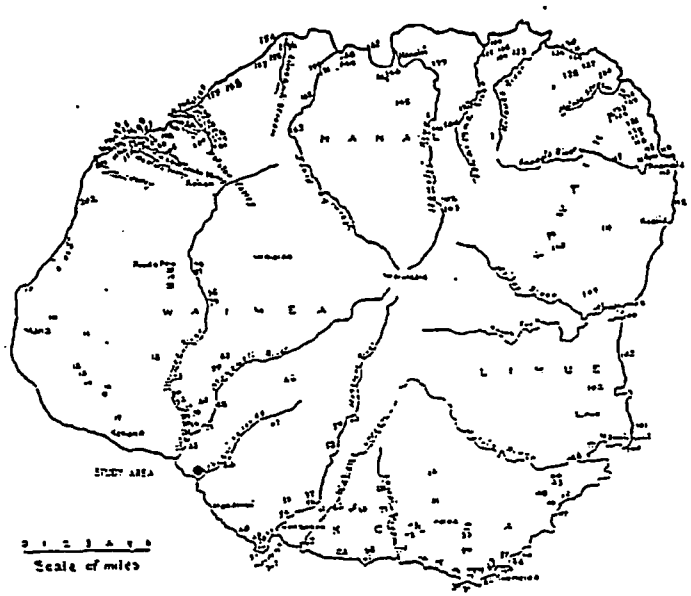



Figure 7 Index Map of Kaua'i Showing Location of Archaeological Sites, taken from *Archaeology of Kaua'i* (Bennett, 1931: p.98); no north arrow.

Site 27. House sites.
Along the base of the bluffs on both sides of the river, after getting up past the branch of the Makaweli and Waimea rivers, there are built-up stone house sites. In some places these facings run for over 100 feet along the base of the bluff, with the paving extending back 15 feet or more. At other places the terrace is just sufficient to maintain one house. On the east side of the river, on the steep talus slopes, there are house sites with terraces as high as 8 feet to maintain a level platform for a house. (*Ibid.*: 106)

Site 42. Taro fields and house sites, in Makaweli and Olokele valleys.
"The taro terraces and house sites, utilizing as much of the flat lands as possible, and terracing a bit on the sides, are much the same as in Waimea valley." (*Ibid.*: 111)

Site 46. Taro fields and house sites in Kawaipapa Valley.
"The valley is well terraced where convenient though no great labor has been expended in irrigating the higher, though fertile land. The terraces and the house sites on the edge of the valley are interesting as they show a fairly large population quite a ways inland." (*Ibid.*: 112)

Site 47. Taro fields and house sites in Honuaula Valley.
"This valley shows considerable taro terracing, as well as walled inclosures that look like pigpens. The part toward the sea of this valley is utilized for sugar cane and so all that is left is the outer rim. As such it would indicate fairly extensive work lower down in the valley." (*Ibid.*)

*3. Hāua (recreational) Slides*

There is a brief mention of a *hāua* slide in Makaweli: "A hill named Puuholua in Makaweli was probably another slide" (*Ibid.*: 55). There was no site number designation.

*4. Salt Production*

Another point of interest is the Makaweli red salt. Referenced in the following passage, Site 49 is closer to Hanapēpē than to the present project area:

> "The manufacture of salt has always been important among the Hawaiians, and Kaua'i was famous for the red salt of Makaweli (Site 49) made by mixing ordinary salt with a little red dirt. Ellis (18, p. 376.) describes the method of salt manufacture on Hawai'i:
>
> > They have generally one large pond near the sea into which the water flows by a channel cut through the rocks or is carried thither by the natives in large calabashes. After remaining there some time, it is conducted into a number of smaller pans about 6 or 8 inches in depth which are made with great care, and frequently lined with large



> evergreen leaves in order to prevent absorption. Along the narrow banks or partitions between the different pans we saw a number of large evergreen leaves placed. They were tied up at each end so as to resemble a shallow dish and filled with sea water in which the crystals of salt were abundant." (*Ibid.*: 24)

B. More Recent Archaeological Research

More recently, the major focus of archaeological research in the vicinity of the project area has been the Russian Fort. In 1816, Hawaiians and the Russian-American Company built "Fort Elisabeth". A great deal of information on this site is presented in the following three documents:

McCoy (1972) performed some of the first detailed recording of testing in and around Fort Elisabeth. He recorded Fort Elisabeth as State Site # 50-30-05-1000. Of greater interest to the present project area were the other two sites he recorded. State Site # 50-30-05-1001 is described by McCoy as a late prehistoric coastal site. He recovered numerous traditional Hawaiian artifacts and cultural deposits. He also identified a possible burial feature. State Site # 50-30-05-1002 is a single course, right-angle alignment 13m (41.6 ft.) on one side and 5m (16 ft.) on the other.

Following the 1972 findings, Hommon *et al.* (1975: 123) performed backhoe testing and identified a possible *imu* and two burials in trenches X-13 and X-14 south of the Russian Fort.

Mills (1996) reports on the ethnohistory and archaeological findings at the fort. His dissertation focused on the role Hawaiians played in the history of the fort.

On the other side of the project area to the southeast, McMahon (1993) assessed the inadvertent discovery of a coastal burial. State Site # 50-30-09-6011 is located just south of the inlet of Mahinauli Gulch, and just north of the Robinson Landing barge harbor. The discovery exposed a cultural deposit including midden and basalt debitage. It was unclear whether the burial was Hawaiian or historic.

In nearby Waimea town there have been numerous archaeological studies. The majority of the state site designations have been associated with burials. A brief summary of the findings in Waimea follows:

In an early work, Soehren (1962) reported on sites at Waimea, Kaua'i. He located the remains of a low stone platform on a knoll between 350 and 400 feet in elevation. It measured 44 feet by 83 feet with walls up to 4 feet high. He surmised that the size and location of the structure strongly suggest that it was once a *heiau* in an area of terraces. However, he concluded that it was not sufficiently well preserved to warrant preservation.

In an area much higher up in the valley, Newman (1970) found a small agricultural area in the Waimea Heights Houselots. At around the 325 foot elevation, there was a series of

parallel rows of stones in an area measuring 30 feet by 40 feet. No site number was assigned.

Cox (1975) found a total of nine widely scattered burials along Kaumuali'i Highway, between the intersection with Ala Wai Road on the southeast and Onaona Road on the northwest, designated State Site Numbers 50-30-05-3250 through -3256 and 50-30-05-3244 through -3246 (10 sites). Salvage operations were undertaken, and traditional and historic artifacts recovered. Most site numbers reflected individual burials.

In a report concerning a waterline excavation near the upstream Waimea Stream pumping station, Kikuchi (1983) describes a burial (State Site # 50-30-09-1870) and the Pa'a-Kaua'i Ditch (State Site # 50-30-09-28).

In 1993, Gerald Ida and Hallett Hammatt found a 20th century trash pit while on an archaeological survey of the Campos Property in Waimea.

Also in 1993, but six miles up Waimea Canyon, McMahon (1993) recorded five burials in a cave in an area of rock walls, enclosures and platforms designated State Site # 50-30-06-498.

The presence of grave sites (State Site Numbers 50-30-05-1853 and 50-30-05-1854) was noted just west of the restaurant at Waimea Plantation Cottages (Sinoto, 1993).

An early date was reported from Waimea Town by Ha·mmatt *et al.* (1993). An inventory survey of approximately 1 acre identified a prehistoric cultural layer (State Site # 50-30-05-4012) and 1 burial believed to be prehistoric. The layer was charcoal carbon dated to A.D. 910-1275.

Recently, in Waimea Town, two historic cave burials - State Site Numbers 50-30-05-636 and 50-30-05-637 - were located by McDermott *et al.* (1997).

There are at least 18 sites recorded in the greater Waimea Town area. The majority of these are burials. Very little reference is made to Waipao and A'akukui valleys which lie *mauka* of the project area (Figure 8; see also Appendix 3).

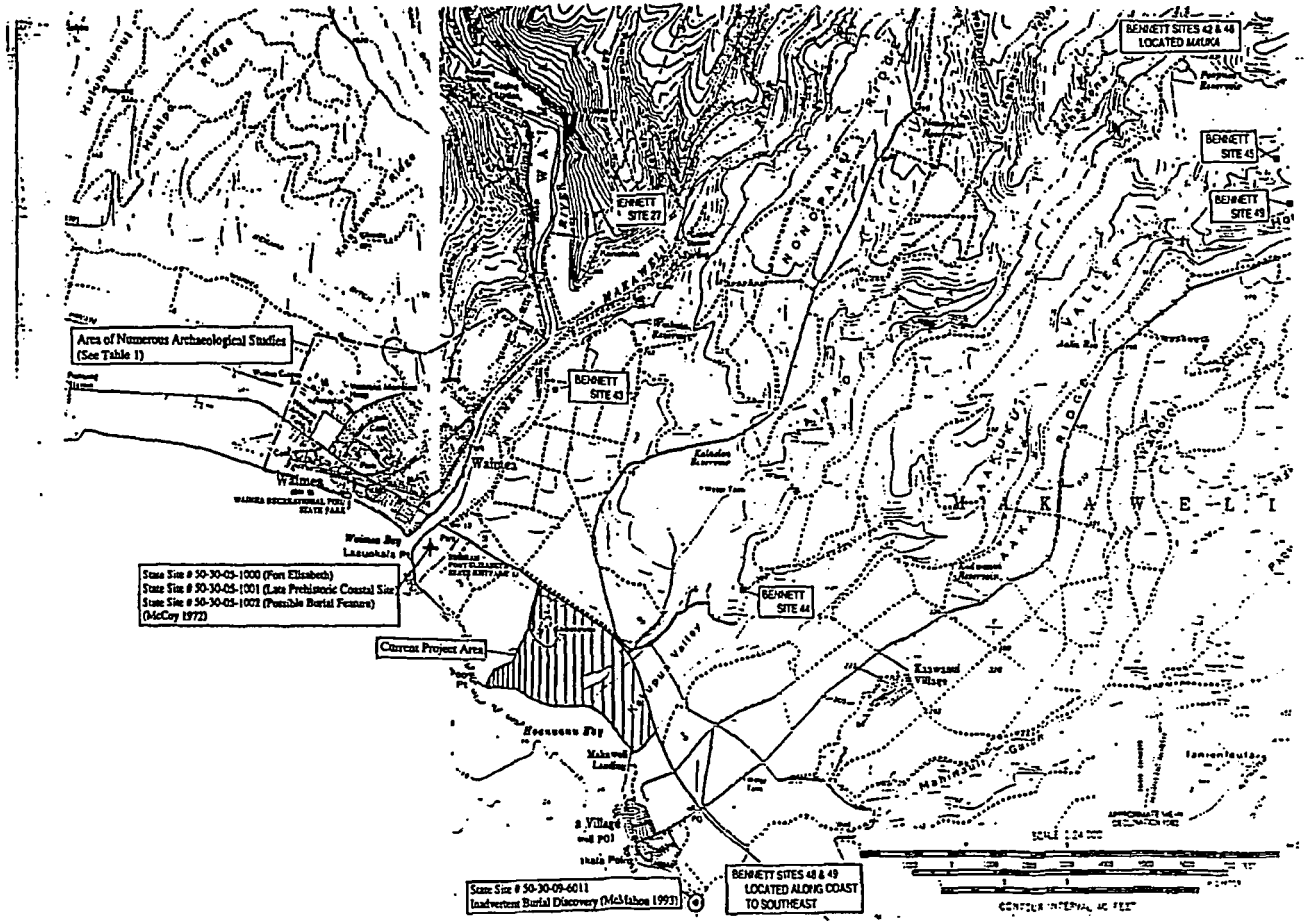



Figure 8 Portion of USGS 7.5 Minute Series with previous archaeology in area.

## V. SITE DESCRIPTIONS

Six historic properties were identified during the inventory survey (see Figure 5 above). These sites have been recorded with the DLNR/SHPD and assigned State Inventory of Historic Places site numbers. Three of the sites are single-feature sites, and three are multiple-feature sites.

### State Site # 50-30-9-762

General Description: Site 50-30-9-762 is a series of rock walls, a terrace, and an iron try-pot. The walls are located in and around the workers camp area (Lot 1). There are two walls lining the main driveway (Features A and B). Feature A also serves as part of the western property boundary. One wall follows the old government road and serves as a northern boundary (Feature C). Another wall intersects with Feature A and continues *makai* as the western project area boundary (Feature D). There are several wall segments in the camp area that partition house lots (Feature E). The terrace is *mauka* of the houses in the camp area (Feature F). The try-pot (Feature G) is located at the *mauka* end of Kekupua Fishpond.

An interview with Warren Robinson regarding when the walls were built provided the following information:

> WR: ... I would assume that they were built when they [Sinclair-Robinson family] purchased the place and probably through the years after that.

This would date the walls and terrace as post 1865, when Eliza Sinclair purchased the *ahupua'a* of Makaweli. Thus, Site # 50-30-9-762 was determined to be historic and related to the Robinson era of occupation.

| | |
|---|---|
| **Feature #:** | 50-30-9-762/A |
| **Feature Type:** | Rock Wall |
| **Feature Function:** | Boundary |
| **Length:** | 417m (1,334 ft.) |

Description: Feature 762/A is a rock wall which runs along the Waimea side of the curved main driveway (see Figure 32 below). Its northern terminus is a cut rock column with a wrought iron gate (front gate). The southern end is at the bridge spanning a water ditch where it adjoins a wooden fence. The wall is constructed of basalt boulders stacked 3 to 5 courses high. There is considerable cobble chinking which indicates some care was taken in its construction. The wall is .95 - 1m (3 ft.) wide and 1 - 1.1m (3 ft.) high. There is no mortar evident. The northern half of this wall acts as the western boundary of the project area.



| | |
|---|---|
| **Feature #:** | 50-30-9-762/B |
| **Feature Type:** | Rock Wall |
| **Feature Function:** | Barrier |
| **Length:** | 417m (1,334 ft.) |

Description: Feature 762/B is a rock wall which runs along the Hanapēpē side of the main driveway (see Figure 33 below). It parallels Feature 762/A, the wall on the other side of the driveway. Its northern terminus is the other half of the front gate with a cut rock column and a wrought iron gate (see Figures 34 & 35 below). The southern end is at the bridge spanning a water ditch and ending with a rock column. The wall is constructed of basalt boulders stacked 3 to 5 courses high (1m, 3 ft.). There is cobble chinking. The wall is .95 - 1m wide (3 ft.). There is no mortar evident. Cactus is growing on the top surface.

| | |
|---|---|
| **Feature #:** | 50-30-9-762/C |
| **Feature Type:** | Rock Wall |
| **Feature Function:** | Boundary |
| **Length:** | 755m (2,416 ft.) |

Description: Feature 762/C is a rock wall that runs *makai* of the old government road. This wall is the northern boundary for the project area. The wall is of core filled construction. It measures .90m (3 ft.) wide by 1.10m (3.5 ft.) high. It stands 4-5 courses high (see Figure 36 below). A major portion of the central segment of the wall has degradation from adjacent cane operations and growth of bougainvillea. Because of the dense bougainvillea growth, the wall is not visible in its entirety. This wall runs from the front gate on the east side of the driveway to its terminus at an irrigation ditch.

| | |
|---|---|
| **Feature #:** | 50-30-9-762/D |
| **Feature Type:** | Rock Wall |
| **Feature Function:** | Boundary |
| **Length:** | 584m (1,868 ft.) |

Description: Feature 762/D is a rock wall of core fill construction. It measures 3 - 4 courses (1m, 3 ft.) high, by 2m (6.5 ft.) wide. This wall has very little chinking in its construction. This wall runs along the western boundary of the project area (see Figure 37 below). In general this wall runs northeast to southwest. There is a distinct bend in the wall where it turns from 228° to 269°. This bend ties in the datum on State Site # 50-30-9-763 (platform). The platform abuts the eastern side of the wall. The *makai* end is approximately 78m (250 ft.) from the beach. Here a barbed wire fence continues on to the southwest corner of the property. The area just outside the project area has been cleared and the bulldozer push lies up against the west side (outside) of the wall. This wall is bisected by the driveway, and the two walls that line the driveway. At this juncture the western boundary of the project area changes from Feature D (wall) to Feature A (wall). Wall Feature 762/D continues northeast on the opposite side of Feature 762/B (wall) after it is bisected. At this point it is within lot 1, the workers camp. This wall is bisected two more times within the workers camp by dirt roads. Inside the camp area the wall is more narrow, measuring 1m (3 ft.)wide.

**Feature #:** 50-30-9-762/E
**Feature Type:** Rock Walls
**Feature Function:** Boundary
**Length:** 151m (483 ft.)

Description: Feature 762/E is a series of rock walls within the workers camp. The walls generally run northeast to southwest. They are associated with the houses built here, and act as informal property lines. These walls are generally 3-4 courses (.85m, 2.5 ft.) high and 1.10m (3.5 ft.) wide. The original wall is core filled. There are many rebuilt places along the walls that are constructed of simply stacked freshly excavated boulders with heavy equipment scars and large chunks of concrete (see Figure 38 below).

**Feature #:** 50-30-9-762/F
**Feature Type:** Terrace
**Feature Function:** Agriculture
**Length:** 39m (125 ft.)

Description: Feature 762/F is a rock terrace. It measures 2-3 courses (.70m, 2 ft.) high by .80m (2.5 ft.) wide. This terrace runs roughly north to southwest. Both ends appear to have been cut by bulldozing. Presently, the terrace is covered in prickly pear cactus (see Figure 39 below). There is a great deal of historic debris covering the terrace including lumber, metal, corrugated metal roofing, and animal feeding troughs.

Based on the presence of historic trash perceived as agricultural in nature and informal discussions with past and current residents of the "camp area", this rock terrace was determined to be an animal enclosure. At one time, this area was used for the Robinson family's vegetable garden.

**Feature #:** 50-30-9-762/G
**Feature Type:** Iron pot
**Feature Function:** Rendering Whale Blubber/Cattle Feed Container
**Length:** 1.0 m (3.28 ft.)

Located at the *mauka* end of the fishpond, near the pump house, is another agricultural artifact, an iron try-pot (see Figure 26 below), whose primary function *in situ* was for agriculture. The try-pot is a remnant left over from the whaling era. Historically, try-pots were used on whaling ships for boiling out oil from whale blubber. A factory was built aboard the ship's deck for this purpose. A brick housing called the *'caraboose'* held the try-pots in place and, were filled with sea water so as to form a shallow pool, which also served to protect the deck from fires lit beneath the try-works. The try-pots were designed to have flat sides so they could butt up against each other, thus utilizing less space aboard the ship's already overcrowded deck. The average try-pot held about 250 gallons of whale oil (Simpson 1986:84).



An interesting note is that the term *'ōkolehao* which means "iron bottom" (Puku'i & Elbert 1986:282) takes its name from the iron try-pot which was used as a still to distill liquor made from the *tī* root. An amusing anecdote is that when you put two try-pots together side by side, the shape resembles the buttocks from which derived the term "iron bottom" or *'ōkolehao* (Susan Remoaldo 5/21/99: personal communication).

The iron try-pot seems to be in fair to moderate condition. It measures .70m (2 ft.) in height and 1m (3 ft.) in width with a diameter of 1.10m (3.5 ft.). After the demise of whaling in Hawai'i, the try-pots were incorporated into the sugar and ranching industry. At Kapalawai, try-pots were put out in the pastures as feeding stations for the cattle and were filled with sugar molasses. The cattle would lick the molasses, making them thirsty and encouraging them to drink water so they would not get dehydrated. At one time, iron try-pots could be found in every pasture (Hakila Callahan 5/18/99: personal communication). This is the only try-pot remaining on the Kapalawai property today.

**State Site # 50-30-9-763**

Description: Site 763 is a large oval platform measuring 48.5 m (155 ft.) long north to south by 23 m (73.5 ft.) wide east to west (Figure 9). It is constructed on level ground. There is rocky soil with small bedrock outcrops in the area. The platform is constructed of *pāhoehoe* cobbles and boulders .05 - 1 m (2 in. - 3 ft.) in diameter. In profile, the platform is highest at the southern end where it is 2.5 m (8 ft.)above ground surface. It gradually slopes downward toward the northern end where it's a single course, .6 m (2 ft.), high. It was observed that the platform rises .37 m (1 ft.) over 15 m (50 ft.) from *mauka* to *makai*. The ground surface along the eastern side of the platform slopes downward toward the ocean at a rate of .30 m (1 ft.) Over 15 m (50 ft.). The surface of the platform is relatively even with five distinguishing characteristics; a ridge down the middle, two paved depressions (paths), a mound, and a square pit. Large boulders are found around the perimeter of the feature with small boulders and cobbles found mainly on the upper surface. The base around the perimeter is presently piled. The upper surface of the feature has a mounded ridge extending almost the entire length of the platform. This ridge measures 2.7 m (8.5 ft.) wide and 1 m (3 ft.) high. It extends to the furthest point north. This ridge is constructed of piled boulders, and is wider at the base than the top. On either side of the ridge are two linear paved depressions that run almost parallel North/South (see Figure 40 below). They are paved with cobbles and small boulders. These depressions are .10-.20 m (4 - 8 in.) below the placed cobbles and small boulders which line them. These features appear as paths (see Figure 41 below). The western depression has a square 2 m (6.5 ft.) pit built into it. The pit has walled edges formed by small boulders stacked to four courses high. It is .40-.7 0 m (1 - 2 ft.) deep. There is a mound on top of the platform in the southeast quadrant (see Figure 42 below). It measures 7 m (22.5 ft.) long x 1.5m (11 ft.) wide x 1.25 m (4 ft.) high. The mound is built of piled boulders, and is of similar construction as the ridge. It is oval in shape with the apex in the center. The exterior of the platform appears altered. The western edge of the platform abuts a rock wall that functions as the western project area boundary (see Figure 43 below). It is possible that rocks were taken from the platform and used in the construction of nearby

walls. The bulls that roam freely in the area could have also altered the edges of the feature. There are several large (old) *kiawe* trees growing through the platform which indicate the platform has remained where it is for many years. There is deadfall over its surface. The platform is in fair condition.

Interviews with individuals familiar with the property describe the platform as a clearing pile (interviews with Hakila Callahan, 5/18/99, and Warren and Bruce Robinson, 5/21/99). Mr. Hakila Callahan (age 65) who visited the property from his home on NTihau as a child, related the following regarding the platform:

CSH: What do you know about it [the platform]?
HC: That's the rock from Akia 1.
CSH: What is Akia 1?
HC: That's the cane, you know where the corn is right now?
CSH: Oh, that's where they plowed that whole field.
HC: The whole place. Yeah. That place had nothing but rock. So they went clean that place up, the rock, and they went take the rock and pile it over there on the railroad track.
CSH: What railroad track?
HC: They used to get, you know, in the old days. Never had truck before. They used to pull with the tractor. The Robinsons used to get railroad track. So that's how use to, they pile 'em up there, the pile stone. When they tell me the archaeology went over there and put ribbon over there 'cut *heiau*, that's not no heiau. That's all the stone from there. When they went clean that place up, right after that, the war went break out in 1941. So they had only cattle in there. Then they stop. After the war, then they plant cane inside their place.
CSH: In Akia?
HC: Akia 1. That's where all the stone came from.

Discussions with Warren and Bruce Robinson substantiate this. However, informal discussions with people who did not wish to be interviewed or named in this report indicated some community concern that the structure was solely a clearing mound.

Based on this and on the unusual pre-contact style of construction of this rock platform, a second period of field work was devoted solely to determining the function and age of this structure and trying to resolve the nature of this site. There are puzzling features which make us question the sole function of this rock platform as a clearing mound. These include a roughly level surface paved with cobbles, and a well constructed pit feature. As such, this structure does not appear to be an arbitrary field clearing pile. The fact that no midden, charcoal or artifacts were found — not even an iota of historic trash was found, makes defining its age and function a problem. Further, no references to this structure could be located in any previous archaeological or historical source. Another point for consideration is community concern that the structure be preserved until such time that more conclusive evidence turns up and a definite age and function can be determined. Based on the above, our findings remain inconclusive and the function of this large, paved



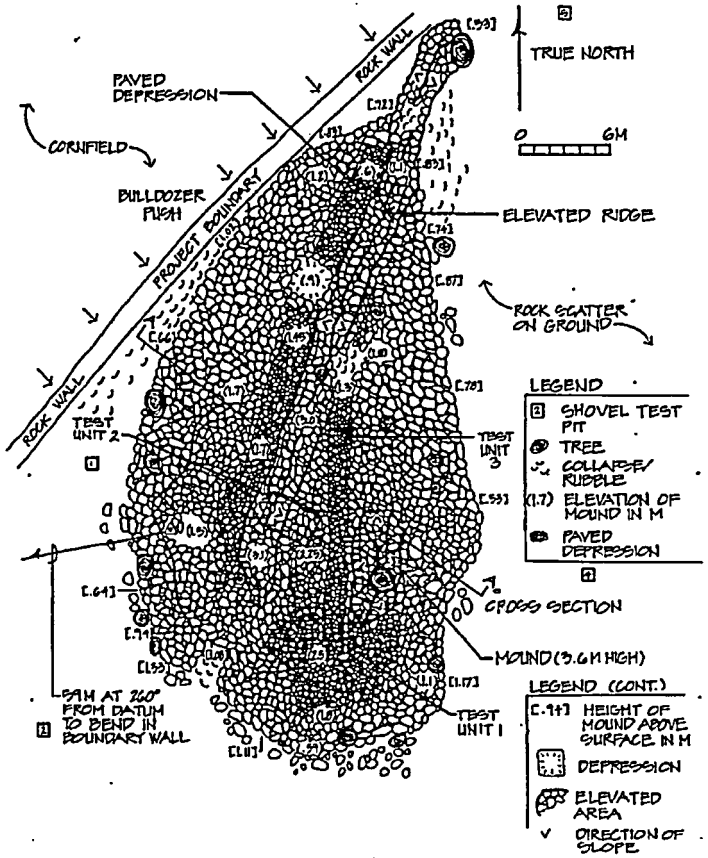



Figure 9 Plan view drawing of platform (State Site # 50-30-9-763).

platform remains questionable.

Taking into consideration the long land tenure of the Sinclair-Robinson family (135 years), it is feasible that the structure was constructed prior to 1865 and that it was used as a clearing mound in the 20th century when the adjacent field was cleared for growing cane. It would not seem unlikely that any rock piling during the Robinson tenure would have been on a pre-existing pile of rocks. It does seem possible that, prior to such a massive clearing endeavor, there was a previously existing culturally modified bluff on the site, which might account for the constructed pit feature. Just as likely, it is possible that the apparent "paving" of the surface was simply done to facilitate the laying of temporary track for a tractor-pulled operation clearing an adjacent field of stone just prior to World War II.

Due to the uncertainty over the function and the community concern raised, we have recommended Site 763 (rock platform) for preservation. The landowner has agreed to such an arrangement.

State Site # 50-30-9-764

General Description: Site 764 is the main house complex of the Robinson Homestead, located in Lot 1. The site includes 14 separate structures. These buildings include: A) the main house, B) the guest house, C) offices, D) the carriage house, E) the tack room, F) the greenhouse and G-N) employee cottages. The main house was constructed by 1897. The other structures may date from around the same period, but some may date from as late as the 1920's. This site is situated in the northern quadrant of the project area. It has a fence protecting the grounds from cattle pastures around it. The grounds are maintained regularly by workers. Several of the structures are in use today, others are in disrepair.

The documentation of these architectural structures fall outside our realm of expertise and an evaluation is being conducted by Mason Architects, Inc.

Also within this area (Lot 1) are eight plantation style camp houses which continue to be used as employee residences (Pers. Comm., Kalā Kapahu). The "camp area" is comprised of eight modest houses with gardens, *lo'i* and animal enclosures which the employee residents maintain for their personal use. The architectural structures within the "camp area" are beyond our expertise to evaluate. In consultation with Mason Architects, Inc., it has been agreed to designate each house as a separate feature of Site #764. It is our understanding that, if feasible, the camp houses, which are so typical of the "plantation era", might be renovated and maintained to add to the ambiance of the property. The final disposition of these cottages will await architectural evaluation.

| | |
|---|---|
| **Feature #:** | 50-30-9-764/A |
| **Feature Type:** | Historic House |
| **Feature Function:** | Habitation |
| **Approx. Area:** | 6,484m² (20,760 sq. ft.) |

Description: Feature 764/A is large single story wooden house. This main house was built



by 1897 (oral interview with Warren Robinson, 2/17/99). It is basically a square house in plan view measuring 39m (125 ft.) x 39m (125 ft.) with an open courtyard in the center. Additions made to the square plan view are guest bedrooms off the eastern corner, and living quarters with a large kitchen off the western side of the house. A roofed porch runs around three sides, and the center courtyard. The front porch has a view to the southwest of the ocean (see Figures 44 & 45 below). The house is in good condition, contains many original furnishings, and is slated for renovation and use as a museum. In the front yard of the house is a circular rock terrace which contains four cut block boulders. These cut blocks are similar to the ones found exclusively in Waimea as part of the Menehune Ditch (see Figures 46 & 47 below).

| | |
|---|---|
| **Feature #:** | 50-30-9-764/B |
| **Feature Type:** | Historic House |
| **Feature Function:** | Habitation |
| **Approx. Area:** | 602m² (1,925 sq. ft.) |

Description: Feature 764/B is a guest house. It is a wooden structure rectangular in shape. The guest house was built off the west corner of the main residence, and is detached from it. This house faces the southeast, has an attached carport, and is in good condition. The guest house is presently used as an employee residence (see Figure 48 below).

| | |
|---|---|
| **Feature #:** | 50-30-9-764/C |
| **Feature Type:** | Historic House |
| **Feature Function:** | Habitation |
| **Approx. Area:** | 1012m² (3,239 sq. ft.) |

Description: Feature 764/C is a single story wooden structure that was built off the northwest side of the main house. It was formerly used as the servants quarters. It has been converted into office space and is currently used as such. It is in good condition (see Figure 49 below).

| | |
|---|---|
| **Feature #:** | 50-30-9-764/D |
| **Feature Type:** | Historic Structure |
| **Feature Function:** | Carriage House/Garage |
| **Approx. Area:** | 602m² (1,925 sq. ft.) |

Description: Feature 764/D is a large two story wooden structure. The flooring on the inside is wood plank. The building was constructed north of the servants quarters. Originally, this was used as the carriage house. Today, it's a garage for several cars and two carriages. There is a ramp constructed off the back of the garage designed to service vehicles. Presently, the entire building is leaning, a significant portion of the roof is gone, and the staircase to the second floor has collapsed. This structure is in poor condition (see Figure 48 below).

| | |
|---|---|
| **Feature #:** | 50-30-9-764/E |
| **Feature Type:** | Historic Structure |
| **Feature Function:** | Tack Room |
| **Approx. Area:** | 113m² (360 sq. ft.) |

Description: Feature 764/E is currently only a remnant. It was formerly the tack room. This structure was attached to the eastern side of the carriage house. The floor and the foundation are all that remain intact. Presently, on the floor's surface is wood from the walls and roof intermixed with equestrian tools (see Figure 51 below).

| | |
|---|---|
| **Feature #:** | 50-30-9-764/F |
| **Feature Type:** | Historic Structure |
| **Feature Function:** | Agriculture |
| **Approx. Area:** | 133m² (425 sq. ft.) |

Description: Feature 764/F is a vacant plant house in poor condition. The structure is rectangular and made of wood (see Figure 52 below). The dirt floor has been excavated 1m (3 ft.) below the ground surface (see Figure 53 below). The walls of the excavated portion are lined mostly with hollow tile, but also basalt boulders. The hollow tile may have been a later addition. The steps at the entrance are cut basalt. The roof is damaged.

**State Site # 50-30-9-765**

Description: Site 765 is a 6-acre inland fishpond (Figure 10) identified by DHM Planners, Inc. *et al.* (1990: 186) as Kekupua Fishpond. It measures approximately 309m at its longest dimension by 120m at its widest (989 x 384 ft.). This feature is a large enclosure constructed of pahoehoe cobbles and boulders to .80m (2.5 ft.) in diameter. They are stacked 2-8 courses high (.30 - 1.6m, 1 - 5 ft.) around the perimeter of a pond of fresh water. The wall is discontinuous. Some areas around the perimeter have been disturbed by cattle (see Figure 54 below). Other spots have fallen trees or vegetation covering the perimeter wall. Of the wall that remains, the majority is 2-5 courses (.40 - .90m, 1.5 - 3 ft.) high. In addition to the wall constructed around the perimeter, there is a wall which transects the width of the pond. It is located at the western end of the pond, and essentially splits the pond into two unequal parts. The wall is constructed of basalt cobbles and boulders. This wall is approximately 6 m (19 ft.) wide, and 110 m (352 ft.) long. Coconut trees are planted along its entire length down the center. In its present state the wall has a layer of dead vegetation covering the upper surface (see Figure 55 below).

There are a number of historic modifications to the pond. The gate at the southern end is made of concrete (see Figure 56 below). It measures 1.8m² (5.5 sq. ft.). At the opposite end of the pond from the gate, a pump house was erected on a concrete slab (see Figure 57 below). The shack is made from corrugated metal. Inside, there is a combustion engine attached to a 6" cast iron waterline. One end of the waterline goes to the pond, and the other end runs out of the pump house to the north where it becomes subterranean. There are three natural springs located within the pond. One spring is named Kahe, one spring



is named Kekupua, and the third is Ma'o (oral interview with Bruce Robinson, 5/21/99). Water was pumped out of the pond for use on the rest of the property. Approximately 35m (112 ft.) along the east side of the pond from the pump house are two portable engines (pumps) and 6" PVC piping. This apparatus is used to drain the pond.

There are a number of different types of vegetation in and around the pond. There is a row of coconut trees planted around its perimeter. There are many opiuma trees, some monkeypod, and banyan trees. There are *milo* trees in the southwest corner near the gate. In the vicinity of the drainage pumps are *hau* and *ilima*. Many assorted low grasses and shrubs grow around the perimeter. Within the pond itself there is bullrush and waterlily. The growth within the pond is so thick that one can find very few spots to actually see the water (see Figures 58 & 59 below).

The datum point is located on the wall of the pond at the northeastern end. This datum is tied into the northwest corner of the bridge on Kaumualiʻi Highway which spans Mahikona Stream. The pond has been used for fish farming for many years. In its present state it has extensive historic modification.

Kekupua Fishpond History: Information regarding the fishpond in historical documents was minimal. Details concerning how and when the pond was constructed were not available. Coring samples taken from the pond on 5/29/99, may reveal data not available in historical sources (see Section VIII below).

The size of the pond is approximately six acres and is quite large for an inland pond. Most often, large ponds were reserved for *aliʻi*. This may have been true for Kekupua Pond as well. The Land Commission Award documents mention the pond in two claims: LCAs #2290 and 2291. In these claims, the pond was referred to by two names: Kahe and Kekupua. This conflicting information was explained by Bruce Robinson in an interview conducted on May 21, 1999. The pond is fed by three fresh water springs, all of which have separate names. The names of the three springs are Kahe, Kekupua and Ma'o. The few *kūpuna* born in the early 20th century who remember the fishpond said they knew the name always to be Kekupua.

The only known story relating to the fishpond centers around a *mo'o wahine* (a fresh water mermaid with the ability to change into a partially human form) who is said to reside in the pond. Legend has it that she can be seen in the early mornings sitting on a particular *pōhaku* (rock) just before sunrise. The stone was described as being flat and oblong in shape. It used to lie about a foot under water, near the pond's northeast edge. However, the water level has surely changed over the last fifty years. There is also a particular monkeypod tree and coconut tree which mark the spot where the *pōhaku* is said to have been. While the name of the *mo'o wahine* is not known, it is probable that there is an older name for the pond which relates to the legend in some way (Interview with Hakila Callahan, 5/18/99).

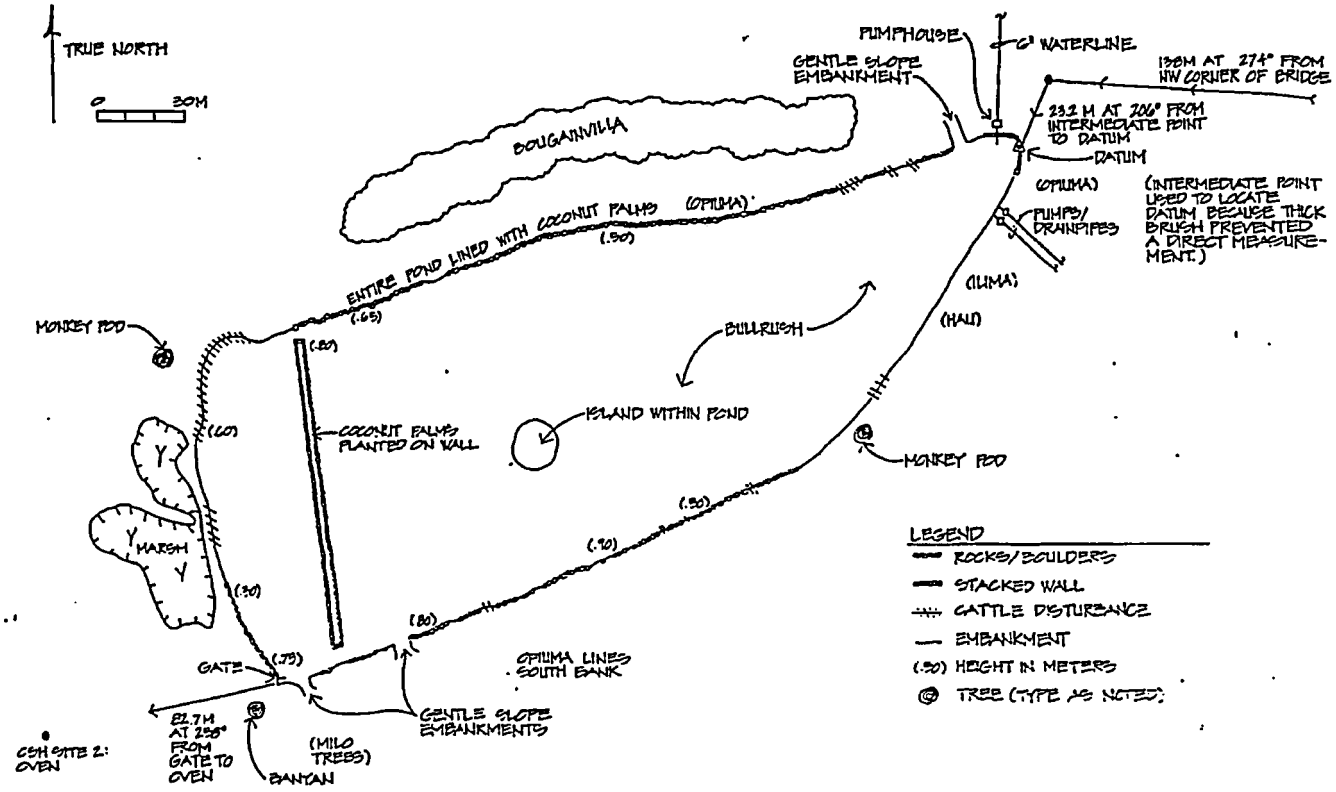



Figure 10 Plan view drawing of Kekupua Fishpond (State Site # 50-30-9-765).

**State Site # 50-30-9-766**

Description: Site 766 is a mortared stone and brick structure commonly referred to as a "Portuguese Oven". Immigrants from Portugal introduced this type of wood-fired outdoor oven to Hawai'i (Figures 10 & 11). The oven is 1.9m (6 ft.) wide and 2m (6.5 ft.) long. The front of the oven is 1.65m (5.5 ft.) high, rising to a gentle peak (see Figure 60 below). The oven opening is .40 m (1.5 ft.) tall, .24 m (9 in.) wide at the top, .28 m (1 ft.) wide at the bottom formed from red brick on the top and sides with a heavy oxidized, 3-ply sheet-metal piece supporting the brick over the portal. The bottom of the opening is formed by two basalt slabs set side by side which extend .12 m (5 in.) out from the oven to form a small apron. Extending out from either side of the apron to the side edges of the oven front is a narrow .05 m (2 in.) ledge formed of rock and mortar. Below the opening, at ground level, is a rectangular indentation .30 m (1 ft.) deep, .35 m (1 ft.) high, .30 m (1 ft.) wide which served as an ash collection area. On the interior floor of the oven, just inside the opening is a hole .12 m (5 in.) square which connects to the ash collection area below. This feature allowed the remaining ashes from the oven heating fire to be swept into the square hole and drop into the collection area where a suitable container could be placed. On the front of the oven, from the ground surface up to the ledge is a straight vertical face. From the ledge to the peak, the face is angled back 3°. The back of the oven rises 1.10 m (3.5 ft.) at 10°from vertical. From this point it gently slopes upward to meet the high peak of the front. On top of the oven is a heavy layer of mortar with only a few rocks exposed. The top has a definite peak and hips at the front of the oven, but the peak flattens out toward the back of the oven. The interior of the oven is circular, 1.30 m (4 ft.) in diameter, with a dome ceiling .65 m (2 ft.) high. The interior is entirely made up of mortared red brick. The thickness of the brick at the opening is .20 m (8 in.). There has been some upward buckling of the interior floor. On the exterior there are several large cracks in the mortar. A large separation that runs across the front of the oven may be due to the vertical expansion of the metal plates because of oxidation. The front of the oven generally faces North. The historic oven is in good condition. The oven is located 82.7 m (264.5 ft.) at 258° from the fishpond gate.

Specific History: The Portuguese oven at Kapalawai was built by John Rita. He worked as a milkman for the Robinson family and lived in a house which was located approximately 20 yards east of the oven. Interviews with informants and specifically with Warren Robinson and Bruce Robinson did not provide any information regarding construction dates of any of the buildings on the property. Thus, it is not known when the Rita house was built. It would be safe to conjecture that the house was built in the late 1800's or early 1900's after the main house was built. The Sinclair-Robinson family did maintain a dairy and the house seems to have been built for the purpose of housing a milkman/dairyman. The house apparently fell into disrepair after the Rita family moved away in the late 1940's and is no longer standing. No remains of a house was observed. The Ritas were the only Portuguese family living at Kapalawai. John Rita built the oven for his wife, Mary, to do the family baking. The oven was used up until the late 1940's when the Rita family moved to O'ahu (Edith Pavao, daughter of John Rita: pers. comm. to K. Mc Gulre).



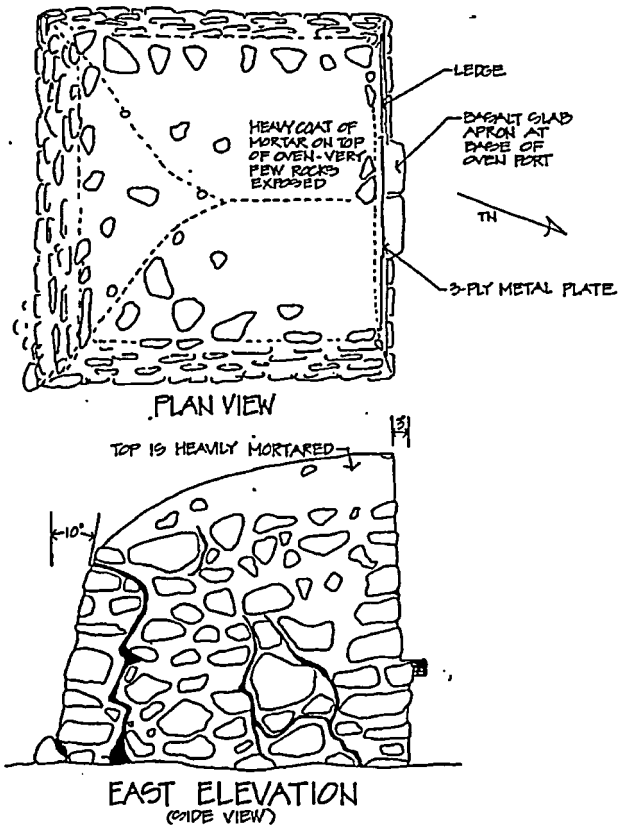



Figure 11 Plan / front view drawings of Portuguese oven (State Site # 50-30-9-766)

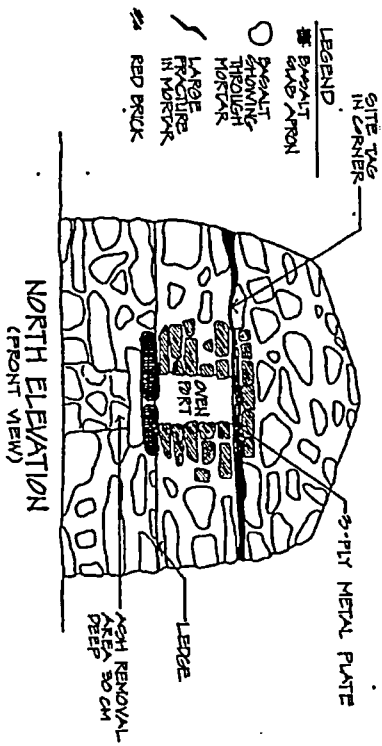



Figure 12 Profile drawing of Portuguese oven (State Site # 50-30-9-766)



This oven was constructed in the basic "igloo" shape. Compared to other ovens, it has several distinct variations. The bricks that line the inner oven walls are unusually large as compared with other ovens. Also, an inner mouth for removing the ashes was built just inside the doorway opening (see Figure 61 below). Usually the ashes would be scraped out through the front opening and, once the bread was placed inside, a metal plate was put in place to serve as a door. Construction of an inner mouth is a curious feature of the basic oven design. Having an opening just inside the outer opening would allow for heat to escape out the bottom during baking. It is not currently known how many Portuguese ovens still exist on Kaua'i. This oven is an example of the rich culture of the Portuguese on Kaua'i, and further adds to the historical heritage of Kapalawai.

General History: Although it is documented that the Portuguese arrived in Hawai'i as early as 1838, the formal immigration period is considered to have begun on September 30, 1878 when the first band of 180 Portuguese immigrants arrived in Honolulu. Introduced as plantation laborers, they brought their families and their culture with them (Toni DeMello 6/4/99: pers. comm.).

One aspect of culture the Portuguese brought with them was the *forno* (pronounced "funo") or oven in which they baked *pao duce* (sweet bread) and other kinds of breads and baked goods. The *forno* was also used to bake meat roasts and other main dishes as well. Most *forno* could bake 10-12 loaves of bread at one time. The bread dough was prepared the night before and allowed to rise. Early the next morning, a wood fire was started in the oven. When the wood burned down, the ashes were removed with a scraping implement. The bricks were quickly wiped down with a damp mop to remove all remnants of ash which would discolor and blacken the bottom of the loaves if not removed (Toni DeMello 6/4/99: pers. comm.). To test the temperature of the oven, a handful of flour was thrown into the oven. A good baker could tell by the color of the flour and by how quickly it browned if the oven temperature was just right for baking (Susan Remoaldo 5/21/99: pers. comm.).

Portuguese communities were usually small and very tight-knit. When an oven was built, it was commonly shared among the community and women would take turns baking on their scheduled days, which was usually two to three days a week.. The task of gathering wood and lighting the fire belonged to the women and children. The oven became a focal point of the community. Women would gather to exchange stories and information, and childhood friendships were born as the children played together in the vicinity of the oven (Toni DeMello 6/4/99: pers. comm.).

Ovens were usually constructed out of cement and stone. The inner walls of the oven were lined with fire bricks to retain the heat. Even though all ovens were constructed and designed a little differently, depending on the builder, the *forno* had two basic shapes. One shape is referred to as a "beehive" or "igloo" shape and the other is a simple rectangle (Toni DeMello 6/4/99: pers. comm.).

**State Site # 50-30-9-792**

General Description: This site consists of a subsurface cultural layer that contains the remains of prehistoric habitation and other activities. The layer formed as a culturally modified A-horizon during prehistoric times. During Hawaiian occupation of the site, the A-horizon was enriched with material from cultural activities. The layer contains traditional-Hawaiian food remains, including mammal and fish bone and marine shell, charcoal from combustion features, and artifacts such as basalt flakes and volcanic glass. The site also contains numerous intrusive features that extend from the culture layer into the underlying, culturally sterile, beach sand. These features are the result of Hawaiian excavations for many purposes, including hearths, earth-ovens, and structural supports such as post holes. The site also contains what is most likely a prehistoric human burial.

| | |
|---|---|
| **Feature #:** | 50-30-9-792/A |
| **Feature Type:** | Prehistoric Cultural Layer |
| **Feature Function:** | Traditional Hawaiian Activity Area and Habitation Remains |
| **Approx. Area:** | Discontinuous over approximately 8250 $m^2$ (88,756 sq. ft.) |

Feature A is the cultural layer itself. It consists of a culturally enriched sand A horizon located in the western corner of the project area, see Figures 5 and 21 and Figures 66 to 69 in the Photographic Appendix 4. This feature was located and documented during the backhoe subsurface testing of the project area. Backhoe trenches 5, 6, 14, and 23 cut through this layer and exposed it in profile, see the backhoe testing results below. These four trenches exposed over 15 distinct intrusive features that extend from the cultural layer (generally stratum II) into the underlying culturally sterile sand deposits. This layer is generally 30-40 cm thick, but is up to 1.3 m thick at the largest and deepest intrusive features. The layer is discontinuous over an area measuring approximately 110 m (350 feet) by 75 m (250 feet).

The amounts of cultural material within this layer, the charcoal, basalt and volcanic glass flakes, and food midden remains, are not particularly large. The collected samples from the sampled features are catalogued in Appendix 5 and discussed in the backhoe trench descriptions below. The cultural layer is clearly visible in Trenches 5, 14, and 23. It is not visible in trenches 12 and 13 in this same immediate area. In Trench 6 the cultural layer is hardly apparent--but two earth-oven, or *imu*- type features were found within the side walls of this trench. Only in Trench 14 was the cultural layer one and the same with the current A Horizon. In all other trenches where Feature -792A was observed, the cultural layer was covered by what appears to be a fairly recent A horizon made up of sandy loam terrigenous sediments mixed with beach sand.

Based on the results of radiocarbon dating analysis of two charcoal samples from Trench 5, this prehistoric cultural layer dates to the pre-contact era, after the 14th century AD. See Appendix 6 for the discussion of radiocarbon dating results.



| | |
|---|---|
| **Feature #:** | 50-30-9-792/B |
| **Feature Type:** | Human burial |
| **Feature Function:** | Disposal of the dead |
| **Approx. Area:** | one $m^2$ |

This prehistoric/early historic Native Hawaiian burial is associated with the culturnl layer 50-30-9-792/A. It was found in backhoe trench 23 in a large intrusive feature approximately 140 cmbs. This burial is described fully below in the Trench 23 description. It is common to find Native Hawaiian burials in sandy deposits along the coast. There is a good chance that additional, as yet undetected human burials are located in the vicinity.

## VI. TESTING RESULTS

### A. Hand Excavations

Following the pedestrian inspection of the project area, nine hand excavated test excavations were dug on April 29 and 30, 1999 by Kaipo Akana, David Shideler, and Loren Zulick. Three test units were excavated in the rock platform (State Site # 50-30-9-763), and five shovel test pits were placed around its perimeter. The final test unit was put in at the shoreline on the west bank of Mahikona Stream.

Test Units 1,2,3, and Shovel Test Pits 1-5 were excavated at the platform (State Site # 50-30-9-763) in an attempt to determine function and date of this structure.

Test Unit 1 was placed at the southern end of the eastern paved depression on the surface of State Site # 50-30-9-763 (rock platform). This location was chosen to reveal a potentially high traffic area on the surface of the platform. This test unit was excavated in an effort to collect midden and/or artifacts for dating and functional interpretation. Test Unit 1 measured roughly 1.3m (4 ft.) by 1.5m (4.5 ft.). The width of the unit followed the feature dimensions and therefore was not uniform. The surface of Test Unit 1 was paved with cobbles and small boulders. The highest (SW) corner was at 2.3m (7.5 ft.) above ground surface. The unit was excavated by removing the cobbles and boulders and looking for artifacts and cultural deposits. Test Unit 1 was excavated to a maximum depth of 1.75m (5.5 ft.) below datum, or .75m (2.5 ft.) above ground surface. Bottom of excavation was 100% rock; there were large boulders that could not be removed. There was no soil at all within test unit 1. No cultural material was recovered (Figures 13 & 14).

Test Unit 2 was excavated on the eastern side of the surface ridge near its southern end. The piled rock construction technique of the ridge differed from placed paving technique of the surrounding surface of the platform. The purpose of Test Unit 2 was to determine if the surface ridge was constructed over a paved surface. A 1.6m (5 ft.) long by 1m (3 ft.) wide area near the southern end on the east side of the mounded ridge was chosen. The test unit extended from the apex of the ridge to the east out over the existing paved surface. The rocks from the sloping side of the ridge were removed to expose the surface upon which the ridge is constructed. It was determined that beneath the piled boulders of the ridge a relatively level surface of small subangular cobbles exists. From this observation it can be determined that the roughly piled boulder ridge postdates the paved surface of the platform. Taking this observation one step further, the mound, which was not tested, but is of similar construction technique and materials as the ridge, probably also has paving beneath it. These observations suggest that this structure utilizes various construction techniques and that construction occurred at different times. The base of excavation was 100% rock. Excavation ended when data recovered was sufficient to answer the questions posed. Test Unit 2 was not excavated below the paved surface of the platform. There was no soil at all within Test Unit 2. No cultural material was recovered (Figures 15 & 16).



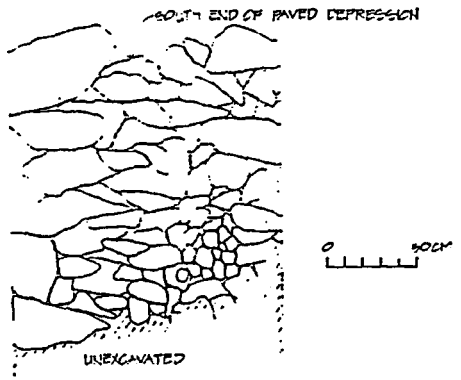



Figure 13 Test Unit 1 profile drawing of south wall



Figure 14 Test Unit 1 post excavation photo view to south

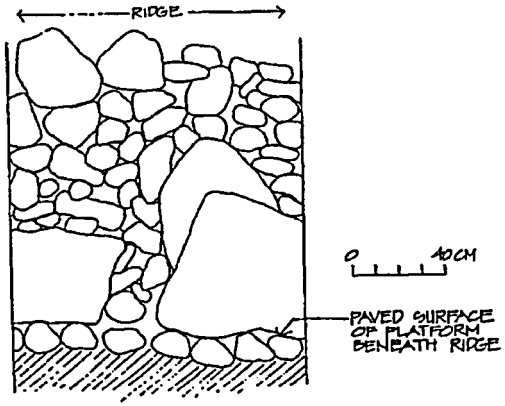



Figure 15 Test Unit 2 profile drawing of mounded ridge



Figure 16 Test Unit 2 post excavation photo of mounded ridge



**Test Unit 3** was placed at the northern end of the eastern paved depression. Test Unit 3 measured 1.2m (4 ft.) square. Its location, at the end of a paved depression and by a gently sloping side (possible ramp), was chosen as a likely spot for cultural deposits, as this may have been an access area for the platform. This unit was excavated by removing basalt cobbles and boulders to a maximum depth of 1.25m (4 ft.) below the surface of the platform. Bottom of excavation was 100% rock. There was no soil within Test Unit 3. There were no cultural materials within the test unit (Figures 17 & 18).

The three test units did not yield any cultural material at all. No soil was excavated in any of the three test units. What the test units did reveal was that the surface of the platform had been entirely paved in its initial construction. Two of the surface features utilized a piling construction technique that distinguished them from the paved surface of the platform. The surface ridge, and theoretically the mound (it was not tested), were built at a later date than the surface of the platform.

No soil was excavated directly beneath the platform so the soil around the perimeter of State Site # 50-30-9-763 was tested to search for the presence of cultural material that might be helpful in determining the age and/or function of the platform (see Figure 9 above).

**Shovel Test Pit #1** was 2.4m (7.5 ft.) west of the platform in the soil between the platform and the project boundary wall. This test pit measured .50m (1.5 ft.) by .65m (1.5 ft.) and .30m (1 ft.) deep. Stratum 1 was an organic layer of *kiawe, hale koa,* and grass detritus measuring 0-.04m (0-2 in.) below surface. Stratum 1 was a 10YR 4/4 dark yellowish brown silt loam. This silt loam is described as having a lower boundary of *as* (abrupt, smooth), its structure is *ov/gr* (structure less, very fine, granular). The consistence of the soil is: *dlo* (dry-loose, noncoherent), *mfi* (moist-firm), *wss* (wet-slightly sticky). Stratum 1 plasticity is described as *wps* (slightly plastic). The root description is *1mi hor ex* (few micro roots spreading out horizontally along ped faces).

Stratum 2 was a 10YR 5/3 yellowish brown silt loam that measured from .04-.30m (2-12 in.) below the surface. The lower boundary of Stratum 2 was not observed. The structure of this silt loam is *1/cr* (weak, fine, crumb). The consistence of the soil is: *dsh* (dry-slightly hard), *mfr* (moist-friable), *wss* (wet-slightly sticky). Stratum 2 plasticity is *wp* (plastic). The root description is *v,m hor ex* (very few medium roots spreading out horizontally along ped faces).

Bottom of excavation was at .30m (1 ft.) below surface with 50% subangular basalt possibly bedrock and 50% stratum 2. No midden or artifacts were observed.

**Shovel Test Pit #2** was 5m (16 ft.) west of the southwest corner of the platform. This test pit measured .50m$^2$ (1.5 ft.) and .25m (10 in.) deep. Stratum 1 was an organic layer of *kiawe, hale koa,* and grass detritus measuring 0-.11m (0-4 in.) below surface. Stratum 1 was a 10YR 4/4 dark yellowish brown silt loam. This silt loam is described as having a *w* (wavy) lower boundary whose structure is *ov/gr* (structure less, very fine, granular).

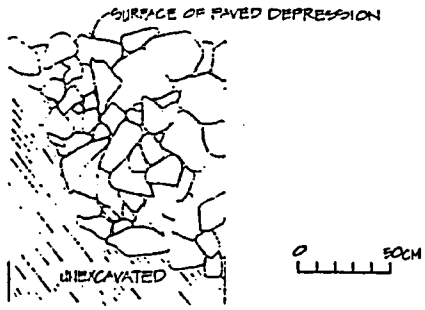



Figure 17 Test Unit 3 profile drawing of west wall

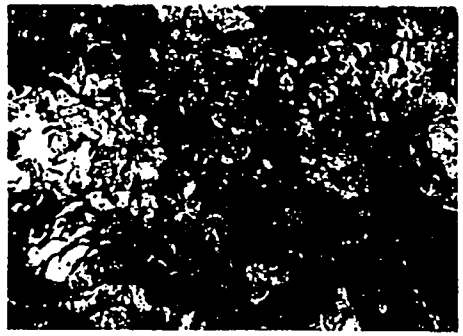


Figure 18 Test Unit 3 post excavation photo of west wall



The consistence of the soil is: *dlo* (dry-loose, noncoherent), *mfi* (moist-firm), *wss* (wet-slightly sticky). Stratum 1 plasticity is described as *wps* (slightly plastic). The root description is *1mi hor ex* (few micro roots spreading out horizontally along ped faces).

Stratum 2 was a 10YR 4/4 dark yellowish brown silt loam that measured from .11-.25m (4-10 in.) below the surface. The lower boundary of Stratum 2 was not observed. The structure of this silt loam is *1fcr* (weak, fine, crumb). The consistence of the soil is: *dsh* (dry-slightly hard), *mfr* (moist-friable), *wss* (wet-slightly sticky). Stratum 2 plasticity is *wp* (plastic). The root description is *v,m hor ex* (very few medium roots spreading out horizontally along ped faces).

Bottom of excavation was at .25m (10 in.) below surface with 50% subangular basalt possibly bedrock and 50% stratum 2. No midden or artifacts were observed.

**Shovel Test Pit #3** was 6m (19 ft.) south of the southern end of the platform. This test pit measured .50m (1.5 ft.) by .55m (1.5 ft.) and .35m (14 in.) deep. Stratum 1 was an organic layer of *kiawe, hale koa*, and grass detritus measuring 0-.08m (0-3 in.) below surface. Stratum 1 was a 10YR 4/4 dark yellowish brown silt loam. The lower boundary of this silt loam is *as* (abrupt, smooth), its structure is *ovfgr* (structureless, very fine, granular). The consistence of the soil is: *dlo* (dry-loose, noncoherent), *mfi* (moist-firm), *wss* (wet-slightly sticky). Stratum 1 plasticity is described as *wps* (slightly plastic). The root description is *1mi hor ex* (few micro roots spreading out horizontally along ped faces).

Stratum 2 was a 10YR 5/8 yellowish brown silt loam that measured from .06-.35m (3-14 in.) below the surface. The lower boundary of stratum 2 was not observed. The structure of this silt loam is *1fcr* (weak, fine, crumb). The consistence of the soil is: *dsh* (dry-slightly hard), *mfr* (moist-friable), *wss* (wet-slightly sticky). Stratum 2 plasticity is *wp* (plastic). The root description is *v,m hor ex* (very few medium roots spreading out horizontally along ped faces). Bottom of excavation was at .35m (14 in.) below surface with 80% subangular basalt possibly bedrock and 20% stratum 2. No midden or artifacts were recovered.

**Shovel Test Pit #4** was 6m (19 ft.) east of the eastern side of the platform. This test pit measured .45m$^2$ (18 in.) and .40m (16 in.) deep. Stratum 1 was an organic layer of *kiawe, hale koa*, and grass detritus measuring 0-.03m (0-1 in.) below surface. Stratum 1 was a 10YR 4/4 dark yellowish brown silt loam. This silt loam is described as having a lower boundary of *as* (abrupt, smooth), its structure is *ovfgr* (structure less, very fine, granular). The consistence of the soil is: *dlo* (dry-loose, noncoherent), *mfi* (moist-firm), *wss* (wet-slightly sticky). Stratum 1 plasticity is described as *wps* (slightly plastic). The root description is *1mi hor ex* (few micro roots spreading out horizontally along ped faces).

Stratum 2 was a 10YR 4/4 dark yellowish brown silt loam that measured from .03-.40m (1-16 in.) below the surface. The lower boundary of stratum 2 was not observed. The structure of this silt loam is *3cepr* (strong, coarse, columnar). The consistence of the soil is: *dsh* (dry-slightly hard), *mfr* (moist-friable), *wss* (wet-slightly sticky). Stratum 2 plasticity

is *wp* (plastic). The root description is *v,m hor ex* (very few medium roots spreading out horizontally along ped faces).

Bottom of excavation was at .40m (16 in.) below surface with 100% very hard stratum 2 that could not be dug any deeper by shovel.

**Shovel Test Pit #5** was 7.5m (24 ft.) east of the northern end of the platform. This test pit measured .50m$^2$ (1.5 ft.) and .35m (14 in.) deep. Stratum 1 was an organic layer of *kiawe, hale koa*, and grass detritus measuring 0-.04m (0-2 in.) below surface. Stratum 1 was a 10YR 4/4 dark yellowish brown silt loam. This silt loam is described as having a lower boundary of *as* (abrupt, smooth), its structure is *ov/gr* (structure less, very fine, granular). The consistence of the soil is: *dlo* (dry-loose, noncoherent), *mfi* (moist-firm), *wss* (wet-slightly sticky). Stratum 1 plasticity is described as *wps* (slightly plastic). The root description is *1mi hor ex* (few micro roots spreading out horizontally along ped faces).

Stratum 2 was a 10YR 4/4 dark yellowish brown stsil (stoney silt loam) that measured from .04-.35m (2-14 in.) below the surface. The lower boundary of stratum 2 was not observed. The structure of this silt loam is *3cepr* (strong, coarse, columnar). The consistence of the soil is: *dsh* (dry-slightly hard), *mfr* (moist-friable), *wss* (wet-slightly sticky). Stratum 2 plasticity is *wp* (plastic). The root description is *v,m hor ex* (very few medium roots spreading out horizontally along ped faces). Bottom of excavation was at .35m (14 in.) below surface with 60% subangular basalt and 40% stratum 2.

The shovel test pits helped to determine the rocky nature of the soil surrounding State Site #50-30-9-763. This fact raises confidence that the platform was constructed over a natural outcropping. The soil surrounding the platform had cobbles and boulders above and below the surface. There were small bedrock outcrops observed on the surface as well. It was observed that the most available and closest loose cobbles and boulders on the pasture lands surrounding the platform were not utilized in the construction of the platform.

**Test Unit 4** was excavated on the level sandy ground behind the beach where the Mahikona Stream flows into the ocean (Figures 19 & 20). More specifically, the test unit was 6m (19 ft.)west of the western bank of Mahikona Stream, and 4m (13 ft.) north (*mauka*) of the beginning of the vegetation along the shoreline. The test unit location was chosen as a likely spot for pre-contact occupation because of its proximity to the ocean and perennial stream. Test Unit 4 measured 1m$^2$ (3 ft.$^2$) and was excavated in beach sand to a maximum depth of 1.3m (4 ft.) below surface.

Stratum 1 was a 10YR 6/4 light yellowish brown sterile beach sand that extended from 0m below surface (bs) to .68mbs (2 ft.). This sand had an as (abrupt, smooth) lower boundary whose structure is defined as: *0v/gr* (structureless, very fine, granular). The consistence of the sand in stratum 1 is: *dlo* (dry-loose, noncoherent), *mlo* (moist-loose noncoherent), *wso* (wet-nonsticky). The sand is *wpo* (nonplastic). The roots within stratum 1 are *1f&m hor ex* (few fine and medium roots spreading out horizontally along ped faces).



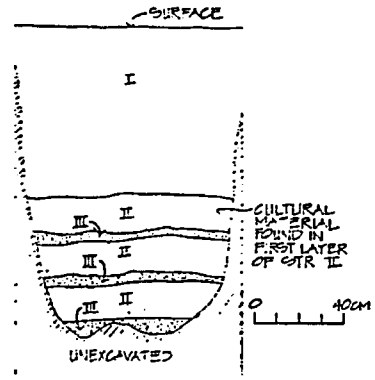



Figure 19 Test Unit 4 profile drawing of north wall

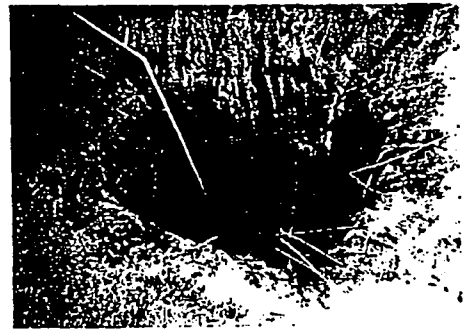


Figure 20 Test Unit 4 post excavation photo of north wall

Stratum 2 was a 10YR 4/4 dark yellowish brown sandy clay that extended from .68mbs (2 ft.) to .84mbs (2.5 ft.). This stratum had a *vas* (very abrupt, smooth) lower boundary. This sandy clay had a structure defined as: *2cr* (moderate, coarse, crumb). Its consistence is: *dsh* (dry-slightly hard), *mvfi* (moist-very firm), *wss* (wet-slightly sticky). This sandy clay is *wpo* (nonplastic). The roots within stratum 2 are *v,vf hor ex* (very few very fine roots spreading out horizontally along ped faces). There were historic metal pieces within this stratum.

Stratum 3 was a 10YR 3/4 dark yellowish brown clay extending from .84mbs (2.5 ft.) to .90mbs (3 ft.). This stratum had a *vas* (very abrupt, smooth) lower boundary. The structure of this clay is defined as: *3cabk* (strong, coarse, angular blocky). Its consistence is: *dh* (dry-hard), *mfi* (moist-firm), *wss* (wet-slightly sticky). This clay is *wp* (plastic). The roots within stratum 3 are *v,vf hor ex* (very few very fine roots spreading out horizontally along ped faces). This stratum was sterile.

Stratum 4 was identical to stratum 2 except that it had no cultural materials within the layer. Stratum 4 was a 10YR 4/4 dark yellowish brown sandy clay that extended from .90mbs (3 ft.) to 1.02mbs (3 ft.). This stratum had a *vas* (very abrupt, smooth) lower boundary. This sandy clay had a structure defined as: *2cr* (moderate, coarse, crumb). Its consistence is: *dsh* (dry-slightly hard), *mvfi* (moist-very firm), *wss* (wet-slightly sticky). This sandy clay is *wpo* (nonplastic). The roots within stratum 4 are *v,vf hor ex* (very few very fine roots spreading out horizontally along ped faces).

Stratum 5 was identical to stratum 3. Stratum 5 was a 10YR 3/4 dark yellowish brown clay extending from 1.02mbs (3 ft.) to 1.08mbs (3.5 ft.). This stratum had a *vas* (very abrupt, smooth) lower boundary. The structure of this clay is defined as: *3cabk* (strong, coarse, angular blocky). Its consistence is: *dh* (dry-hard), *mfi* (moist-firm), *wss* (wet-slightly sticky). This clay is *wp* (plastic). The roots within stratum 5 are *v,vf hor ex* (very few very fine roots spreading out horizontally along ped faces). This stratum was sterile.

Stratum 6 was identical to strata 2 and 4. Stratum 6 was a 10YR 4/4 dark yellowish brown sandy clay that extended from 1.08mbs (3.5 ft.) to 1.22mbs (4 ft.). This stratum had a *vas* (very abrupt, smooth) lower boundary. This sandy clay had a structure defined as: *2cr* (moderate, coarse, crumb). Its consistence is: *dsh* (dry-slightly hard), *mvfi* (moist-very firm), *wss* (wet-slightly sticky). This sandy clay is *wpo* (nonplastic). The roots within stratum 6 are *v,vf hor ex* (very few very fine roots spreading out horizontally along ped faces). Stratum 6 was sterile.

Stratum 7 was identical to strata 3 and 5. Stratum 7 was a 10YR 3/4 dark yellowish brown clay extending from 1.22mbs (4 ft.) to 1.30mbs (4 ft.). This stratum had a *vas* (very abrupt, smooth) lower boundary. The structure of this clay is defined as: *3cabk* (strong, coarse, angular blocky). Its consistence is: *dh* (dry-hard), *mfi* (moist-firm), *wss* (wet-slightly sticky). This clay is *wp* (plastic). The roots within stratum 5 are *v,vf hor ex* (very few very fine roots spreading out horizontally along ped faces). This stratum was sterile.



In addition to Test Unit 4, the west bank of Mahikona Stream where it cuts through the beach was examined. In an effort to expose a cultural layer, an area 1.5m (5 ft.) wide and 1.5m (5 ft.) high was excavated on the bank with a shovel. Some driftwood and large boulders (used to reinforce the bank) were the only items observed.

Neither Test Unit 4 nor the shovel exploration of the bank of Mahikona Stream yielded any evidence to support pre-contact occupation at this location.

### B. Coring and Dating at Kekupua Pond

In coordination with the present archaeological research, coring studies were conducted at Kekupua Pond on the subject property by David A. Burney of Fordham University and William (Pila) K. Kikuchi of Kaua'i Community College. Their study, "*Preliminary Investigations at Kekupua Pond, Makaweli, Kaua'i*" is included in its entirety as Appendix 3. Carbon dating results were not available at the time of this study. Pollen analysis is still on-going. The results of coring and dating available to date are briefly summarized below.

Probing indicated that only the central portion of the pond has > 1 m of soft sediment and is suitable for coring studies. One 220 cm long core was recovered. Seven layers of sediments were described. Burney and Kikuchi tentatively suggest a pond history beginning with a shallow, natural basin subject to marine overwash, followed by modification by prehistoric Hawaiians to minimize marine influence, which was followed by a swamp-forest stage with periods of increased erosion into the pond concluded by a last phase of organic sedimentation reflecting recent overgrowth of the pond by aquatic vegetation.

A "key" or drupe from a *hala* (*Pandanus tectorius*) fruit was recovered from a core depth of approximately 170 cm at a zone of contact between silty peat and a basal silty sand layer of probable marine origin. This drupe sample was "submitted for C14 dating in order to establish a maximum age for the pond." (Burney and Kikuchi 1999). The dating results are presented below.

| Beta Analytic # | Sample Size | Depth | Measured C14 Range | C13/C12 Ratio | Conventional C14 Age |
|---|---|---|---|---|---|
| 132384 | 2.2 g (0.5 g carbon) | 170 cm bs | 980 +/- 80 BP | -25.6 o/oo | 980 +/- 80 |

The Beta Analytic, Inc. print outs are included in Appendix 6.

The two sigma calibrated range (95 % probability) is AD 895 to 1225. Because *Pandanus* is indigenous to Kaua'i there is some uncertainty regarding what this date represents but if Burney and Kikuchi are correct then the maximum age for the pond would be AD 895 to 1225. This would seem to thus correspond to the time of initial modification of the natural basin by prehistoric Hawaiians to minimize marine influence or effectively to the creation

of Kekupua Fishpond. Kikuchi (1973:181-186) hypothesized that the innovation of fishponds was earlier than AD 1200. A study at Nu'upia Fishpond at Mōkapu, O'ahu (Hammatt *et al.* 1985) dated the initial use of the ocean as a fishpond circa AD 1048 +/- 95 years. Kikuchi's (1992:58) dating of Kamo'omaika'i Fishpond at Hanalei Kaua'i estimated the origin of the pond as circa AD 1250. Thus the date range for the posited origin of Kekupua Fishpond is somewhat early but quite consistent with previous dating studies on Hawaiian fishponds.

The Kekupua Fishpond date is consistent with other carbon dating from Kaua'i which suggests a substantial expansion of human settlement in the latter portion of the posited Kaua'i Island "Developmental Period" from AD 600 to 1400 (Hammatt *et al.* 1998: 130ff). The time frame from AD 1150 to 1400 seems to have been a time of pronounced population increase, settlement and agricultural/ aquacultural expansion on Kaua'i.



C. Backhoe Trenches

*1. Introduction*

In response to comments on an earlier draft of this inventory survey report, Cultural Surveys Hawai'i conducted three days of sub-surface testing within the proposed Kapalawai project area, from January 20-22, 2000. The field crew consisted of Matt McDermott and Ka'ohulani Mc Guire. Kiklaola Construction Company provided the backhoe and operator.

A total of 23 backhoe trenches were excavated and documented. The following trench descriptions and their accompanying profiles are presented and discussed by geographic region rather than in order by trench number. Trench locations are shown on Figure 21. Select photographs of trench profiles are included in the Photographic Appendix 4. As can be seen from the trench distribution in Figure 21, the backhoe subsurface testing focused on the sand deposits along the coast and on the terrigenous sediments around Kekupua Fishpond. The terrigenous sediments in the *mauka* portion of the project area were not tested with the backhoe. Based on observations made during the pedestrian inspection of the project area, it was unlikely that these *mauka* terrigenous sediments contained buried cultural deposits.

For the sake of discussion the tested areas of the project area were divided into four geographic regions. The southeastern-most region consists of the *makai* portion of Kekupua Valley between A'akukui and Mahikona Streams. Trenches 1, 2, 3, 4, 15, 16, 17, and 18 were excavated in these entirely sandy beach deposits.

The next geographic region to the northwest consists of the area around the *makai* half of Kekupua Fishpond. Trenches 19, 20, 9, 10, and 11 were excavated in these almost entirely terrigenous sediments. A cross-section was prepared at the location of Trench 10 showing the relationship of the trench stratigraphy, including uncovered bedrock, to the water level in Kekupua Fishpond.

To the west of Kekupua Fishpond, directly *makai* of the Robinson Family home (Site 50-30-09-764), Trenches 7, 8, 21, and 22 document the sandy beach stratigraphy of this portion of the project area.

The last concentration of backhoe trenches is located at the west corner of the project area amid predominantly sandy deposits. Trenches 5, 6, 12, 13, 14, and 23 were excavated to document the stratigraphy there.

*2. General Discussion of Stratigraphy*

Because the majority of trenches were excavated in sandy coastal deposits, sand is the most common stratigraphic component. The majority of trenches consisted simply of a grey-brown, organically enriched sand A-horizon over undisturbed beach sand deposits. The grey-brown sand A-horizon contains abundant roots and rootlets. In some portions of

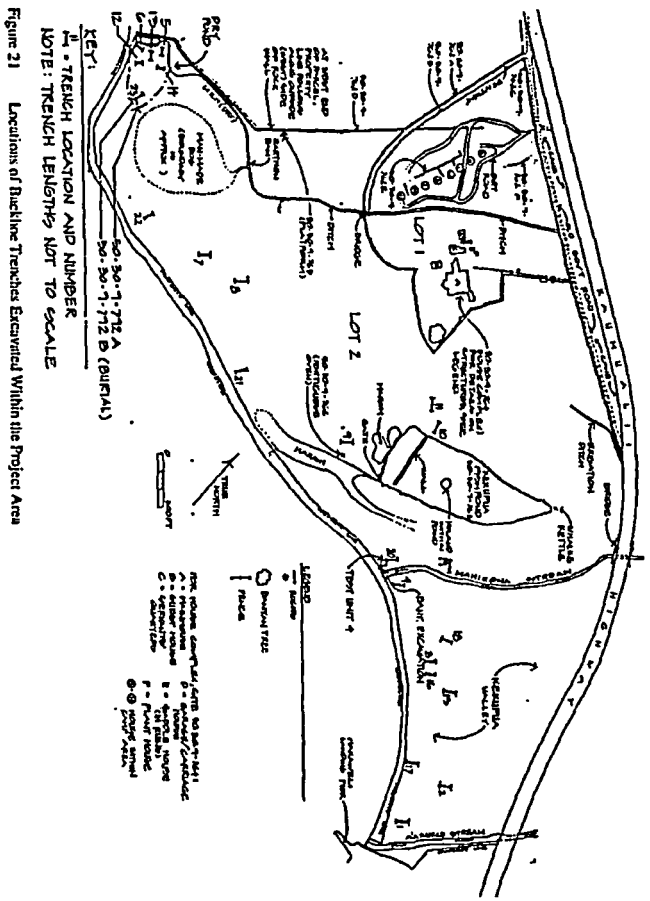



Figure 21 Locations of Backhoe Trenches Excavated Within the Project Area



the project area it is enriched with charcoal, artifacts, midden, and numerous pit-features which extended into the underlying cultural sterile sand. In the underlying pure calcareous sand it is common to have significant amounts of water rounded shell and coral pebbles. There are also thin, horizontal bands of semi-cemented coarser grained shell and coral within the sand deposits. These bands are the result of periodic higher energy deposition from storm surge or high surf. At the base of several trenches cemented beach-rock was encountered.

A variable component to this basic beach sand stratigraphy included a medium brown, sandy loam. This generally thin (15-30 cm thick) layer is usually found at the surface, generally immediately above the grey-brown sand former A-horizon (discussed above). The sandy loam has weak structure and generally poor development as an A-horizon, suggesting fairly recent deposition. This sandy loam is discontinuous and unevenly distributed over the landscape. It is a mix of the local beach sand with terrigenous loam from the *mauka* portion of the project area. This sediment is most likely associated with historic or modern land modifications. Where this sediment is found it does not appear to have disturbed the older sand A-horizon when it was deposited.

The excavations around Kekupua Fishpond revealed almost exclusively terrigenous sediments. These silty-clay-loams, clay loams, and clays are the result of alluvial deposition. Closer to the coastline these sediments are either buried by or bury calcareous sand deposits. Except for a single historic cultural layer associated with the mechanized earth moving along the north side of Kekupua Fishpond, documented in Trench 10, no cultural deposits or features were found in terrigenous sediments.

*3. Trench Descriptions by Geographic Region*
(From southeast to west across the project area)

**Trench BT#1: Orientation: 70/250° TN; Length 5.4 m.; Width: .75 m.; Depth: 2.2 m.; Watertable @ 205 cmbs*; Profile: South Face**

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-30 | 7.5YR 4/3-4/4 brown, loose, structureless, medium to fine sand. Organically enriched A-horizon. Contains abundant roots and rootlets. Lower boundary clear/wavy. |
| Stratum IIa | 31-85 | 10YR 6/4 light yellowish brown, slightly compact, structureless, medium to fine sand. Contains a few roots and rootlets, and a few coral cobbles. Lower boundary clear/wavy. |
| Stratum IIb | 86-205 | 10YR 6/4 light yellowish brown, slightly compact, structureless, medium to coarse sand. Contains a few roots and rootlets, and a few coral cobbles. Lower boundary abrupt/wavy. |
| Stratum III | 206-BOE** | Gley N7/ light grey, wet (found only below water table @ 205 cmbs), loose, structureless, medium sand. Contains a few coral cobbles. |

*centimeters below surface
**Base of Excavation

**This trench contains no cultural deposits and all calcareous sand sediments.**



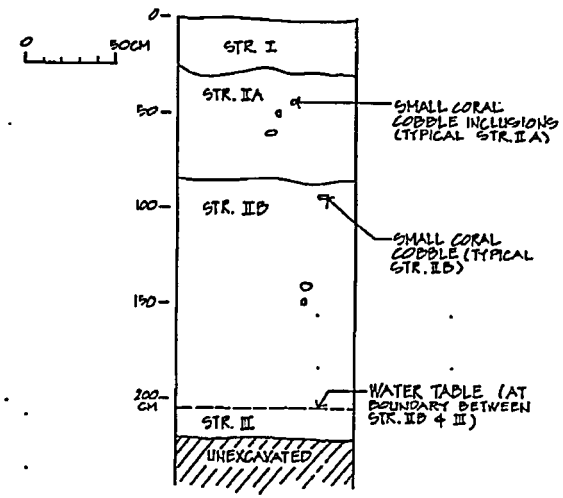



Figure 22 Backhoe Trench #1, Representative South Profile

**Trench BT#2:** Orientation: 45/225° TN; Length 7.2 m; Width: .75 m; Depth: 2.1 m; Watertable at 200 cmbs; Profile: North Face

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-29 | 10YR 4/3 brown, slightly compact, with weak medium granular structure, sandy loam. Contains terrigenous sediment and medium beach sand and abundant roots & rootlets. A horizon. Lower boundary clear/wavy. |
| Stratum IIa | 30-95 | 10YR 6/4 light yellowish brown, slightly compact, structureless, medium to fine sand. Contains a few roots and rootlets, and a few coral cobbles. Lower boundary clear/wavy. |
| Stratum IIb | 96-BOE | 10YR 6/4 light yellowish brown, slightly compact, structureless, medium to coarse sand. Contains a few roots and rootlets, and a few coral cobbles. Lower boundary abrupt/wavy. |

Note: No gleyed Str III in this trench as in trench 1, although watertable at 2 m below surface.

Stratum I in this trench is the sandy loam, poorly developed A-horizon that appears to be a recently deposited. The rest of the sediments are purely calcareous sand.



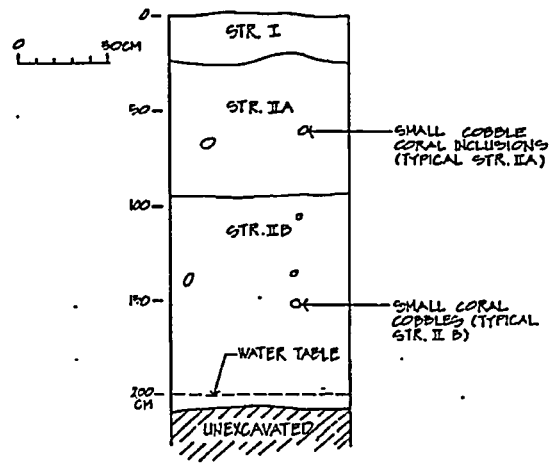



Figure 23 Backhoe Trench #2, Representative North Profile

Trench BT#3: Orientation: 40/220° TN; Length 7.6 m; Width: .75 m; Depth: 2.3 m; Watertable at 215 cmbs; Profile: Southeast Face, See Figure 86 in Appendix 4.

Profile Description

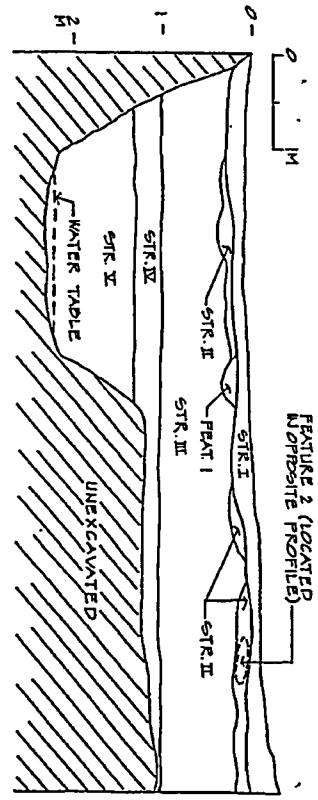
| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-30 | 10YR 4/3 brown, slightly compact, with weak medium granular structure, sandy loam. Contains equal parts terrigenous sediment and medium beach sand and abundant roots & rootlets. A horizon. Lower boundary clear/wavy. |
| Stratum II | 10-30 | 10YR 4/3 brown, slightly compact, structureless fine to medium sand. Somewhat mottled with the underlying III (beach sand); contains a few roots and rootlets, and a few small flecks of charcoal. There are 2 small areas of black/ash stained sand--Features 1 and 2 in the profile. Feature 2 is on the opposite (northwest) side wall, see feature discussion below. Str. II contains shell fragments and coral pebbles, naturally part of the deposit. Lower boundary abrupt/wavy. Str. II is a discontinuous older A-horizon buried, probably fairly recently, by Str. I. |
| Stratum III | 20-120 | 10YR 6/4 light yellowish brown, loose, structureless, fine to medium sand. Contains very few roots or rootlets, no culture. Lower boundary abrupt/wavy. |
| Stratum IV | 100-130 | 10YR 6/4 light yellowish brown, very compact, structureless, coarse to very coarse sand. Contains abundant coral and shell pebbles--a higher energy deposit that has become semi-cemented. No culture. Lower boundary abrupt/smooth. |
| Stratum V | 125-BOE | 10YR 6/4 pale brown, loose to slightly compact, coarse and very coarse sand. Some coral pebble structures, no culture, no roots. Water table at 215 cmbs. |

Features 1 & 2 - 3 gallons from each feature were screened through 1/8" mesh screen. Only the material from Feature 1 was collected. Both features contained similar amounts of charcoal and marine shell. The 3-gallon sample from Feature 1 contained 6 g of charcoal,



Figure 24 Backhoe Trench #3, Northwest Profile





1.3 g of unidentifiable small fragments of mammal bone, and 5.3 g of marine and brackish/fresh water shell, see Figure 86 in Appendix 4. The marine shell consisted of Echinoderm, *Brachidontes* sp., *Turbo sandvicensis*, *Terebra* sp., and unidentifiable shell fragments. The fresh/brackish water shell consist of a single fragment of *Theodoxus* sp. The marine invertebrate shell from the features is water-rounded and indistinguishable in abundance, appearance, and species present from the shell collected from 3 gallons of screened Stratum III (natural beach deposit). Even the Theodoxus shell fragment is less of a cultural indicator because of the two freshwater streams in close proximity to Trench 3. However, the charcoal and mammal bone fragments indicate the two features are cultural. No historic or traditional-Hawaiian artifacts were found in the feature fill.

Features 1 and 2, within the discontinuous stratum II are remnants of cultural activity. Trenches 16 and 18 were excavated on either side of Trench 3 to determine if this discontinuous cultural deposit extended horizontally. Based on the stratigraphy of Trenches 16 and 18 the deposit does not continue horizontally. It is more likely that Features 1 and 2 are not prehistoric features. This determination was made based on the available evidence, including the comparison of the features' contents and form with the features of the clearly prehistoric cultural layer documented in the west corner of the project area (Site 50-30-09-792/A). These features are thought to be the remains of historic hearth-type features associated with the older, recently buried A-horizon, stratum II. No State site number was assigned this ephemeral, apparently historic cultural deposit.



**Trench BT#4:** Orientation: 25/205° TN; Length 6.3 m; Width: 1.5 m; Depth: 1.8 m; Profile: North Face

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-25 | 10YR 4/3 brown, slightly compact, with weak medium granular structure, sandy loam. Contains equal parts terrigenous sediment and medium beach sand and abundant roots & rootlets. A horizon. Lower boundary clear/wavy. |
| Stratum II | 26-40 | 10YR 4/3 brown, slightly compact, structureless fine to medium sand, Somewhat mottled with the underlying III (beach sand); contains a few roots and rootlets, Str. II contains shell fragments and coral pebbles, naturally part of the deposit. Lower boundary abrupt/wavy. Str. II is an older A-horizon buried, probably fairly recently, by Str. I. |
| Stratum IIIa | 41-15 | 10YR 6/4 light yellowish brown, loose, structureless, fine to medium sand. Contains very few roots or rootlets and no culture. Lower boundary abrupt/wavy. |
| Stratum IIIb | see profile | 10YR 6/4 light yellowish brown, very compact, coarse to very coarse sand, semi-cemented, contains water-rounded shell & coral pebbles, high energy deposit, no culture. Lower boundary abrupt/smooth. |
| Stratum IV | 156-BOE | 10YR 6/2 light brownish grey, loose to slightly compact, structureless, coarse to very coarse sand. Some coral pebble inclusions, no culture, no roots. |

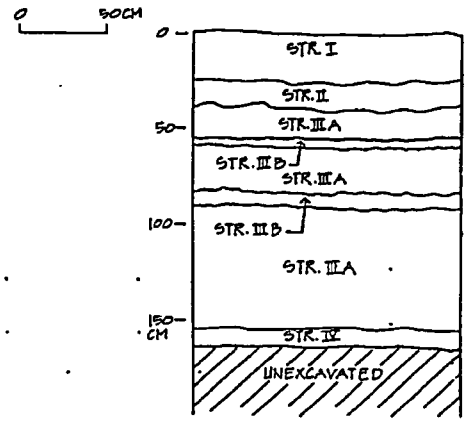



Figure 25 Backhoe Trench #4, Representative North Profile



**Trench BT#15:** Orientation: 50/230° TN; Length 6.2 m; Width: 0.85 m; Depth: 1.5 m; Profile: Southeast Face

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-42 | 10YR 4/3 brown, loose, structureless, medium sand. Typical sand A-horizon. Contains abundant roots and rootlets and some coral and shell pebble inclusions. No culture. Lower boundary clear/wavy. |
| Stratum II | 40-BOE | 10YR 6/4 light yellowish brown, loose to compact (with greater depth), structureless, medium to coarse sand. Contains several horizontal bands of coarse grained sand, shell and coral pebbles and small cobbles (higher energy deposit - 3-5 cm thick--semi-cemented). No culture. Few roots or rootlets. Str. II becomes more compact with greater depth, it eventually becomes semi-cemented. |

The sandy loam is not present in this trench--all calcareous sand.

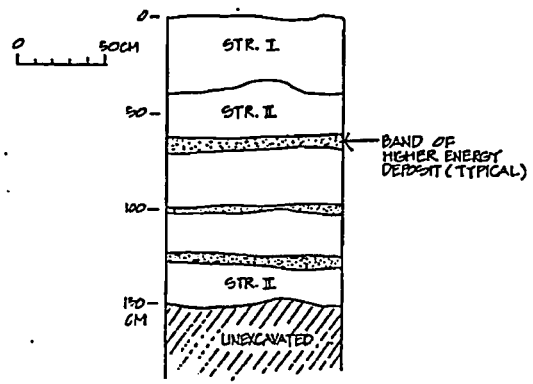



Figure 26 Backhoe Trench #15, Representative Southeast Profile



**Trench BT#16:** Orientation: 40/220° TN; Length 12.2 m; Width: 0.8 m; Depth: 2.05 m (as deep as was possible because of cave in); Profile: West/Northwest Face

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-35 | 10YR 4/3 brown, loose, structureless, medium sand. Typical sand A-horizon. Contains abundant roots and rootlets and some coral and shell pebble inclusions. No culture. Lower boundary clear/wavy. |
| Stratum II | 25-BOE | 10YR 6/4 light yellowish brown, loose to compact (with greater depth), structureless, medium to coarse sand. Contains several horizontal bands of coarse grained sand, shell and coral pebbles and small cobbles (higher energy deposit - 3-5 cm thick--semi-cemented). No culture. Few roots or rootlets. Str. II becomes more compact with greater depth, it eventually becomes semi-cemented. |

The sandy loam is not present in this trench--all calcareous sand.

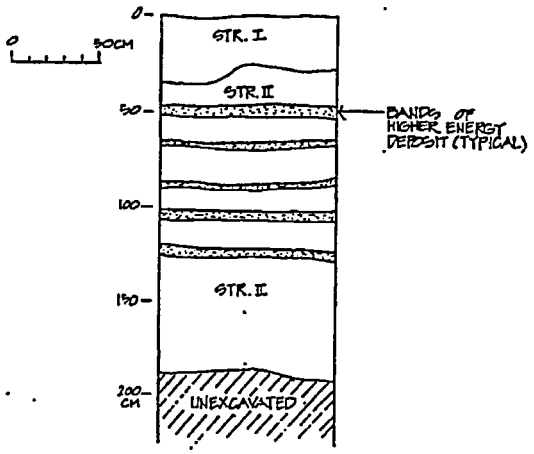



Figure 27 Backhoe Trench #16, Representative West/Northwest Profile



Trench BT#17: Orientation: 48/228° TN; Length 7.5 m; Width: 1.10 m; (cave in) Depth: 1.65 m; Profile: North Face

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-29 | 10YR 4/3 brown, loose, structureless, medium sand. Typical sand A-horizon. Contains abundant roots and rootlets and some coral and shell pebble inclusions. No culture. Lower boundary clear/wavy. |
| Stratum II | 25-BOE | 10YR 6/4 light yellowish brown, loose to compact (with greater depth), structureless, medium to coarse sand. Contains several horizontal bands of coarse grained sand, shell and coral pebbles and small cobbles (higher energy deposit - 5-10 cm thick--semi-cemented). No culture. Few roots or rootlets. Str. II becomes more compact with greater depth, it eventually becomes semi-cemented. |

Note: southwest end of trench is .28 m. higher than the northeast end. Even slope along the trench. Rise is due to the trench's location along the back slope (mauka) of the beach berm. The sandy loam is not present in this trench--all calcareous sand.

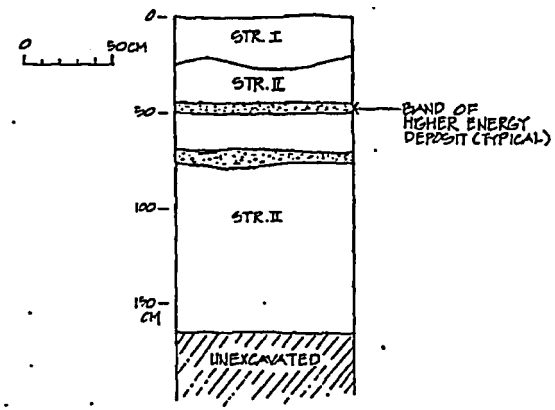



Figure 28 Backhoe Trench #17, Representative North Profile



**Trench BT#18:** Orientation: 26/206° TN; Length 4.5 m; Width: 0.8 m; Depth: 1.55 m; Profile: West Face

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-20 | 10YR 4/3 brown, loose, structureless, medium sand. Typical sand A-horizon. Contains abundant roots and rootlets and some coral and shell pebble inclusions. No culture. Lower boundary clear/wavy. |
| Stratum II | 20-BOE | 10YR 6/4 light yellowish brown, loose, structureless, medium to coarse sand. Contains several horizontal bands of coarse grained sand, shell and coral pebbles and small cobbles (higher energy deposit - 3-5 cm thick--semi-cemented). No culture. Few roots or rootlets. |

The sandy loam is not present in this trench--all calcareous sand.

**Summary of Trenches 1, 2, 3, 4, 15, 16, 17, and 18, excavated in the *makai* portion of Kekupua Valley**

This portion of the project area consists entirely of calcareous sand deposits, with the exception of the recently deposited stratum I sandy loam. This sandy loam is not evenly distributed over this portion of the project area. Where it is found it caps the older sand A-horizon.

Two subsurface features were recorded and samples were taken from Trench 3. This deposit did not appear to extend horizontally, for it was not found in either Trench 16 or 18 on either side of Trench 3. Based on the available evidence the deposit is most likely historic and no State site number was assigned.

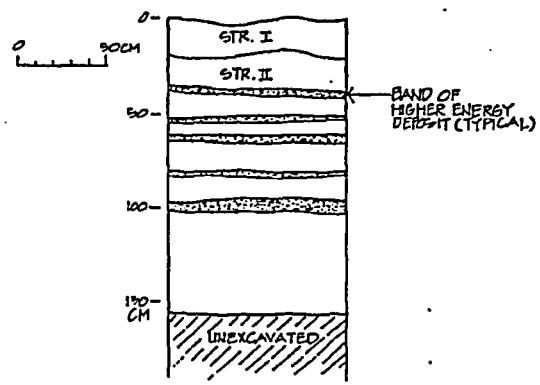



Figure 29 Backhoe Trench #18. Representative West Profile



**Trench BT#19:** Orientation: 330/150° TN; Length 8 m; Width: .77 m; Depth: 2.3 m; water table at 2.23 m below surface; Profile: Northeast Face

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-140 | 2.5YR 3/3 dark reddish brown, silty clay loam, slightly compact, becoming more compact with depth & water saturation, structure only visible in top 50-60- cm, consists of moderate medium granular structure. Contains few roots & rootlets throughout. No culture. Lower boundary clear/smooth. |
| Stratum II | 140-BOE | 10YR 3/1 very dark grey, clay loam, slightly compact, water saturated, structureless. No roots or rootlets, no culture. Water table at 223 cmbs. |

No indications of subsurface cultural deposits in this portion of the project area. Stratigraphy consists entirely of terrigenous sediments.

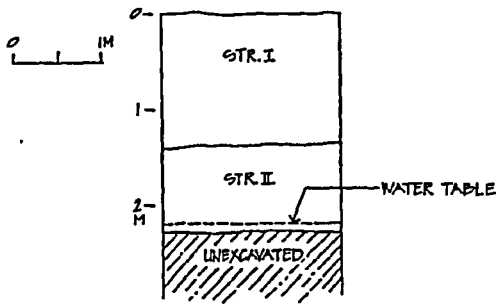



Figure 30 Backhoe Trench #19, Representative Northeast Profile



**Trench BT#20: Orientation: 28/208° TN; Length 8.2 m; Width: .75 m; Depth: 1.40 m; Profile: Northwest Face**

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-15 | 7.5YR 4/4 brown, loose, medium to fine sand. Structure is weak, fine to medium sub-angular blocky. Sand with faint A-horizon development with a little admixture of coloration from the reddish brown terrigenous sediment that is common in this area. Contains the same small water-rounded shells as Str. II, and abundant roots and rootlets. No culture. Lower boundary abrupt/wavy. |
| Stratum II | 10-35 | 10YR 6/6 brownish yellow, loose, structureless, medium to fine sand. Contains small (1-3 mm diameter) water-rounded shell inclusions, some roots and rootlets. No culture. Lower boundary abrupt/smooth. |
| Stratum III | 35-BOE | 2.5YR 3/3 dark reddish brown, silty clay loam, slightly compact, becoming more compact with depth & water saturation, structure only visible in top 90- cm because of water saturation below that, consists of moderate medium granular structure. Contains few roots & rootlets throughout. No culture. Lower boundary clear/smooth. |

This trench was excavated in the same general location as test unit 4. Trench 20 further confirms that no subsurface cultural deposits are located in this portion of the project area, where calcareous sands overlay terrigenous loam.

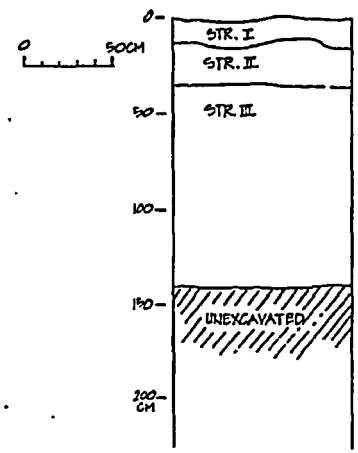



Figure 31 Backhoe Trench #20, Representative Northwest Profile



**Trench BT#9: Orientation: 359/179° TN; Length 8.6 m; Width: .75 m; Depth: 1.4 m; Water table at 1.32 mbs; Profile: East Face**

Note: 25 m. @ 330° TN from Portuguese oven

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-45 | 10YR 3/3 dark brown, slightly compact, weak, fine to medium granular structure, silty loam. A-horizon containing roots and rootlets, some organic mixture. No culture. Lower boundary abrupt/wavy. |
| Stratum II | 40-BOE | 10YR 6/4 light yellowish brown, loose, structureless ,fine sand. Contains very few roots and rootlets. No culture. Water table at 1.32 mbs. |

No sign of subsurface cultural deposits in this trench. Trench 9 is the reverse of trench 20 where calcareous sands overlay terrigenous loam.

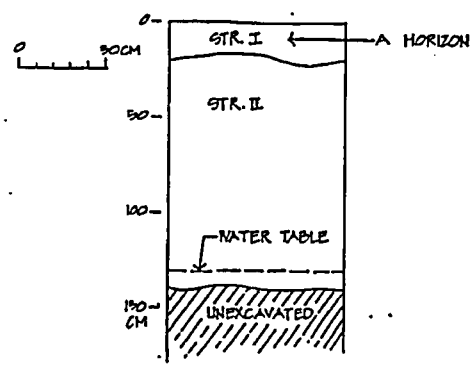



Figure 32 Backhoe Trench #9, Representative East Profile



**Trench BT#10:** Orientation: 341/161° TN; Length 11 m; Width: .75 m; Depth: 2.26 m (max).; Profile: West Face, See Figure 85 in Appendix 4.

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-120 | 2.5YR 3/4 dark reddish brown, slightly compact, structureless, gravelly (decomposing bedrock frogments) silty loam. Contains abundant roots/rootlets. This material has not developed *in situ*–it is a reworked decomposing bedrock sediment that was deposited by earthmoving equipment. Lower boundary abrupt smooth. |
| Stratum II | 120-140 | 5YR 3/3 dark reddish brown, slightly compact, weak to moderate, medium granular structure, loam. Contains abundant roots and rootlets, charcoal, and what appears to be coal slag–also basalt cobbles and historic artifacts including rusted nails, glass fragments, and a small medicine bottle. Lower boundary abrupt/smooth (discontinuous). See Figure 85 in Appendix 4. |
| Stratum III | 140-190 | 7.5YR 3/3 dark brown, very compact, structureless, clay loam. Contains some roots/rootlets. No culture. Lower boundary abrupt/smooth. |
| Stratum IV | 185-220 | 10YR 5/4 yellowish brown, very compact, structureless, clay. Contains few roots and rootlets. No culture. Lower boundary abrupt/smooth. |
| Stratum IV | 220-BOE | 10YR 5/1 grey, very compact, structureless, clay. Undulating basalt bedrock beneath. |

All of stratum I and 2 are historically deposited, apparently by earth moving equipment, to create the artificial mound that marks the northern boundary of the fish pond. The clay loam that makes up stratum III may well have been the previous land surface before the earth moving. The cross-section shows the relationship of the Trench 10 sediments to the water level in Kekupua Fishpond. The bedrock exposed in Trench 10 is higher than the water level in the pond. This supports the findings of David A. Burney of Fordham University and William (Pila) K. Kikuchi of Kaua'i Community College that the pond rests in a natural bedrock depression, see Appendix 3. No prehistoric cultural deposits were found in this trench.

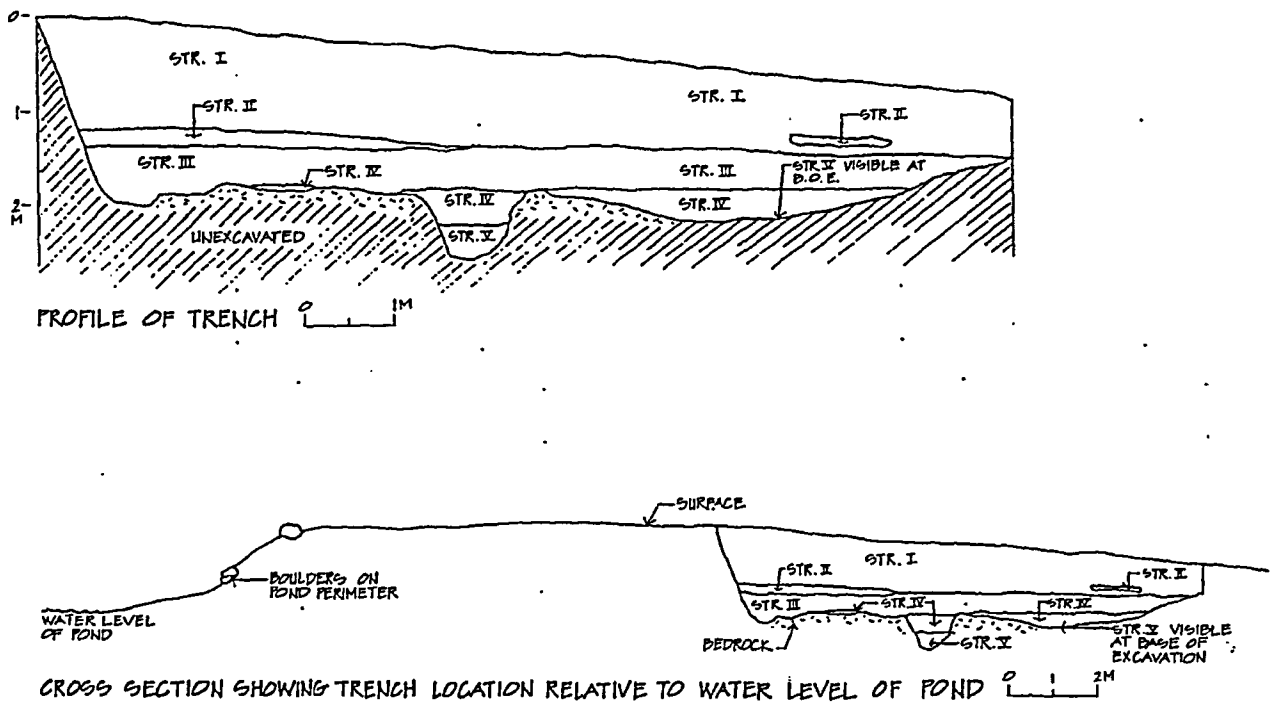



Figure 33 Backhoe Trench #10, West Profile, with Cross Section Showing the Relationship of Trench 10 sediments to the water table in Kekupua Fishpond.

Trench BT#11: Orientation: 369/180° TN; Length 3.5 m; Width: .75 m; Depth: 1.35 m; Profile: East Face

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-80 | 2.5YR 3/3 dark reddish brown, loose to compact (with greater depth), clay loam, with weak to moderate fine to medium blocky structure. Contains abundant roots and rootlets in upper 30 cm; much less below. No culture. Lower boundary gradual/smooth. |
| Stratum II | 80-BOE | 10YR 5/4 yellowish brown, very compact, structureless, clay. Contains few roots and rootlets. No culture. |

All terrigenous sediments, no cultural deposits.

**Summary of Trenches 19, 20, 9, 10, and 11 Located Around Kekupua Fishpond**

The only cultural deposit located in this portion of the project area consisted of the historic stratum I and II of Trench 10. Stratum I is a massive terrigenous sediment that was apparently pushed into place with earth moving equipment to create the pronounce artificial berm that borders Kekupua Fishpond to the north. Stratum I contains decomposing bedrock fragments and apparently originated from the *mauka* portion of the project area. Stratum II contains historic artifacts, and what appears to be coal-slag. Trench 10 documents one event of massive earth moving that was carried out in the project area during the historic period. Based on the artifacts found in Stratum II, this took place sometime around 1900-1930.

Closer to the coast, in Trenches 9 and 20, The terrigenous sediments overlap with the calcareous sand beach deposits. In Trench 20 sand overlies terrigenous loam, while in trench 9 it is the opposite.



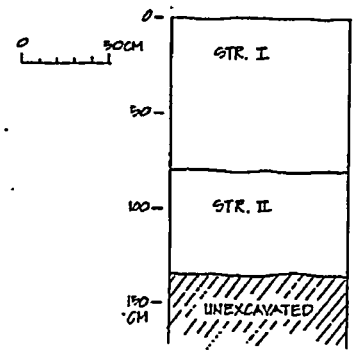



Figure 34 Backhoe Trench #11, Representative East Profile

**Trench BT#21: Orientation: 14/194° TN; Length 10.2 m; Width: .75 m; Depth: 1.60 m; Water table at 155 cm; Profile: Northwest Face**

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-38 | 10YR 3/3 dark reddish brown, loose, loam, with moderate fine to medium granular structure, abundant roots and rootlets. A horizon. No culture. Lower boundary gradual/wavy. |
| Stratum II | 35-105 | 10YR 6/6 brownish yellow, loose, fine sand, structureless. Contains some roots and rootlets. No culture. Lower boundary abrupt/smooth. |
| Stratum III | 105-120 | 10YR 6/4 light yellowish brown cemented fine sand, structureless. No roots. No culture. Lower boundary abrupt/smooth. |
| Stratum IV | 120-BOE | 10YR 6/4 light yellowish brown, slightly compact fine sand, structureless. No roots. No culture. All sediment below III is wet. Water table at 1.55 mbs. |

No cultural deposits found. The basic beach sand stratigraphy in this portion of the project area is capped by a dark brown loam. This loam could be a natural alluvial deposit or a historically introduced sediment related to earth moving and/or land clearance.



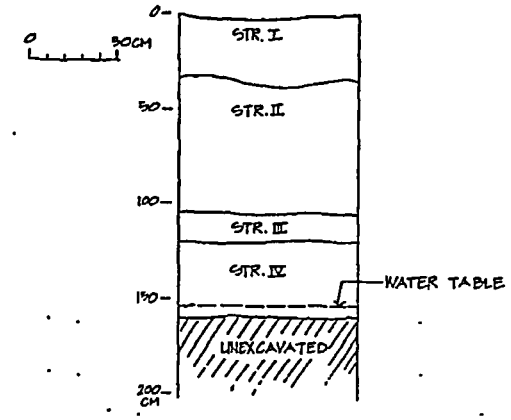



Figure 35 Backhoe Trench #21, Representative Northwest Profile

**Trench BT#7: Orientation: 17/197° TN; Length 7.0 m; Width: .75 m; Depth: 1.30 m; Profile: East Face, See Figure 87 in Appendix 4.**

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-20 | 2.5YR 3/4 dark reddish brown, compact, with weak, fine to medium blocky structure, loam. Terrigenous sediment. Contains some fine roots and rootlets. Lower boundary clear/wavy. |
| Stratum II | 20-52 | 2.5YR 4/4 reddish brown, slightly compact, weak, medium granular structure, sandy loam. Mix of I and the underlying IV (sand). Contains some roots and rootlets and some charcoal flecking in Features 1 and 2 shown in the profile. Lower boundary abrupt/wavy . See Figure 87 in Appendix 4. |
| Stratum III | see profile | 2.5YR 4/4 reddish brown medium sand, loose, structureless. This stratum consists of three root molds and an ant nest which have stained the stratum IV beach sand. Lower boundary clear/wavy. |
| Stratum IV | 35-128 | 5YR 6/6 reddish yellow (stained from terrigenous sediments above) with 10YR 6/4 light yellowish brown (not stained), loose, structureless, medium sand. Contains a few roots and rootlets and no culture. Lower boundary abrupt/smooth. |
| Stratum V | 128-BOE | At base of excavation cemented beach rock was encountered. 10YR 7/3 very pale brown. This could not be excavated. |

Samples were screened through 1/8" mesh from Features 1 & 2--4.5 and 3 gallons, respectively. Based on sampling, each feature contains similar amounts of charcoal and marine shell midden. The Feature 1 sample yielded 7.7 g of charcoal and a total of 3.6 g of marine shell midden consisting of Echinoderm, *Brachidontes* sp., *Terebra* sp., and *Conus* sp. The Feature 2 sample yielded 11.1 g of charcoal and a total of 5.8 g of marine shell midden consisting of Echinoderm, *Brachidontes* sp., and small unidentifiable shell pieces. No artifacts, either historic or traditional-Hawaiian, were found in the screened samples. Unlike the vast majority of marine shell from the other features sampled in the project area, this shell was not waterworn and appeared unequivocally cultural in origin. Both



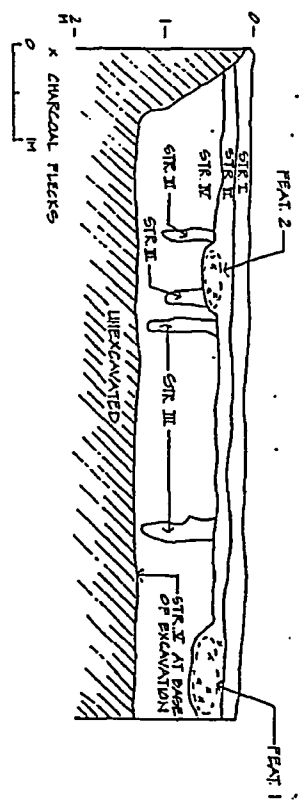



Figure 36 Backhoe Trench #7, East Profile

features are associated with stratum II, a sandy loam mix of terrigenous and calcareous sediments.

Stratigraphic observations indicate this mixing of terrigenous and beach sediments in the *makai* portion of the project area is a relatively recent historic process, thought to be related to land clearance and/or ranching activity. Based on both features' association with stratum II and lack of traditional-Hawaiian artifacts (i.e. basalt or volcanic glass flakes), it is more likely that these features are not prehistoric. These features are thought to be remnants of historic hearth features. The cultural deposits are limited to the two features, charcoal and shell midden were not found in stratum II outside these features. This indicates the cultural deposit is localized and does not constitute a "cultural layer". No State site number was assigned to Features 1 and 2.

Strata I and II are thought to be historically introduced terrigenous sediments. This determination is based on the sediments weak structure and poor A-horizon development, which suggest relatively recent deposition of these sediments.



Trench BT#8: Orientation: 366/188° TN; Length 5.5 m; Width: .75 m; Depth: 1.5 m; Profile: East Face, See Figure 88 in Appendix 4.

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-38 | 2.5YR 3/3 dark reddish brown, compact moderate, fine to medium sub-angular structure, sandy loam. Contains roots and rootlets. Lower boundary clear wavy. |
| Stratum II | 30-45 | 2.5YR 4/3 reddish brown, slightly compact, weak, medium granular structure, sandy loam. Contains a few roots and rootlets. Lower boundary abrupt wavy. |
| Stratum III | 40-130 | 10YR 6/4 light yellowish brown (with some staining from Str. I & II--5 YR 6/6 reddish yellow) loose, structureless, medium sand. Contains coral and shell pebbles. Lower boundary abrupt smooth. |
| Stratum IV | 130-BOE | 10YR 7/3 very pale brown, compact, structureless, coarse sand. Semi-cemented like beach rock--could only be excavated with difficulty. |

No cultural deposits found. As in Trench 7, strata I and II are thought to be historically introduced terrigenous sediments. See Figure 88 in Appendix 4.

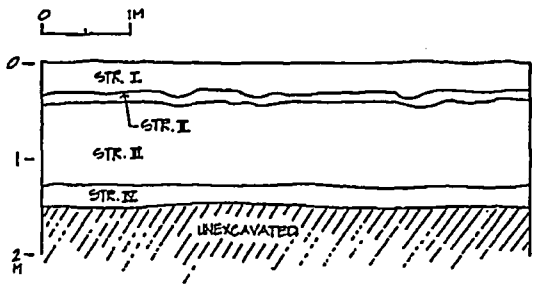



Figure 37 Backhoe Trench #8, East Profile



**Trench BT#22: Orientation: 24/204° TN; Length 8.4 m; Width: .75 m; Depth: 1.50 m; Profile: West Face**

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-26 | 5YR 4/4 reddish brown, loose to slightly compact loam sand (with medium to coarse grained sand), weak, fine, sub-angular blocky structure, abundant roots and rootlets. Modern A-horizon, sand with terrigenous loam mixed in. No culture. Lower boundary clear/wavy. |
| Stratum II | 26-BOE | 10YR 7/4 very pale brown, loose, coarse to medium sand, structureless, very few roots and rootlets. No culture. Some reddish stained root molds extending from stratum I through stratum II to the base of excavation. |

No cultural deposits found. Stratum I is the a mix of terrigenous and calcareous sediments, thought to be the result of historic earth moving and/or land clearing activity.

**Summary of Trenches 7, 8, 21, and 22, Located West of Kekupua Fishpond and *Makai* of the Robinson Family Residence.**

These trenches confirmed the presence of predominantly calcareous sand deposits in this portion of the project area. One or two strata of terrigenous, or terrigenous enriched, sediment were observed in the highest levels of these trenches. In Trench 21 it was unclear if this uppermost layer of brown loam, immediately above the calcareous sand, was historically introduced sediment or a natural alluvial deposit. Based on the soil color, more pronounced soil structure and A-horizon development, it is more likely that stratum I in Trench 21 is a natural alluvial deposit. In Trenches 7, 8, and 22 confidence is high that the red-brown terrigenous loams and sandy loams are historic introductions related to earth moving or land clearance in this portion of the project area.

The only cultural deposits located in this portion of the project area consisted of the two charcoal and marine shell midden enriched features documented and sampled in Trench 7. Based on the lack of traditional-Hawaiian artifacts and the features' association with stratum II, thought to be a historically introduced sediment, these features are considered historic. Stratum II, outside of Features 1 and 2 did not contain cultural materials. These features represent isolated activity and are not part of a horizontal "cultural layer". No State site number was assigned to these two features.

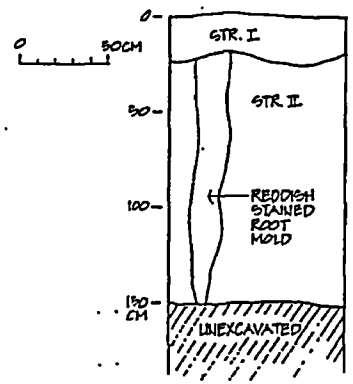



Figure 38 Backhoe Trench #22, Representative West Profile



Trench BT#5: Orientation: 58/238° TN; Length 8.0 m; Width: .75 m; Depth: 1.6 m; Profile: Southeast, Southwest, and Northwest Faces, See Figure 89 in Appendix 4.

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-15 | 10YR 4/3 brown, slightly compact, with weak medium granular structure, sandy loam. Contains terrigenous sediment and medium beach sand and abundant roots & rootlets. A horizon. Lower boundary clear/wavy. |
| Stratum II | 15-110 | 10YR 4/3 brown, slightly compact, structureless, fine to medium sand. Somewhat mottled with the underlying III (beach sand). Str. II contains a few roots and rootlets, flecks of charcoal, and water rounded shell fragments and coral pebbles. It also contains numerous features that extend into the underlying stratum III. Lower boundary abrupt/wavy. Str. II is an older A-horizon buried, probably fairly recently, by Str. I. |
| Stratum III | 30-BOE | 10YR 6/4 light yellowish brown, loose, structureless fine to medium sand. It contains two bands of coral and shell pebble material, higher energy deposit, semi-cemented. Very few roots or rootlets, no culture. Lower boundary abrupt/wavy. |

Eight features, each associated with stratum II and intruding into the underlying stratum III, were documented in Trench 5, see accompanying profile, see Figure 89 in Appendix 4. Five of these features were sampled to determine the feature fill contents and collect charcoal for radiocarbon dating. This was done to better establish the age and origin of the apparently prehistoric cultural stratum II. From Features 2 & 3, 3.5 and 4 gallon samples, respectively, were screened through 1/8th inch mesh. All material that did not pass through the screen was bagged and brought back to the laboratory. In the laboratory this material was sorted. Both samples yielded abundant water rounded coral and basalt pebbles--a natural component of stratum II. The Feature 2 sample yielded 44.9 g of water-rounded marine shell, 0.1 g of fishbone, and 25.9 g of charcoal. The Feature 3 sample yielded 0.5 g of un-water rounded *Brachidontes* sp. shell, 41.2 grams of water-rounded marine shell, 24.3 grams of charcoal, and a small (4 by 4 by 1.5 mm) volcanic glass flake. In both these samples the water-rounded shell is considered a natural component of Stratum II and not cultural in origin.

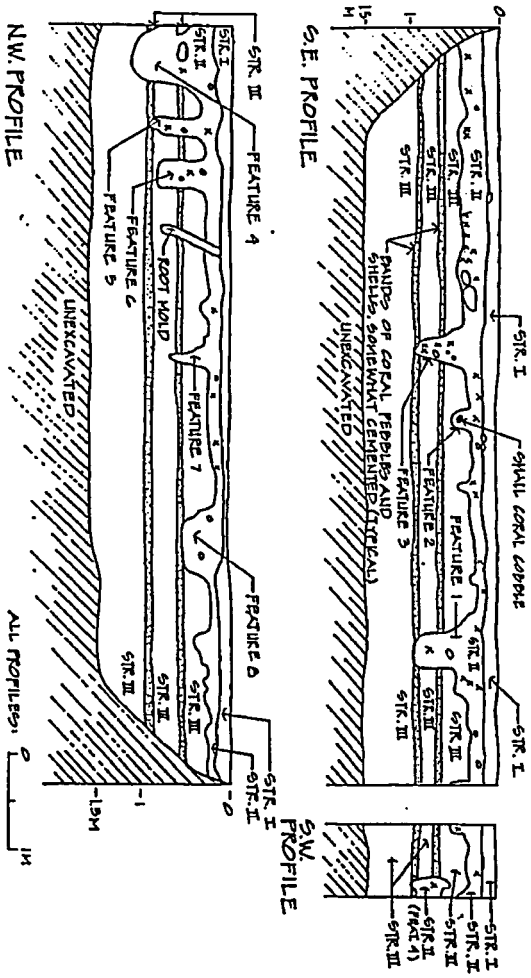



Figure 30 Backline Trench #5, Representative Southeast Profile



Samples from Features 1, 4, and 6 were each screened and rapidly sorted in the field. Water rounded shell in these three samples was as abundant as in Features 2 and 3 and was not collected. For the field sorted samples only charcoal, artifacts, bone, and non-water-rounded marine shell were collected.

Seven gallons of Feature 1 were sampled. Two basalt flakes, 0.5 g of burnt, unidentifiable mammal bone, and 6.7 g of charcoal were collected from the Feature 1 sample. The entire collected charcoal sample was sent to Beta Analytic, Inc. for radiocarbon dating analysis. Twelve gallons of Feature 4 were sampled, yielding 0.3 g of *Terebra* sp., 0.8 g of Echinoderm, 3.3 g of charcoal, and 8.8 g of small, unidentifiable mammal bone fragments. Five and a half gallons of Feature 6 were sampled, yielding 6.5 g of charcoal. The entire charcoal sample from Feature 6 was sent to Beta Analytic, Inc. for radiocarbon dating analysis.

Stratum II is an old A horizon that was fairly recently buried by the sandy loam of stratum I. Based on the sampling results the numerous features associated with stratum II are related to prehistoric habitation of the project area. Based on radiocarbon dating analysis this prehistoric occupation spanned the later prehistoric era, from the 15th century AD onwards. See Appendix 6.

This prehistoric, traditional-Hawaiian cultural layer was assigned State site # 50-30-09-792. This same horizontal cultural layer was documented in Trenches 5, 14, 23 and to a lesser degree in Trench 6.

Trench BT#6: Orientation: 45/225° TN; Length 6.6 m; Width: 95 m; Depth: 1.8 m; Profile: Northeast Face, See Figures 91 and 92 in Appendix 4.

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-40 | 10YR 4/3 brown, slightly compact, structureless coarse sandy loam. Contains abundant grass/roots, some modern kukui-nut shell fragments and water-rounded coral and shell. No culture. Modern A-horizon. Lower boundary clear/wavy. |
| Stratum II | 41-90 | 10YR 4/3 brown, slightly compact, structureless, fine to medium sand. Contains a few roots and rootlets and water rounded coral and shell fragments. There are also two small features (1 and 2) that consist of ash and charcoal enriched sediment containing abundant small basalt cobbles. Both appear to be the remains of *imu*-type cooking features. Lower boundary abrupt/wavy. |
| Stratum III | 70-BOE | 10YR 6/4 light yellowish brown, loose, structureless fine to medium sand. Contains very few roots or rootlets. Lower boundary abrupt/wavy. |

Approximately 5 gallons each from both Features 1 and 2 were sampled and passed through the 1/8th inch mesh screen. Sample content was noted in the field but not collected to bring back to the laboratory. This sampling removed nearly 100 % of the what remained of both features in the trench sidewalls. Both features yielded abundant fist-sized basalt cobbles, see Figure 92. The feature fill from both features was ash enriched and contained charcoal and water rounded shell and coral fragments, natural components of stratum II. A half-gallon bulk sample was collected from Feature 1. This sediment sample was not selected for radiocarbon dating because it was unclear if it contain sufficient carbon for successful dating analysis. These features are likely remnants of *imu*-type combustion features, see Figures 91 and 92 in Appendix 4. The age of these features is undetermined, however, it is likely they are associated with the prehistoric cultural layer (State Site #50-30-09-792) documented in Trenches 5, 14, and 23.

Stratum I is the same sandy loam, historically introduced partially terrigenous sediment that is found discontinuously in various portions of the project area. This layer is found in Trench 5 and 6, but not in Trenches 12 and 13, which were excavated between Trenches 5 and 6.



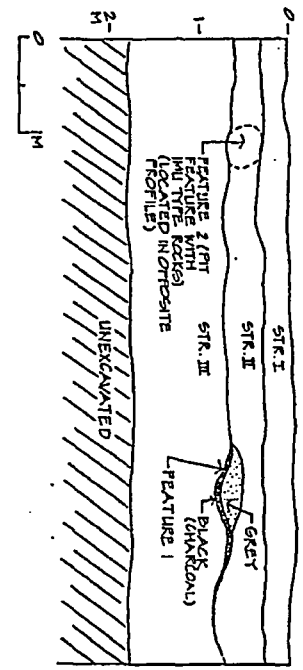



Figure 40 Backhoe Trench #6, Northeast Profile

**Trench BT#12:** Orientation: 369/216° TN; Length 10.0 m; Width: 1.0 m; Depth: 2 m; Profile: southeast Face

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-40 | 10YR 4/4 dark yellowish brown, loose structureless, medium sand. A horizon. Contains abundant roots and rootlets. Lower boundary abrupt wavy. A large depression of stratum I into the underlying stratum II was observed in both side walls, see profile. This contained one basalt boulder and abundant decomposing branches and organic debris from land clearance. This is a recent feature associated with the land clearance of this portion of the project area. |
| Stratum II | 40-BOE | 10YR 6/4 light yellowish brown, slightly compact becoming more compact with depth, structureless, medium sand. Contains roots and rootlets and abundant water rounded coral and shell inclusions. |

The only cultural material found in this trench consists of the modern large depression filled with recently deposited wood, branches, leaves and other organic material. This depression is the result of modern land clearance and earth moving within the project area. It may be related to the recent clean-up of the project area of the dead fall from Hurricanes *Iniki* and *Iwa*. The discontinuous sandy loam layer was not found in this trench.



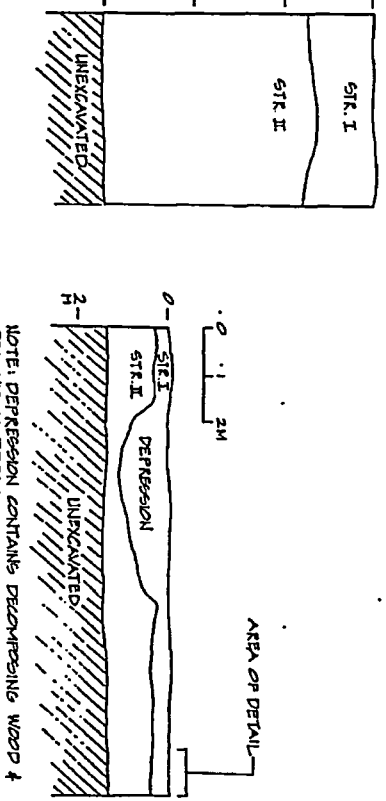



Figure 41 Backhoe Trench #12, Representative Southeast Profile

**Trench BT#13: Orientation: 309/129° TN; Length 5.6 m; Width: 1.5 m; Depth: 1.5 m (Cave in); Profile: Northeast Face**

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-38 | 10YR 4/4 dark yellowish brown, loose structureless, medium sand. A horizon. Contains abundant roots and rootlets. Lower boundary abrupt wavy. |
| Stratum II | 38-BOE | 10YR 6/4 light yellowish brown, slightly compact becoming more compact with depth, structureless, medium sand. Contains roots and rootlets and abundant water rounded coral and shell inclusions. |

No cultural material was observed in this trench. The sandy loam historically introduced sediment was not found in this trench.



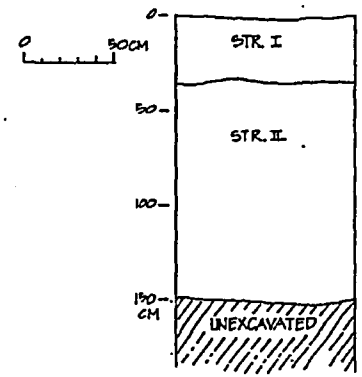



Figure 42 Backhoe Trench #13, Representative Northeast Profile

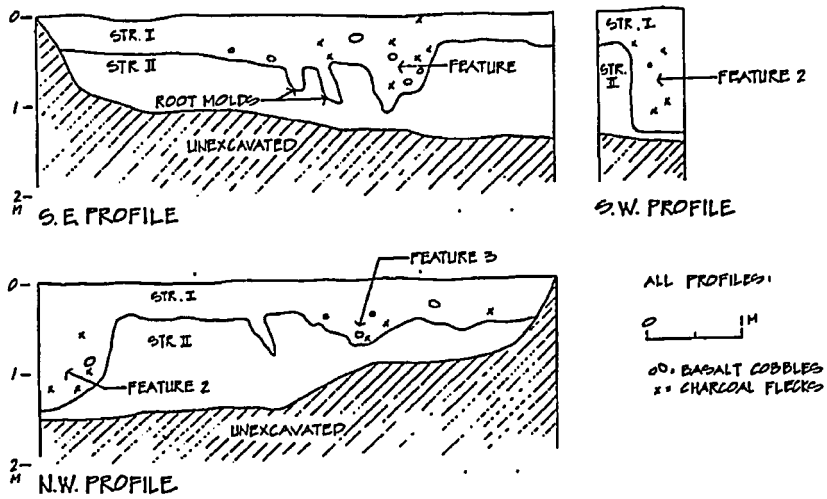



Figure 43 Backhoe Trench #14, Southwest Profile



Trench ET#14: Orientation: 44/224° TN; Length 5.6 m; Width: 1.4 m; Depth: 1.6 m; Profile: Southeast Face, See Figure 90 in Appendix 4.

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-140 | 10YR 4/4 dark yellowish brown, loose structureless, medium sand. A horizon--somewhat mottled with the underlying beach sand. Contains abundant roots and rootlets and scattered basalt cobbles--also charcoal flecking. Three features were identified in the profile, intruding into the underlying stratum II. These cultural features were discernable from the trenches root molds. The feature fill contained charcoal flecking, basalt cobbles, and was darker in color--quite different from the root molds. Lower boundary abrupt wavy. |
| Stratum II | 30-BOE | 10YR 6/4 light yellowish brown, loose, structureless, medium sand. Contains roots and rootlets and abundant water rounded coral and shell inclusions. |

Two of the three features documented in Trench 14 were sampled. This was done to help determine the age and origin of the apparent cultural layer stratum I. Feature 1 is irregular shaped. Four gallons of the Feature 1 fill were screened through 1/8th inch mesh and sorted in the field. This sampled material contained two basalt flakes, 0.2 g of burnt, unidentifiable mammal bone, 3.6 g of charcoal, and 1.5 g of un-water rounded marine shell, consisting of Echinoderm, *Pinctada radiata*, *Conus sp.*, and unidentifiable small fragments. No historic artifacts were found.

Feature 2 is large, over a meter across and extending a meter down into stratum II, and visible in the southwest and northwest profiles, see profile drawing, see Figure 90 in Appendix 4. Four gallons of the feature fill were screened. This contained one small basalt flake, 2.5 g of unidentifiable mammal bone fragments, 6.4 g of charcoal, and 2.3 g of un-water rounded marine shell, consisting of Echinoderm, *Brachidontes sp.*, and *Pinctada radiata*. No historic artifacts were found.

Feature 3 was not tested, but looked to contain the same types and amounts of cultural materials. All features contained basalt cobbles, similar to *Imu* stones seen in Tr#6.

Stratum I is the same A horizon that is buried in Trench 5 (stratum II in Trench 6). Based on the sampling results the numerous features associated with stratum II are related to prehistoric habitation of the project area.

**Trench BT#23: Orientation: 25/225° TN; Length 8.0 m; Width: 1.0 m (cave-in); Depth: 1.4 m; Profile: Northwest Face**

Profile Description

| Strata | Depth (cmbs) | Description |
|---|---|---|
| Stratum I | 0-25 | 10YR 4/3 brown, slightly compact, with weak medium granular structure, sandy loam. Contains terrigenous sediment and medium beach sand and abundant roots & rootlets. A horizon. Lower boundary abrupt/wavy. |
| Stratum II | 15-BOE | 10YR 4/3 brown, slightly compact, structureless, fine to medium sand. Somewhat mottled with the underlying III (beach sand). Str. II contains a few roots and rootlets, flecks of charcoal, and water rounded shell fragments and coral pebbles. It also contains a large feature (Feature #1–human burial) and a large root mold that extend into the underlying stratum III. Lower boundary abrupt/wavy. Str. II is an older A-horizon buried, probably fairly recently, by Str. I. |
| Stratum III | 20-BOE | 10YR 7/3 very pale brown, loose to slightly compact (with greater depth), structureless, medium to coarse sand. Contains abundant water rounded coral & shell pebbles and very few roots and rootlets. No culture. |

The root mold in the trench profile contains decomposing roots and is clearly a natural feature extending down from the present land surface.

Feature 1 is a burial pit-feature containing what appears to be a complete human skeleton. The completeness of the skeletal remains could not be established with great certainty without the complete excavation of the burial, however, this estimation of completeness is based on the identification of skeletal material from the head, torso, arms, hands, and feet, suggesting a fairly complete skeleton. The burial was located at the base of the excavation, at what appears to be the base of Feature 1 at 140 cmbs. Identified human remains included the shaft portion of an ulna, a portion of the pelvis, a metacarpal, a foot phalange, and a canine tooth with a pronounced carrie. A large water rounded basalt boulder, measuring 25 cm thick by 35 cm long, was found in the Feature 1 fill directly above the burial, see profile. Also found in the Feature 1 fill were basalt flakes, a fragment of a young pig jaw with molars intact, and marine shell midden. No samples were collected from Feature 1, and all skeletal remains were placed back within Feature 1 before Trench 23 was backfilled. Feature 1 was not visible in the opposite (southeast) trench profile. With



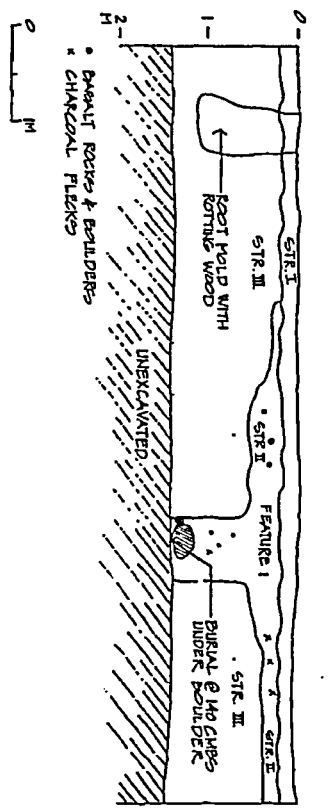



Figure 44 Backhoe Trench #23, Representative West Profile.

the possible exception of the large basalt boulder, no burial goods were found with the burial. However, it should be stressed that only the barest minimum of the burial was exposed. Only that which was sufficient to insure its positive identification as a human burial.

The bone material that was seen is fragmentary and poorly preserved. There was no indication that more than one individual was present. No estimations of sex or ethnicity of the individual could be made from the skeletal fragments that were observed. The individual is not a child judging from the canine tooth.

Based on general context–an unmarked burial in coastal sand deposits, with no apparent historic artifacts in association, within what is most likely a prehistoric cultural deposit–it is more likely that the burial is pre-historic/early historic Native-Hawaiian. The burial location was marked with a vertical pole and yellow flagging tape. This pole is protruding 4 inches from the surrounding land surface to allow for easy location of the burial should there be the need. The burial is located 41 meters, at 168 degrees true north from the lone monkey pod tree immediately *makai* of the dry pond noted in Figures 5 and 21.

The burial was found on the afternoon of Saturday, January 22, 2000. As it was a weekend, SHPD notification procedures had to be postponed until Monday morning. On Monday, January 24th, 2000, Mr. Kana'i Kapeliela of the SHPD Burials Program and Ms. Nancy McMahon, SHPD Kauai archaeologist, were each notified of the burial find.

Stratum II is the same buried A-horizon cultural layer documented in Trenches 5 and 14.

**Summary of Trenches 5, 6, 12, 13, 14, and 23 Located in the West Corner of the Project Area**

In this portion of the project area the sediments are almost exclusively calcareous sand. The discontinuous, historically introduced sandy loam has a terrigenous component, but this thin layer is only found at the surface of Trenches 5, 6, and, 23. Evidence of modern land disturbance was documented in Trench 12. A prehistoric/traditional-Hawaiian cultural layer was documented and sampled in Trenches 5, 6, 14, and 23. This layer contains the remains of traditional-Hawaiian habitation and related activities, including charcoal, basalt and volcanic glass flakes, marine shell and fish and mammal bone midden, and numerous intrusive pit-features that extend into the underlying culturally sterile beach deposits. A human burial, thought to be prehistoric or early historic Native-Hawaiian based on available evidence, was also documented in association with this burial. The cultural layer was assigned State site # 50-30-09-792, with the layer itself designated Feature A and the human burial designated Feature B. With one burial found in association with this cultural layer, it would not be surprising for there to be more.



*4. Summary of Subsurface Backhoe Testing*

As expected, sediments in the *makai* portion of the project area are predominantly calcareous beach sand. Only in the area immediately around Kekupua Fishpond were substantial terrigenous sediments found. No evidence of prehistoric/traditional Hawaiian subsurface deposits was found in terrigenous sediments. Evidence of massive historic earth moving was documented in Trench 10, where an artificial berm was created along the northern boundary of Kekupua Fishpond.

Loam and sandy loam terrigenous sediments appear to have been deposited discontinuously over many portions of the project area. Based on field observations these deposits are most likely recent historic or modern and related to land clearance or earth movement. An apparently historic or modern sandy loam deposit was often observed immediately above the older, now buried sand A-horizon.

Beside the historic fill layers documented in Trench 10, subsurface evidence of cultural activity was documented in three locations during the backhoe testing. Two of these locations, Trenches 3 and 7, consisted of discontinuous cultural deposits, charcoal flecking and marine shell, in pit-features. The cultural deposits in Trenches 3 and 7 are most likely historic and were not assigned State site numbers.

The third location consisted of the extensive prehistoric/traditional-Hawaiian cultural layer that was documented and sampled in Trenches 5, 6, 14, and 23 at the project area's west end. A most likely prehistoric/early historic Native Hawaiian burial was located in association with this cultural layer. The layer was assigned State site # 50-30-09-792.

The backhoe testing adequately sampled the *makai* portions of the project area for subsurface cultural deposits. The *mauka* portion of the parcel was not sampled with backhoe trenches based on observations made during the pedestrian inspection of this region. These observations indicated little likelihood of buried cultural deposits in the project area's *mauka* terrigenous sediments.

The discovery of a human burial in these sandy coastal deposits is hardly surprising. There is a reasonable probability that as yet undiscovered human burial remains are located within the project area's sandy deposits. Accordingly, archaeological monitoring should take place during project area development when these sandy coastal deposits will be disturbed, see recommendations section below.

## VII. SUMMARY

The project area is a beachfront property located in the *'ili* of Kapalawai in Makawell on the island of Kaua'i. The property is *makai* of Kaumuali'i Highway. The northern boundary is a barbed wire fence and a rock wall covered with bougainvillea that parallels Kaumualii Highway. The southern boundary is the Pacific Ocean. A'akukui Stream is the eastern boundary. The western project area boundary is a rock wall. These features enclose an area of approximately 170 acres. The Mahikona Stream passes through the central portion of the parcel. There is a man-made bog in the western end. For descriptive purposes the project area is divided into two lots. Lot 1 is in the northwest corner. It is enclosed by rock walls and fences, and contains a land area of approximately 26 acres. Lot 1 contains the living quarters of the property. Lot 2 is much larger at approximately 144 acres. It is primarily used as pasture land for cattle. The terrain slopes gently up *mauka*, and is relatively flat. In the middle of Lot 2 is Kekupua Fishpond which is fed by three natural springs.

The project area is located close to Waimea River where Captain James Cook first set foot in Hawai'i in 1778. At that time he recounts a scene of houses and taro production in the area. Nearby, in 1816, the Russian-American Company built Fort Elisabeth under the direction of Georg Schäffer. A year after it was built the fort was abandoned by the Russians and occupied by Hawaiians under the rule of Kaumuali'i. In 1831, the many cattle that had been introduced to Kaua'i were being ranched for the first time. At the time of the *Māhele* in 1845, the land use pattern for the area was predominantly agriculture throughout the fertile valleys of Waimea and Makawell. Shortly after the *Māhele* the land owners of the current project area arrived in Hawai'i. The Robinson family in Hawai'i dates back to 1863, when Eliza Sinclair brought her family from New Zealand and bought Ni'ihau, and later extensive acreage on Kaua'i (*Honolulu Advertiser*, 1999). The Robinson family acquired the property in 1865, and it has been in their possession ever since (oral interview with Warren Robinson, 2/17/99). They built the first structure there (main house) in 1897. Over time, the area within Lot 1 had developed into the living quarters for the land owner and the workers. "The Kapalawai house was once the family compound and heart of the clan's sugar and cattle enterprises" (*Honolulu Advertiser*, 1999). Lot 2 was made into a pasture which it is still used as today.

Kekupua Fishpond, documented in *Māhele* records, and the prehistoric/traditional-Hawaiian cultural layer at the project area's west end, are the only pre-contact sites found within the project area. All other sites and structures found were related to the Sinclair-Robinson era. Subsurface testing results did not reveal the presence of any subsurface traditional-Hawaiian deposits near the fish pond, or in most of the coastal sand deposits.

The archaeological pedestrian inspection consisted of a systematic walk over of the entire project area. As was expected, a variety of historic sites directly related to the Robinson family occupation were located within the project area. A total of five historic properties were located and recorded during the pedestrian inspection. They are summarized below. Most of the sites located during the inventory survey are concentrated in and around Lot 1



(see Figure 5 above), which was the main habitation area for the Robinson family. An additional historic property, the prehistoric/traditional-Hawaiian cultural layer, was subsequently located during the subsurface testing phase of the project. This site is also summarized below.

Site 50-30-9-762 is a wall system in and around the camp compound in Lot 1. It consists of six separate components.

- **Feature A:** A rock wall on the west side of the driveway with rock column and iron gate.
- **Feature B:** A rock wall on the east side of the driveway with rock column and iron gate.
- **Feature C:** A rock wall along the old government road at the northern project area boundary.
- **Feature D:** A rock wall that is the western boundary. It extends into Lot 1.
- **Feature E:** A series of rock walls and extensions within the camp area of Lot 1.
- **Feature F:** A rock terrace near the entrance to the camp area in Lot 1.
- **Feature G:** Iron try-pot

Site 50-30-9-763 is a 48.5m (155 ft.) by 23m (73.5 ft.) stone platform.

Site 50-30-9-764 is the main house complex within Lot 1. It consists of 14 structures.

- **Feature A:** The main house.
- **Feature B:** The guest house/current residence.
- **Feature C:** The servants quarters/current offices.
- **Feature D:** The carriage house/current garage.
- **Feature E:** The remnants of a tack room.
- **Feature F:** The greenhouse.
- **Feature G-N:** Employee cottages.

Site 50-30-9-765 is the 6-acre Kekupua Fishpond.

Site 50-30-9-766 is a Portuguese brick oven.

Site 50-30-9-792 consists of an extensive prehistoric/traditional-Hawaiian cultural layer that was documented and sampled in backhoe Trenches 5, 6, 14, and 23 at the project area's west end. A most likely prehistoric/early historic Native Hawaiian burial was located in association with this cultural layer.

Hand excavated subsurface testing was performed in and around State Site 50-30-9-763, and at the juncture of the Mahikona Stream and shoreline. Three test units were excavated on the surface of the platform (State Site 50-30-9-763). Test Units 1, 2, and 3 did not yield midden, charcoal, or artifacts of any kind. Test Unit 2 was excavated into the mounded ridge extending down the center of the platform. The results of Test Unit 2 indicate the paved surface of the platform is continuous and that the ridge postdates the construction of the surface of the platform. Five shovel test pits were placed around the

perimeter of the platform to look for cultural deposits. The shovel test pits revealed the rocky nature of the soil surrounding the platform. These pits did not yield midden, charcoal, or artifacts of any kind. The findings indicate a sterile environment in and around the platform. A single test unit was excavated above the west bank of Mahikona Stream where the vegetation begins behind the beach. Test Unit 4 was excavated to a maximum depth of 1.30mbs (4 ft.) and yielded a cultural layer (stratum 2) between .68mbs (2 ft.) and .84mbs (2.5 ft.). Historic metal pieces were found. Additionally, the west bank of Mahikona Stream was excavated at the beach only to reveal boulders used to reinforce the bank and driftwood. No major sub-surface deposits were found within the proposed project area.

Backhoe subsurface testing was carried out throughout the *makai* portion of the project area. Twenty-three trenches were excavated, documented, and sampled. The detailed results as well as a general summary of this work are summarized above.

Background research revealed a substantial amount of historic modification to the project area for the purpose of ranching. Field observations confirmed that the project area has been utilized for ranching, agriculture and residential habitation. During the backhoe subsurface testing, evidence of historic and modern earth moving and sediment redeposition were documented.



## VIII. SIGNIFICANCE EVALUATIONS

Site significance was evaluated using five broad criteria defined by the State of Hawai'i and National Registers of Historic Places (HRS 6E-10 and 6E-5.5). A cultural site is determined to be significant if the:

A. Site reflects major trends or events in the prehistory or history of the state or nation.
B. Site is associated with the lives of persons significant in our past.
C. Site is an excellent example of a site type.
D. Site has yielded or is likely to yield information important to prehistory or history.
E. Site has traditional cultural significance to an ethnic group.

*Significance Table*

The following table provides a summary of the significance evaluation of each site and feature within the proposed project area.

| | | Significance Criteria | | | | |
|---|---|---|---|---|---|---|
| Site # | Brief Description | A | B | C | D | E |
| 50-30-9-762 | Ranching/Agricultural Infrastructure | | | | X | |
| 50-30-9-762/A | Rock wall | | | | | |
| 50-30-9-762/B | Rock wall | | | | | |
| 50-30-9-762/C | Rock wall | | | | | |
| 50-30-9-762/D | Rock wall | | | | | |
| 50-30-9-762/E | Rock wall | | | | | |
| 50-30-9-762/P | Rock terrace | | | | | |
| 50-30-9-762/G | Iron try pot | | | | | |
| 50-30-9-763 | Rock platform | | | | X | |
| 50-30-9-764 | Robinson Family Compound* | | | | X | |
| 50-30-9-764/A | Main house | | | | | |
| 50-30-9-764/B | Guest house | | | | | |
| 50-30-9-764/C | Offices | | | | | |
| 50-30-9-764/D | Carriage house | | | | | |
| 50-30-9-764/E | Tack Room | | | | | |
| 50-30-9-764/F | Greenhouse | | | | | |
| 50-30-9-764/G-N | Employee cottages | | | | | |
| 50-30-9-765 | Kekupua Fishpond | X | | X | X | |
| 50-30-9-766 | Portuguese Oven | | | X | | X |
| 50-30-9-792/A | Precontact Cultural Layer | | | | X | X |
| 50-30-9-792/B | Human Burial | | | | | |

*Significance determined by Mason Architects, Inc., in a report accepted by Ms. Carol Ogata, Branch Chief Architecture Branch, SHPD/DLNR (Mason Architects, Inc. 2000)

**State Site # 50-30-9-782 (Rock Walls, Rock Terrace, and Iron Try Pot)**

This is a multiple feature site composed of seven features (A-G) which include a series of rock walls, one terrace, and the iron try pot. These features are associated with Robinson Family ranching and agricultural activity.

The walls are difficult to date, but the property boundary wall features besides defining property limits, appear to have been constructed to provide a certain amount of privacy to the landowner. The larger walls likely also served to keep cattle out of the Robinson residential compound. The smaller camp wall features and terrace seem customized for use in and around Lot 1. The iron try-pot (feature G) is significant under two different contexts. This artifact relates to a period of history (the whaling era) for which we believe very few artifacts exist in the Waimea area. This try-pot is a historically significant artifact, based on its original use in the whaling industry. In its current context, the iron try-pot is significant as part of the ranching infrastructure because of its use as a feed trough. Site 762 is significant under criterion 'D'.

**State Site # 50-30-9-783 (Rock Platform)**

The 48.5 x 23 x 2.5 meter (155 x 74 x 8 ft.) platform has a relatively even surface that slopes from its high end at the south downward to the north. There are five identifying characteristics on the surface of the platform: Two linear paved depressions, a mounded ridge extending down the center, an oval mound, and a constructed pit. A total of 8 test units were excavated in and around the structure. Testing revealed no cultural materials of any kind. Testing also revealed the structure had been modified through multiple phases of construction. The surface is relatively even, not piled, and its construction required a substantial amount of time and effort. Based on these observations it is assessed as historically significant under criteria 'D'.

**State Site # 50-30-9-784 (Historic Buildings)**

This site consists of fourteen historic structures (Features A-N) which include: the main house, a guest house, offices (previously servants quarters), a carriage house/garage, a tack room, a greenhouse and eight employee cottages.

The main house dates back to 1897 and "is an example of the Queen Anne style, which is a sub-type of the Victorian style, typical of the turn-of-the century period" (Masons Architects, Inc. 1999:20). The house was one of the first buildings constructed on the property and it was "designed by C.P. Ripley and Arthur Reynolds, prominent architects during that period in Hawai'i" (*Ibid.*,:21). These structures were built for the Robinson family, a prominent landowner with a long history in Hawai'i. For these reasons, Features A-C are assessed significance by Mason Architects, Inc. based on criteria 'B' and 'C'. Features D-N were evaluated by Mason Architects, Inc., as well. Their significance evaluations are part of Mason Architects, Inc., historic structures report, which was accepted by the SHPD/DLNR architecture branch in February 2000.



**State Site # 50-30-9-765 (Kekupua Fishpond)**

Kekupua Fishpond measures roughly 309 x 120 meters (989 x 384 ft.). This fishpond has a number of historic modifications, and is not currently in use. It is, however, a good example of a fishpond, and could yield more information through further testing. For these reasons, its significance is based on criteria 'A', 'C' and 'D'.

The landowner is committed to preservation and restoration of the fish pond. This maintenance process could disturb the bed of the pond. In an effort to obtain datable material and advance the field of paleoecological studies in Hawai'i, it was recommended that coring samples be taken prior to cleaning. Paleoecology studies the characteristics of ancient environments and their interrelationships with ancient plants and animals. The study of pollen assemblage from datable core samples has yielded data allowing for paleoenvironmental reconstruction. Research performed by Athens *et al.* (1992), Athens and Ward (1991), Wickler *et al.* (1991), and Hammatt *et al.* (1990) has had success in reconstructing paleoecological systems in Hawai'i.

On May 29, 1999, Cultural Surveys Hawaii, Inc., in coordination with Dr. William Kikuchi and Dr. David Burney, conducted coring tests at the fishpond. The results of the coring are included as an addendum to this report (Appendix 4).

**State Site # 50-30-9-766 (Portuguese Oven)**

This mortared stone and brick oven measures roughly $2m^2$ (6.5 sq. ft.), and is clearly historic. It is in very good condition, and a good example of this feature type. Therefore, it is significant under criterion 'C' and 'E'.

**State Site # 50-30-9-792 (Traditional-Hawaiian Cultural Layer and Human Burial)**

Site 50-30-9-792 consists of subsurface cultural deposits containing the charcoal-enriched sediments, pit-features, artifacts, and midden associated with prehistoric or early historic traditional-Hawaiian occupation. The site is significant under Criterion D of the State and National Registers of Historic Places for its information content regarding traditional-Hawaiian coastal habitation in this portion of Kauai. The age and ethnicity of the human burial associated with the cultural layer (Feature B), based on the available evidence, is most likely a prehistoric or early historic Native-Hawaiian. Accordingly, the site also has traditional cultural significance to Native Hawaiians and is significant under Criterion E of the State and Register of Historic Places.

## IV. MITIGATION RECOMMENDATIONS

*Mitigation Table*

The following table summarizes the mitigation recommendations of all sites and features found within the proposed project area.

| SITE # | DESCRIPTION | MITIGATION RECOMMENDATIONS |
|---|---|---|
| 50-30-9-762/A | Rock wall | No further historic preservation work |
| 50-30-9-762/B | Rock wall | No further historic preservation work |
| 50-30-9-762/C | Rock wall | No further historic preservation work |
| 50-30-9-762/D | Rock wall | No further historic preservation work |
| 50-30-9-762/E | Rock wall | No further historic preservation work |
| 50-30-9-762/F | Rock terrace | No further historic preservation work |
| 50-30-9-762/G | Iron try-pot | Preservation |
| 50-30-9-763 | Rock platform | Preservation in place with no buffer zone |
| 50-30-9-764/A | Main house* | Preservation and restoration |
| 50-30-9-764/B | Guest house* | Preservation and restoration |
| 50-30-9-764/C | Offices* | Preservation and restoration |
| 50-30-9-764/D | Carriage house/Garage* | Photo Documentation before removal |
| 50-30-9-764/E | Tack Room* | Photo Documentation before removal |
| 50-30-9-764/F | Greenhouse* | Photo Documentation before removal |
| 50-30-9-764/G-N | Employee cottages* | (Being evaluated by Mason Architects, Inc.) |
| 50-30-9-765 | Kekupua Fishpond | Preservation and restoration |
| 50-30-9-766 | Portuguese Oven | Preservation |
| 50-30-9-792/A | Cultural Layer | Preservation/Monitoring During Construction |
| 50-30-9-792/B | Human Burial | Preservation |

* Recommendations based on the work of Mason Architects, Inc. (2000).

**State Site # 50-30-9-762 (Rock Walls, Rock Terrace, Iron Try-Pot)**

This site contains seven features (A-G) which are a series of rock walls, a rock terrace, and an iron try-pot.

It was determined that this site is related to the Robinson family era of occupation at Kapalawai. The majority of the walls were boundary walls or associated with use specific to the needs of the Robinson family. The iron try-pot, in its present context, is related to



ranching infrastructure. The information content of the site has been documented during the inventory survey. With the exception of the iron try-pot (Feature G), no further historic preservation work is recommended for the site. We do recommend, however, in keeping with the ambiance of the Robinson estate, that the proposed development plans integrate these features into the project design as much as possible.

Feature G, the iron try-pot, is the only feature of Site # 50-30-9-762 recommended for preservation. Iron try-pots, a remnant of the whaling era, were incorporated into the sugar and ranching industries. At Kapalawai, iron try-pots were filled with sugar molasses and put in the pastures to feed the cattle. Adjacent to the fish pond is the only remaining try-pot on the property. Iron try-pots are uncommon enough and because of its interesting history and its contribution to an important era, we are recommending preservation. We also recommend construction of a moderate roof structure to shelter it from the weather.

**State Site # 50-30-9-763 (Rock Platform)**

Test excavations did not yield any information regarding the function and age of this rock platform. Oral interviews suggested the site was used as a clearing mound in the 1940's. However, community concerns have been expressed as to whether a clearing mound was its sole function. There were other factors which raised serious questions regarding the "clearing mound" theory. The presence of certain sub-features (a paved depression and a well-constructed pit), along with the size of the structure and the amount of time and effort taken to construct it and pave the entire surface, are difficult to reconcile with this being simply a clearing mound. Due to remaining uncertainty regarding the function of this highly anomalous site, we are recommending preservation. For these reasons, preservation is being recommended, with no buffer zone. The landowner has agreed to this arrangement.

**State Site # 50-30-9-764 (Historic Buildings)**

This site consists of fourteen historic structures (Features A-N): the Aubrey Robinson home, a guest cottage, servants quarters which are now used as offices, a carriage house/garage, a tack room, a greenhouse and outlying worker's cottages.

Since this site consists of historic buildings, it is beyond our scope of work and expertise to evaluate this site. A proper evaluation by an architectural historian to evaluate 1) its architectural and historic merit and 2) assess its present integrity was made by Mason Architects, Inc. Based on their report (July, 1999), the main house, the guest house, and the offices are being recommended for preservation and restoration. Due to the "poor condition" and the fact that "repairs needed would require so much reconstruction that very little historic material would remain, diminishing much of the building's historical integrity", the recommended mitigation for the carriage house, tack room and greenhouse is photographic documentation before removal of these three structures (Mason Architects, Inc. 1999:22). Mitigation recommendations for the workers' cottages (Features G-N) are available in the revised historic structures report for Kapalawai by Mason Architects, Inc. (2000). This report has been approved by the architecture branch of the SHPD/DLNR.

**State Site # 50-30-9-765 (Kekupua Fishpond)**

The landowner is committed to the preservation, cleaning and restoring of Kekupua Fishpond. At present, expertise is being sought out as how best to accomplish this restoration. Any restoration efforts will be accomplished in consultation with the State Historic Preservation Division. The fish pond is being recommended for restoration and preservation following documentation of sediments (See Appendix 4).

*Mo'o Stone*

Additionally, there is a *Pohaku* (rock) in the fish pond associated with a *mo'o wahine* legend, which is now covered by water and debris and cannot be seen. It is recommended that before restoration work on the pond begins, this *Pohaku* (rock) be located and that it be preserved in place. We also recommend that Mr. Hakila Callahan be contacted to identify the exact location of the *Pohaku* (rock).

**State Site # 50-30-9-766 (Portuguese Oven)**

This oven is a wonderful example of its kind and represents an ethnic group important in the history of Hawai'i. The recommendation is to preserve the oven in place on the property.

**State Site # 50-30-9-792 (Traditional-Hawaiian Cultural Layer and Burial)**

State Site # 50-30-9-792 consists of a traditional-Hawaiian cultural layer and an associated human burial, which, based on available evidence, is likely prehistoric/early historic Native-Hawaiian. Both the cultural layer and the burial are recommended for preservation through the establishment of an archaeological and burial preserve area. The approximate location and dimensions of this preserve area are plotted on Figures 5 and 21. The preserve area boundaries include all areas where the discontinuous cultural layer was encountered during the backhoe testing of the parcel, plus a fifty-foot buffer. The preserve area covers an area of approximately 8250 $m^2$ (88,750 $ft^2$.) Two mitigation steps will be required to establish this preserve area.

Feature 50-30-9-792/A, the cultural layer, will require the preparation of a preservation plan. The cultural layer is recommended for preservation for future archaeological research. The preservation plan will outline the short-term and long term preservation measures that will safeguard the feature from damage during project construction and subsequent land use. Recommended short term preservation measures include:

1) a preconstruction meeting with the project construction personnel to make them aware of the location and significance of the preserve area;

2) surveying the preserve area boundaries by professional land surveyors so the



correct dimensions of the preserve area can be plotted on all project development maps. No construction or other land disturbance should take place within this preserve area; and

3) the erection of temporary 4-foot high plastic event fencing during construction along the preserve area boundary to make the boundary highly visible to machine operators. This fencing can be removed once construction is completed.

Long term preservation measures should protect the site for future research. These include keeping the preserve are free of ground disturbance such as construction, excavation, or major landscaping, such as tree planting. Simple landscaping, such as a grass lawn, should be installed to cover and protect it from erosion and pedestrian traffic. Once adequately protected by a lawn covering the preserve area need not be closed off from public access. No fencing or other demarcation of the preserve area is recommended, as this will only draw undue attention to the area.

Feature 50-30-9-792/B, the human burial, is recommended for preservation in place within the combination archaeological and burial preserve area. The preservation of the burial will require the preparation of a burial treatment plan. As a previously recorded burial site (so designated because it was found during inventory survey investigations) the mitigation and treatment of these skeletal remains fall under the jurisdiction of the Kauai Island Burial Council, who must approve all mitigation and/or treatment measures. The request for preservation in place must be presented to the Burial Council in the form of the burial treatment plan. The requirements for a burial treatment plan are clearly outlined in Chapter 13-300, Hawai'i Administrative rules "Rules of Practice and Procedure Relating to Burial Sites and Human Remains". Along with other information the burial treatment plan must include:

1) Evidence of good faith search for lineal and cultural descendants, including legal advertising;

2) Names of known lineal or cultural descendants recommended by the SHPD Burials Program and recognized by the Burial Council; and

3) A description of proposed treatment of all burial sites including a statement of preservation in place or relocation. This should include both short and long term measures, which would be very similar to the measures given above for the archaeological site preservation plan.

Both the preservation plan and the burial treatment plan will have to be written, approved by SHPD (preservation plan) and the Kauai Island Burial Council (burial treatment plan), and implemented, before development of the parcel can begin.

## Recommendation for Archaeological Monitoring

The proposed development of the project area will entail construction related grading and trenching. Subsurface testing results indicate that two site or feature types will potentially be found during ground disturbance: human burials and subsurface prehistoric cultural layers. These site/feature types are much more likely to be found in the project area's sand deposits along the coast. Accordingly, archaeological monitoring is recommended for all portions of the project area containing sand deposits. Before construction begins a monitoring plan should be written, approved by SHPD, and implemented.

Although only one burial was located in the project area during the backhoe testing, this cannot be taken as an indication that no other burials exist. Traditional-Hawaiian burials are common in coastal sandy deposits like those that make up the *makai* portion of the project area. There is a distinct possibility that additional burials will be found during project construction.

Although unlikely, there is the possibility that additional subsurface prehistoric cultural deposits will be located in the project area during construction. It is therefore recommended that the monitoring plan include provisions for the documentation of inadvertently discovered prehistoric cultural deposits. Documentation of features should include plotting their location on the overall project area map, profile drawings, descriptions of their stratigraphic context, descriptions of the feature's contents, and, if possible, samples for radiocarbon dating analysis. The monitoring plan should contain provisions for the analysis of these samples, if they are encountered. If available this information would provide better understanding of the prehistoric coastal occupation in the region.

In consultation with DLNR/SHPD and the Kauai Island Burial Council it may be possible to combine the burial treatment and preservation plans for Site 50-30-9-792 with the monitoring plan for the entire parcel into a comprehensive historic preservation mitigation document. The preparation of one overall mitigation document would presumably be more cost effective for the client.



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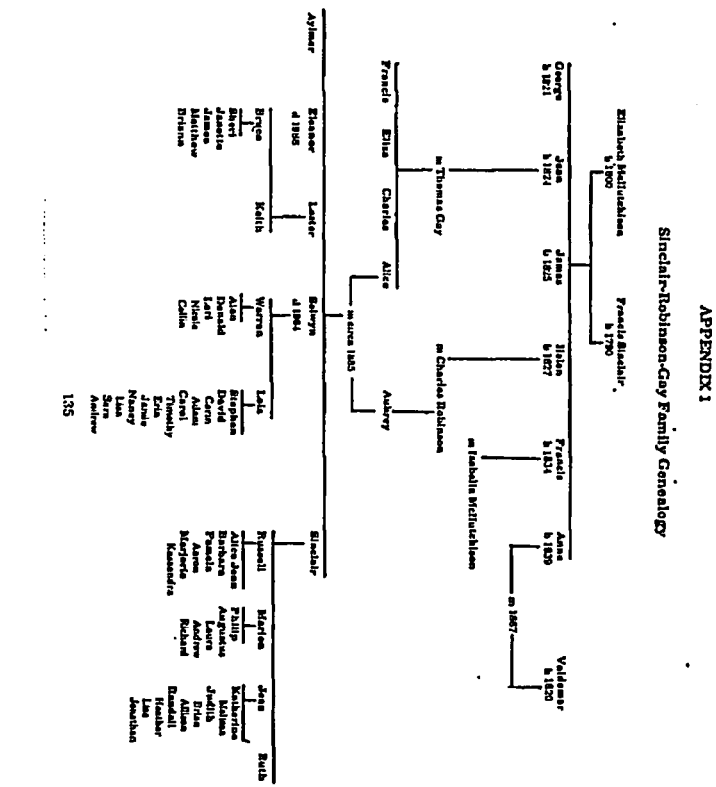
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## APPENDIX 1

### Sinclair-Robinson-Gay Family Genealogy






## APPENDIX 2

### TABLE 1

**State Sites Recorded in and Around Waimea Town**

| State Site Number | Function | Report |
|---|---|---|
| 50-30-05-3244 | Mostly Individual Burials | Cox 1975 |
| 50-30-05-3245 | " | Cox 1975 |
| 50-30-05-3246 | " | Cox 1975 |
| 50-30-05-3250 | " | Cox 1975 |
| 50-30-05-3251 | " | Cox 1975 |
| 50-30-05-3252 | " | Cox 1975 |
| 50-30-05-3253 | " | Cox 1975 |
| 50-30-05-3254 | " | Cox 1975 |
| 50-30-05-3255 | " | Cox 1975 |
| 50-30-05-3256 | " | Cox 1975 |
| 50-30-09-26 | Ditch | Kikuchi 1983 |
| 50-30-09-1870 | Burial | Kikuchi 1983 |
| 50-30-06-498 | Burials, Walls, Enclosures, Platforms | McMahon 1993 |
| 50-30-05-1853 | Grave Sites | Sinoto 1993 |
| 50-30-05-1854 | " | Sinoto 1993 |
| 50-30-05-4012 | Cultural Layer and Burial | Hammatt 1993 |
| 50-30-05-636 | Historic Cave Burials | Hammatt 1993 |
| 50-30-05-637 | " | Hammatt 1993 |

**APPENDIX 3**

**Coring at Kekupua Fishpond**



# PRELIMINARY INVESTIGATIONS AT KEKUPUA POND, MAKAWELI, KAUAI

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On 29 May, 1999, the investigators visited Kekupua Pond near Makaweli at the invitation of the landowner, Warren Robinson. The intent was to make a preliminary evaluation of the pond on the site, said to be a prehistoric fishpond, for paleoecological research. This was part of an ongoing archaeological, historical, and ethnographic study of the property by Dr. Hallett Hammatt, of Cultural Surveys Hawaii, and his staff in connection with a development proposal.

### *Physical Description and Limnology*

Kekupua Pond (21° 56' 46" N / 159° 39' 14" W) is a is a small shallow body of fresh water on the SW coast of Kaua'i at Kapalawai, between Makaweli and Waimea. It is classified as a *pu'uone* type pond. A *pu'uone* is created by the formation of a barrier sand dune that isolates the pond from the sea. This is a very common type of pond in the coastal zone of the major islands in the Hawaiian chain. On Kaua'i, this is the type of pond most frequently used as a fishpond or taro pond. Most *pu'uone* have freshwater spring sources, a feature which converts them into an almost freshwater pool termed *loko-wai*. Because of their fresh waters, the inland portions of such ponds were usually partitioned into taro growing areas.

Shaped like an elongate triangle, Kekupua measures ca. 240 m by 100 m. A causeway of earth and stone separates a small section from the main pond. The pond is shallow (generally <1m), and most of its surface is covered by sedges, grasses, and the highly invasive water-hyacinth (*Eichornia crassipes*). A small ditch drains seaward from the pond. A water-grate, which has been remade into a concrete channel and gate-way, exists on this SW end. Low dunes separate the pond from the ocean. The waters of



Kekupua are fresh to very slightly brackish: at noon on 29 May, the specific conductance was 805 µm $cm^{-1}$ and five hours later, 830. The water's pH is neutral to slightly alkaline, measuring 7.6 and 7.5 at these times. Temperatures and oxygen levels of the surface waters were 23.6°C and 24.1°C, and 8.25 and 8.0 mg/l at noon and 5 pm respectively.

Informants attest to the presence of at least three springs. Two were called Kahe and Kekupua; the name of the third is unknown, although it may have been Kinari'i. Informants also say that the fishpond had a *mo'o*, or waterspirit-demigoddess, the caretaker of the watery environment. A large rock stands in the water at the SW side of the pond. This is where the *mo'o* sat and combed her hair, it is said. Her name is not recorded, but may have been the same as that of the pond.

Only the central portion of the pond has >1m of soft sediment. Probing showed that other areas, including the NE end and accessible points along the NW side, had only 30-100 cm of soft mud overlying rock. On the SW end, a similarly thin layer of mud overlies sand and gravel. The causeway that nearly cuts off a section of the pond stands several feet high and is about 2 m wide at the top. It runs across the pond in a *mauka-makai* direction but does not connect to the pond's outer edges. This man-made structure is very unusual because of its size and reputed function, i.e., to isolate one end of the pond to provide safety for the young mullet spawn. Intimated by the size of the mound is the presence of an internal stone wall, repeatedly built up by dredging of the pond. The mound is far too big and tall for the simple function of separating the young fish from the main pond. All sides of this mound are faced with stones. The entire perimeter of the pond is also apparently faced with stone. This facing, standing ca. 1 meter high, is now

set back from the water's edge. Excavations at these points may show that the stone facing was the edge of the original pond.

*Stratigraphy*

The thickest deposit of soft sediment found, ca. 220 cm, was located by probing near the center of the pond. The accompanying figure shows the lithology of this site, which was covered by ca. 10 cm of water at the time of coring. Sediment was recovered in contiguous sections of about 30 cm each using a 7.5 cm-diameter hand-driven bucket auger. Sediments were described in the field, subsamples were collected in airtight plastic bags, and sediment smears were examined by light microscopy at 400X in the Paleoecology Laboratory of the Dept. of Biological Sciences at Fordham University. Munsell colors were recorded in wet condition.

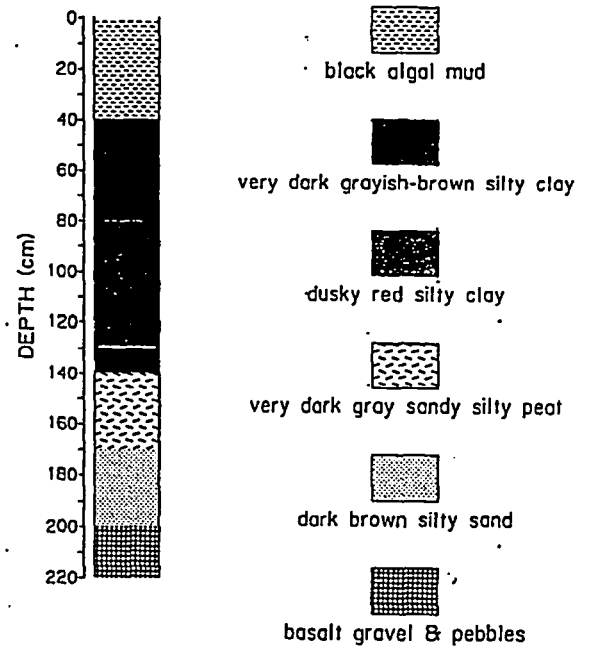
From 0-40 cm below the sediment surface, the coring site (KEK-3) yielded black (N 2/0) algal mud. This material contains an abundant and diverse diatom assemblage, including species in the genera *Nitzschia, Melosira, Pinnularia,* and *Fragilaria.* Plant fibers, fungus spores, and pollen (particularly grasses and sedges) are present.

At ca. 40 cm, the sediment changes to a very dark grayish-brown (10YR 3/2) silty clay. Diatoms are less abundant and not so well-preserved, and organic material in general is scarcer. This silty clay changes gradually at ca. 80 cm to a dusky red (2.5YR 3/2) with fewer coarse clastics and a noticeable increase in charcoal. Sand grains increase in the silty clay at ca. 130 cm, where the color darkens again to very dark grayish-brown (10YR 3/2). This material is more humic than the clay layers above it.

From 140-170 cm, the sediment is a very dark gray (10YR 3/1) sandy silty peat with large pieces of plant fiber and leaf tissue. A "key" (drupe) from a hala fruit



LITHOLOGY OF KEK-3 CORE FROM KEKUPUA POND



(*Pandanus tectorius*) was extracted from the zone of contact between this unit and the one described below.

At ca. 170 cm, the sediment changes abruptly to a dark brown (10YR 3/3) silty sand containing large centric diatoms, sponge spicules, and foraminiferan tests of probable marine origin. Some wood-derived charcoal particles are present at this level. This sand layer coarsens downwards, becoming gravelly at ca. 200 cm. Stones to 5 cm diameter were recovered from the base of the section, at 220 cm. These were subrounded vesicular basalt.

### *Proposed Future Investigations and Provisional Interpretation*

We hesitate to make more than the most provisional paleoecological reconstruction for the site without $^{14}C$ dating and pollen analysis. The hala key retrieved from the top of the basal sand layer has been submitted for $^{14}C$ dating in order to establish a maximum age for the pond. Pollen samples are currently being processed for analysis, and their contents should provide clues to the age of the sediment layers based on comparison to the regional chronology being developed by the investigators from other sites on the island. The organic-rich nature of most of the layers would make it feasible to assemble a complete chronology from radiocarbon dating and intercorrelation with the other studies in progress.

It would appear that the site may have been a shallow natural basin prior to modification by prehistoric Hawaiians. Initially it appears to have experienced marine overwash, followed by a freshwater swamp-forest stage. The overlying clay layers suggest a subsequent period of erosion, perhaps from cultivation of the adjacent banks. Whether this was in prehistoric times or post-European contact cannot be determined



from the evidence presented, but the additional investigations proposed above could almost certainly resolve this question. Following this erosional phase, the pond has reverted to organic sedimentation, probably reflecting the overgrowth of the pond with aquatic vegetation in recent decades. It would appear from the thin mantle of sediments in all areas probed except the pond center that, when the pond was in use for aquaculture and later, irrigation, some small-scale dredging took place. This notion is supported by oral sources.

In conclusion, Kekupua Pond is a valuable source of information concerning the past environments and lifeways of the area. More information could be recovered from the materials collected through radiocarbon dating and pollen analysis, and this work will probably be undertaken as part of our ongoing studies of the paleoecology of Kaua'i. Kekupua also has great potential if it is restored as a fishpond. The shallow depth of the underlying sediments, the apparent solid rock base, and the freshwater springs insure that the pond is continually flushed seaward. The current presence of mullet and tilapia in the pond attests to its continued viability for this purpose.

### *Acknowledgements*

We thank the Robinson family and Dr. Hallett Hammatt for inviting us to examine Kekupua Pond. Field investigations were assisted by Ka'ohulani McGuire, Lida Pigott Burney, Dolly Kikuchi, and Kristina Kikuchi-Palenapa. Our work on Kaua'i paleoecology is supported by Kaua'i Community College, the Smithsonian Institution, National Science Foundation grant DEB9707260, and National Oceanic and Atmospheric Administration grant NA46GP0465.

## APPENDIX 4

**Photos**



Figure 45 Bull in project area.



Figure 46 Photo showing dirt road, vegetation, and cleared areas.



Figure 47 Patches of vegetation in project area.



Figure 48 Patches of vegetation in project area.



Figure 49 Photo of whaling iron try-pot.



Figure 50 Dense vegetation behind shoreline.



Figure 51 Photo taken from beach to main house showing clear line of sight.

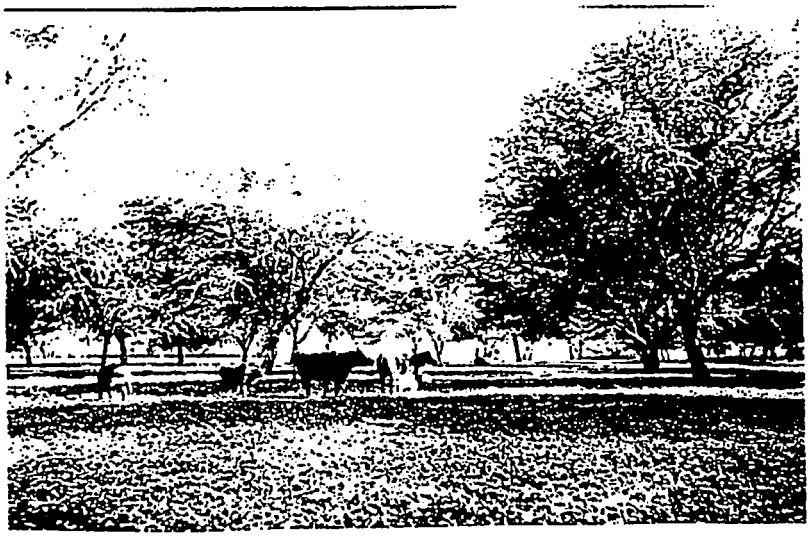


Figure 52 Cattle in project area in early 1900's. Note lower branches of trees cut.



Figure 53 Workers camp houses.



Figure 54 Modern *lo'i* in workers camp.



Figure 55 Site 50-30-9-762/A: Wall lining driveway on Waimea side. View to west.

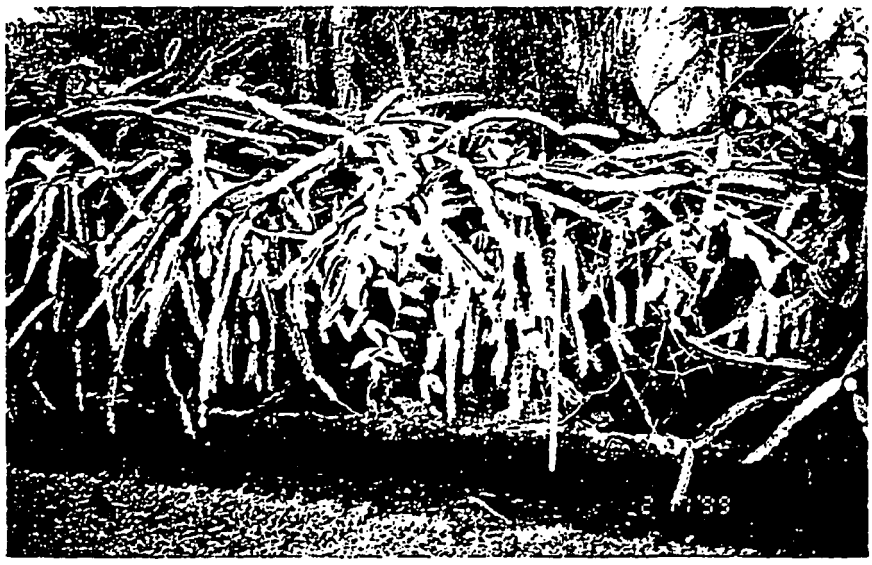


Figure 56 Site 50-30-9-762/B: Wall lining driveway on Hanapēpē side. View to east

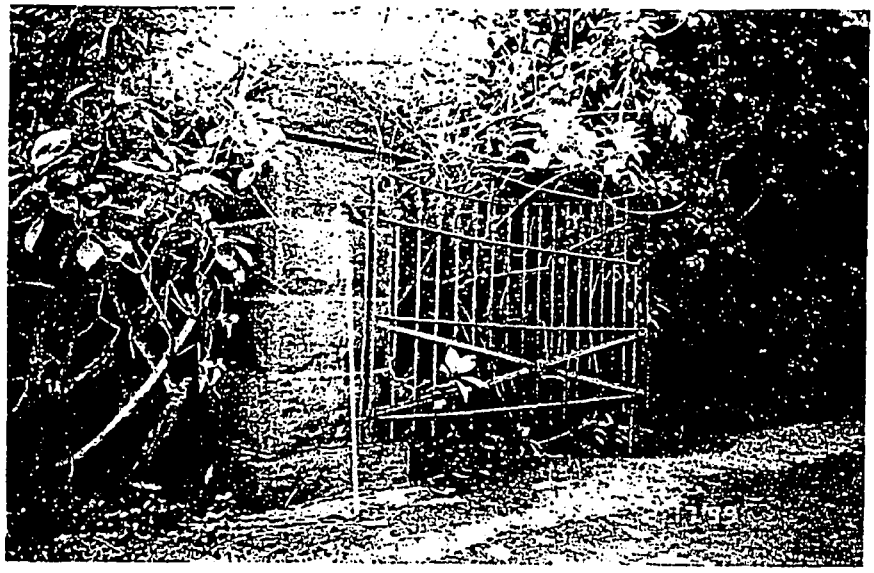


Figure 57 Photo of rock column at front gate.

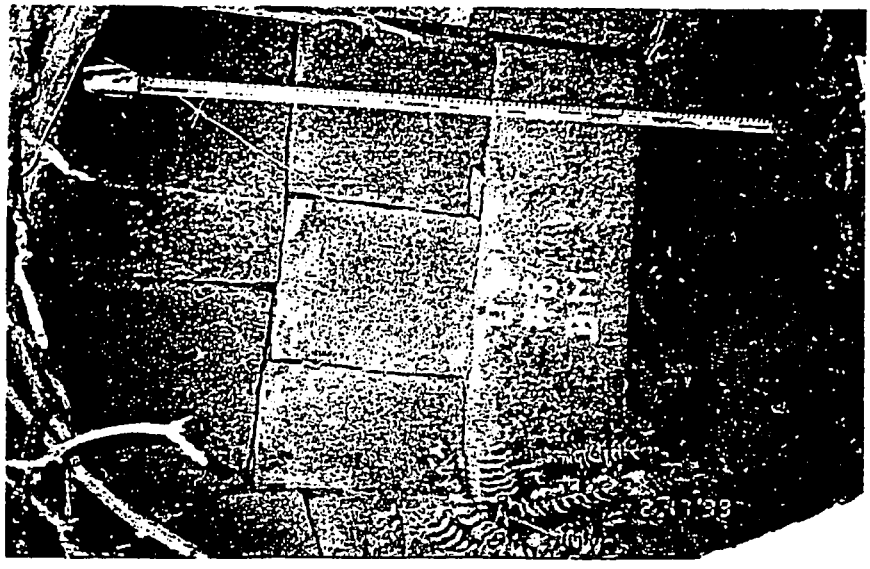


Figure 58 Front gate rock column showing cut stone detail.

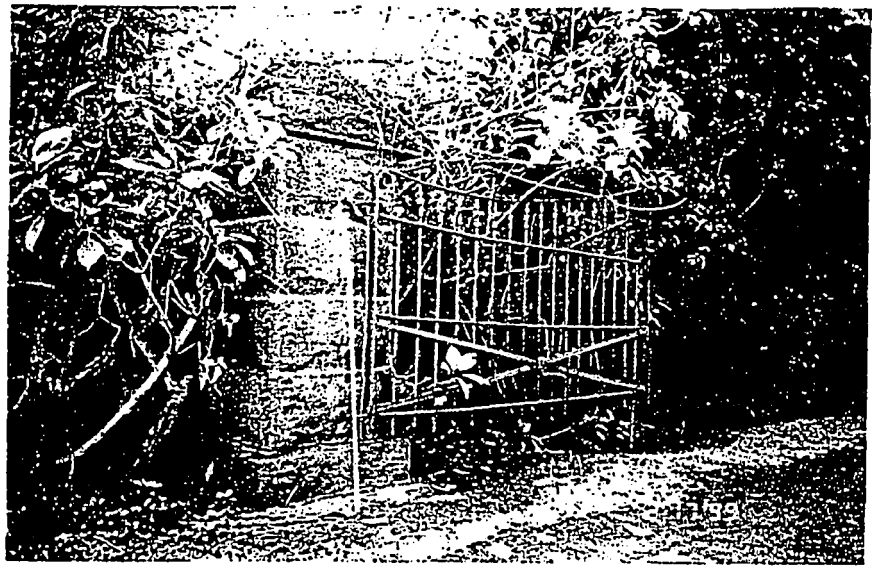


Figure 57 Photo of rock column at front gate.

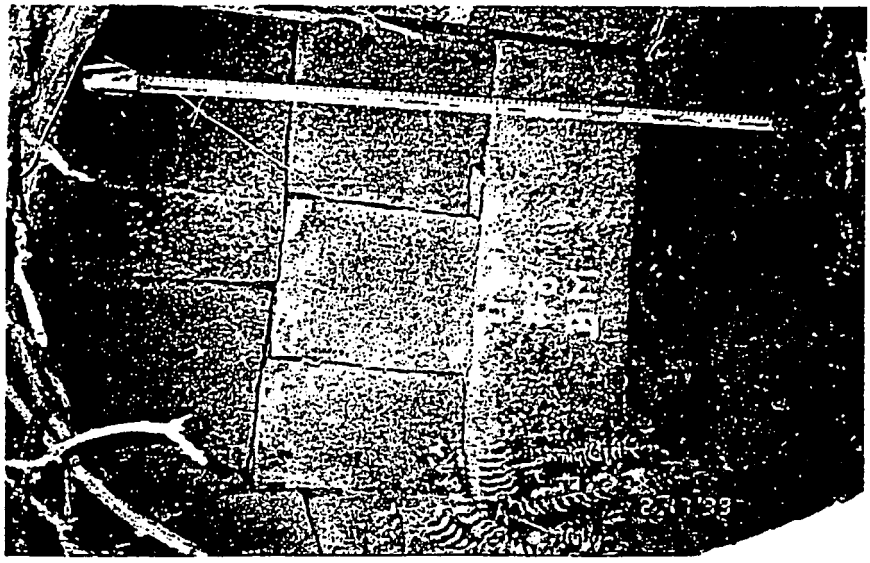


Figure 58 Front gate rock column showing cut stone detail.

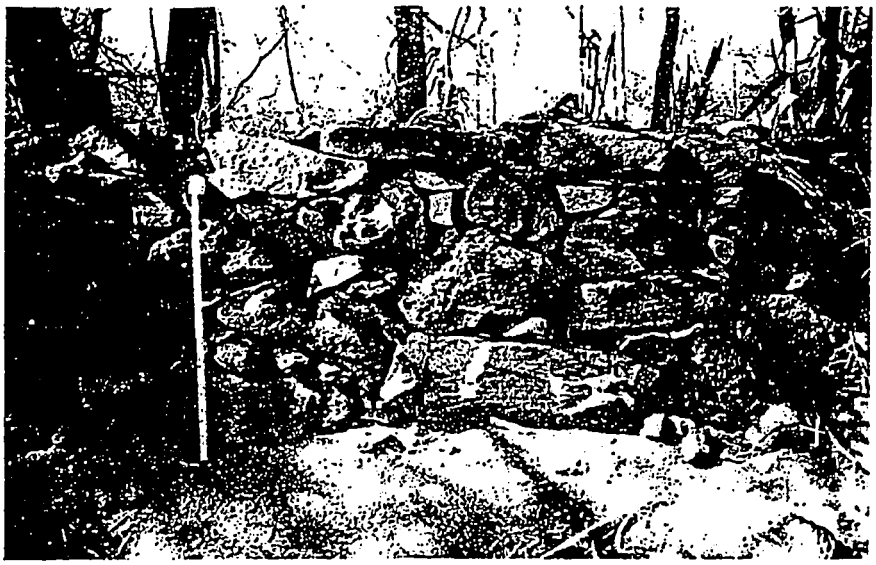


Figure 59 Site 50-30-9-762/C: Photo of northern project area boundary wall.



Figure 60 Site 50-30-9-762/D: Photo of project area boundary wall. View to west.



Figure 61 Site 50-30-9-762/E: A section of rock walls within workers camp.



Figure 62 Site 50-30-9-762/F: Photo of rock terrace. View to west.

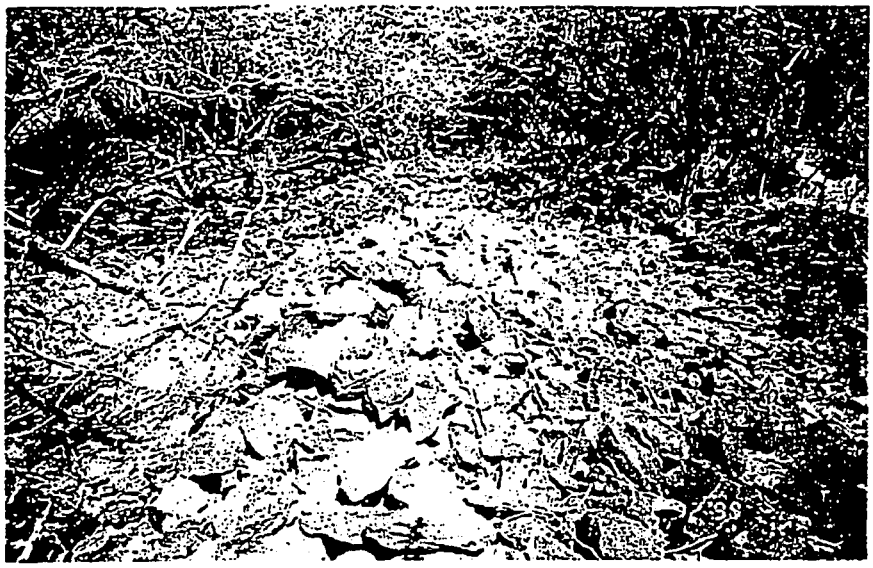


Figure 63 Site 50-30-9-763: Platform showing ridge with paved depressions. View N.

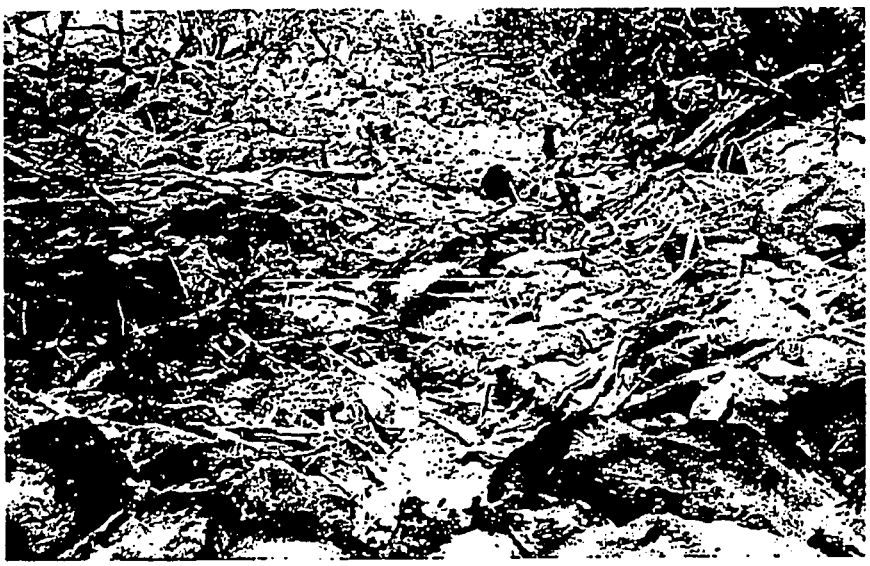


Figure 64 Site 50-30-9-763: Length of paved depression on top of platform. Center ridge on left side of photo. View to north.



Figure 66 Site 50-30-9-763: Profile of mound on surface of platform. View to east.



Figure 65 Site 50-30-9-763: West side of platform abuts project area boundary wall



Figure 67 Site 50-30-9-764/A: Photo of front of main house. View to northeast.

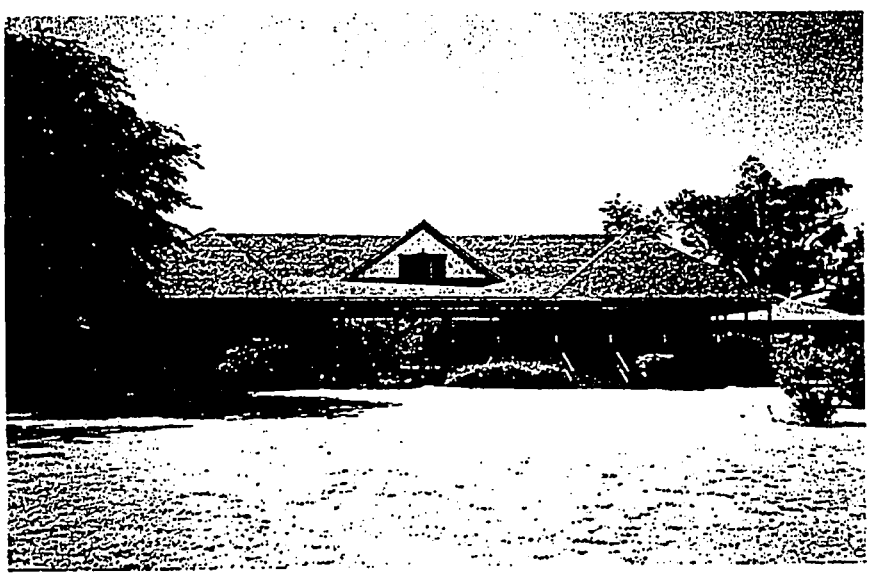


Figure 68 Site 50-30-9-764/A: Photo of back of main house.

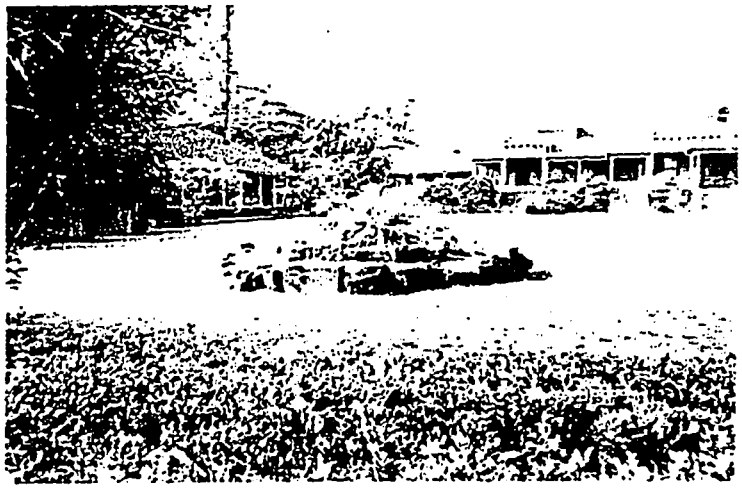


Figure 69 Cut block in modern terraced garden

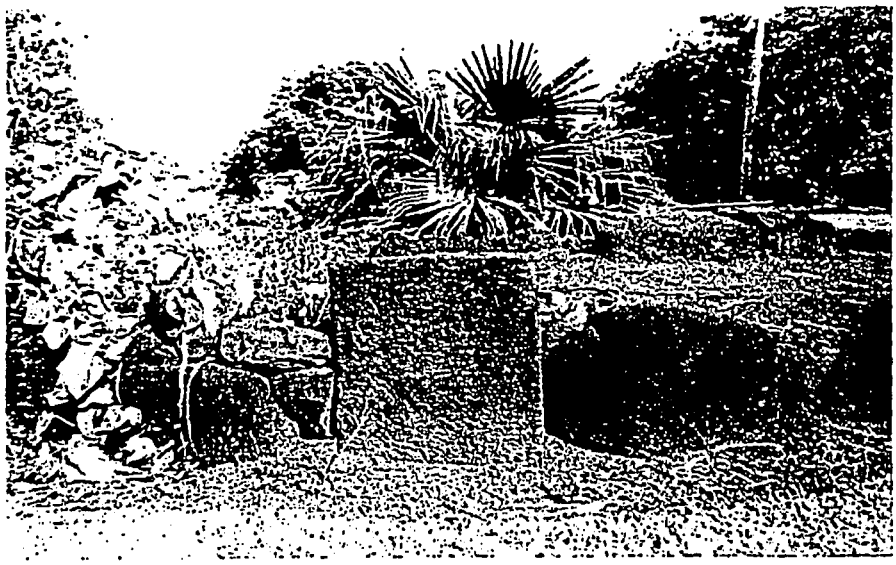


Figure 70 Close up of cut block



Figure 71 Site 50-30-9-764/B: Photo of guest house. View to northwest.



Figure 72 Site 50-30-9-764/C: Photo of servants quarters. View to southeast.

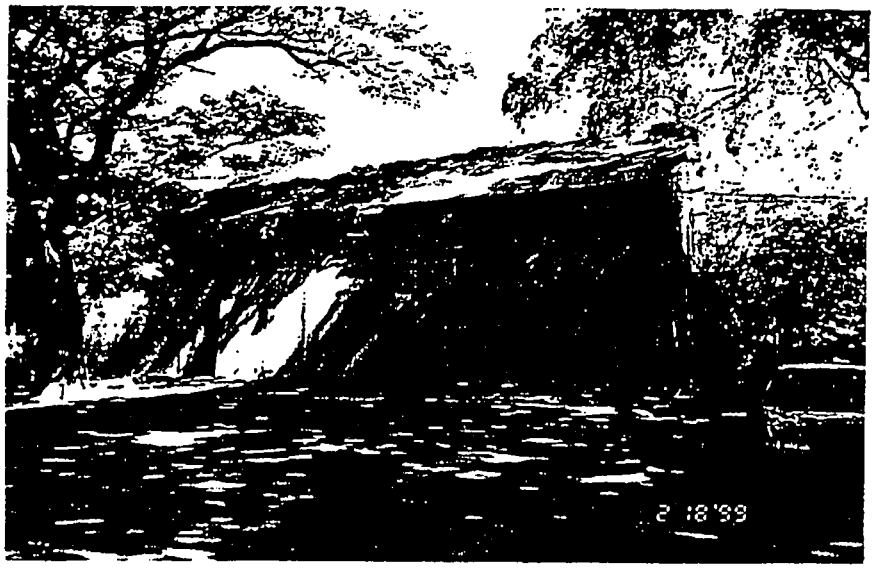



Figure 74 Site 50-30-9-764/D: The carriage house. Part of main house complex.



Figure 73 Site 50-30-9-764/E: Saddle house remnants.



Figure 75 Site 50-30-9-764/F: Exterior of plant house.



Figure 76 Site 50-30-9-764/F: Interior of plant house with excavated floor.



Figure 77 Site 50-30-9-765: Area of fishpond with cattle disturbance. View to west.



Figure 78 Site 50-30-9-765: North end of island wall showing height and structure. View to south.



Figure 80 Site 50-30-9-765: Concrete gate at southwest corner of pond. View west



Figure 79 Site 50-30-9-765: Photo showing pump house, vegetation, and high wall construction around pond. View to north northwest.



Figure 81 Site 50-30-9-765: View from north to south shore showing vegetation.



Figure 82 Site 50-30-9-765: Photo looking across fishpond to west. Small island is visible. The row of coconut trees represents the island wall.

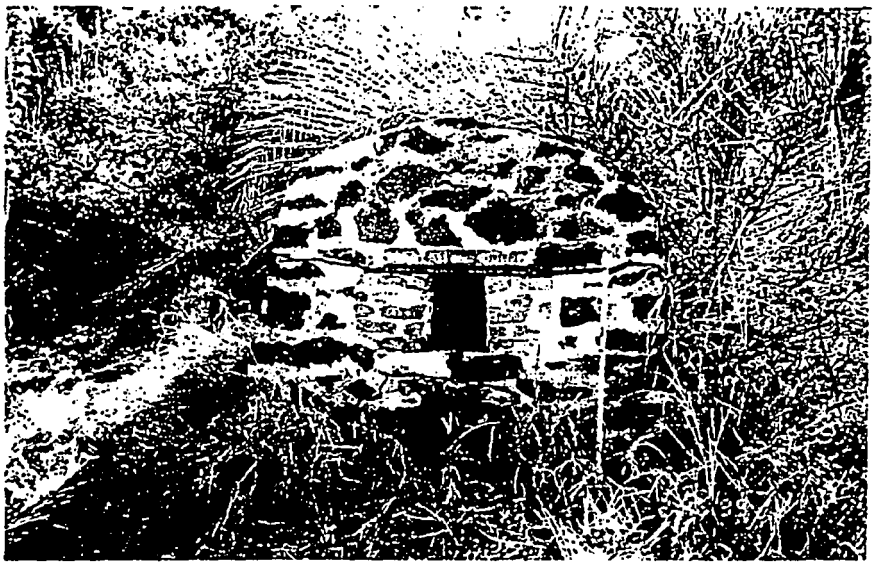


Figure 84 Site 50-30-9-766: Front of Portuguese oven.

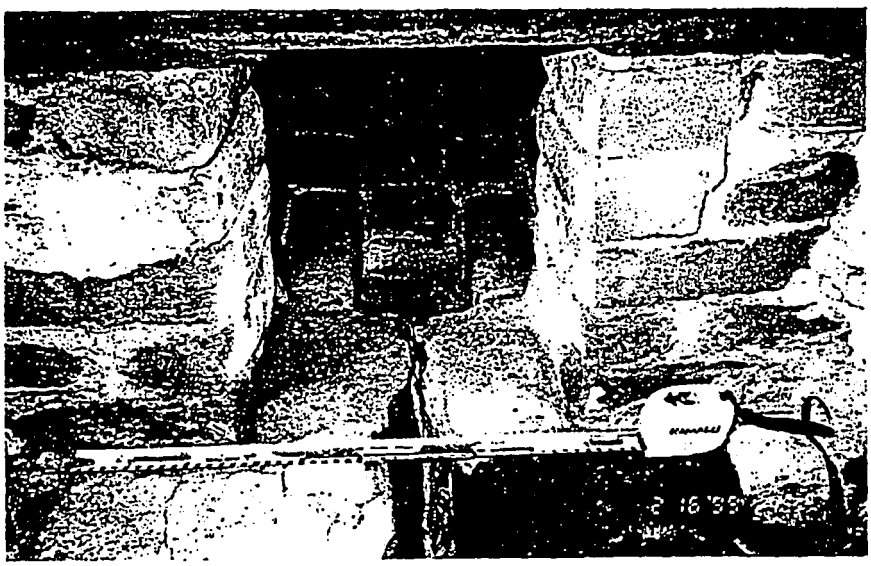


Figure 83 Site 50-30-9-766: Photo showing mouth for ash removal.

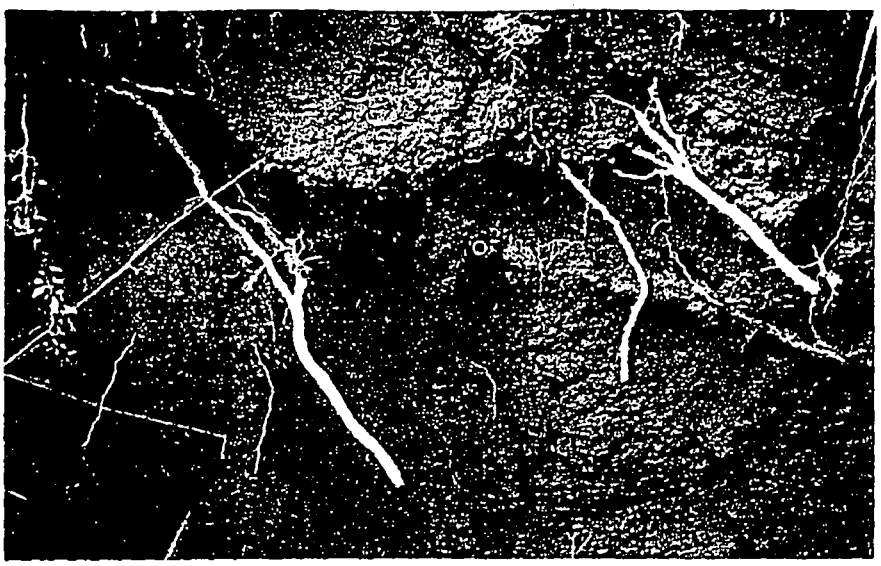


Figure 85 Shot west-southwest of historic material *in situ*, stratum II. Trench 10.



Figure 86 Shot east of Feature 1 (on left) and stratum II. Trench 3. Historic sandy loam overlies stratum II--the buried A-horizon.

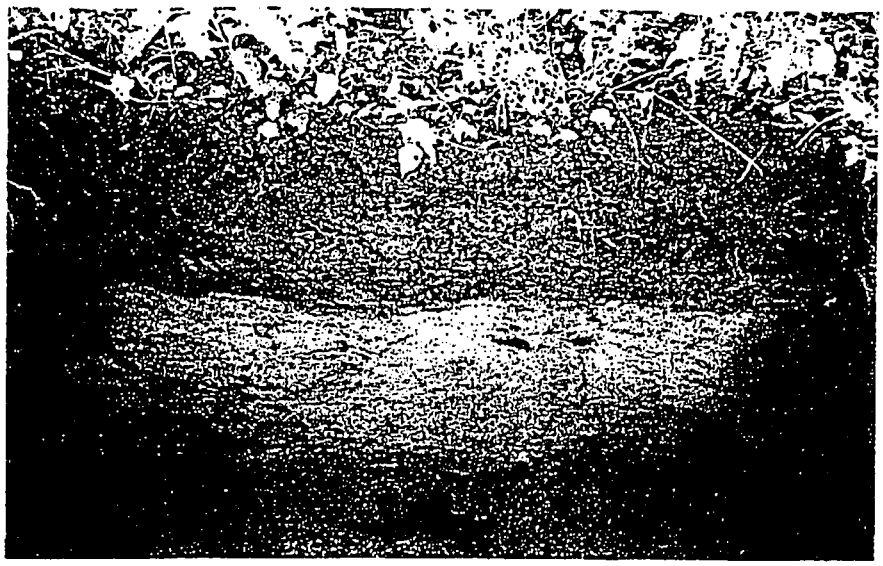


Figure 88 Trench 8. showing historic/modern introduced clay loam sediment overlying calcareous beach sand deposits..



Figure 87 Trench 7. showing charcoal flecking in Feature 1. Red-brown clay-loam sediments above calcareous sand are historic/modern introductions

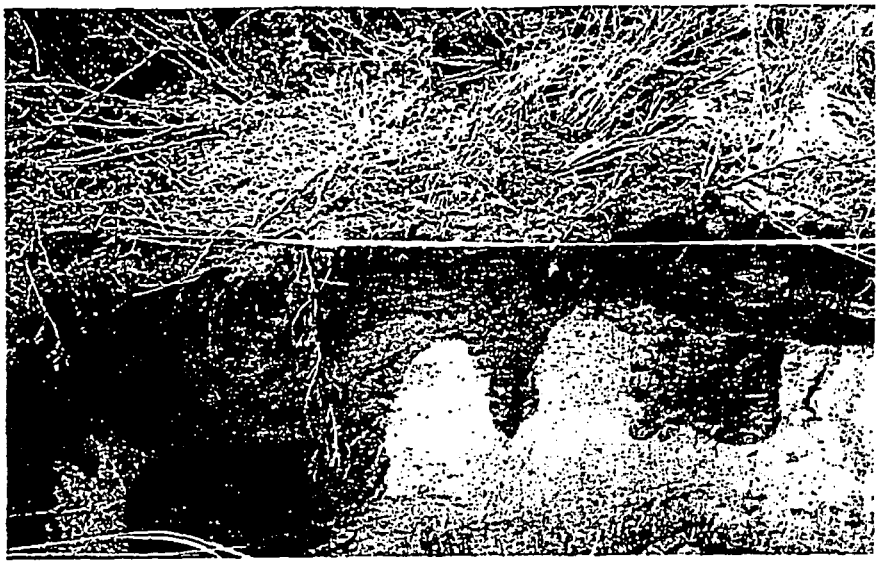


Figure 89 Trench 5, showing Features 4 (on left), 5, and 6 of State site # 50-30-09-792/A--traditional-Hawaiian cultural layer.



Figure 90 Trench 14, showing Feature 2 (northwest profile) of State site # 50-30-09-792/A--traditional-Hawaiian cultural layer.

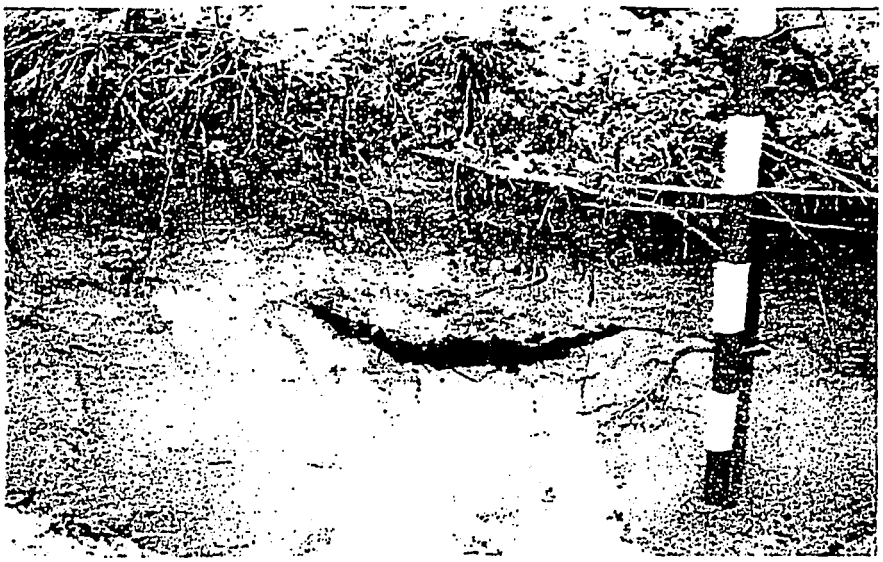


Figure 92 Trench 6, Feature 1, probable *imu*-style earth-oven, prior to sampling.

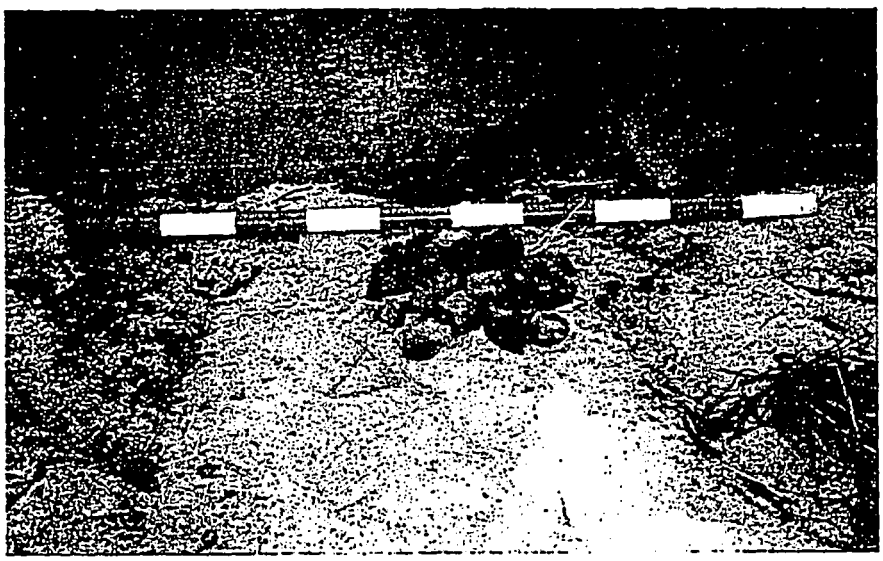


Figure 91 Trench 6, Feature 2, probable *imu*-style earth-oven, showing the concentration of fist-sized basalt cobbles recovered during excavation of this feature.

## ARTIFACT & MIDDEN CATALOG

Cultural Surveys Hawaii
Project: Kapalawai Inventory Survey (Kapa 10)

| Test Pit | Tr 3 | Tr 5 | Tr 5 | Tr 6 | Tr 6 | Tr 7 | Tr 7 | Tr 10 | Tr 14 | Tr 14 | Totals |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Stratum | | | | | | | | | | | |
| Depth (cm) | | | | | | | | | | | |
| Feature | | | | | | | | | | | |
| Cerus sp | | | | | | 0.3 | | | 0.3 | | |
| Theodoxus sp | 0.1 | | | | | | | | | | |
| Terebra sp | 3.5 | | | | 0.3 | 1.5 | | | | | |
| Turbo sandvicensis | 0.7 | | | | | | | | | | |
| Brachidontes crebristriatus | 0.1 | | | 0.6 | | 1.5 | 5.3 | | | 1.1 | |
| Pinctada radiata | | | | | | | | | 0.7 | 1.1 | |
| Water-rounded marine shell | | | 44.9 | 41.2 | | | | | | | |
| Mac./Unidentified shell | 0.7 | | | | | | 0.2 | | 0.4 | | |
| Total marine shell | 5.1 | 0 | 44.9 | 41.7 | 0.3 | 0 | 5.5 | 0 | 1.4 | 2.2 | |
| Echinoderm | 0.2 | | | | 0.6 | | 0.3 | 0.3 | 0.1 | 0.1 | |
| Fish bone | | | 0.1 | | | | | | | | |
| Total Charcoal | 6 | 67* | 25.9 | 24.3 | 3.3 | 65* | 7.7 | 11.1 | 3.8 | 3.6 | 6.4 |
| Total Unident. Mammal Bone | 1.3 | 0.5 (burnt) | | 1.4 | 0.8 | | | | | 0.2 (burnt) | 2.5 |
| Total midden | 12.6 | 7.2 | 70.9 | 67.4 | 5.2 | 65 | 13.5 | 15.9 | 3.8 | 5.5 | 11.2 |
| Volcanic Glass Flakes (# of Pieces) | | | | 1 | | | | | | | |
| Basalt Flakes (# of Pieces) | | 2 | | | | | | | 2 | 1 | |
| Medicine Bottle | | | | | | | | 1 (broken) | | | |
| Glass Fragments | | | | | | | | 1 | | | |
| Rusted Nail | | | | | | | | 3 | | | |

*Charcoal Samples Sent to Beta Analytic

APPENDIX B
Midden and Artifact Catalog

## APPENDIX 6

### Radiocarbon Dating Results

Three samples were sent for radiocarbon dating analysis from the inventory survey. The first sample, consisting of a "key" or drupe of the *hala* plant (*Pandanus tectorius*), was collected from the basal layers of sediments in Kekupua Pond. This sample is discussed in Appendix 3 and on pages 61 and 62 "Coring and Dating at Kekupua Pond" of this volume, see above.

| Beta Analytic # | Sample Size | Depth | Measured C14 Range | C13/C12 Ratio | Conventional C14 Age |
|---|---|---|---|---|---|
| 132384 | 2.2 g (0.5 g carbon) | 170 cm bs | 980 +/- 80 BP | -25.6 o/oo | 980 +/- 80 |

The two sigma (95 % probability) calibrated calendar age for the sample from the Kekupua Pond sample is AD 895 to 1225, after calibration with the Oxcal software, see print out below. The significance of this date has already been discussed in Appendix 3 and pages 61 and 62.

The remaining two samples were collected from the traditional-Hawaiian cultural layer that constitutes Site 50-30-09-792. Each sample consisted of diffuse charcoal particles collected from discrete features located in the cultural layer. The samples were from Trench 5, stratum II, Features 1 and 6. The box below summarizes the radiocarbon dating results supplied by Beta Analytic, Inc.

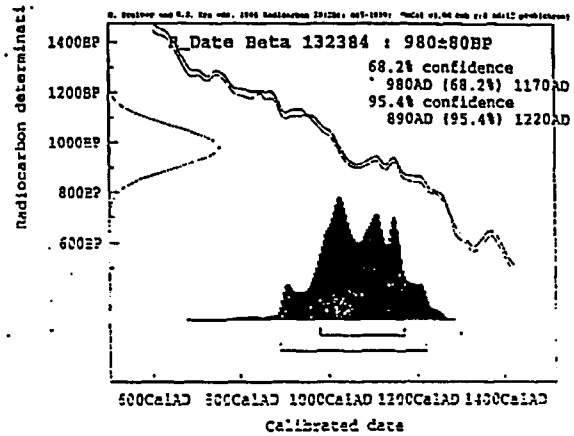
| Beta Analytic # | Sample Size | Provenience | Measured C14 Range | C13/C12 Ratio | Conventional C14 Age |
|---|---|---|---|---|---|
| 139725 (CSH ID# Kapa10a) | 1.9 g charcoal (0.8 g final carbon) | Tr. 5/Str. II Fe. 6/30-50 cmbs | 280 +/- 100 BP | -24.3 o/oo | 290 +/- 100 BP |
| 139726 (CSH ID# Kapa10b) | 1.3 g charcoal (0.6 g final carbon) | Tr.5/Str. II Fe. 1/30-50 cmbs | 180 +/- 130 BP | -24.0 o/oo | 200 +/- 130 BP |

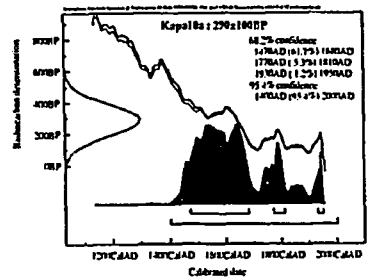
Both samples were calibrated into calendar ages using the Oxcal Calibration Program (Version 3.3). The Oxcal calibration result printouts are included in the subsequent pages. Both calibrated calendar ages were broad at the 2 sigma (95 % probability) confidence level, ranging from the 15th to the 20th century. Sample 139725 (CSH ID# Kapa10a) yielded a calendar age rang of 1400 to 2000 AD. Sample 139726 (CSH ID# Kapa10b) yielded a calendar age rang of 1480 to 1960 AD. These broad age ranges are often the case from samples consisting of diffuse charcoal particles not collected from a specific combustion feature. Unfortunately, these were the only types of samples that were available from the



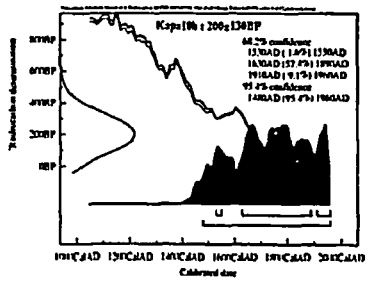
exposed features of Site 50-30-09-792.

The appearance and artifact and midden content of cultural layer 50-30-09-792 indicate the cultural deposit is traditional-Hawaiian (pre-contact and/or early contact in age). Although the two radiocarbon dates from this layer are not conclusive regarding the age of the layer, in light of the context, the dates are generally corroborative of the pre-contact age of the deposit.



R_Date Beta 132384 : 980±80BP
68.2% confidence
980AD (68.2%) 1170AD
95.4% confidence
890AD (95.4%) 1220AD





# E

## ARCHITECTURAL ANALYSIS OF STRUCTURES AT KAPALAWAI

MASON ARCHITECTS

# ARCHITECTURAL ANALYSIS OF STRUCTURES AT KAPALAWAI

**Prepared for Helber, Hastert & Fee**

July 1999
(revised February 2000)

Prepared by
Mason Architects, Inc.

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## PART 1 - INTRODUCTION

The Robinson house at Makaweli, near Waimea on the island of Kauai, was constructed in c. 1897, and was designed by architects C.B. Ripley and Arthur Reynolds for Aubrey Robinson. The house has remained in the Robinson family since its construction. It sits on a parcel of land defined by agricultural fields on the northwest, Kaumualii Highway on the northeast, and the ocean to the south. On that property are the main house structure, ancillary buildings, several smaller houses, and an inland fishpond. The main house includes an original attached kitchen building, and an attached bedroom wing addition.

Mason Architects, Inc., is working with Helber Hastert and Fee for Destination Villages LLC to create planning and design for a new resort at the site. This historic structures report was prepared as part of the background research and analysis for the preparation of an Environmental Impact Statement (EIS).

The general plan for the project at the main house complex is to develop the main house and attached kitchen and bedroom wings as a greeting space and as a museum, administration and meeting room area. At the main house the bedroom wings will be renovated to provide three meeting rooms, a bar, and mens' and womens' restrooms. Some interior walls will be removed in these areas. The library, sitting room, dining room, pantry, china room, linen room, guest room, and the original portion of the kitchen building will be restored and used in their current layout as museum spaces. Furniture and other items currently in the house will be kept in these spaces. The exterior of the house will be basically unaltered, and will generally receive only repairs to damaged materials.

The majority of the planned new construction for this project is located away from the existing structures. Existing buildings other than the main house will either be used in their current state, or will be restored to the original appearance at least on the exterior. The few buildings that are in very poor condition will be demolished.

## PART 2 - SITE VISITS AND METHODOLOGY

On-site research of the house and site was conducted on November 17 and 18, 1998 by Glenn Mason, AIA, Marianne Cooper, John Fullmer, AIA, and Katharine Slocumb, AIA. Measurements and photographs were taken of the building and site, as well as observations of deterioration and damage of the building material. Additional observations and measurements were recorded by Katharine Slocumb, AIA on December 2, 1998. The entire main house structure, along with the attached kitchen and bedroom structures, were measured and compared with the original drawings for the buildings. New drawings of the building plans, elevations, and sections were produced on computer. Existing interior finishes and conditions of the room were recorded.

The field checks of additional buildings at the site included visual surveys of the buildings on two occasions. Architects Glenn Mason, AIA, and Katharine Slocumb, AIA, surveyed the buildings on November 18, 1998, and on July 1, 1999. Photographs were taken of the buildings, and notes and observations were made on the materials used, the condition of the buildings, and



the level of historic integrity. Historic photographs and maps owned by the Robinson family were checked to help determine the age of the structures.

An archaeological survey of the site was conducted by Cultural Surveys Hawaii in April 1999. This survey identified, and assigned site numbers to, all observed major man-made features on the site. The descriptions and significance analysis of these sites by Cultural Surveys Hawaii are listed in a separate report. The site numbers assigned by Cultural Surveys Hawaii to buildings at the site are also identified in this report.

## PART 3 - SIGNIFICANCE CRITERIA

The significance of each structure was evaluated using the significance criteria defined by the National Register of Historic Places, which in title 36, part 60 of the Code of Federal Regulations (referred to as 36 CFR 60), defines the criteria for legally evaluating the significance of cultural resources:

> Criteria: The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:
>
> A. that are associated with events that have made a significant contribution to the broad patterns of our history; or
>
> B. that are associated with the lives of persons significant in our past; or
>
> C. that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
>
> D. that have yielded, or may be likely to yield, information important in prehistory or history.

## PART 4 - DESCRIPTION OF SITE AND RECOMMENDATIONS

### 4.1 General

The site, approximately 170 acres of oceanfront property, contains the main house structure, three smaller buildings just west of the main house, and eight small houses further west, which are accessible from a separate dirt road from Kaumualii Highway (see Figure 9). An inland fishpond (photo 1) is located southeast of the house, near the center of the site. The pond area is quite lush, with many coconut palms, dense grasses along the pond edges, and plants covering much of the surface of the pond. Just southeast of the pond is Mahaikona Stream, which runs the width of the site ending at the beach (photo 2) on the southwest side. It empties into the ocean only during periods of rain in the areas above the site, and appears to be stagnant at other times. The stream walls are rock-lined at the southwest end.

The site is covered with various vegetation, including Coconut and Date palms, Kiawe, Monkeypod, Ironwood, Eucalyptus, Milo, and Banyan trees, as well as night-blooming Cereus and Bamboo. An orchard area behind the main house contains mango trees and banana plants. Much of the site beyond the houses is currently covered with Bougainvillea and Kiawe thicket.

### 4.2 Site at Main House

The main house is surrounded by a large grass lawn. There a few large trees immediately adjacent to the house, and many trees border the outer edge of the lawn. Tropical plants grow along the base of the perimeter of the house, including a thick hedge of Dwarf Rhapis (Bamboo Palm) (photo 3) at the south and west edges at the front of the house and at the kitchen area, and at the north side of the attached bedroom building. Ti plants grow at the main stair entry, and ginger grows along the east side of the house.

On the south side of the house at the edge of the lawn are two lava rock gate posts and a decorative wrought iron gate (photo 4). The fence surrounding the house area has sections of wire, wire mesh, and stones.

On the northwest side of the house is a fenced orchard or garden area with Ti plants and papaya, mango, and banana trees.

*Recommendations:*

1. *Plants more than 18" tall which are immediately adjacent to the buildings should be removed or trimmed so that they are at least three feet from the structure. Any plants growing on the building exterior walls or at the roof or gutter should be removed.*

2. *Trees growing adjacent to the structures should be trimmed so that no branches are hanging over the buildings.*

## PART 5 - ARCHITECTURAL OBSERVATIONS OF MAIN HOUSE (Site 50-30-9-764, Feature A) AND RECOMMENDATIONS

### 5.1 Historical Information

The house was designed by architects C.B. Ripley and Arthur Reynolds for Aubrey Robinson. The plans are dated 1897.

An addition was made to the northwest side of the attached kitchen building sometime prior to 1930. This small addition was simply attached to the outer edge of the exterior lanai of the existing kitchen building. The fascia of the addition's flat roof butts up to the fascia of the hipped roof of the kitchen building. The addition was used as an employee dining room and for wood storage.

The attached bedroom wing was added as a boy's bedroom wing some time before 1920.



### 5.2 Exterior

#### 5.2.1 Roof

Main House

The main house roof is a double-pitched hipped roof (photo 5), in the O-shape of the floor plan around the central courtyard (photo 6). The roof has many gables, including a large projecting gable out over the front entry. Large gables are also located at the center of the east and north (rear) sides, and there are gables on each side of the front corners of the building. The front central gable has a small window with decorative columns at each side and an arch above, and the two front corner gables have decorative scrollwork. The gable at the rear side has three double-hung windows; one is boarded up, and the sashes may be missing. Other gables have louvered vent openings. The large gables have shingle siding, some of which is scalloped. The shingles at the gables generally appear to be in good condition, but there are some areas where the shingles are deteriorated or need repainting.

The roofing is brown-red asphalt shingles. They appear to be in good condition. The original drawings do not indicate the original roofing type, but based on wood shingles visible from inside the roof, the roof was originally wood shingle.

The eaves are closed all around the building. The eaves below and above the three gables at the front elevation of the building, which are above the three stairs leading to the front lanai, have decorative brackets. Portions of the fascia are missing at the rear elevation and all of the fascia is missing at the courtyard.

The roof structure has 2 x 4 (2" x 3-3/4" actual size) rafters at 24" O.C. These are augmented by horizontal or diagonal bracing members in some sections of the roof (photo 7). The 1 x 3 purlins are nailed to the rafters at 6" O.C., with wood shingles nailed to the purlins. The attic is reached by a stair leading from the lanai at the back of the building. The roof structure members all appear to be in good condition. There is currently no insulation in the attic.

Attached Kitchen Building

The kitchen building (photo 8) has a hipped roof with corrugated metal roofing. It appears from the original drawings that this was the original roofing type. The roofing is in fairly good condition, and has previously been patched. This structure also has enclosed eaves, which appear to be in good condition.

Attached Bedroom Wing

The bedroom structure (photo 9) has a gable-on-hip roof structure, with louvered vents at both gable ends. The roofing is the same asphalt shingle roofing as the main house, and is also in good condition. The fascias and closed eaves also appear to be in good condition.

*Recommendations:*

1. *Repair/replace the window in the central gable on the rear side of the house.*

2. *Replace approximately 20% of the shingles at the front central gable.*

3. *Paint the corrugated metal roofing at the kitchen building. Repair and reinstall the original ridge vent located on the ground (photo 10). Replace one corrugated roofing panel on the makai side.*

4. *Replace the fascia at the interior courtyard (photo 11).*

5. *Replace the fascia at the rear of the main house, adjacent to the bedroom wing.*

6. *Insulate all attic spaces.*

7. *Retain existing asphalt roofing shingles. When they need to be replaced, install new wood shingles.*

### 5.2.2 Roof Drainage

A metal gutter runs along the entire perimeter of the main house, including the courtyard, and at the attached kitchen building, but not at the bedroom wing. The round metal downspouts, generally located at the corners, lead directly to the ground below. The gutter and downspouts are both somewhat deteriorated, and several downspouts are missing.

*Recommendations:*

1. *Replace all gutters and downspouts with new copper downspouts and gutters to match the existing profiles.*

2. *Install splashblocks at the base of downspouts to direct water away from the house.*

### 5.2.3 Original Exterior Walls

The original exterior siding (photo 12) at the main house structure is rabbeted siding of 1 x 10 horizontal tongue & groove boards, of which 8-1/2" is exposed. The horizontal groove portion has a 1" flat surface and 1/2" diagonal surface exposed. The walls have a low wood wainscot, with vertical tongue & groove that has a center groove. The wainscot cap is a 1 x 6, beveled on the bottom, topped with a 2 x 4. Below the projecting 2 x 4 is a decorative molding strip. Building corners have a 1 x 6 casing. This exterior finish style is the same at the attached bedroom structure. The siding appears to be in good condition, although small areas of termite damage were noted in two locations.

The kitchen structure has vertical wood tongue & groove siding, with 1 x 6 casing at the corners, and a 1 x 6 baseboard. This siding is in good condition.

*Recommendations:*

1. *Repaint the entire exterior of the house.*

2. *Replace any damaged siding.*



### 5.2.4 Other Exterior Walls

On the southeast side of the house, the wall encloses the exterior lanai (photo 13). The wall finish and design exactly matches that at the rest of the house.

*Recommendations:*

1. *Move portions of the exterior wall as indicated in the drawings, retaining the existing location at one of the new meeting room areas, and at the new mens' room area.*

### 5.2.5 Wall Openings

Exterior Doors

Nearly all of the exterior doors at the main house and the attached bedroom wing have both an inward swinging wood door and outward swinging screen door. Some doors have glazing and others do not. The glazing at the doors from the lanais into the bedrooms is often obscure glass, usually in the "Florentine" pattern (photo 14). Doors leading to the front sitting room from the front lanai and the courtyard lanai (photo 15) are double doors; all others are single doors.

Exterior doors are generally 3'-0 x 7'-0". The doors at either end of the hallway between the dining room and pantry are both 4'-0" wide doors. A smaller 2'-0" wide door leads into a bedroom on the eastern side of the house where the wall was moved out. The screen doors are wood panel doors with three vertically oriented panels along the bottom, a horizontally oriented panel in the middle, and the screen above, which has a central vertical muntin. Only the screen doors to the front entry doors, leading into the sitting room are different; they have two panels at the bottom rather than three. Some doors have screened transoms above.

The paneled wood door has two panels at the bottom, a central horizontally oriented panel, and either a single glass pane or two vertically oriented panels above. These panels are fairly decorative, with a raised center portion with grooved lines, grooved trim along two sides, and a rounded bevel along the other two sides.

The exterior doors at the attached kitchen building and bedroom wing are the same as those at the original house structure, but are 2'-10" wide by 6'-10" high. Most doors appear to be in good condition, with some minor repairs necessary.

There are sliding doors (photo 16) at the west side of the rear lanai. It appears there were originally three doors, but only one door is extant. The wood door has a single wood panel at the bottom, and four glass panels above. The door and frame are in only fair condition.

*Recommendations:*

1. *Replace the screens at all screen doors and screened transoms.*

2. *Replace the mid-rails at both screen doors at the front entry to the sitting room.*

3. *Patch door stile at linen room door to outer lanai.*

4. *Remove sliding doors and swinging door at rear lanai.*

5. *Replace door threshold at outer door to hallway passing through building, adjacent to pantry.*

Windows
All windows at the main house are wood double-hung windows. At the main house, windows are one-over-one light. Most windows are 2'-10" wide and 7'-0" tall. The window has exterior casing on the top and sides; the sill and apron are continuous pieces that serve as the top of the exterior wall wainscot. The bottom of the top sash has decorative stile tails. One smaller window on the west side of the house has a decorative jamb casing extension at the apron, where the casing is cut diagonally into a point (photo 17). This is similar to windows at the attached kitchen and bedroom wings. Some window glazing is obscure glass, such as in the linen and china rooms, and typically in bathrooms.

At the main house, three sashes, one sill, and one pane are in need of replacement.

At the kitchen building, windows are divided light, two-over-two (photo 18). The bedroom wing has both one-over-one and two-over-two double-hung windows. The window sizes vary from 2'-6" wide to 4'-2" wide. Most windows at both buildings have a decorative jamb casing extension at the apron, where the casing is cut diagonally into a point. The addition at the kitchen has one-over-one and six-over-six double-hung wood windows.

At the bedroom wing, two sashes need to be replaced. At the kitchen building, one pane is broken.

*Recommendations:*

1. *Replace window sashes and panes as required, at locations indicated in drawings.*

2. *Replace all window screens.*

5.2.6 Lanais

The exterior lanais run continuously around the outside of the original house, and around the central courtyard. The lanai is 12 feet wide at the front of the house (photo 19), and 8 feet wide at the sides and inner courtyard. The outer and inner lanais are connected at the center of the back side of the house, where a large open lanai space passes through from the courtyard to the back lanai. This open lanai has a wood panel swinging door on the east side leading to the mauka lanai, and sliding doors with glazing leading to the west side mauka lanai. Large wood-framed windows were installed between the columns above the wood railing; one pane is broken. Wood tongue & groove covers the wood railing at the inside at this lanai area.

*Recommendations:*



1. *Replace one window pane at windows at rear lanai.*

2. *Make operable the sliding glass windows above the rail at back center lanai.*

Flooring
The flooring of the lanai is wood tongue & groove strip flooring, probably Douglas Fir. The flooring is generally in good shape, but is termite eaten or damaged in several places (photo 20). At eight columns, the flooring underneath is badly damaged, often causing the column and roof above to sink. The flooring also is damaged at the outer house lanai adjacent to the kitchen building, at the lanai near the stair behind the kitchen building, and at three places on the west side of the rear lanai.

*Recommendations:*

1. *Refinish all wood floors at lanai. Patch where indicated in drawings.*

2. *Where indicated in drawings, remove wood column, repair wood flooring, and replace column.*

Columns
The decorative wood columns at the edges of the lanai (photo 21) around the outside of the building, and at the inner courtyard, help to support the roof structure. These round columns are 8'-4" tall, with a 2" thick square wood bearing plate on top. The columns have a rounded base and top section, and rounded grooves cut into the lower part of the middle. The columns are approximately 7" in diameter. At least six columns need to be repaired at the base. One column at the east corner of the interior courtyard is substantially deteriorated at the top (photo 22).

Columns at the attached kitchen building are 5-3/4" square posts, and those at the attached bedroom wing are 5-5/8" square posts. Each post has a decorative wood capital piece at either side, below the eave plate. These square columns all appear to be in good condition.

*Recommendations:*

1. *Repair top of column at northeast corner of central courtyard with new wood capital.*

2. *Patch columns at base as indicated in drawings (approx. 9 total) using epoxy patching compound.*

Railings
The railings at the exterior lanais have two horizontal members, at the top and bottom of the railing. The lower member is 1-3/4" thick, and the top rail is 2-1/2" thick, with a rounded top. Balusters are straight vertical members.

*Recommendations:*

1. *Replace missing railings at the east side of the house (2 sections) and at the east side of the bedroom wing (1 section).*

Stairs

Three stairs currently lead to the front entry lanai, two on the southwest, front side, and one at the corner from the west side, in front of the kitchen wing. Stairs also lead to the outer lanai from the back of the west elevation, and from the rear elevation. There is one stair at the north side of the center courtyard. There was also originally a stair on the east side of the house front elevation, which is now missing. Stairs are also missing from the front of the bedroom wing, at the south side of the center courtyard, and at the eastern side of the back (northeast) house elevation.

The stairs at the front lanai have L-shaped (in plan) columns at the edge of the lanai. These columns have a thickened base and decorative molding at the base and near the top. The center front stairway has a hipped roof extending out over the stair, supported by the typical decorative round columns. These are sitting on top of square decorative posts at ground level, so that the base of the round columns are at the same level as those at the lanai. A staggered tongue & groove wall extends out from the house at each side of the stair, and is topped by sections of railing. The other two extant stairs at the front lanai have simple wood handrails, which are not the original railings; they originally looked similar to the front central stairway, without the extended roof.

The other extant stairways have wood stairs with simple wood handrails that are attached to the round columns at the edge of the lanai. These railings are not original.

*Recommendations:*

1. *Rebuild the stairway at the east side of the front elevation of the house. The railings and posts shall match the existing front (central) stair.*
2. *Rebuild the rails and posts at the two stairways at the west corner of the front lanai to match the existing front stair.*
3. *Rebuild the stairs at the central courtyard and at the front of the bedroom wing.*
4. *Construct an accessible lift at the house lanai, just in front of the kitchen building.*
5. *Repair the stair posts at the center stair.*

### 5.2.7 First Floor Structure, Foundation & Skirt

The existing first floor structure is constructed of 2x8 floor joists and 6x8 beams supported by 6x6 posts on concrete or stone footings (photo 23). The central footings are spaced at approximately 6'-0", and the perimeter footings at approximately 10'-0". The joists, beams, and posts appear to be in good condition. Dirt has covered the top of most of the footings.

The foundation at the front lanai has settled in various areas, particularly at the corner posts, and at the right front stair.



The skirt at the exterior wall, covering the foundation structure below the lanai, varies in appearance at the front and back of the house. The front and east elevations of the house, as well as the west side wall in front of the kitchen building, are sheathed in vertical wood tongue & groove, while the rest of the building has a diagonal lattice skirt. There is a large hole in the wood tongue & groove skirt at the center of the east side elevation of the main house (see photo 12). There are some areas of the lattice that need minor replacement, particularly on the rear elevation of the main house, at the back of the kitchen building (photo 24), and at the east front corner of the bedroom wing.

*Recommendations:*

1. *Remove six inches of the earth throughout the crawl space at the foundation to expose the top of the post footings which have become buried under silt.*
2. *Repair/replace 10% of wood lattice skirt that surrounds the building at the foundation.*
3. *Repair the hole in the wood tongue & groove foundation skirt on the east side of the house.*
4. *Adjust footings under posts that have settled.*

## 5.3 Interior

### 5.3.1 Planned Alterations to Interior

As part of the resort, the main house and attached kitchen and bedroom wings are planned to be used for greeting, administration, meeting, and museum space. The existing dining, sitting, library, pantry, china, and linen room, as well as one guest bedroom and the original kitchen building, would be used as museum space. In these rooms the furniture and other items currently found in the house will be displayed to help portray the history of the area, of the Robinson family, and of the building itself. The rooms in the kitchen building addition will be used as a catering kitchen.

The east side of the house and the attached bedroom wing would undergo the most interior renovations. At the two guest chambers with bathrooms at the front of the house, all interior walls and fixtures would be removed, and a bar constructed. Most of the interior walls in the east section of the house will be removed to create space for public men's and women's restrooms and three meeting rooms. Some of the exterior wall along the outer lanai will be moved to create more lanai space. The interior walls in the attached bedroom wing will all be removed to create the fourth meeting room, keeping only two storage rooms.

### 5.3.2 Interior Walls & Finishes

The interior walls have a variety of finishes. The walls in the sitting room and library are covered with wall paper on linen (photo 25). It extends to a wood molding at a height of 12'-0", with a plaster wall above the molding to the ceiling. The wallpaper is generally in fair shape, but

is peeling in a few areas. The adjacent dining room has a koa wood wainscot with wallpaper above, and a deep koa ceiling molding (photo 26). All three rooms have a deep wood base.

The bedrooms have a wallpaper, plaster, or canec wall finish. Bathrooms typically have wood wainscots with canec or wallpaper above, and closets have canec or wood tongue & groove wall finishes. The china room and pantry have wood tongue & groove walls.

The walls at the attached kitchen are wood tongue & groove, which appear to be in good condition.

The wall finishes appear to generally be in good condition, with a few exceptions. The wallpaper finish in the attached bedroom wing rooms is in poor shape.

*Recommendations:*

1. *Repaint entire interior of house at all existing painted surfaces (painted wood, gypsum board, plaster, canec).*
2. *Refinish koa wainscot at dining room.*
3. *Re-paper walls at dining room, sitting room, and library. Search for more information on original wallpaper design and restore if possible. If evidence of original wall paper cannot be found, replace with an appropriate period paper.*
4. *Remove wallpaper at bedroom wing. Remove interior walls as indicated. Install new wallpaper on gypsum board backing, to match original finish.*



### 5.3.3 Ceilings

Ceilings are generally plaster, canec, wood tongue & groove, or wallpaper on wood. The ceiling in the dining room is the most decorative, with koa wood cased beams running in both directions, as well as diagonally at the center of the room (photo 27). This ceiling appears to be in good condition. Acoustic tile panels have been installed at the ceiling in the office rooms at the north corner of house.

The kitchen building ceilings are wood tongue & groove, which appear to be in good condition.

The ceiling finishes appear to generally be in good condition, with a few exceptions. The wallpaper ceiling finish in the attached bedroom wing rooms is in poor shape. Some other ceilings are simply in need of repainting.

*Recommendations:*

1. *Remove wallpaper at ceilings in bedroom wing building. Install gypsum board ceilings.*
2. *Remove acoustic tile ceiling in office rooms and install new gypsum board ceiling over existing wood.*
3. *Repaint all ceilings.*
4. *Refinish koa finish of beam falsework in dining room.*

### 5.3.4 Floors

All floors are tongue & groove wood flooring. The wood floors appear to be in good condition, but need to be refinished or repainted. Some floors have an additional flooring surface installed on top of the wood floor. The two office rooms, as well as one of the bedrooms, have a cork tile flooring. The cork flooring is in fair condition.

Three bathrooms have vinyl tile flooring. Several bedrooms have a woven mat covering over the wood flooring. The woven mats are substantially worn, and are even worn through in some areas.

Both the kitchen building and bedroom wing rooms also have tongue & groove wood flooring, which also appears to be in good condition.

*Recommendations:*

1. *Refinish or repaint all wood floors, except in plan where carpet or other finish is called for.*
2. *Remove all woven mat flooring.*

3. *Remove existing deteriorated cork flooring. Consider installing new cork flooring in offices.*

### 5.3.5 Interior Doors

Interior swinging doors either have the same pattern as the exterior doors (with no glazing), or are single-panel wood doors. Most doorways have a decorative wood casing, with a raised square with a circular indentation at the head corners. The interior doors appear to be in good condition. Sliding doors are located between the library and sitting room, and the sitting room and the dining room. The condition of these doors needs to be evaluated.

At the kitchen building, interior doors are screen doors with four rectangular screen openings. Most of the interior doors in the bedroom building are to be removed in the proposed renovations; the remaining doors should be evaluated.

*Recommendations:*

1. *Salvage and store any doors removed during demolition that are not to be reused at this time.*

### 5.3.6 Furniture & Other Contents of House

The entire house contains a substantial amount of historic furniture and other items, which include books, guns, desk items, personal correspondence, artwork, linens, china, lamps, luggage, and sports equipment.

Substantial furniture pieces of koa or other decorative woods include the dining room table and numerous chairs with a leather seat pad, china hutch, couches, shelves, book cases, and a gilded mirror in the sitting room, and bookcases in the library (photo 28). Several bedrooms contain beds with wood head and foot boards, and matching dressers, chairs, and night tables. The interior furniture all appears to be in good condition.

The pantry contains sets of crystal and china of European and Asian origins (photo 29). Book cases contain many books, and desks contain correspondence, stamps, photographs and negatives, and writing instruments from the 1800s and early 1900s.

The kitchen contains a large cast iron stove (photo 30), probably original to the building. At the central lanai space at the rear of the house is an old, large pool table with heavy wooden base, a deteriorated piano, and several other furniture items. The front lanai contains wood benches and rockers, all in need of refinishing.

*Recommendations:*

1. *Remove rust and refinish cast iron stove.*

2. *Clean and refinish lanai wood furniture as appropriate.*



3. *Inventory all interior furnishings and other contents of house. Work with the Robinson family to decide which of the furnishings should be saved for display in the museum, which should be removed and kept by the family, and what, if any objects might be curated off site.*

### 5.3.7 Bathroom Fixtures

The smaller bathrooms generally have corner sinks. Bathrooms that have not been renovated have free-standing bathtubs. The bathroom fixtures appear to be in good condition.

*Recommendations:*

1. *Replace the fixtures in the bathroom at the current guest chamber on the northwest side of the main house with new fixtures that are of the same style as the original fixtures, or are of a simple modern style.*

## 5.4 Door Finish Hardware

The door hardware at the main house is quite decorative. The escutcheon and the hinge plates have a Victorian pattern. The escutcheon and hinges are brass. The doorknobs are black ceramic.

The screen doors have a small steel knob and hinges, which are quite rusted.

Hardware at the kitchen building and at the bedroom wing needs to be evaluated.

*Recommendations:*

1. *Clean and oil all brass door hardware.*

2. *Replace all screen door hardware with brass hardware to match design of existing.*

3. *Completely inventory all hardware to decide what to save.*

## 5.5 Light Fixtures

Exterior
Modern flood lights have been installed at the exterior eaves at the front of the house and at the west front stair. These are centrally located above the stairs, and have replaced earlier glass ball light fixtures, which are extant at the east side, back of the west side, and back (north side) of the house above the stairs.

A few historic, possibly original, wall mounted lights are located around the building: one on the pilaster on the east side of the front entry, one at the west side of the interior lanai, and two at the rear lanai. These have a decorative round base that support a scroll and a fluted glass shade (photo 31).

A modern fluorescent light has been installed at the rear lanai, over the pool table area.

Interior
The structures contain many early, possibly original, light fixtures. The dining room and sitting room have ornate chandeliers suspended from the middle of the ceiling (see photo 25). These appear to be kerosene/electric fixtures. Some rooms have ceiling mounted fixtures, while others have fixtures suspended from a long cord from the ceiling. Most rooms have floor or desk lamps that appear to be from the early 1900s.

The kitchen wing has ceiling mounted or pendant fixtures that appear to be from the mid-1900s.

The attached bedroom wing fixtures need to be evaluated.

*Recommendations:*

1. *Rewire the entire house.*
2. *Clean all existing light fixtures.*
3. *Remove the fluorescent fixture at the rear lanai.*
4. *Augment existing lanai lighting to attain an adequate light level. Use fixtures that are appropriate to the building.*
5. *Modern light fixtures will be installed as needed for the newly renovated spaces. The style of these fixtures shall not be historic, but they should not be starkly modern either.*

### 5.6 Stored Architectural & Other Elements

Underneath the house are stored some architectural elements (photo 32) that were removed from the house, either due to renovations or due to the damaged state of the element. Elements noted are stair rail columns and sections of railing.

The attic contains some light fixtures and furniture, as well as other artifacts such as steamer trunks, painted ipu or 'umeke gourds, calabashes, and baskets (photo 33).

*Recommendations:*

1. *All architectural items underneath the house shall be inventoried. Those that can be reused, such as the stair railing posts and railings, shall be repaired as necessary. Those that are not to be reused at this time shall be placed under the house, elevated off the ground.*
2. *Items in the attic shall be inventoried. Those that are chosen to be re-used in the house or used for display shall be repaired as necessary. Others shall be kept in the attic, and covered with a dust cloth. It is recommended that most of the luggage be discarded.*



## PART 6 - DESCRIPTION OF OTHER STRUCTURES AT SITE AND RECOMMENDATIONS

### 6.1 Caretaker's/Guest Cottage (Site 50-30-9-764, Feature B)

#### 6.1.1 Historical Information

This small cottage (Figure 34) is located adjacent to the main house, along the Waimea side of the makai lawn. The exact date of construction is not known, but it is likely that the cottage was constructed as guest quarters not long after the main house was completed, almost certainly before 1920. Some of the architectural details or elements are the same or very similar to those at the main house. The style of the original doors, window casing, and other architectural details suggest that the house was built around the turn of the century. Historic photographs of the building (Figure 35) and site show this building in place before the boys' rooms wing was added to the main house, and the age of the people and clothing present in some photographs also verify the date.

#### 6.1.2 Description

The original portion of the building is rectangular in plan, 34' x 57', with a lanai running the full length of the building on the Hanapepe and mauka sides. The building has a wood post and beam foundation, and wood frame and roof structure. The hipped roof was originally double-pitched; new rafters have been added over the original rafters to change the roof to a single pitch. The roofing is fairly new asphalt shingles, matching that at the adjacent house and office building. The original roofing was wood shingles. The edge of the lanai has tapered wood columns with a thickened base and decorative capital pieces. Portions of the lanai and foundation are currently being rebuilt. The column capitals are missing at the posts along the Hanapepe side. The stair located at the middle of the Hanapepe side, and the railing between the columns on this side, have been removed. The exterior baseboard is missing at the Hanapepe wall.

The exterior siding is vertical 1x6 tongue and groove boards. Windows on the Hanapepe side are double-hung 2/2 lite wood windows, with decorative apron and head at the exterior casing. The three entry doors on the Hanapepe side are four-panel wood doors or two-panel with glazing, and have wood panel screen doors. The doors also have the decorative head at the exterior casing. Other windows are smaller 1/1 lite double-hung windows without the decorative casing.

An attached carport has been constructed on the makai side, and a storage area was built on the Waimea side, and is attached at the roof. A small entry addition was built on the Waimea side.

The building appears to generally be in good condition, although it has suffered some weather damage, particularly on the Hanapepe side. The exterior is in need of repainting, the foundation skirt boards need to be replaced on the Hanapepe side and mauka/Hanapepe corner, and much of the horizontal skirt board along the top of the foundation is damaged. Some of the eave and fascia boards need to be replaced.

### 6.2 Office (Site 50-30-9-764, Feature C)

#### 6.2.1 Historical Information

The office structure is composed of two of structures (Figures 36 and 37), unified by a walkway and a wood deck. The makai portion is now used as office space, and longer mauka portion houses tack and storage rooms and additional office space. These were connected with a new lanai deck and roof structure in 1991. It is unknown what the original purpose of these structures was, although the makai office building likely served as either office space for the property or as additional guest or worker accommodations.

The makai office structure appears in early photographs of the site, including one taken in the 1920s. The building has several architectural similarities to the kitchen portion of the main house, including the louvered ridge vent, the column capital detail, and the 2/2 lite double-hung wood windows. It is likely that this building was constructed at the same time, or not long after, the kitchen wing was built with the main house (c. 1897).

The mauka building does not appear in the 1920 era photograph, and was likely constructed sometime in the 1920s to mid-1930s. Its construction materials and style indicate that it was not built much later than the mid-1930s.

#### 6.2.2 Description

Although the two structures are connected by the lanai and roof, there remains an open passageway between the two, which has a wood floor connected to the lanai built during the 1991 renovation. The makai office building is rectangular in plan (if the lanais are considered), with dimensions of 32' x 40'. The exterior of the structure was changed little in the recent renovation. The building has a wood post and beam foundation, and wood frame and roof structure. The hipped roof has a monitor ridge vent with louvered vent openings. The foundation skirt is diagonal wood lattice. The exterior walls are vertical tongue and groove wood boards. The windows are generally 2/2 lite double-hung wood windows with simple casing. The 1991 renovation made some interior renovations, including the construction of two walls, the removal of a few walls, and the relocation of entries, but the effect on the exterior appearance is minimal.

The mauka structure essentially has two parts: the tack and storage rooms at ground level, and the office portion with a higher floor level on the makai side. The overall building dimensions are 27' x 57'. The foundation is wood post and beam on the Hanapepe and makai sides, and concrete slab on the Waimea side. The walls are wood, and the roof has a wood structure with asphalt shingle roofing. The roof corners are beveled, except where the roof meets the roof of the adjacent office structure. The lanai is also beveled on the Hanapepe side corners. The exterior walls are vertical tongue and groove wood boards. Windows at the office portion are 1/1 lite double-hung wood windows, while the window on the mauka end of the building, at the storage area, is 6/6 lite. Doors to the storage room are made of vertical tongue and groove boards, and those at the office section are wood panel doors. The building appears to be in fair to good condition, and needs only cleaning and repainting at the storage room portion.



### 6.3 Garage (Site 50-30-9-764, Feature D)

#### 6.3.1 Historical Information

This structure appears in an early photograph of the site, with a group of horseback riders in front of the building (Figure 38). In this photo, the current garage doors do not exist, and this front wall has at least one pedestrian-size door and a 6/6 lite double-hung window. A wood ramp leads up into the center part of the building, but not across the entire front, as it is now. An awning roof extends out just below the bottom of the windows at the upper wall, and is supported by wood posts with a wood railing. A definite line can be seen on the building now where this awning roof was located. From the photograph, it appears the building was associated with equestrian activities and storage.

#### 6.3.2 Description

The overall building dimensions are 32' x 54'-4". The structure is quite tall, with a gable roof with a very small overhang, and corrugated metal roofing in very poor condition. Sections of the corrugated roofing have been missing for at least 7 years, causing further damage to the building. The exterior walls are vertical tongue and groove boards. The lower half of the front (makai) wall has four pairs of large swinging doors, also made of vertical tongue and groove boards (Figure 39). There are two double-hung 6/6 lite wood windows near the top of this wall. The Hanapepe side has a window which appears to be a double-sash horizontal sliding window, and has a door into the upper level with a fallen-down wood stair on the exterior. Very little of the Waimea and mauka elevations are visible due to vines and plant growth, but the mauka side has at least one window and a vehicle opening that leads out to a wood ramp, open at the middle, for vehicle maintenance. The interior has a small room on the mauka side, and a dirt floor. Items inside the building include several old cars, two horse-drawn carriages, and modern ground keeping equipment. The entire building currently is leaning severely, and is about to collapse. The items inside this structure should be removed and stored elsewhere due to the danger of the building's failure.

Adjacent to the garage, on the Hanapepe side, is the foundation of a former tack/saddle shed building (Site 50-30-9-764, Feature E). This building was reportedly destroyed in Hurricane Iniki. Some of the collapsed walls are still laying on top of the foundation, and many of the items once stored inside still remain where they were when the building was still standing. These items should be sorted to determine if any are salvageable. The door hardware should also be salvaged.

### 6.4 Greenhouse/Fernhouse (Site 50-30-9-764, Feature F)

#### 6.4.1 Historical Information

The construction date of the greenhouse is unknown, but it appears from the materials and construction style to have been built by about the 1920s. A Robinson family member remembers it being used as a fern house.

#### 6.4.2 Description

The structure (Figure 40) is 22'-4" x 31'-6" in plan. The gable roof has wood roof trusses. It currently has no roofing and is covered with vines. It is unknown if the building previously had some kind of roofing or shade material on top. The walls are vertical wood boards of various width on a wood frame structure. The perimeter wall sits on a curb wall that is made of mortared stone at the bottom with two rows of concrete block on top. The floor level is lower than that of the surrounding ground level; reportedly the floor level used to be even lower, but additional dirt accumulated when the area was flooded during the 1980s. A single door opening with no door is at the middle of the mauka elevation.

### 6.5 Water Tower

#### 6.5.1 Historical Information

The remains of a water tower (Figure 41) is located about mauka of the main house. It is not known when this tower was constructed, but it appears it was similar to another tower that was located just mauka of what is now the office building. The tower located near the office building was probably built before or at the same time as the completion of the main house c. 1897; a historic photograph seen of the main house about the time of completion was probably taken from the tower. It also appears in photographs of the area taken sometime between 1900 and the mid-1920s. It is likely that the tank whose remains we see mauka of the house also dates from this time period.

#### 6.5.2 Description

The structure originally consisted of a large cylindrical wood water tank supported on a foundation of large wood beams and large round posts on concrete piers. The water storage tank portion of the structure is completely gone, except for the base and some of the metal bands that went around the tank. A wood stair partially remains on one side, leading up to the platform level of the tank bottom. A large metal pipe that once led from the bottom of the tank to the ground level still remains.

### 6.6 Wash House

#### 6.6.1 Historical Information

The construction date and the original appearance of the wash house structure(s) is unknown.

#### 6.6.2 Description

Mauka of the main house near the water tower ruin is a concrete slab, approximately 20 feet on each side, with a curb around the outer edge, and a metal pole at each corner and at the center of the slab (Figure 42). Each pole, about six feet high, has a metal hook near the top, and the center pole has a curved metal loop protruding from the top. Attached to each of these are the remains of metal wires; it appears these wires were strung between the poles to create a large clothesline system. Adjacent to this slab is a small concrete stove (Figure 43), rectangular with an opening



at the top and at the front for inserting firewood. A pile of firewood still lays next to this stove. The stove probably was used to heat water for the laundry. A pile of wood and corrugated metal lays in a heap here also, and likely was once a roof structure over the stove area. The slab and stove are in fair to poor condition.

Just mauka of the laundry clothesline and stove area is another concrete slab (Figure 44) with a concrete curb on three sides and down the middle of the slab. Metal bolts at the corners and along the curb indicated there was once a wood wall and roof structure above. This structure may have been part of the laundry service area.

### 6.7 Other Structures

#### 6.7.1 Description

Just mauka of the main house in the former garden area is a small shed (Figure 45). Approximately six feet by 10 feet, the shed has a wood foundation, vertical tongue and groove wood siding, and a gable roof with corrugated metal roofing. The roof projects out to provide an awning over the entry. A single window on the mauka side has a six-lite wood sash, and the entry door is a four-panel wood door with a black ceramic knob. The siding boards are heavily deteriorated at the bottom, and the metal roofing is in poor shape. The building appears otherwise to be in fair condition. Inside this structure is a stack of wood window sashes.

On the opposite side of the mauka lawn is another small shed. This building has corrugated metal siding and roofing, and is currently covered with vines. The condition of the structural elements could not be determined in detail, as the vines prevent access to the structure, but it appears to be in poor condition.

On the Waimea side of the parking area by the office and garage is another shed structure, which is in poor condition. Piles of wood around this structure include some architectural elements from the adjacent buildings, such as wood columns and railings from the main house. The debris should be sorted through and any salvageable elements retained.

### 6.8 Employee Housing (Site 50-30-9-764, Features G-N)

The eight camp/employee houses are designated as sites 50-30-9-764, features G through N, and are lettered sequentially with G the northernmost house in the group, and N the southernmost house.

#### 6.8.1 Historical Information

Eight small houses are located approximately 500 feet west of the main house. These structures were built as housing for employees of the Robinson estate, most likely for servants tending to the main house and surrounding property. Earlier houses were located in the same or approximately the same area as the existing houses; a 1912 USGS map and a 1930s aerial photograph show buildings in about the same location as the existing. Gay and Robinson Company tax records indicate that two of the houses were rebuilt in 1953 and two rebuilt in 1954.

The designs and materials of the eight houses are so similar that it is nearly certain that they were all constructed close together in time. Although one area resident recalls that some houses were rebuilt possibly as early as the 1940s, it is likely that the existing employee houses were all rebuilt around the 1950s. The houses continued to be used by employees of the property at that time. The same area resident recalls that the chauffer, the cook, and gardeners all lived in these houses around the time of reconstruction. The main house at the property was occupied up until 1986, and at least one or several of the camp houses were still used by someone working for the family at the property until that time. Other residents of these houses were typically employed by the Gay & Robinson Company.

**6.8.2 Description**

The camp houses are located just west of the main house, but are separated both visually and physically from the main house area by a ditch and dense landscaping. There is a small pedestrian bridge across the ditch, but there is no direct vehicle access between the camp houses and the main house. The camp houses are reached by a separate road than the driveway leading to the main house; this road leads directly from Kaumualii Highway, and then forks into roads leading both behind and in front of the houses.

The eight houses are nearly identical, varying slightly in layout or size. There appears to be two different floor plans, with either three or four bedrooms, and varying in size between approximately 1064 square feet and 1311 square feet. The construction style and type of materials is the same for all houses. Only a few houses have received any exterior renovations. Most of the eight structures have a storage shed or garage on the rear side, typically attached only at the roof to the main house. Nearly all of the storage and garage units appear to have been built about the same time as the houses.

The houses are rectangular in plan, with wood post and beam foundations, and vertical wood T&G exterior siding. The gable roofs have wood truss structures and corrugated metal roofing. The metal roofing has been replaced with or covered by asphalt rolled roofing at two of the houses. The gable end walls have wide horizontal board siding and louvered vents at the upper portion of wall. The windows are double-hung wood windows with six-over-six lights. The windows are typically paired, except at the bathrooms. There is typically one front entry leading into the living room, and an entry on the back side leading into the kitchen. The front entry has a gabled roof projecting from the main roof, and a small porch with wood railing and wood steps. The rear entry has a wood deck with a wood railing and wood steps, but no roof overhead. Foundation skirts are horizontal 1x3 boards.

The interior side of the exterior (perimeter) walls have a v-joint and a 1x4 girt, rounded on the exposed edges. The interior walls are also constructed of vertical 1x6 T&G with v-joints. The interior walls have a 1x4 simple wood base. The canec ceilings are 8'-0" high, with a quarter-round at the top of the walls. The doors are typically wood single-panel doors, except at closets, which have five-panel wood doors. Door hardware is simple brass or metal knobs, and flip-latch locks at the closets.



The houses have received little renovation, and generally retain their original layouts, materials, and character. The original windows, doors, and cabinetry generally remain. At least one house retains a metal-lined shower.

The houses appear to generally be in good condition, with little termite or other damage. Some houses are in need of new roofing and paint, and the two vacant houses need to have overgrown vegetation cleared away. Two houses have been recently renovated. The renovations did not alter the significance of the structures, as changes were confined to new bathroom and kitchen fixtures, rewiring of the electrical systems, and general cleaning and painting.

## PART 7 - STATEMENT OF SIGNIFICANCE AND GENERAL RECOMMENDED TREATMENT

Main House

The main house and attached kitchen building are over 100 years old, well past the 50 year minimum for consideration of significance by the NRHP. The original sections of the building are basically unaltered; later additions have left the original sections intact. The house is an example of the Queen Anne style, which is a sub-type of the Victorian style, typical of the turn-of-the-century period. The Queen Anne style utilized details such as hipped roofs with gables (typically having a dominant front-facing gable), turned porch columns, bead decorative elements, patterned shingles and scroll-like elements at the gables, pent roofs enclosing the gable, brackets to accentuate overhangs, and full-width porches, all used at this house. The house design is unique in its modification for the local climate and lifestyle by including a central courtyard and continuous deep lanais around the courtyard and the building exterior. The lanai area is so extensive that it makes up more than half of the total floor area of the house. Also, most rooms open to both the courtyard and exterior lanai. The house was designed by C.P. Ripley and Arthur Reynolds, prominent architects during that period in Hawaii. The house is therefore significant under Criteria C, as it embodies the distinctive characteristics of a type and period, and possesses high artistic values. The house is also significant under Criteria B, as it is associated with the Robinson family, who are important in the history of the Islands of Kauai and Niihau, and the state of Hawaii. The house is the primary structure at the site, and is the most significant architectural feature there. The bedroom wing, although a later addition, has been part of the house complex for more than 50 years, and has developed significance as part of the complex. It was built using the same materials and style as the original main house, and blends in architecturally.

The main house and attached kitchen and bedroom wings shall be preserved as much as possible, particularly on the exterior. Damaged architectural materials shall be restored using material types and sizes to match the original. Historical items inside the house, as well as historical photographs of the house and area, shall be displayed in order to give guests and understanding of and appreciation for the history of the house, of the Robinson family and their activities, and of the development of the area.

Caretakers'/Guest Cottage

This structure has been an integral part of the property since the earliest historic-period construction on the site, and served an important role as guest quarters for visitors to this then-remote location. Although there are a few additions to the structure, most of these are attached

only at the roof, and do not affect the historic fabric of the structure. These additions could easily be removed. The building has been used for the same general purpose since its construction. The building is a relatively unaltered historic structure, with construction materials and style representative of its period, that has played an important role in the history of, and activity at, this property. It is a significant part of the historic Kapalawai complex. This building is significant under criteria B and C, as part of the complex which is associated with the Robinson family, which embodies the distinctive characteristics of a period of construction, and as part of a significant and distinguishable entity (the house and complex at the site).

The cottage will most likely be used for administrative space. The exterior of the building will be restored, including repair or replacement of all damaged material, and removal of the non-historical additions. This work will increase the historical integrity of this structure.

Office Building/Tack/Storage
These buildings are significant as relatively intact historic structures that played an integral role in life at the Kapalawai complex. They have been part of the property since the earliest historic-period construction on the site, and have been in continuous use as part of the property since construction. These buildings are significant under criteria B and C, as part of the complex which is associated with the Robinson family, which embodies the distinctive characteristics of a period of construction, and as part of a significant and distinguishable entity (the house and complex at the site).

The office building will continue to be used for that purpose. The tack and storage portion on the mauka side will be cleaned and repaired. It is possible that an adjacent structure or addition to the office building will be constructed to serve as a reception area for arriving guests; if this occurs, it will be designed to conform to the Secretary of the Interior's Standards for additions to historic buildings and for new construction adjacent to historic buildings.

Garage and Adjacent Tack Room
The garage has significance due to its age and essential role it served at the site. The front elevation has been somewhat altered from its original appearance by the replacement of the lower portion of the wall with the doors, and the removal of the awning roof. The changes in the structure reflect the changes in the type of activities and mode of transportation available throughout the history of the site. The building appears to be structurally unsound and in very poor condition. Additional investigation of the stability and condition of the building will be done to determine if it can be saved. If it is demolished, the plant growth should be cleared off of the garage structure as much as possible, and the building should be photographically documented, using equipment and materials that meet the Secretary of the Interior's Standards for documentation. The tack shed building is a ruin, and will be removed.

Employee Houses
At least four, and possibly all of the houses, are not yet 50 years old, which is the minimum age for properties to generally be considered as significant under National Register Criteria. However, these structures have been part of the property for at least 45 years, and have served an important role as housing for employees of the Robinson family. The buildings have been used for the same general purpose since their original construction, and for the same purpose as the houses that they replaced at the same location. The buildings are relatively unaltered structures,



with construction materials and style representative of their construction period. The houses are significant as a group of related structures that have played an important role in the history of, and activity at, the historic Kapalawai complex.

The houses will continue to be used as housing for employees of the development or the Gay and Robinson Company, continuing the historical use of the structures. Alterations will be limited to general repairs and maintenance whenever possible, with replacement construction occurring only when necessary, when buildings cannot be rehabilitated. The current residents will be allowed to remain in these houses. At the time of this report, four of the eight houses are occupied.

Greenhouse
The greenhouse has certainly been present at the site for many years, and has significance as a structure continuously used for the same general purpose since its construction. However, due to its poor condition, like the garage building, repairs needed would require so much reconstruction, that very little historic material would remain, diminishing much of the building's historical integrity.

Current plans do not include the restoration or the development of the garden area. This building will be demolished due to its poor condition. Prior to demolition, the plant growth should be cleared off of the greenhouse structure as much as possible, and the building should be photographically documented, using equipment and materials that meet the Secretary of the Interior's Standards for documentation.

Water Tank
The water tank has been present at the site for a long time, and certainly served a very important function during its days of use. However, the structure is now in such poor condition, and has lost so much of the original material, that it retains little historical integrity.

This structure is located in an area that is not included in the development area. This structure will remain as a ruin, unless it is decided to develop this area as part of the resort.

Wash House Structures
Although once used to complete an important function at the property, these structures do not have enough historic material remaining to be significant. No historic photographs or records of the original appearance of these structures is known.

Other Structures
The three sheds surveyed at the site have little significance due to their minor roles at the site. The shed by the driveway and the metal-sided shed by the mauka lawn are ruins. The wood-sided shed, however, is in better condition, and has more substantial construction materials. It is also probably older than the other sheds.

Both the storage shed adjacent to the parking area by the office building, and the corrugated metal shed on the Hanapepe side of the mauka lawn shall be demolished. The wood-sided shed in the garden area will remain, and can continue to be used as storage for the grounds

maintenance. The window sashes currently stored inside it should be removed, and stored with other architectural elements from the property for possible reuse.

## PART 8 - PHOTOGRAPHS

Photo 1 (top) - Pond east of house
Photo 2 (bottom) - Beach south of house





Photo 3 (top) - Dwarf Rhapis (Bamboo Palm) hedge at house
Photo 4 (bottom) - Gateposts and Wrought iron gate south of house





Photo 5 (top) - Front of house with gables at hipped roof
Photo 6 (bottom) - Interior courtyard



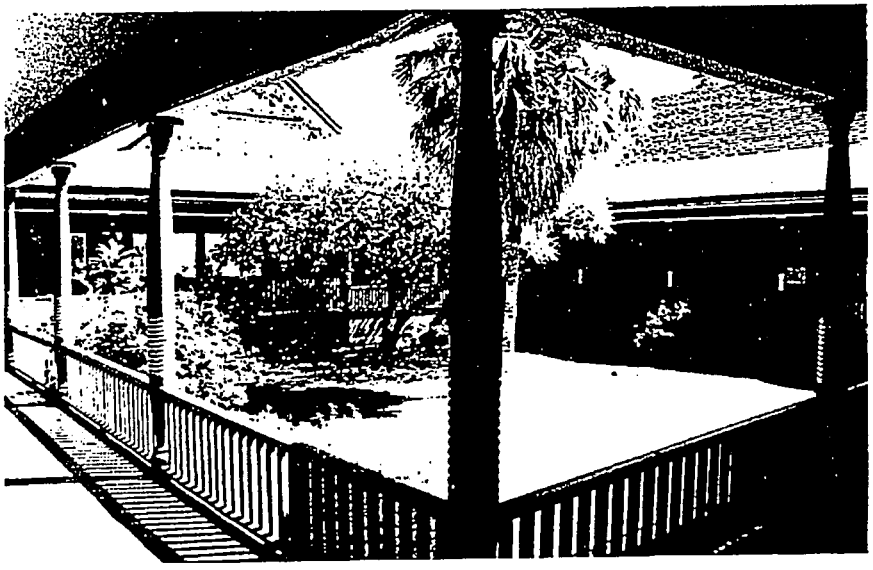


Photo 7 (top) - Roof structure
Photo 8 (bottom) - Attached kitchen building

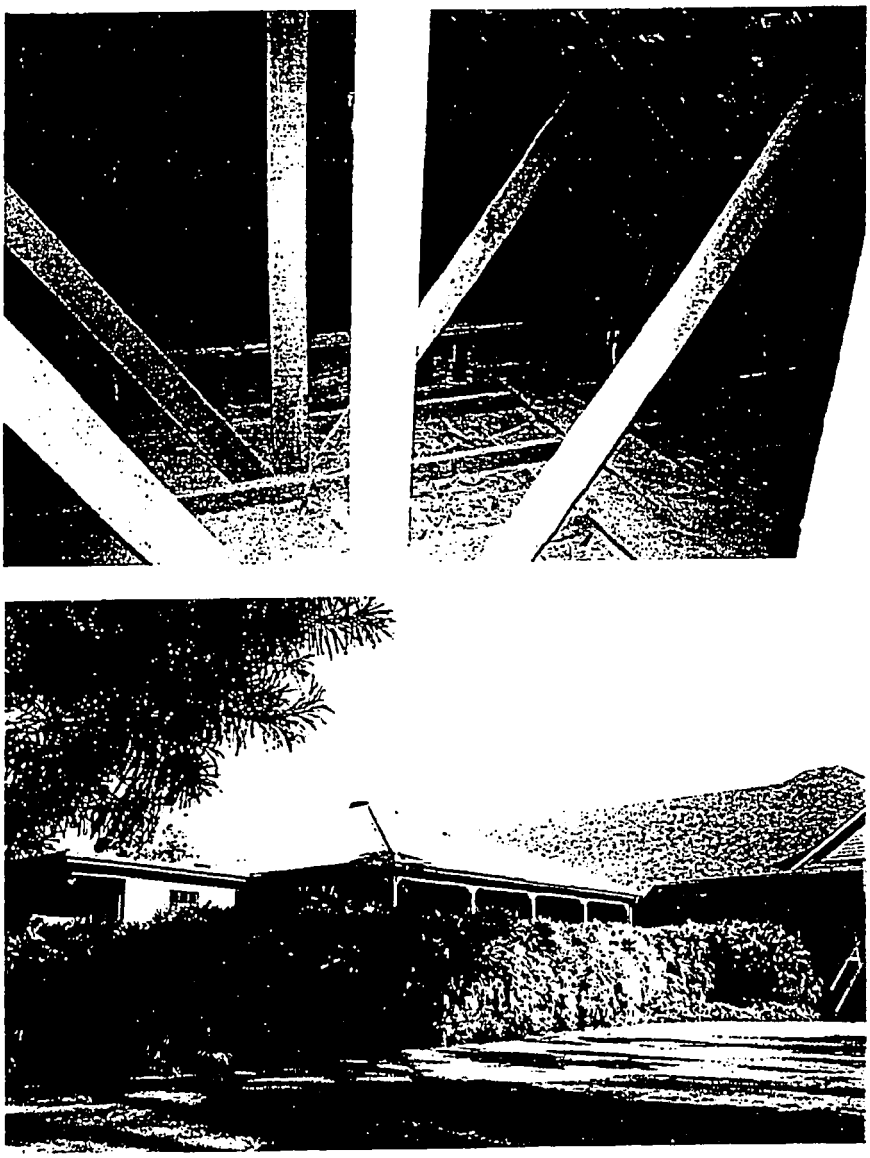


Photo 9 (top) - Attached bedroom wing
Photo 10 (bottom) - Original kitchen building ridge vent





Photo 11 (top) - Fascia at interior courtyard
Photo 12 (bottom) - Exterior siding



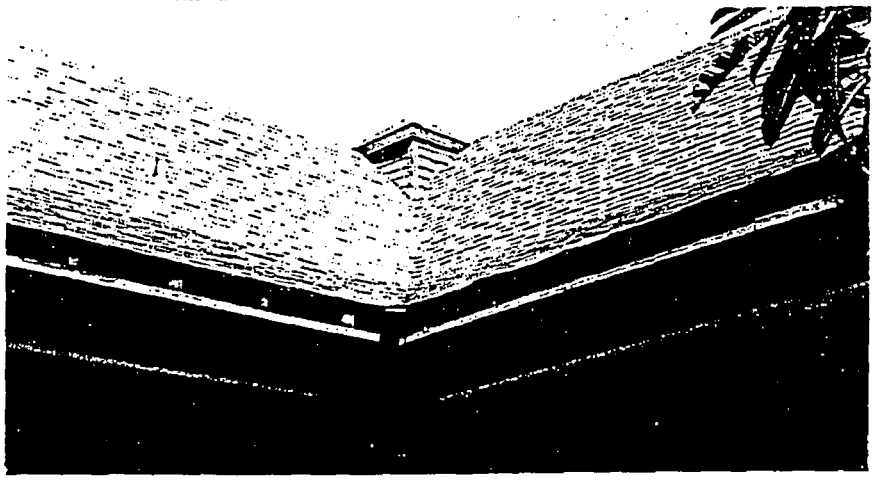


Photo 13 (top) - East side of building showing exterior wall
Photo 14 (bottom) - Exterior door with obscure glazing



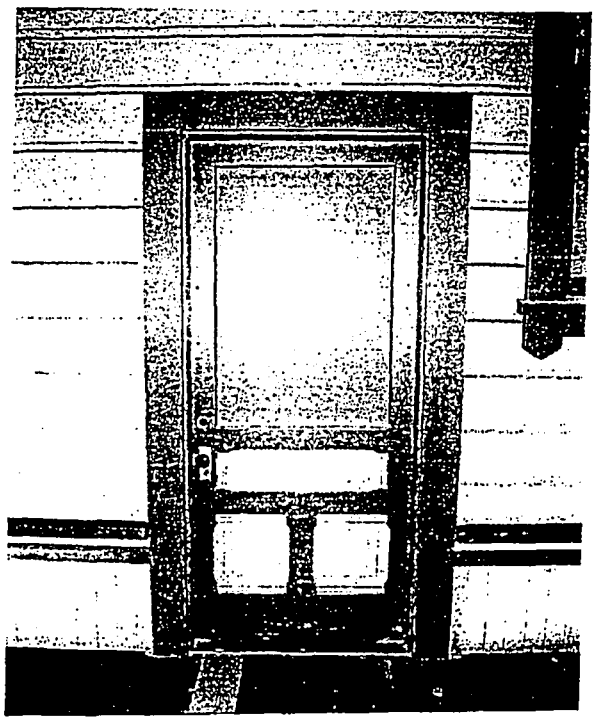
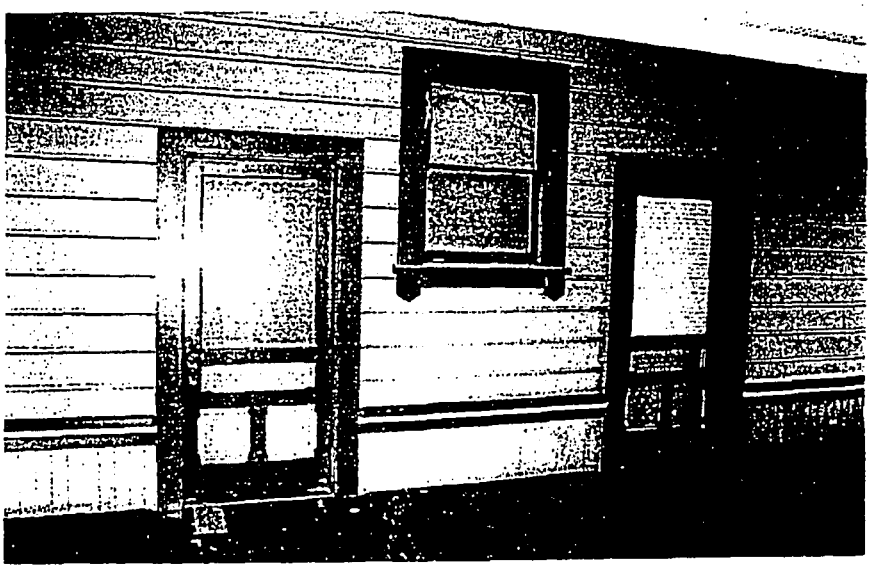


Photo 15 (top) - Double front entry screen doors
Photo 16 (bottom) - Sliding door at rear lanai





Photo 17 (top) - Window at west side of house with decorative casing
Photo 18 (bottom) - Kitchen building double-hung windows



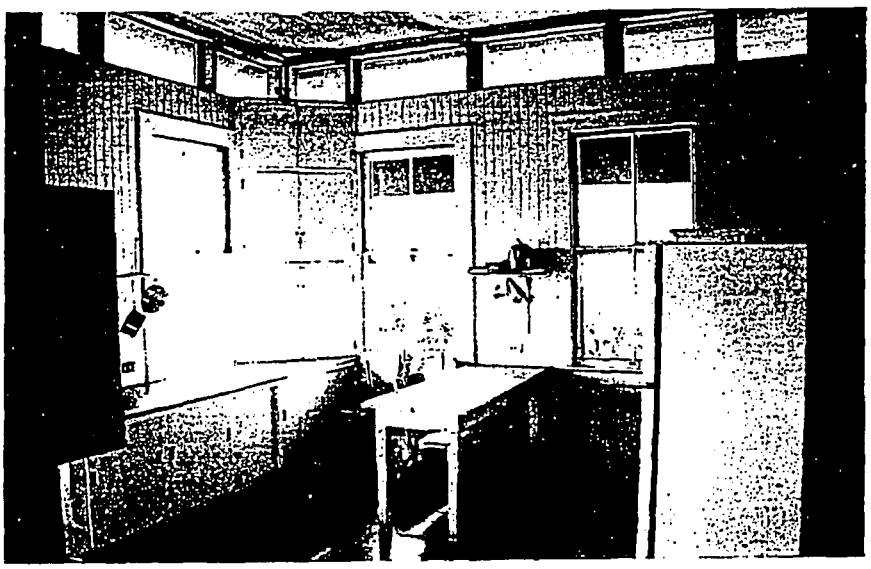


Photo 19 (top) - Front lanai
Photo 20 (bottom) - Damaged flooring at lanai



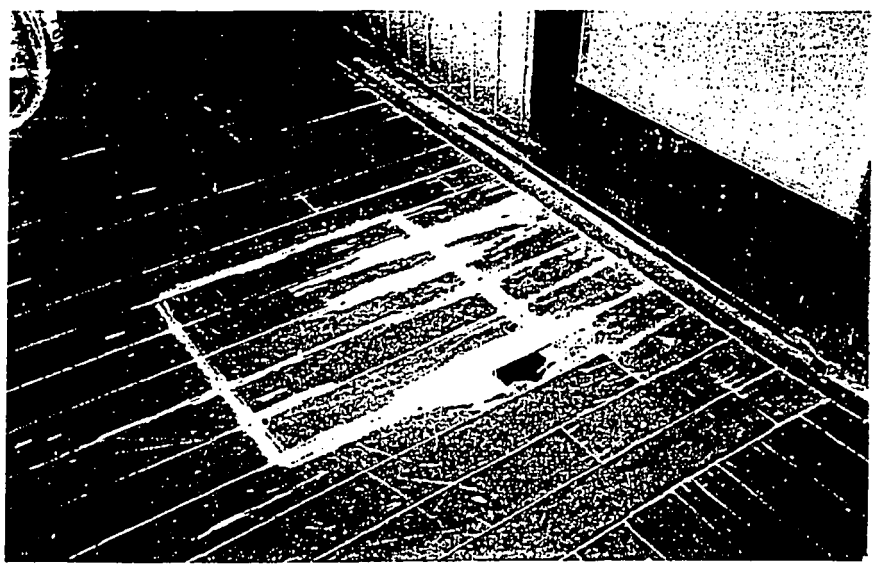
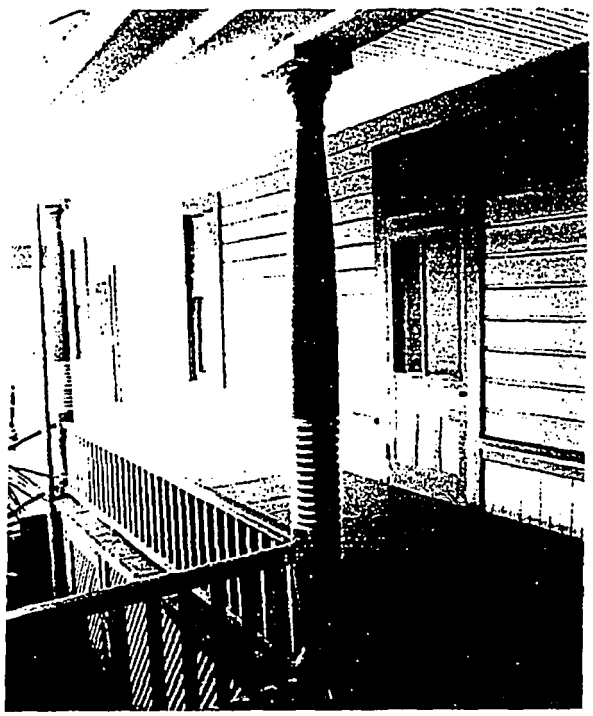


Photo 21 (top) - Decorative wood column at courtyard
Photo 22 (bottom) - Deteriorated column top at courtyard



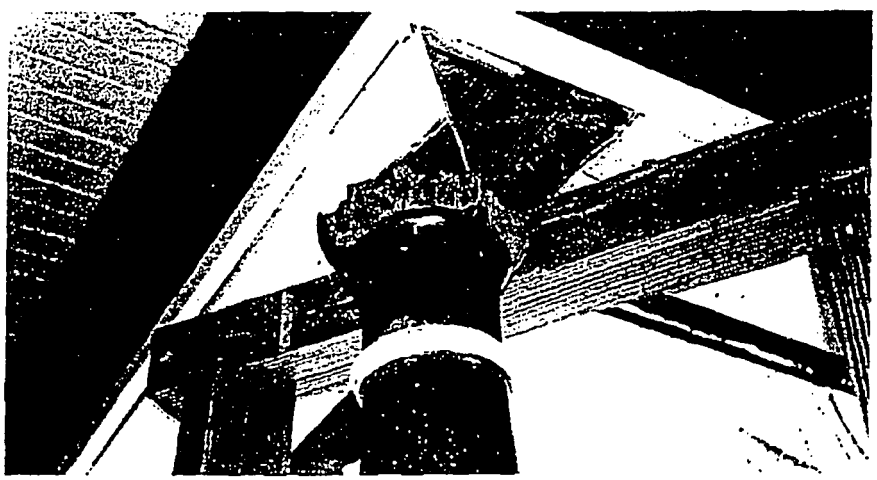


Photo 23 (top) - Foundation
Photo 24 (bottom) - Damaged lattice at kitchen building



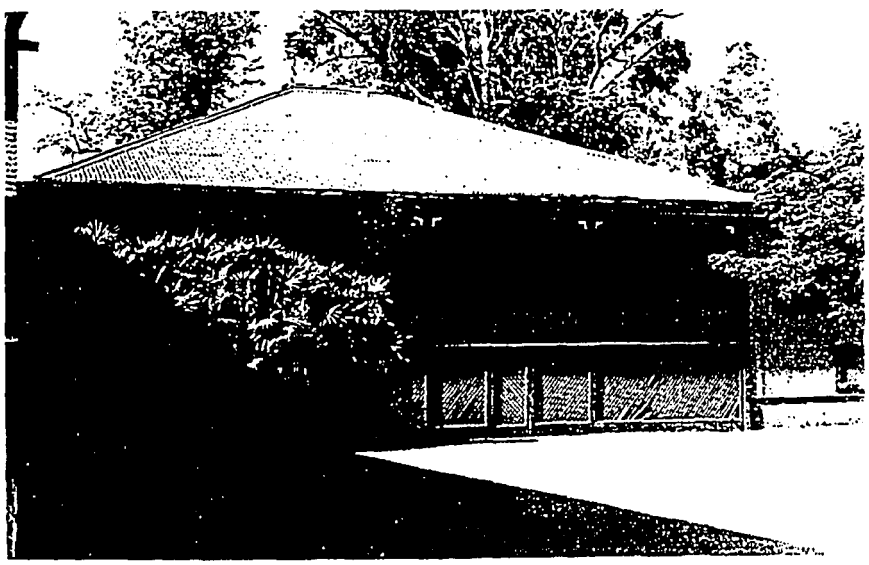


Photo 25 (top) - Wallpaper at sitting room
Photo 26 (bottom) - Koa wainscot at dining room



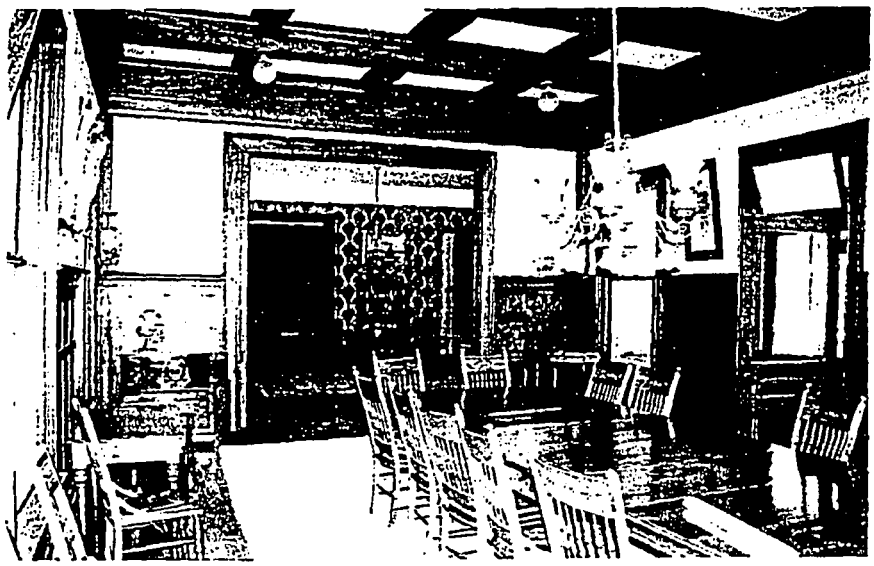


Photo 27 (top) - Ceiling at dining room
Photo 28 (bottom) - Furniture at library

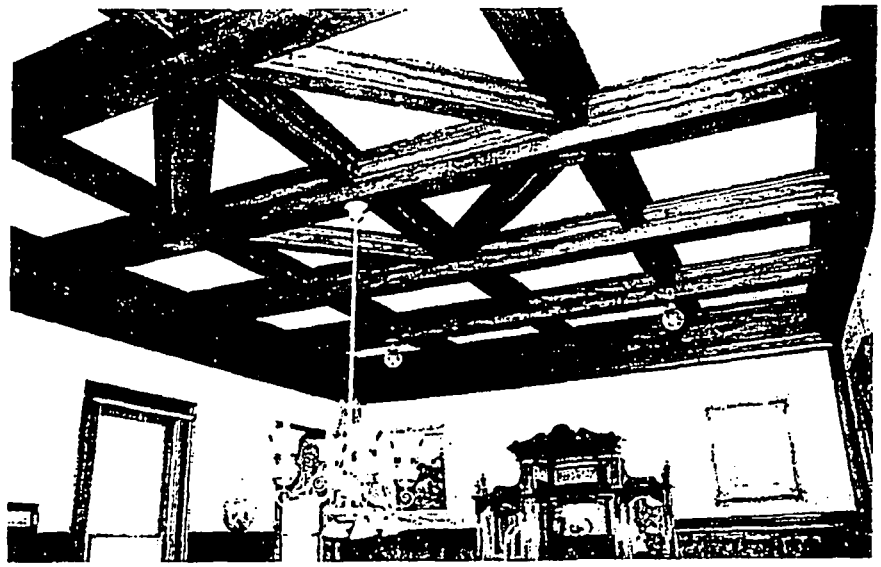
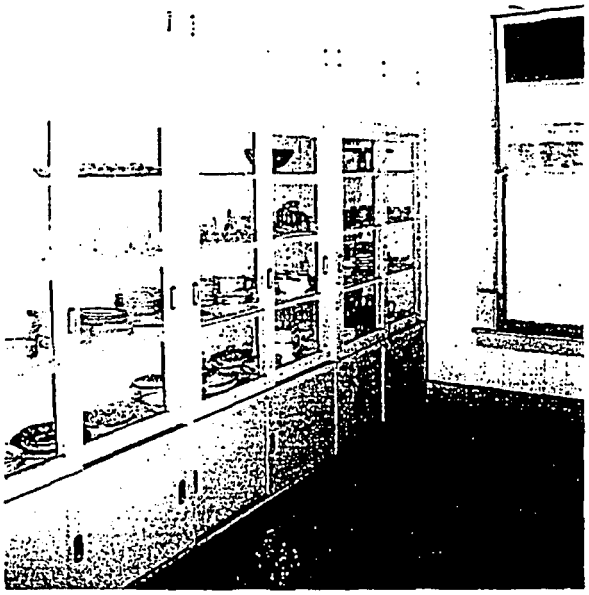




Photo 29 (top) - China room
Photo 30 (bottom) - Cast iron stove at kitchen



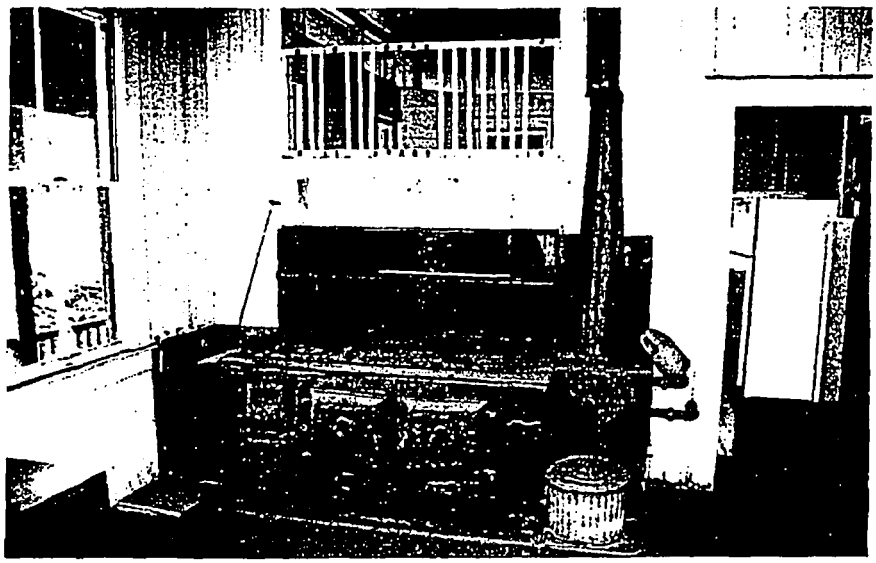


Photo 31 (top) - Exterior light fixture
Photo 32 (bottom) - Architectural elements at foundation

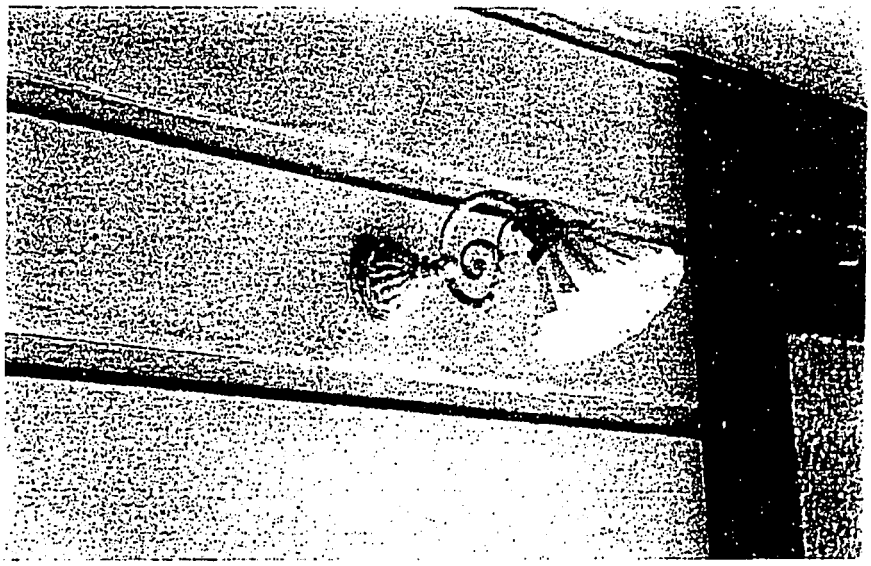




Photo 33 - Stored items in attic

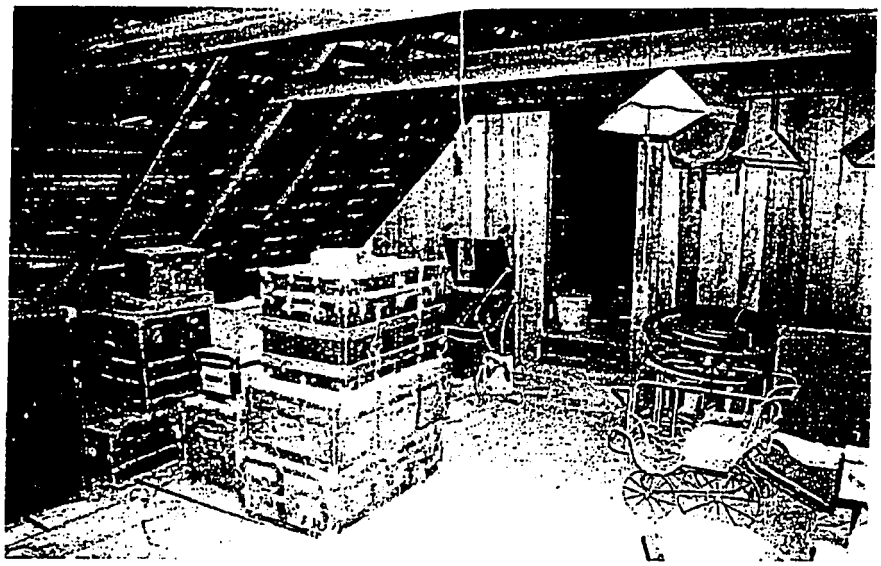
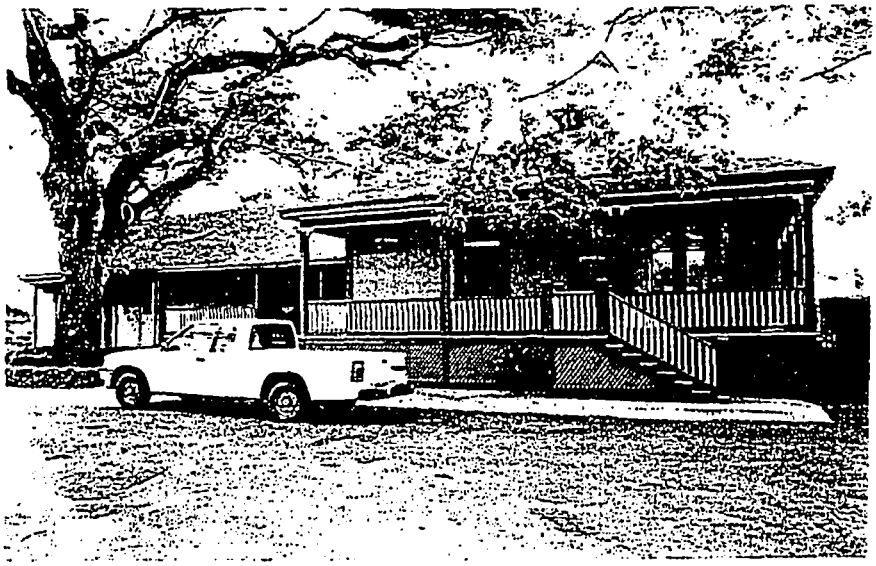


Photo 34 - Cottage, Front View
Photo 35 - Historical View of Cottage





Photo 36 - Office and Tack/Storage Building from Waimea side
Photo 37 - Tack/Storage/Office Building from mauka side



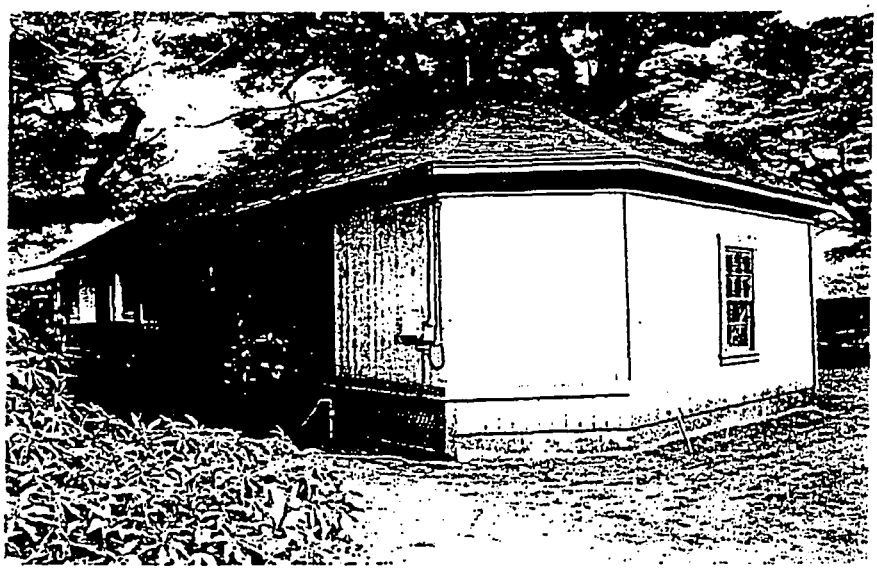


Photo 38 - Historical view of Garage Building
Photo 39 - Garage Building from makai side



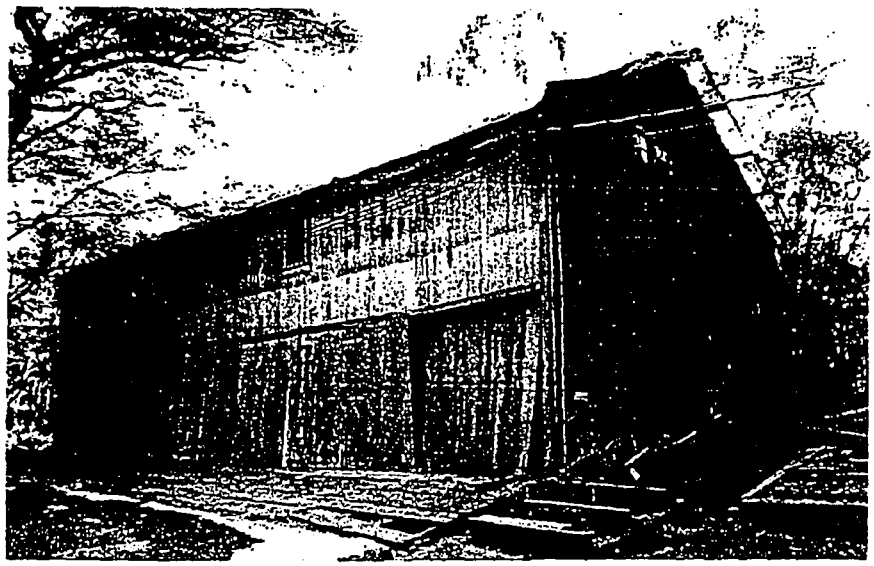


Photo 40 - Greenhouse from mauka side
Photo 41 - Water Tank foundation



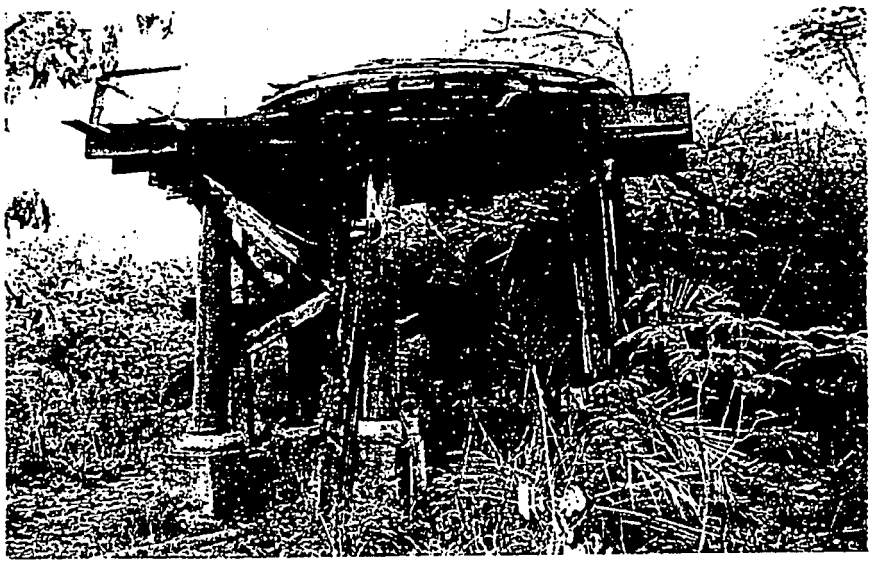
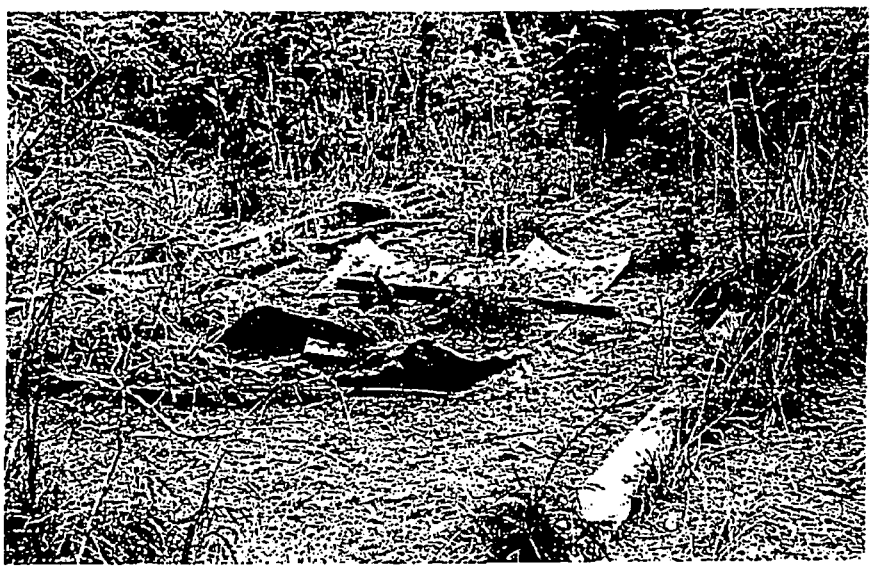


Photo 42 - Laundry/clothesline structure ruins
Photo 43 - Stove ruins at Laundry area





Photo 44 - Concrete slab near Laundry area
Photo 45 - Storage Building at garden area



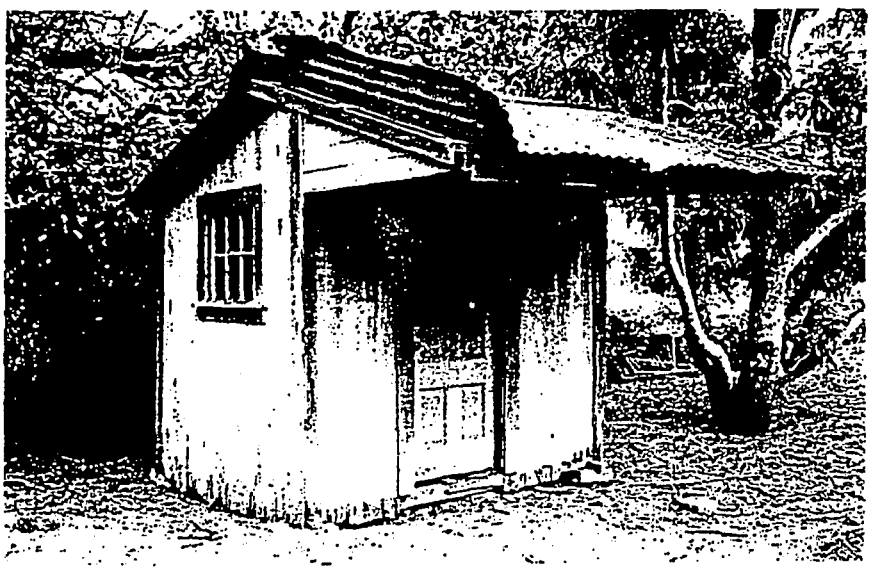


Photo 48 – House 5 (site 50-30-9-764, feature K)
Photo 49 – House 7 (site 50-30-9-764, feature M)



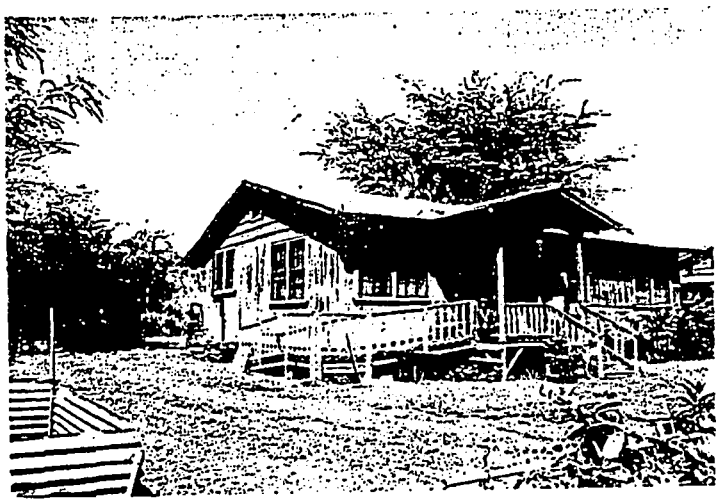


Photo 46 – Houses 2, 3, and 4 (site 50-30-9-764, features H, I, J)
Photo 47 – House 4 (site 50-30-9-764, feature J)

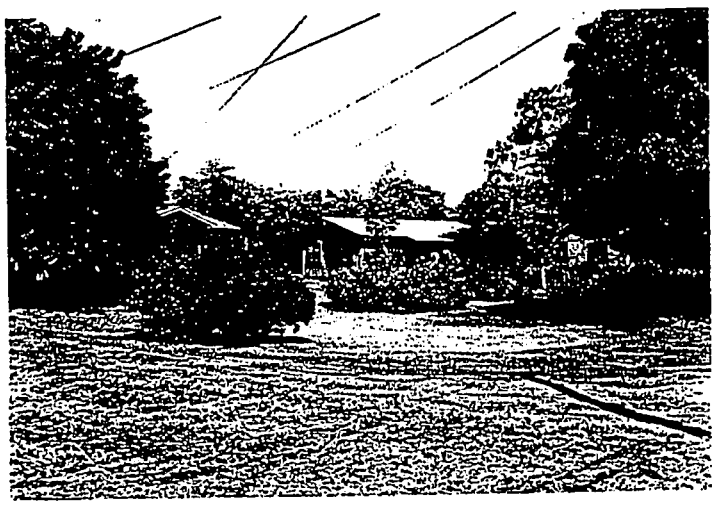




Photo 50 – Attached garage at House 3 (site 50-30-9-764, feature I)
Photo 51 – Interior of Living Room at House 5



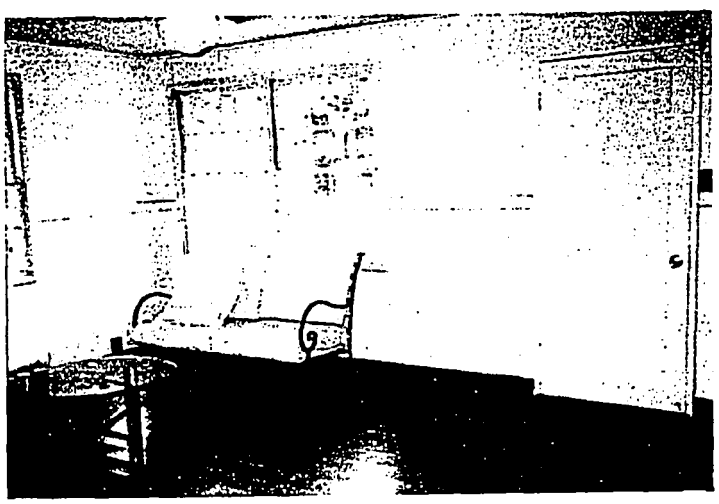
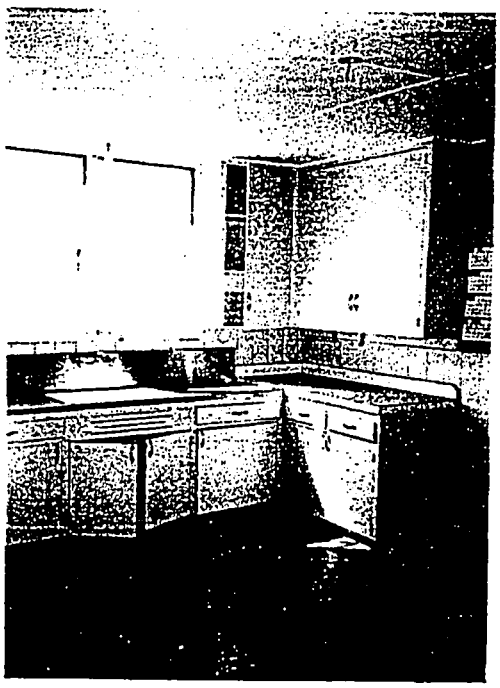


Photo 52 – Interior of Kitchen at House 6



## PART 9 - DRAWINGS

The original drawings, which include the main house and the attached kitchen building, are included here as Figures 1, 2, and 3. Drawings located are the floor plan, foundation plan, and elevations. Drawings were not found for the addition of the attached bedroom wing.

Additional drawings included are the Demolition/Repair plan (Figure 4), the Renovation plan (Figure 5), and Repair Elevations and Sections (Figure 6, 7, 8) for the proposed renovation/ restoration of the main house, attached kitchen building, and attached bedroom wing.

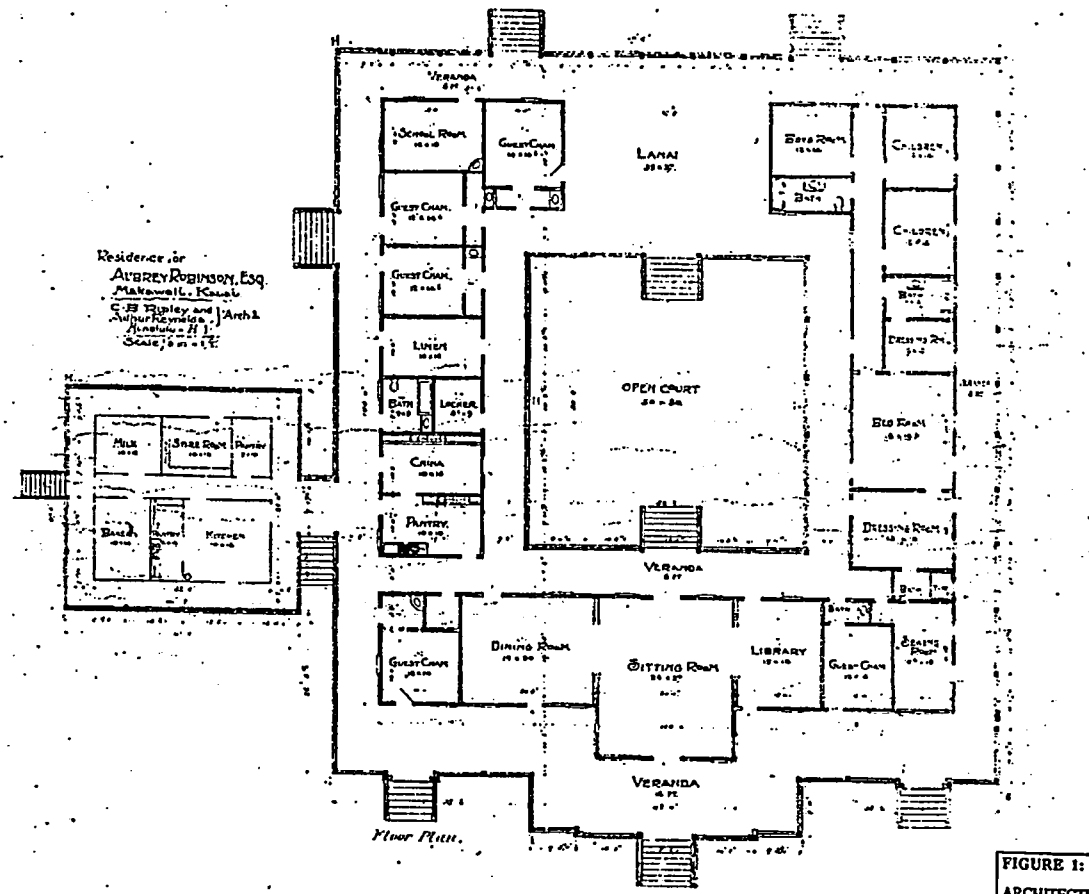



**FIGURE 1: Original Floor Plan**

ARCHITECTURAL ANALYSIS OF STRUCTURES AT KAPALAWAI

Prepared by Mason Architects, Inc.

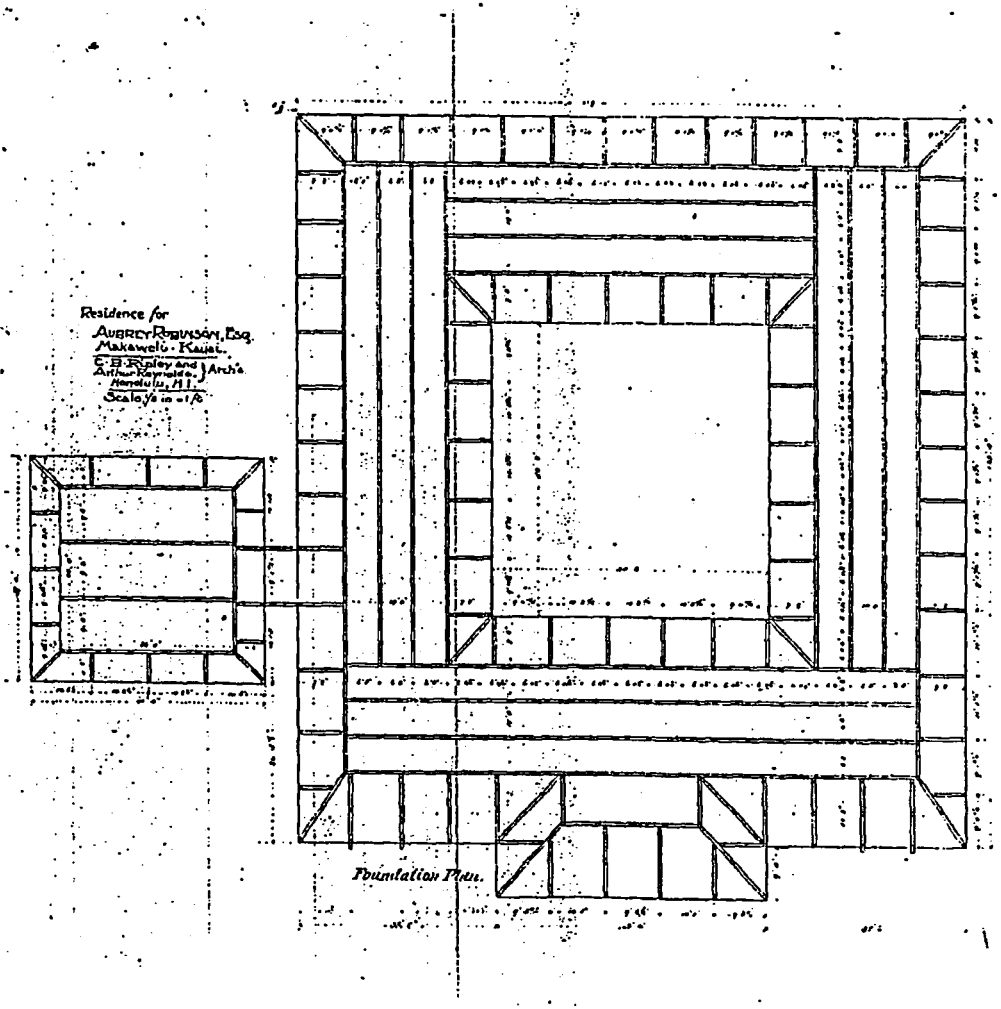



FIGURE 2: Original Foundation Plan

ARCHITECTURAL ANALYSIS OF STRUCTURES AT KAPALAWAI

Prepared by Mason Architects, Inc.

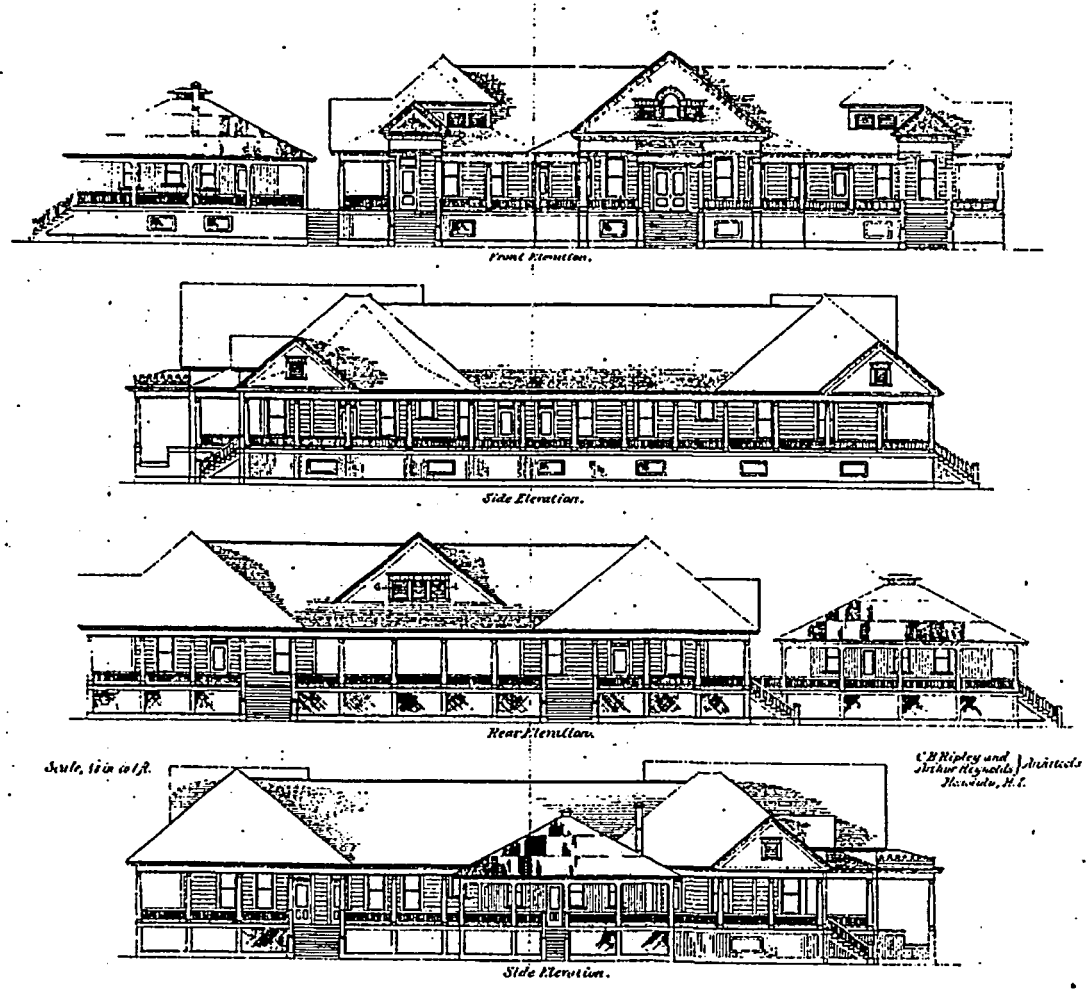



FIGURE 3: Original Elevations

ARCHITECTURAL ANALYSIS OF STRUCTURES AT KAPALAWAI

Prepared by Mason Architects, Inc.

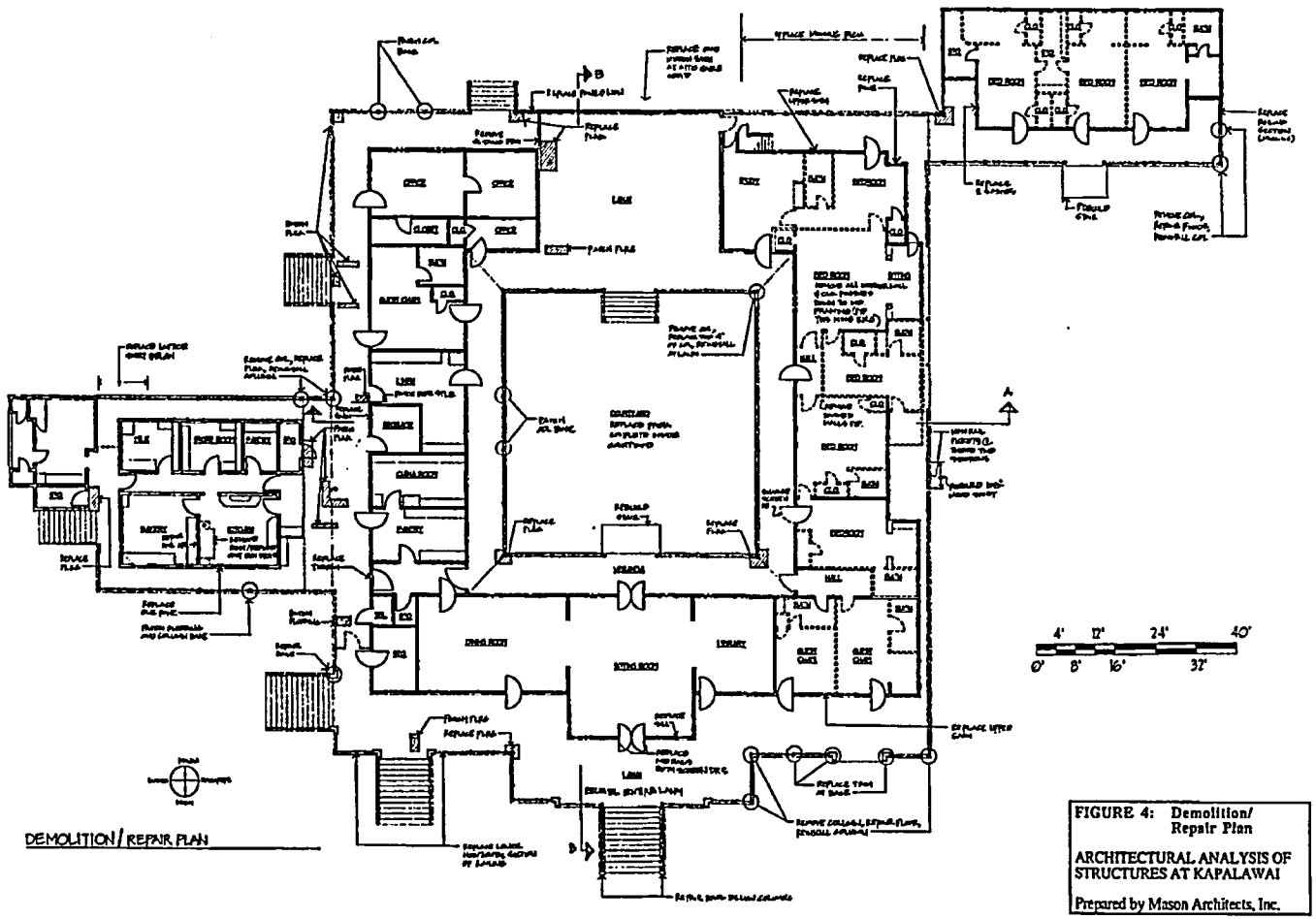



FIGURE 4: Demolition/ Repair Plan

ARCHITECTURAL ANALYSIS OF STRUCTURES AT KAPALAWAI

Prepared by Mason Architects, Inc.

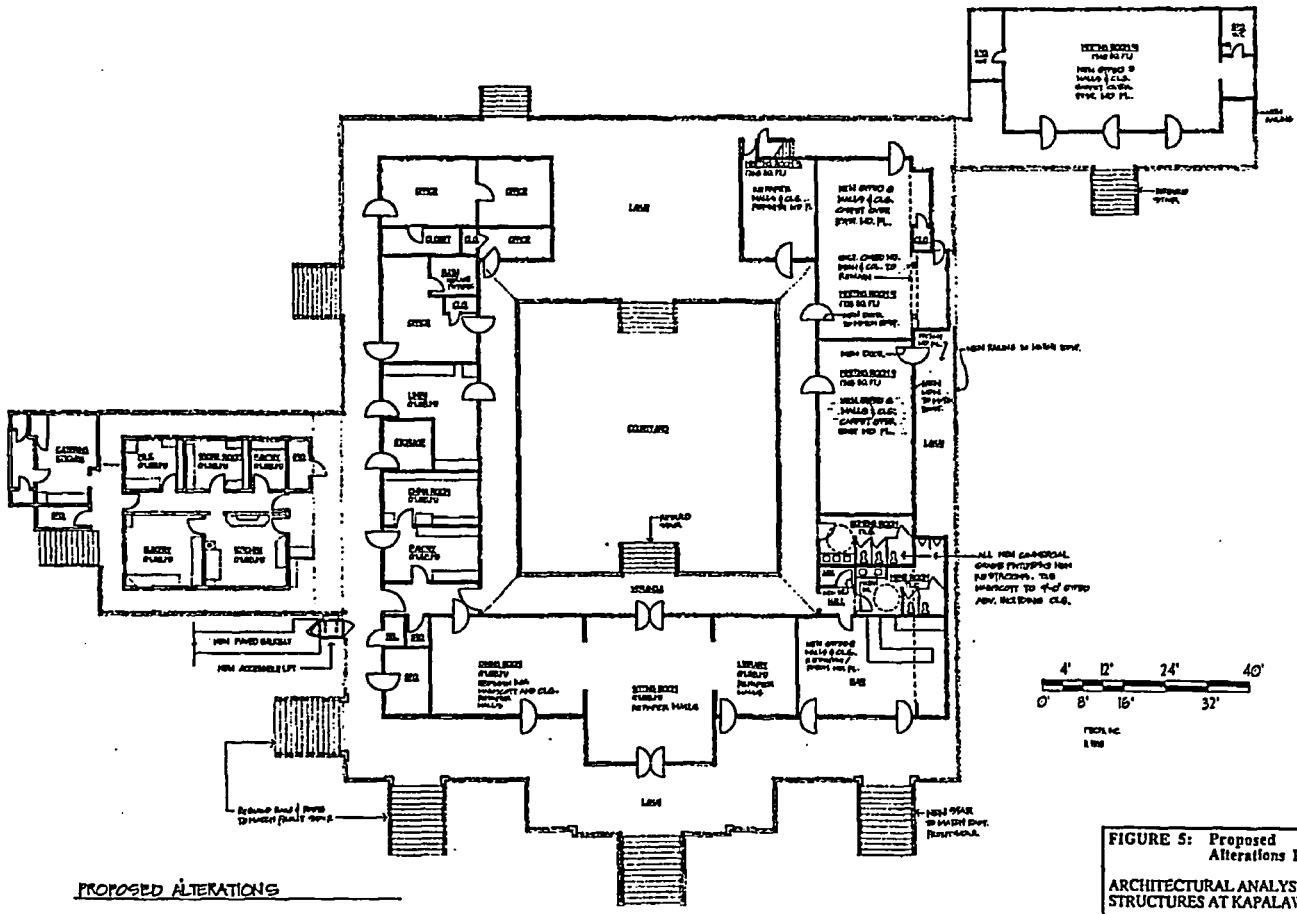
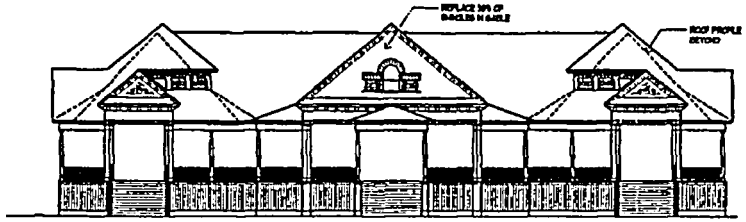



**FIGURE 5: Proposed Alterations Plan**

ARCHITECTURAL ANALYSIS OF STRUCTURES AT KAPALAWAI

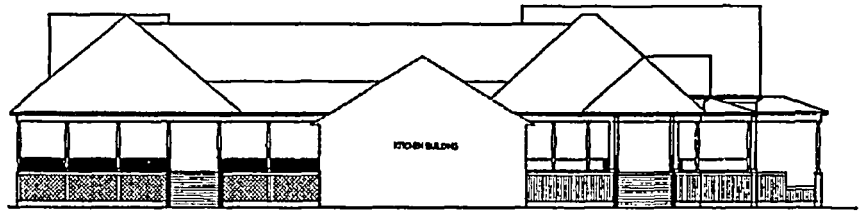
Prepared by Mason Architects, Inc.



FRONT/MAKAI ELEVATION



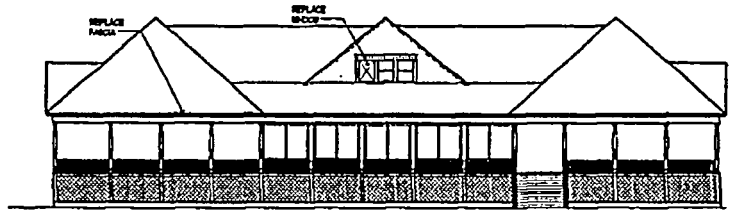
FRONT/MAKAI ELEVATION • LANAI



WAIMEA ELEVATION



WAIMEA ELEVATION • LANAI



BACK/MAUKA ELEVATION

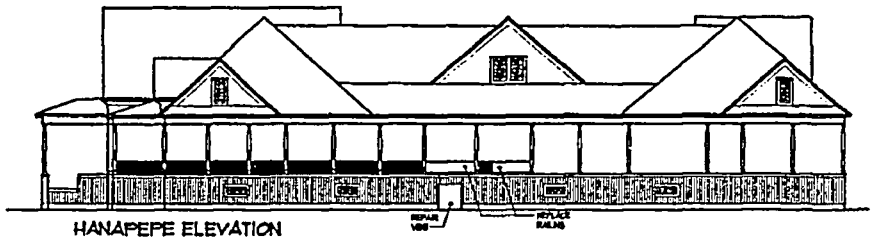


BACK/MAUKA ELEVATION • LANAI

FIGURE 6: House Elevations

ARCHITECTURAL ANALYSIS OF STRUCTURES AT KAPALAWAI

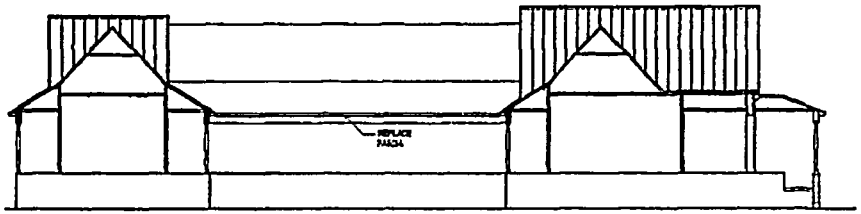
Prepared by Mason Architects, Inc.



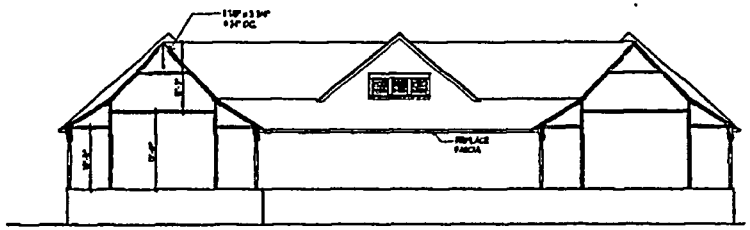
HANAPEPE ELEVATION



HANAPEPE ELEVATION @ LANAI



SECTION B

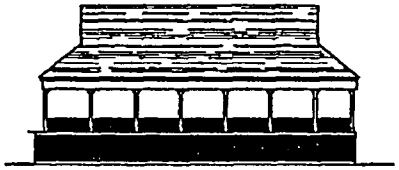


SECTION A

FIGURE 7: House Sections & Elevations

ARCHITECTURAL ANALYSIS OF STRUCTURES AT KAPALAWAI

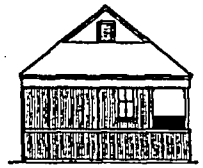
Prepared by Mason Architects, Inc.



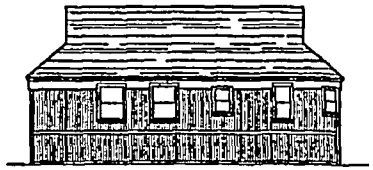
BEDROOM WING
FRONT/MAKAI ELEVATION



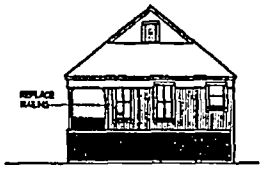
FRONT ELEVATION • LANAI



BEDROOM WING
WAIMEA ELEVATION



BEDROOM WING
BACK/MAUKA ELEVATION



BEDROOM WING
HANAPEPE ELEVATION

**FIGURE 8:** Bedroom Wing Elevations

ARCHITECTURAL ANALYSIS OF STRUCTURES AT KAPALAWAI

Prepared by Mason Architects, Inc.

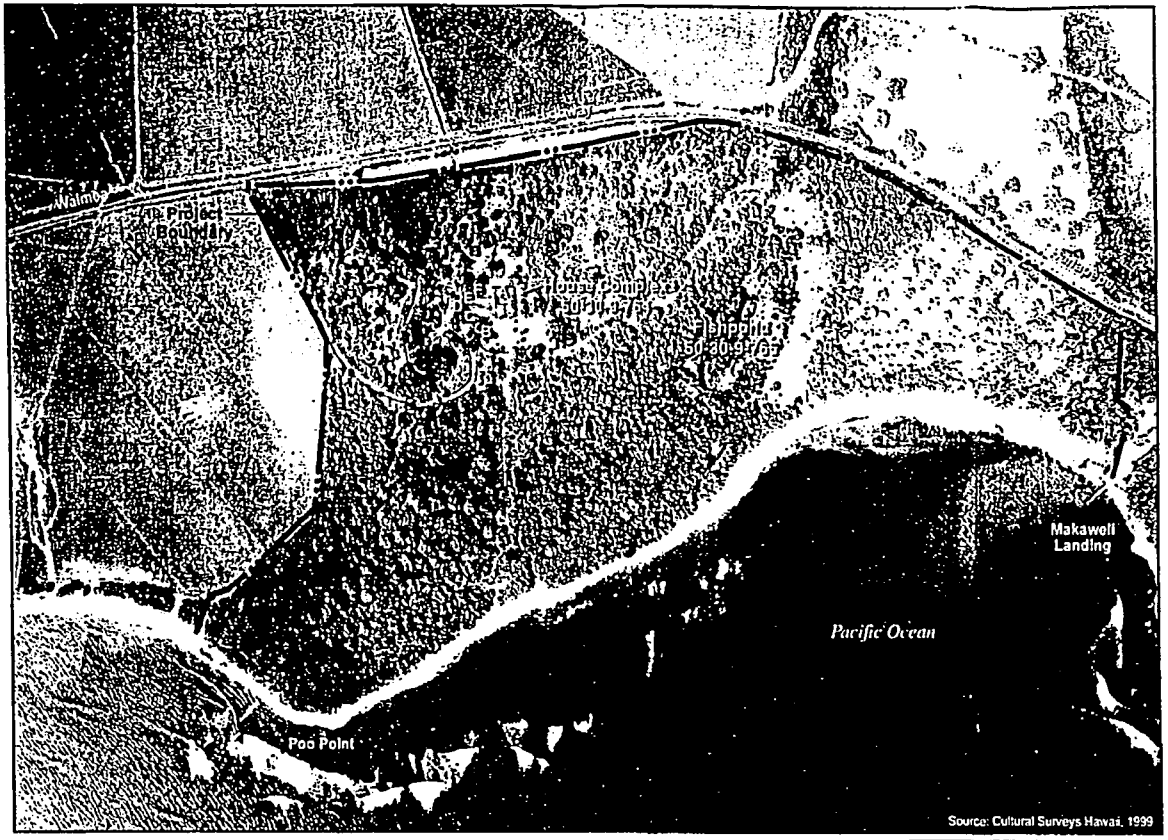



**FIGURE 9: Site Map**

ARCHITECTURAL ANALYSIS OF STRUCTURES AT KAPALAWAI

Prepared by Mason Architects, Inc.



# F

## FISCAL/ECONOMIC IMPACT ANALYSIS

MIKIKO CORPORATION

PA'AKO
CORPORATION

# Economic and Fiscal Impact Assessment for Kapalawai Resort

## Waimea District, Island of Kauai

July 22, 1999

***Prepared for:***

***Helber Hastert & Fee Planners***

2300 Pauahi Tower 1001 Bishop Street Honolulu, Hawaii 96813
Telephone 808 942 5493 Telefax 808 942 7638

*Development planning and tourism advisory services in Hawai'i, Asia, and the Pacific*

July 22, 1999

Mr. Scott Ezer
Helber Hastert & Fee Planners
Grosvenor Center, PRI Tower
733 Bishop Street, Suite 2590
Honolulu, HI 96813

Re: Economic and Fiscal Impact Assessment for Kapalawai Resort, Kauai

Dear Mr. Ezer:

Mikiko Corporation is pleased to present this assessment of the anticipated economic and fiscal impacts of the proposed Kapalawai Resort (hereinafter, "Kapalawai" or "the Resort") on the island of Kauai. This letter explains the background, objective and specific limitations of this study, and summarizes its findings. Following this letter are exhibits that present the detailed study analyses and conclusions. Also attached is a statement of pertinent general limiting conditions.

## BACKGROUND AND STUDY OBJECTIVE

Destination Villages Kauai, LLC (DVK) proposes to develop a 250-bungalow resort on 170 acres of land in Kapalawai, Kauai. The development and its anticipated market support are described in detail in Mikiko Corporation's May 21, 1999 report, "Market Assessment for Kapalawai Resort" (hereinafter, "the market study").

This document presents the results of an economic and fiscal impact analysis for the development of Kapalawai. The analysis is conducted for the State of Hawaii (State) and the County of Kauai (County). This assessment is based on performance assumptions derived from the market study, as well as on development cost and other assumptions and supporting data provided by DVK and/or Helber Hastert & Fee Planners (HHF).

Impacts that were evaluated include the following:

1) Economic impacts:

- Visitor expenditures
- Construction employment
- Operational employment



- Personal income

2) Population impacts:

- On-site de facto population
- In-migrant resident population

3) Fiscal impacts:

- Property tax and other County government revenues
- Transient accommodations tax, excise tax, and other State government revenues
- County and State government operating expenditures
- County and State government net fiscal operating impacts

Estimates of State and County tax benefits and operating expenses stated herein are based on the structure of tax collections and government services in place as of June 29, 1999. The fiscal impacts estimated could differ if governmental taxing and spending policies were to be altered.

All dollar amounts in this report are stated in constant 1998 dollars unless otherwise stated.

## DEFINITION OF TERMINOLOGY

Within this report, the following definitions apply:

- Direct Impacts - Those economic, population or other impacts attributable to persons or activities that are a direct result of a proposed development. For instance, direct employment impacts would include those involved in building the proposed facilities, such as construction workers, and those who would later work at them in their operations.

  The majority, but not all of direct impacts can be expected to occur on-site. For instance, a portion of the construction budget for the development would be for architects and engineers who would design the facilities. While such persons' employment might be temporarily dependent on the contracts generated by Kapalawai, they may do the majority of their work from offices in Honolulu. Likewise, construction professionals working on-site would be supported by administrative and managerial staff located off-site.

- Indirect Impacts - Indirect impacts occur when the businesses or persons who are directly affected make expenditures for additional supplies or services. For instance, in order to offer fresh, local menu choices in Kapalawai's restaurants, the Resort is expected to buy produce and seafood from local farms, fishermen and/or ranching ventures. Kapalawai would thus have indirectly supported new business opportunities for area providers of such goods and services.

- Induced impacts - Induced impacts occur throughout the community when those persons who have benefited from the direct or indirect impacts of Kapalawai spend their associated earnings on consumer goods and services. For instance, a construction worker may spend her earned wages to buy a new pair of shoes, or to pay for her child's day care. The farmer who sells produce to Kapalawai may use his business income to take his family out to the movies. The businesses impacted by such re-spending are said to enjoy induced economic impacts from Kapalawai.

- Total impacts - Total impacts are defined as the sum of direct, indirect and induced impacts for any given variable.

- Resident population - Resident population refers to all those persons who habitually reside in a given area, whether or not they may have temporarily traveled away.

- De facto population - De facto population refers to those persons physically present at a given time. For instance, the de facto population of Kauai includes all tourists and residents who are on the island at a given time, but it excludes residents who have traveled off-island that day. It also includes those who are residing on Kauai only short-term, for instance a Maui resident who is employed as a construction specialist at the site for a month.

- Full-time equivalent - Although some direct, indirect and induced employment opportunities generated by Kapalawai can be expected to be part-time and others to be on-call, this study measures employment opportunities in full-time equivalent (FTE) units. For purposes of this study, one full-time equivalent position is defined as 2,080 hours of employment (including paid vacation, sick leave, etc.) per year. This is equivalent to 40 hours per week, and may also be referred to as a "person-year" of employment. Thus, two half-time jobs are considered to together represent one FTE job.

## DEVELOPMENT OVERVIEW AND TIMING (Exhibit A)

Specific assumptions regarding the scale, nature and timing of Kapalawai are made in order to assess its impacts. For purposes of this assessment, the following timeline is assumed:

- The development period extends from January 1 to December 31, 2001. The study assumes that final discretionary land use entitlement(s) (County Zoning Amendment and/or Special Management Area Use Permit) are obtained in January 2001. Thereafter, final design and engineering studies and all construction are assumed to be completed within the year.



- The operations period begins with the assumed opening of the Resort on January 1, 2002. This study projects the economic and fiscal impacts of the project for two years thereafter, to an assumed "stabilization" of operations in 2004.

The currently on-going entitlement process is already generating significant economic and fiscal benefits by employing professionals throughout the State and generating business travel to the State and to Kauai. However, since such benefits are not dependent on the outcome of the entitlement process, they are not included in this analysis.

Bungalow occupancy is estimated to average 65% and 70% in the first two years of operations, respectively, and then to stabilize at about 75% by 2004, based on the market study findings. Occupied bungalows are projected to house an average of 1.95 visitors, which represents the average party size for visitors to the island of Kauai in 1997[1].

According to HHF, slightly more than half of the site could be developed with resort-type facilities, while the remaining approximately 80 acres would consist of undeveloped areas such as shoreline and highway setbacks, and conserved areas including a large fishpond.

## ECONOMIC IMPACTS

Kapalawai could be expected to impact the State and Kauai economies by (1) attracting visitors who would make new expenditures, (2) generating construction activity, which would support expenditures for goods and services, and (3) creating and supporting jobs and business enterprises in its ongoing operations. The new jobs would in turn generate additional personal income in the County and throughout the State.

### Visitor Expenditures (Exhibit B)

The anticipated mix of types of visitors staying at Kapalawai is based on the findings of the market study. This study assumes the following average mix by direction of travel:

- Westbound visitors – 75%
- Eastbound visitors – 5%
- Hawaii residents – 20%

The Hawaii residents or *kama'ainas* are not expected to contribute significant new expenditures to the State, since it is assumed their vacation budgets would have been spent elsewhere in the islands even if Kapalawai did not exist. To the extent local residents choose to stay within the State for their budgeted vacations because of Kapalawai, this assumption underestimates the project's

[1] Hawai'i Visitors & Convention Bureau, "1997 Annual Research Report," Table 31. In 1996, Kauai's average visitor party size was 1.88

benefits and is therefore considered conservative. However, the Resort's unique vacation opportunities may result in some *kama'ainas* vacationing on Kauai rather than other islands of the State. Thus for purposes of projecting County impacts that stem from visitor population levels, 50% of the Resort's *kama'aina* visitor mix is assumed to be persons who would not have otherwise have stayed on Kauai.

- **Bungalow expenditures** – Bungalow revenues are projected to represent some $8.8 million in 2002, increasing to $10.7 million by 2004 as operations stabilize. This is based on the estimated achieved rate of $185 per room night in 2002. Thereafter, real dollar increases of 3% per year are assumed until stabilization in 2004.

- **Other expenditures** – Other expenditures from the anticipated out-of-State visitor markets are based on the 1997 average daily expenditures of westbound and eastbound travelers to the State, adjusted to 1998 dollars and considering exchange rate changes. Based on this analysis, eastbound visitors are projected to spend some $186.00 per person per day on items such as food and beverages, retail, entertainment, activities, inter-island travel and the like. Likewise, westbound visitors to Kapalawai could spend some $91.50 per person per day on non-lodging items and services.

  On average then, the typical Kapalawai visitor is projected to contribute $78 per day to the State's economy. This figure is averaged across the 20% local resident visitors, whose contribution to the State economy is evaluated as being negligible, as discussed above. Considering only out-of-State visitors to Kauai, non-lodging expenditures are expected to average approximately $98 per day. These expenditures are in addition to the parties' expenditures for accommodations, and are shown near the top of Exhibit B.

  Considering only Kapalawai's out-of-State visitors, the $98 in non-lodging expenditures per day could support some $9.1 million in new visitor spending by 2002, or $10.5 million per year upon stabilization of operations.

- **Total direct expenditures** - In total, direct visitor expenditures are estimated to represent $17.8 million in 2002, increasing to some $21.2 million by 2004, in 1998 dollars. Including the indirect and induced multiplier effects within the State, visitors attracted by Kapalawai could account for over $36 million in new annual visitor expenditures by the time of project stabilization.



**Construction Expenditures (Exhibit C)**

DVK estimates an approximately $33 million budget to develop Kapalawai, to be expended in 2001. The budget is in current dollars and includes:

- **Professional services** – architectural, engineering, landscape design, legal, and similar services.

- **Bungalow construction** – including materials and labor, but excluding the furnishings, fixtures and equipment associated with the bungalows.

- **Support facilities construction** - support and "back of house" facilities, including the boardwalks, landscaping, swimming pools, restaurants and snack bars, renovation of the historic home on site and development of a museum there, meeting spaces, and the like. These estimates also exclude furniture, fixtures and equipment that may be purchased for the facilities.

- **Infrastructure construction** – all costs related to infrastructural developments such as sewage, utility and cable lines, walkways, roads, parking and the like.

**Development Employment and Income (Exhibits C and D)**

Development of Kapalawai is estimated to require about 280 person-years of labor, as shown in Exhibit C. While the majority of this work would occur on-site, some, such as the professional services and administrative positions related to construction, are likely to be primarily located off-site. Many of the latter might be located elsewhere on Kauai, or on Oahu. This estimate includes proprietary employment opportunities supported by the project's development.

Direct personal income associated with these Hawaii-based positions could total about $15.7 million, as shown in Exhibits C and D.

Total wage, salaried and proprietary employment associated with construction of Kapalawai, including induced and indirect positions could total about 710 person-years, as also shown in the exhibit. The indirect and induced positions could be supported throughout the State, but many would be located on Kauai.

Including its direct, indirect and induced impacts, the project's development could support some $30.2 million in wage, salaried and proprietary incomes for Hawaii residents.

**Operational Employment and Income (Exhibit E)**

In addition to its development-related positions, Kapalawai would support many long-term permanent jobs in its operations. Direct operational jobs are projected to stabilize at about 200 FTE positions, as shown in Exhibit E. These new employment opportunities could include a variety of types and levels of work, including opportunities in management, sales and marketing, registration/reservation, human resources, food service, maintenance and engineering, housekeeping, landscaping and activities. The majority of such jobs would be located on-site.

Based on economic multipliers derived from the State's 1992 Input-Output Study (dated December 1998), the total employment impacts of Kapalawai, including its indirect and induced jobs, could represent about 320 FTE positions throughout the State.

Direct wages and salaries paid to those employed in the Resort's operations are expected to reach about $5.3 million in 1998 dollars. Including personal income associated with the indirect and induced positions, the project could generate nearly about $12.3 million per year in ongoing payroll within the State. These figures do not include the potential profits of proprietors whose businesses could serve Kapalawai, nor do they include employee benefits.

**POPULATION IMPACTS (Exhibit F)**

Development of Kapalawai could affect population in several ways:

- It is expected to attract new travelers to the State, primarily staying on-site.
- Construction and operational employment opportunities would lead to new de facto population on-site.
- Some of those taking advantage of the construction and operational employment generated by Kapalawai might move from other counties or states because of the job opportunity, thus increasing the Kauai County and/or Hawaii State resident population levels. Other household members might also accompany such in-migrating persons.

**On-site Population**

Based on the 250 bungalows and the occupancy assumptions presented previously in Exhibit A, Kapalawai could be expected to accommodate an average of about 365 visitors per day once it reaches its anticipated stabilized occupancy level of 75%. On average, Kapalawai could also have



around 240 construction workers on-site on any given day in 2001, and 143 operational employees per day after opening in 2002.

These figures represent the total number of persons anticipated to be on-site over a 24-hour period. In any given hour, there would likely be fewer persons present on-site, since some visitors would be visiting attractions off-site, and the workers would be scheduled in shifts rather than all at once.

**Off-site Population: In-migration to the State (Exhibit F)**

Kapalawai is not anticipated to lead to any significant migration from out-of-State, as discussed below. However, to the extent persons do move to the State because of its development, such in-migrants can be expected to reside in housing or transient accommodations located off-site.

- **Construction:** Hawaii's labor market is considered to have sufficient supply and the required skills to satisfy virtually all of Kapalawai's construction labor needs. However, a nominal number, or 1% of FTE staffing needs are assumed come from the U.S. mainland. Such persons would be temporarily resident on Kauai during the project's development.
- **Operations:** Recent hotel openings on Kauai have been directly associated with little if any in-migration of persons from out-of-State. The Human Resource Managers at the 413-room Sheraton Kauai Resort and the 216-room Holiday Inn SunSpree, which opened in December 1997 and November 1998, respectively, were interviewed regarding the amount of in-migration associated with their hiring. In both cases, no "line" employees are known to have moved from out-of-State due to their employment opportunities. Only two management personnel at the Sheraton may have moved due to the employment opportunity. This represents from 0% to 0.6% of the total employees at each hotel. For purposes of this analysis, 1% of Resort employees were assumed to move to Kauai from out-of-State due to their employment opportunity at Kapalawai.
- **Dependents:** In-migrant dependents are estimated at an average of 0.2 per FTE in-migrant construction worker (since the position on which the "move" is based would be temporary), and 1.0 per FTE in-migrant operations employee.

**Off-site Population: In-migration to the County (Exhibit F)**

Kapalawai's construction is likely to be associated with a temporary movement of employees between islands, but its operations are expected to be staffed predominantly by prior island residents, as discussed below.

- **Construction:** The amount of off-island construction labor Kapalawai will attract would be dependent on factors such as how the project is bid, the bonding capacity and other on-going

activities of Kauai-based general contractors at the time, the general contractor's criteria for selecting subcontractors, and other factors that are beyond prediction. Discussions with Kauai construction industry professionals and the head of the Contractors' Association of Kauai indicate, however, that there are general contractors on Kauai with the capacity to bond a construction project of this size. These contacts also estimated that the ultimate staffing for the Resort's construction could vary from about 60% to 75% Kauai residents, assuming the general contractor is from the island. Based on this input, the projections assume that 30% of construction workers employed on-site at any given time would be from off-island.

- Operations: The openings of the Sheraton Kauai and the Holiday Inn SunSpree discussed on the previous page are estimated to have drawn about seven or eight employees each from other islands. This represents 2.5% of all employees at the Sheraton, and 6% of those at the Holiday Inn. For purposes of this analysis, 5% of Resort employees were assumed to move to Kauai from other Hawaiian Islands due to their employment opportunity at Kapalawai.

- Dependents: As for the State, each in-migrating construction employee is anticipated to be accompanied by an average of 0.2 dependents. This could represent a spouse, child or friend visiting from off-island on some weekends. On average, each in-migrant operations employee is assumed to be accompanied by 1.0 dependent.

## FISCAL IMPACTS

Kapalawai's fiscal impacts are estimated by comparing the project's anticipated government revenues to the government service costs associated with the additional population Kapalawai may attract to the State and to the County.

### Additional County Real Property Tax Revenues (Exhibit G)

For the County, the most significant fiscal impact of the Resort is likely to derive from the higher real property taxes it would generate compared to those paid under its current land use designations and level of development. Once developed, the majority of the site is likely to be taxed based on its resort use, according to discussions with personnel at Kauai County's Real Property Tax Division. However, facilities earning a significant share of revenues from persons not staying at the Resort are likely to be taxed as commercial property. This analysis assumes the main restaurant located near to the fishpond is taxed as commercial property[2].

[2] Since the tax rates for Hotel/Resort and Commercial use properties are the same in Kauai County, this distinction does not have a significant impact on the total amount of real property taxes projected.



Net new real property taxes at the site are based on Kauai's Fiscal Year 1999/2000 rates, as adopted by the County Council in May 1999. The Resort/Hotel and Commercial tax rates are the same, both representing of $8.40 per thousand dollars assessed value of improvements, and $8.80 per thousand assessed value of land.

The assessed values of the lands after their assumed new entitlements in January 2001 are based on comparison to assessed values at other projects on the island, and recent property transactions. The assumed values of the improvements are based on the construction costs shown previously in Exhibit C, and exclude professional services. Assuming entitlements are received in 2001, the properties would be reassessed under the new land use designations as of January 2002. Therefore, the new real property tax classifications would be applied in the next fiscal year, which would begin July 1, 2002.

In 2001 and the first six months of 2002 (prior to its taxation under the new designations), the property is assumed to continue to pay real property taxes based on its current designation as Agricultural and Conservation lands with minimal development.

After adjustments for the nominal property taxes now paid at the site, Kapalawai is anticipated to generate approximately $420,000 annually in net new property tax revenues by 2003.

### Total New County Government Operating Revenues (Exhibit H)

In addition to real property taxes, Kauai County is allocated a share of the transient accommodations taxes (TAT) collected by the State, and it obtains liquid fuel, utility franchise, motor vehicle weight, and other licenses and permit fees from residents and businesses.

Given the bungalow revenues projected to be generated by out-of State visitors to Kapalawai[3], the State's 7.25% TAT, and Kauai County's current 6.5% share of State TAT collections, this could represent some $50,000 in annual TAT revenues for the County by 2003.

Those persons who move to the County because of the project would also pay additional liquid fuel, utility franchise, motor vehicle and other minor County taxes. These miscellaneous tax sources could represent a nominal further increase in County taxes attributable to Kapalawai.

In summary, net new taxes earned by the County as a result of Kapalawai's development and operations could represent some $480,000 per year on an on-going basis by 2004. These figures are in 1998 dollars, and are reflected in Exhibit H.

[3] TAT paid by [illegible] staying at the Resort are not considered an additional impact, since [illegible] are assumed to visit [illegible] in the State even if Kapalawai is not opened.

**Additional State Government Operating Revenues (Exhibit I)**

Additional operating revenues accruing to the State government are expected to derive principally from the general excise tax (GET) accruing from out-of-State visitors' expenditures in Hawaii. Other sources of new State revenues attributable to Kapalawai include its share of the TAT, as well as GET, income and other taxes paid by those who move to the State because of the project, and GET on its development costs.

Taxes paid by households that move to the State were adjusted downward from their historical levels to reflect the income tax rate reductions implemented by the State Legislature in 1998. These projected individual income taxes and other revenue sources from in-migrants are considered conservative because the overall figure was adjusted downward based on changes in State income tax levels, whereas the total figure includes specific excise and other taxes as well.

In total, new operating revenues for the State are estimated to amount to some $1.3 million annually by project stabilization in 2004, as shown at the bottom of Exhibit I. The projected State tax revenues may be conservative in that they do not include:

- Potential income taxes from proprietary operating income, including those that may be paid by the operating entity for Kapalawai,
- GET or possible income taxes on ground lease rents earned by the landowner, or
- The State surcharge on motor and tour vehicles that would be rented by Kapalawai visitors.

**Per Capita Government Operating Expenditures (Exhibits J and K)**

Both State and County governments can be expected to incur additional operating expenses in supporting the in-migrants that are attracted by Kapalawai. An analysis of the County's 1995/96 fiscal year expenditures suggests that the County spends some $1,900 per resident per year, and about $1,170 per full-time equivalent visitor-year, in 1998 dollars. These expenditures support services ranging from public safety and highways to recreation and cash capital improvements, as shown in Exhibit J.

A similar analysis of State government operating expenditures per capita suggests that the State spends about $4,970 per year to support government operations on behalf of each resident, and $1,840 per full-time equivalent visitor-year, in 1998 dollars, as shown in Exhibit K.

**Additional County and State Government Operating Expenditures (Exhibit L)**

Applying these per capita budgets to the number of visitors and those anticipated to in-migrate to the County because of employment opportunities at Kapalawai results in an estimated $420,000 per



year in additional County government operating expenditures by the time of project stabilization in 2004[4].

Employing an analogous methodology, the State could be expected to require up to $560,000 per year to support the visitors and residents attracted by Kapalawai, in 1998 dollars. These figures are shown at the bottom of Exhibit L.

For purposes of estimating government costs associated with additional population, the construction workers and their dependents are treated as "non-residents." This is because their temporary presence on the island or in the State is not likely to lead to additional government expenditures in categories such as public education, public welfare, unemployment, retirement and pension policies, and the like. Rather, they are more likely to burden the County and State governments like visitors do, utilizing public utilities, parks and highways, and requiring their share of police and fire protection.

**Net Fiscal Benefits (Exhibit M)**

County government operating revenues from Kapalawai are anticipated to exceed the additional operating expenses as the project approaches stabilized operations, or in about 2003, as shown in Exhibit M.

On the other hand, with its far greater taxing powers and more varied sources of income, the State government's operating revenues are anticipated to by far exceed the additional operating expenses associated with the project throughout its development and operating periods.

The ratios of government operating revenues to government operating expenditures at the anticipated stabilization of Kapalawai in 2004, and for each year thereafter, are estimated to be approximately as follows:

| | County | State |
|---|---|---|
| Net additional revenues *(1998 dollars)* | $60,000 | $760,000 |
| Revenue/expenditure ratio | 1.1 | 2.4 |

Pv ΣPΣ PΣP ΣP

[4] 50% of Kauaians visitors to Kapalawai are considered "new population" for Kauai, assuming that the other 50% are assumed to be Kauaians who would have been likely to have visited Kauai even without development of the project.

Thank you for the opportunity to provide this report.

*Respectfully submitted,*

*Ann M. Bouslog*
*President*

Enclosures

General Limiting Conditions

This report is subject to the following standard report conditions:

- Every reasonable effort has been exerted to assure that the data contained in this study reflect the most accurate and timely information possible, and the data shown are believed to be reliable. However, no responsibility is assumed for inaccuracies in reporting by government agencies, consultants, published research, or any other data source used in preparing this study.

- Since the projections are based on estimates and assumptions which are inherently subject to uncertainty and variation depending upon evolving events, Mikiko Corporation cannot represent them as results which will actually be achieved.

- Possession of this report does not carry with it the right of publication. Additionally, no abstracting should be made without first obtaining written permission from Mikiko Corporation.

*Exhibit A*

## Kapalawai Resort

### Project Development and Occupancy Projections

*(2001 to 2004)*

| Operating year / Calendar year | Basis/reference | -1 2001 | 1 2002 | 2 2003 | Stabilized 3 2004 |
|---|---|---|---|---|---|
| Number of bungalows: | *As of 1/1 of each year* | | | | |
| Under construction | | 250 | 0 | 0 | 0 |
| Operational | | 0 | 250 | 250 | 250 |
| Utilization assumptions: | | | | | |
| Occupancy rate | | 0% | 65% | 70% | 75% |
| Occupied "bungalow" nights | | 0 | 59,300 | 63,900 | 68,400 |
| Annual visitor days | *1.85 /occ. bungalow* | 0 | 115,600 | 124,600 | 133,400 |
| Site utilization (in acres): | *As of 1/1 of each year* | | | | |
| To be developed: | | | | | |
| Commercial use | *1 restaurant* | n/a | 1 | 1 | 1 |
| Resort uses | *Other developed areas* | n/a | 89 | 89 | 89 |
| To remain undeveloped: | | n/a | 80 | 80 | 80 |
| Total | | 170 | 170 | 170 | 170 |

n/a *Not applicable*

*Source: Compiled based on information provided by Destination Villages Kauai, LLC and Helber Hastert & Fee Planners.*





*Exhibit B*

## Kapalawai Resort

### Projected Direct, Indirect, Induced and Total Annual Visitor Expenditures

*(2001 to 2004) (1998 dollars)*

| DAILY NON-LODGING SPENDING PER PERSON | | Visitor mix | 1997 amount[1] | Time value adjustment[2] | 1998 amount |
|---|---|---|---|---|---|
| Hawaii residents[3] | | 20% | n/a | n/a | $ - |
| Eastbound visitors to Hawaii | | 5% | $109.98 | 0.83 | 180.00 |
| Westbound visitors to Hawaii | | 75% | $97.30 | 0.94 | 91.50 |
| Total | | 100% | | | |
| Weighted average expenditures: | *Per person per day* | | | | |
| Overall | | | $83.00 | | $ 78.00 |
| Out-of-State visitors only | | | $104.00 | | $98.00 |

VISITOR EXPENDITURES (in millions)[5]

| Operating year / Calendar year | Basis/reference | -1 2001 | 1 2002 | 2 2003 | Stabilized 3 2004 |
|---|---|---|---|---|---|
| Direct- | | | | | |
| Room revenues[4] | *$185 Initial ADR* | $0.00 | $8.78 | $9.74 | $10.74 |
| Other | *$38.00 per person* | 0.00 | 9.07 | 9.77 | 10.48 |
| Total, direct | | 0.00 | 17.84 | 19.51 | 21.20 |
| Indirect and induced[5] | *0.71 multiplier* | 0.00 | 12.67 | 13.85 | 15.05 |
| Total spending | | $0.00 | $30.51 | $33.36 | $36.25 |

n/a *Not applicable.*

1. *Non-lodging expenditures by visitor category as shown in Hawaii Visitors & Convention Bureau, "1997 Annual Research Report," June 1998*
2. *Based on CPI-U index estimates from U.S. Bureau of Labor Statistics, as presented by Bank of Hawaii (unpublished data) for westbound travelers; and the ratio of average daily 1997 versus 1998 W/I exchange rates for eastbound travelers.*
3. *No expenditure allocated to Hawaii residents. It is assumed that the expenditures by Hawaii residents would have been incurred elsewhere in the State even if the Project were not developed.*
4. *Initial average achieved rate of $185 based on Mauka Corporation, "Market Assessment for Kapalawai Resort," May 21, 1998 assumes approximately 3% per annum real increase thereafter until stabilization.*
5. *Indirect and induced spending effects for weighted average Hawaii visitors, based on calculations performed by Dr. Xpan Tian, Hawaii State Department of Business, Economic Development & Tourism (personal communication, April 8, 1998). Calculations consider expenditures allocated to 118 industry categories, modeled in DBEDT's Input-Output Model, along with the indirect and induced impacts of each.*

Exhibit C

## Kapalawai Resort

### Estimated Direct Employment & Income from Project Development

*(2001 to 2004) (1998 dollars, in millions)*

| INDUSTRY COEFFICIENTS[1] | DBEDT Industry category applied | Direct impact coefficient per $1 million (1992$) project cost: Jobs[2] | FTE factor[3] | $ Income |
|---|---|---|---|---|
| Professional services | *Engineering and architectural services* | 14.81 | 0.915 | 0.56 |
| Construction: | | | | |
| Bungalows | *Single-family residential construction* | 9.25 | 0.915 | 0.48 |
| Support facilities | *Other construction* | 11.12 | 0.915 | 0.45 |
| Infrastructure | *Road construction* | 11.14 | 0.915 | 0.48 |

| PROJECT COSTS & DIRECT JOBS | Cost[4] | FTE jobs |
|---|---|---|
| Professional services | $1.90 | 23 |
| Construction: | | |
| Bungalows | 12.00 | 82 |
| Support facilities | 12.30 | 113 |
| Infrastructure | 6.90 | 64 |
| Subtotal | 31.20 | 259 |
| Total development (jobs rounded) | $33.10 | 280 |
| DIRECT PERSONAL INCOME | $15.97 | |

1. Jobs and income direct impact coefficients calculated from Hawaii State Department of Business, Economic Development & Tourism, "The Hawaii Input-Output Study: 1992 Benchmark Report," December 1998 (Appendix A, pages 66, 67 and 68). Coefficients are based on project cost, in 1992 dollars.
2. Input-Output Study estimates total wage, salaried and proprietary jobs, both full- and part-time (not full-time equivalent); jobs coefficients are based on construction costs in 1992 dollars.
3. Adjustment factor applied in addition to the jobs coefficient to estimate full-time equivalent jobs at 40 hours per week. Factor derived from the 38.6 average weekly hours worked in the construction industry statewide, for January through April 1998, as reported by the State of Hawaii, Department of Labor and Industrial Relations, "Labor Area News," monthly.
4. In 1998$ dollars; based on discussions with Destination Villages Kaual, LLC and Potter Howlett & Fox personnel.

Exhibit D

## Kapalawai Resort

### Estimated Direct, Indirect and Induced Employment and Income from Project Development

*(2001 to 2004) (1998 dollars, in millions)*

| "DIRECT-EFFECT" INDUSTRY MULTIPLIERS[1] | DBEDT Industry category applied | Indirect & induced multiplier per direct: FTE job[2] | $ Income |
|---|---|---|---|
| Professional services | *Engineering and architectural services* | 1.19 | 0.83 |
| Construction: | | | |
| Bungalows | *Single-family residential construction* | 1.84 | 0.88 |
| Support facilities | *Other construction* | 1.39 | 0.96 |
| Infrastructure | *Road construction* | 1.46 | 0.97 |

| JOBS | Total FTE jobs, 2001[3]: Direct[3] | Indirect & Induced | Total |
|---|---|---|---|
| Professional services | 23 | 27 | 50 |
| Construction: | | | |
| Bungalows | 82 | 151 | 233 |
| Support facilities | 113 | 157 | 270 |
| Infrastructure | 64 | 93 | 157 |
| Subtotal | 259 | 401 | 660 |
| Total jobs (rounded) | 280 | 430 | 710 |
| PERSONAL INCOME | $15.97 | $14.48 | $30.15 |

1. Indirect and induced job and income multipliers derived from FTE total jobs and income "Direct Effect" Multipliers as shown in Hawaii State Department of Business, Economic Development & Tourism, "The Hawaii Input-Output Study: 1992 Benchmark Report," December 1998 (Table 5.1).
2. FTE = Full time equivalent, defined as 40 hours per week or 2,080 per year
3. As shown in Exhibit C

*Exhibit E*

# Kapalawai Resort

## Projected Direct, Indirect, Induced, and Total Operational Employment and Income

*(2001 to 2004) (1998 dollars, in millions)*

| *Operating year* / *Calendar year* | Basis/reference | -1 2001 | 1 2002 | 2 2003 | Stabilized 3 2004 |
|---|---|---|---|---|---|
| Operating summary: | *Exhibit A* | | | | |
| Operational bungalows | *As of 1/1 each year* | 0 | 250 | 250 | 250 |
| Occupied "bungalow" nights | | 0 | 59,300 | 83,900 | 88,400 |
| Total FTE jobs[1]: | | | | | |
| Direct[2] | | 5 | 200 | 200 | 200 |
| Indirect and induced[3] | 0.60 *multiplier* | 3 | 120 | 120 | 120 |
| Total | | 8 | 320 | 320 | 320 |
| Total personal income: | | | | | |
| Direct[3] | $26,357 *av. FTE salary* | $0.13 | $8.27 | $8.27 | $8.27 |
| Indirect and induced[4] | *1.34 multiplier* | 0.18 | 7.06 | 7.06 | 7.06 |
| Total | | $0.31 | $12.33 | $12.33 | $12.33 |

1. *FTE = Full time equivalent, defined as 40 hours per week or 2,080 per year. Estimated for wage and salaried positions only; does not include proprietary employment opportunities that the direct impacts may also support.*
2. *Based on figures provided by Destination Villages Kauai, LLC.*
3. *Indirect and induced effects estimated based on Type II "Direct-Effect" Multipliers for wage and salaried jobs and income, as shown for the Hotels and lodging places' industry category, in Hawaii State Department of Business, Economic Development & Tourism, "The Hawaii Input-Output Study: 1992 Benchmark Report," December 1998 (Table 8.1). Excludes potential proprietary employment opportunities and their associated income.*
4. *Average salary based on 1998 average hourly wage of $12.67 for hotel workers statewide, according to the Hawaii State's Department of Labor & Industrial Relations, "Labor Area News," (monthly), multiplied by 2,080 hours per year.*





*Exhibit E*

# Kapalawai Resort

## Projected Average Daily On-site & In-Migrant Populations

*(2001 to 2004)*

| *Operating year* / *Calendar year* | Basis/reference | -1 2001 | 1 2002 | 2 2003 | Stabilized 3 2004 |
|---|---|---|---|---|---|
| Average daily on-site population1: | | | | | |
| Visitors | *Exhibit A & 365 days/yr* | 0 | 317 | 341 | 365 |
| Construction employees[2] | *Exhibit C* | 240 | 0 | 0 | 0 |
| Operational employees[3] | *Exhibit E* | 0 | 143 | 143 | 143 |
| Total, rounded | | 240 | 460 | 480 | 510 |
| In-migrants to the State: | | | | | |
| Construction employees[4] | 1% *On-site pop.* | 2 | 0 | 0 | 0 |
| Direct operational employees[5] | 1% *Exhibit E* | 0 | 2 | 2 | 2 |
| Dependents[5] | " | 0 | 2 | 2 | 2 |
| Total in-migrants to the State | | 2 | 4 | 4 | 4 |
| In-migrants to Kauai County: | | | | | |
| Construction employees[4] | 30% *On-site pop.* | 72 | 0 | 0 | 0 |
| Direct operational employees[5] | 8% *Exhibit E* | 0 | 10 | 10 | 10 |
| Dependents[5] | " | 14 | 10 | 10 | 10 |
| Total in-migrants to the County | | 86 | 20 | 20 | 20 |

1. *All figures represent total persons present throughout any 24-hour period. Due to shift changes and travel off-site, actual number on site at any given time is anticipated to be less.*
2. *Nominal on-site presence anticipated prior to start of construction. Projected on-site population during construction period (2001) based on Exhibit C and a six-day typical work week.*
3. *None anticipated on-site prior to commencement of operations. Thereafter, estimate is based on Exhibit E and a five-day typical work week.*
4. *Percentage applied to average daily on-site construction worker populations, as shown above. Figure for Kauai County represents about 30% of bungalow and support facility construction employees.*
5. *Percentage applied to direct employees from Exhibit E. In-migrants to the County include all those moving to the State plus only that may move between counties due to job opportunities at the Resort. In-migrant dependents estimated to represent 20% of construction workers and 100% of operational employees.*

*Exhibit G*

## Kapalawai Resort

### Projected Real Property Tax Revenues to the County Government Attributable to Development & In-migrant Population

*(2001 to 2004) (1998 dollars, in millions)*

| Operating year / Calendar year | Basis/reference | -1 2001 | 1 2002 | 2 2003 | Stabilized 3 2004 |
|---|---|---|---|---|---|
| **COMMERCIAL DESIGNATION** | *1 restaurant* | | | | |
| Improvements: | | | | | |
| Value[1] | Construction estimate | $0.00 | $1.50 | $1.50 | $1.50 |
| Annual tax | $8.48 per $000 A/V | 0.00 | 0.01 | 0.01 | 0.01 |
| Land: | 1 acre | | | | |
| Value | $11.50 per s.f. | 0.00 | 0.50 | 0.50 | 0.50 |
| Annual tax | $8.90 per $000 A/V | 0.00 | 0.00 | 0.00 | 0.00 |
| **RESORT DESIGNATION** | *All areas other than restaurant* | | | | |
| Improvements: | | | | | |
| Value[2] | Construction estimate | $0.19 | $29.70 | 29.70 | 29.70 |
| Annual tax | $8.48 per $000 A/V | 0.00 | 0.13 | 0.25 | 0.25 |
| Land: | | | | | |
| To be developed - | 89 acres | | | | |
| Value | $70,000 per bungalow | 0.14 | 17.50 | 17.50 | 17.50 |
| Annual tax | $8.90 per $000 A/V | 0.00 | 0.08 | 0.15 | 0.15 |
| To remain undeveloped - | 80 acres | | | | |
| Value | $1,000 per acre | 0.02 | 0.08 | 0.08 | 0.08 |
| Annual tax | $8.90 per $000 A/V | 0.00 | 0.00 | 0.00 | 0.00 |
| Total new property tax revenues | | 0.00 | 0.21 | 0.42 | 0.42 |
| Less: 1998/99 fiscal year property tax payments[3] | | 0.00 | 0.00 | 0.00 | 0.00 |
| Net new property tax revenues | | $0.00 | $0.21 | $0.42 | $0.42 |

*Note: Tax rates shown in "Basis/Reference" column are F.Y. 1998/2000 rates adopted by Kauai County Council on 5/26/99 (Resolution R73-99, Draft 1). These Commercial and Hotel/resort rates are applied to the figures shown for calendar years 2003 and 2004. Tax rates and property valuations estimated for calendar years 2000 and 2001 are based on Agricultural and Conservation rates, representing the current real property tax designation of the property. Projections assume rezoning is obtained in beginning of 2001 and therefore tax rates and valuations based on redevelopment of the property become effective July 1, 2002. Values shown are those estimated as of beginning of each calendar year.*

1. *Direct hard construction costs as estimated by Destination Villages Kauai, LLC. Includes entire building estimated with pond-front restaurant.*
2. *Direct hard construction costs as estimated by Destination Villages Kauai, LLC, net of main restaurant building.*
3. *Total real property taxes payable in Fiscal Year 1998 are $2,041, according to Robinson Family Partners.*





*Exhibit H*

## Kapalawai Resort

### Projected Total Annual Revenues to the County Government Attributable to Development & In-migrant Population

*(2001 to 2004) (1998 dollars, in millions)*

| Operating year / Calendar year | Basis/reference | -1 2001 | 1 2002 | 2. 2003 | Stabilized 3 2004 |
|---|---|---|---|---|---|
| **BASES FOR PROJECTION** | | | | | |
| Room revenues | *Exhibit B (net of kanu'ahaus)* | $0.00 | $8.78 | $9.74 | $10.74 |
| In-migrant employees and dependents to County | *Exhibit F (persons)* | 88 | 20 | 20 | 20 |
| **ESTIMATED TAXES** | | | | | |
| Net new property tax revenues | *Exhibit G* | $0.00 | $0.21 | $0.42 | $0.42 |
| Transient accommodations tax[1] | 6.5% to Kauai County | 0.00 | 0.04 | 0.05 | 0.05 |
| Taxes and other revenue sources from in-migrant residents[2] | $125 per person | 0.01 | 0.00 | 0.00 | 0.00 |
| Total new County taxes | | $0.01 | $0.26 | $0.47 | $0.48 |

1. *County's share of State's transient accommodations tax collections (7.25% of bungalow revenues), based on intergovernmental allotments in effect as of June 1998 (new formulas applied as of January 1, 1999).*
2. *Includes liquid fuel, utility franchise, motor vehicle weight, liquor licenses and fees, and other licenses and permits, as presented by The Tax Foundation of Hawaii, "Government in Hawaii," 1998 (Table 27). Estimated at $125 per person in 1998 dollars after cost-of-living adjustment based on unpublished CPI-U indices from the U.S. Bureau of Labor Statistics, provided by Bank of Hawaii.*

Exhibit I

## Kapalawai Resort

### Projected Annual Revenues to the State Government Attributable to Development & In-migrant Population

*(2001 to 2004) (1998 dollars, in millions)*

| *Operating year* / *Calendar year* | Basis/reference | -1 2001 | 1 2002 | 2 2003 | Stabilized 3 2004 |
|---|---|---|---|---|---|
| **BASES FOR PROJECTION** | | | | | |
| Room revenues | *Exhibit B (net of kama'aina)* | $0.00 | $9.78 | $9.74 | $10.74 |
| Project development costs: | *Exhibit C* | | | | |
| Professional services | | $1.90 | $0.00 | $0.00 | $0.00 |
| Construction | | 31.29 | 0.00 | 0.00 | 0.00 |
| Total development cost | | $33.19 | $0.00 | $0.00 | $0.00 |
| Direct visitor expenditures[1] | *Exhibit B (net of kama'aina)* | $0.00 | $17.84 | $19.51 | $21.29 |
| Number of in-migrant employee households to State[2] | *Exhibit F* | 1 | 2 | 2 | 2 |
| Out-of-State visitors | *Exhibit F (net of kama'aina)* | 0 | 254 | 273 | 292 |
| **ESTIMATED TAXES** | | | | | |
| Transient accommodations tax[3] | 55.2% State's share | $0.00 | $0.35 | $0.39 | $0.43 |
| General excise taxes- | | | | | |
| In-migrant households[4] | | 0.00 | 0.00 | 0.00 | 0.00 |
| Development[5] | | 0.92 | 0.00 | 0.00 | 0.00 |
| Direct visitor expenditures[6] | *Net of kama'aina* | 0.00 | 0.74 | 0.81 | 0.88 |
| Individual income taxes & other revenues from in-migrants[7] | | 0.00 | 0.00 | 0.00 | 0.00 |
| Total additional revenues | | $0.92 | $1.10 | $1.21 | $1.32 |

1. *Direct visitor expenditures include bungalow revenues (this figure used for estimating General Excise Taxes).*
2. *From Exhibit F, assuming average two in-migrant persons per household.*
3. *Represents the 55.2% of TAT collections retained by the State (to the Tourism Special Fund and the Convention Center Capital Special Fund); intergovernmental allocation in effect as of June 1998. Applied to 7.25% of bungalow revenues.*
4. *Based on the ratio of general excise taxes collected from an average household and personal income levels from Exhibit E.*
5. *Based on 4.166% on 100% of professional services and 60% of construction costs, and a wholesale construction material tax of 8.5% against 40% of construction costs.*
6. *Based on 4.166% of direct visitor expenditures.*
7. *Based on the ratio of State income taxes, specific excise and other taxes, and unemployment compensation collected per State resident, and personal income levels from Exhibit E. Estimated at $1,440 per in-migrant resident, in 1998 dollars, then adjusted further to reflect State income tax savings of 19% in 2000, 12% in 2001, and 11% in 2002 and thereafter, based on State income tax legislation enacted in 1998. (Tax savings assume a joint returns tax bracket of $21,000 to $71,000).*

*Sources: Destination Villages Kaual, LLC; The Tax Foundation of Hawaii, "Government in Hawaii," 1993, ibid., "The Tax Burden of the Ame Aloha Family," 1994; State Department of Taxation, unpublished calculations provided on April 13, 1998.*



Exhibit J

## Kapalawai Resort

### Kauai County Per Capita Government Expenditures

*(Fiscal Years 1995/1996 and Estimated 1998)*

| | Operating expenditures - (Sthousands)[1] | Service population[2] | | Expenditure per: Resident | Non-resident |
|---|---|---|---|---|---|
| General government | $33,417 | 67,650 | | $494 | $494 |
| Public safety | 14,213 | 67,650 | | $210 | $210 |
| Highways | 4,190 | 67,650 | | $62 | 62 |
| Health and sanitation | 3,131 | 67,650 | | $46 | 46 |
| Recreation | 3,711 | 67,650 | | $55 | 55 |
| Interest | 2,048 | 67,650 | | $30 | 30 |
| Bond redemption | 3,570 | 67,650 | | $53 | 53 |
| Retirement and pension | 6,105 | 56,262 | | $109 | - |
| Cash capital improvements | 13,975 | 67,650 | | $207 | 207 |
| Public welfare | 26,871 | 56,262 | | $478 | - |
| Public schools | 87 | 56,262 | | $2 | - |
| Miscellaneous[3] | 7,923 | 56,262 | | $141 | - |
| Total, $FY 1995/1996 | $119,241 | | | $1,885 | $1,157 |
| Estimated total, $CY 1998[4] | | Time adjustment | 1.01 | $1,900 | $1,170 |

1. *County government operating expenditures for fiscal year ended June 30, 1996, as provided by the Tax Foundation of Hawaii (prepublication data for "Government in Hawaii, 1997").*
2. *Resident or de facto population interpolated for the County as of January 1, 1998, based on data obtained from State of Hawaii, Department of Business, Economic Development and Tourism, "State of Hawaii Data Book," 1997.*
3. *Includes "Salary adjustment" of $404,381, not allocated by function.*
4. *Fiscal year 1998 dollars adjusted to 1998 calendar year dollars based on CPI-U indices for second half year of 1995 and first half year of 1998, compared to annual index for calendar year 1998. Indices derived from U.S. Bureau of Labor Statistics data.*

*Note: Preliminary County government expenditure data for FY 1997 actually show a decline from FY 1996.*

Exhibit K

## Kapalawai Resort

### State of Hawaii Per Capita Government Expenditures

*(Fiscal Years 1995/1996 and Estimated 1998)*

| | Operating expenditures ($thousands)[1] | Service population[2] | | Expenditure per: Resident | Non-resident |
|---|---|---|---|---|---|
| General government | $495,060 | 1,290,100 | | $384 | $384 |
| Public safety | 166,187 | 1,290,100 | | $129 | 129 |
| Highways | 158,990 | 1,290,100 | | $123 | 123 |
| Natural resources | 44,996 | 1,290,100 | | $35 | 35 |
| Health and sanitation | 173,887 | 1,290,100 | | $135 | 135 |
| Hospitals and institutions | 318,030 | 1,180,888 | | $268 | - |
| Public welfare | 1,039,884 | 1,180,888 | | $881 | - |
| Education | 1,453,478 | 1,180,888 | | $1,231 | - |
| Recreation | 37,847 | 1,290,100 | | $29 | 29 |
| Utilities and other enterprises | 314,352 | 1,290,100 | | $244 | 244 |
| Debt service | 607,529 | 1,290,100 | | $471 | 471 |
| Retirement and pension | 268,052 | 1,180,888 | | $227 | - |
| Employees' health insurance | 639 | 1,180,888 | | $1 | - |
| Unemployment compensation | 233,884 | 1,180,888 | | $198 | - |
| Grants in-aid to counties | 2,826 | 1,180,888 | | $2 | - |
| Urban redevelopment and housing | 152,857 | 1,180,888 | | $129 | - |
| Cash capital improvements | 347,812 | 1,290,100 | | $270 | 270 |
| Miscellaneous | 205,551 | 1,180,888 | | $174 | - |
| Total, SFY 1995/1996 | $6,019,882 | | | $4,930 | $1,819 |
| Estimated total, $CY 1998[3] | | Time adjustment: | 1.01 | $4,979 | $1,840 |

1 State government operating expenditures for fiscal year ended June 30, 1996, as provided by the Tax Foundation of Hawaii pre-publication data for "Government in Hawaii, 1997".

2 Resident or de facto populations interpolated for the State as of January 1, 1996, based on data obtained from State of Hawaii, Department of Business, Economic Development and Tourism, "State of Hawaii Data Book," 1997.

3 Fiscal year 1998 dollars adjusted to 1998 calendar year dollars based on CPI-U indices for second-half year of 1995 and first half year of 1996, compared to annual index for calendar year 1998. Indices derived from U.S. Bureau of Labor Statistics data.
Note: Preliminary State government expenditure data for FY 1997 actually show a slight decline from FY 1996.



Exhibit L

## Kapalawai Resort

### Projected Annual County and State Government Expenditures Attributable to Population In-migrating

*(2001 to 2004) (1998 dollars, in millions)*

| Operating year / Calendar year | Basis/reference | -1 2001 | 1 2002 | 2 2003 | Stabilized 3 2004 |
|---|---|---|---|---|---|
| **ATTRIBUTABLE POPULATION** | *Exhibit F* | | | | |
| Kauai County: | | | | | |
| Average daily visitors[1] | *Net of 50% of land'ainas* | 0 | 285 | 307 | 329 |
| In-migrant employees & dependents: | | | | | |
| Related to construction | | 88 | - | - | - |
| Related to operations | | - | 20 | 20 | 20 |
| Total, County | | 88 | 305 | 327 | 349 |
| State of Hawai'i: | | | | | |
| Average daily visitors[1] | *Net of all land'ainas* | 0 | 254 | 273 | 292 |
| In-migrant employees & dependents: | | | | | |
| Related to construction | | 2 | - | - | - |
| Related to operations | | - | 4 | 4 | 4 |
| Total, State | | 2 | 258 | 277 | 295 |
| **ANNUAL EXPENDITURES** | | | | | |
| Kauai County[2]: | | | | | |
| Average daily visitors | $1,170 per person | $0.00 | $0.33 | $0.36 | $0.38 |
| In-migrant employees & dependents: | | | | | |
| Related to construction | $1,170 per person | 0.10 | - | - | - |
| Related to operations | $1,900 per person | - | 0.04 | 0.04 | 0.04 |
| Total expenditures, County | | $0.10 | $0.37 | $0.40 | $0.42 |
| State of Hawai'i[3]: | | | | | |
| Average daily visitors | $1,840 per person | $0.00 | $0.47 | $0.50 | $0.54 |
| In-migrant employees & dependents: | | | | | |
| Related to construction | $1,840 per person | 0.00 | - | - | - |
| Related to operations | $4,979 per person | - | 0.02 | 0.02 | 0.02 |
| Total expenditures, State | | $0.00 | $0.49 | $0.52 | $0.56 |

1 State estimate excludes all land-area staying of the property, since they would be already within the State; County estimate excludes 50% of land'ainas that might have visited Kauai even if the Project were not built

2 Per capita expenditure estimates as shown in Exhibit J

3 Per capita expenditure estimates as shown in Exhibit K

*Exhibit M*

## Kapalawai Resort

### County & State Government Revenue and Expenditure Comparison

*(2001 to 2004) (1998 dollars, in millions)*

| Opening year<br>Calendar year | Basis/reference | -1<br>2001 | 1<br>2002 | 2<br>2003 | Stabilized<br>3<br>2004 |
|---|---|---|---|---|---|
| COUNTY OF KAUAI | | | | | |
| New revenues | *Exhibit N* | $0.01 | $0.26 | $0.47 | $0.48 |
| New expenditures | *Exhibit L* | (0.10) | (0.37) | (0.40) | (0.42) |
| Net additional revenues | | ($0.09) | ($0.11) | $0.07 | $0.06 |
| Revenue ÷ expenditure ratio[1] | | 0.1 | 0.7 | 1.2 | 1.1 |
| STATE OF HAWAII | | | | | |
| New revenues[2] | *Exhibit I* | $0.92 | $1.10 | $1.21 | $1.32 |
| New expenditures | *Exhibit L* | 0.00 | (0.49) | (0.52) | (0.56) |
| Net additional revenues | | $0.92 | $0.61 | $0.69 | $0.76 |
| Revenue ÷ expenditure ratio[1] | | n/a | 2.2 | 2.3 | 2.4 |

n/a Not applicable.
1. New revenues divided by new expenditures.
2. Excludes potential income taxes from any operating entities, proprietors' incomes associated with Project operations, and GET on ground lease rent



# G

## TRADITIONAL CUSTOMS AND PRACTICES REPORT

CULTURAL SURVEYS HAWAII

# HAWAIIAN TRADITIONAL CUSTOMS AND PRACTICES STUDY FOR KAPALAWAI, *AHUPUA'A* OF MAKAWELI, DISTRICT OF KONA, KAUA'I (TMK 1-7-05:POR.1)

by

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Cultural Surveys Hawai'i
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## ABSTRACT

Helber Hastert & Fee, Planners, Inc. requested a native Hawaiian traditional customs and practices (*Pono 'Ōiwi*) study for the lands known as Kapalawai in the *ahupua'a* of Makaweli, Kona district, Kaua'i.

Kapalawai consists of approximately 170 acres (TMK 1-7-05:portion 1). The Kapalawai project area is bounded on the west by a corn field known as 'Ākia 1, on the east by A'akukui Stream, on the north by Kaumuali'i Highway and on the south by the shoreline.

Since Kapalawai has been owned and managed by one family from 1865 to the present (135 years), it was difficult to locate people still living who had any knowledge regarding land use and cultural use specific to the project area or anyone who accessed the area for traditional purposes. Upon acquiring the *ahupua'a* of Makaweli, the Sinclair-Robinson family lands became, in every sense of the word, private. Because the *'ili* of Kapalawai was reserved strictly for family use, only family members and invited guests were allowed to go there and use the area. Interviews with prior employees indicated that employee residents at Kapalawai had access to resources on the land and in the near off-shore waters at Kapalawai. The interviews indicated that as long as permission was obtained first, the request was granted by the land owner. As for fishing along the Kapalawai shoreline, between 'Ākia 1 and A'akukui Stream, access was usually obtained via a corridor along 'Ākia 1, just outside the western boundary wall of Kapalawai, or through Pākalā, rather than through the property itself.

Based on the past history of the land tenure, it is unlikely that native Hawaiian traditional customs and practices will be affected by proposed development. Cultural impact, if any, will be minimal.

Note: Throughout this report the spelling of Hawaiian vocabulary and place names has been standardized according to present orthography.

## ACKNOWLEDGMENTS

We are very grateful to the Robinson family, especially Warren Robinson and Bruce Robinson, for their time and sharing of their family history; and to Charlie Okamoto for allowing us to use the Kapalawai offices while conducting fieldwork on Kaua'i. We also want to acknowledge the following people for their help on this project: Dr. David Burney and Dr. William Pila Kikuchi for their evaluation of Kekupua Pond; Dr. Lida Pigott Burney, Dolly Kikuchi and Kristina Kikuchi-Palenapa for assisting with field investigations during coring of the pond; Toni DeMello and Susan Remoaldo for their assistance in researching the Portuguese oven; and Nani Kamai, Dr. George Kanna, Kaipo Akana and Gerald Ida for assisting with contacts while on Kaua'i. A very special *mahalo* to Carol Lovell, Margaret Lovett, Noelani Pomroy and the staff at Kaua'i Museum; and to the staff of the Kaua'i Historical Society.

Most of all, we are deeply grateful to both *kūpuna* and *kama'āina* who so willingly gave of their time through informal and in-depth interviews and without whose valuable knowledge, this project could not have been completed: Lahapa Dotimas, Joni Ho'okano, 'Ohu Ho'okano, Hawila Kaleohano, Aletha Ka'ohi, Kalā Kapahu, Momi Kapahu, Kawika Kapahulehua, Punnani Kapahu Montalvo, Edith Pavao, Ed Rice, Bruce Robinson and Warren Robinson.



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## I. INTRODUCTION

The purpose of this Hawaiian Traditional Customs and Practices Impact Assessment is to consider the effects proposed development may have on native Hawaiians as it pertains to their traditions and customs which are protected by law under the Hawai'i State Constitution, Article XII, Section 7, as well as to address any historic properties issues as defined in Chapter 6E of the Hawai'i Revised Statutes. Presently, there are numerous complexities which make it unclear as to the private land owner's obligations under present law. Recent PASH (Public Access Shoreline Hawai'i) issues pertaining to traditional access and gathering rights are still unresolved and are likely to remain so for some time. This assessment is meant to be informational for the purpose of disclosing any impacts proposed development might have on native Hawaiian culture or on any historic properties identified within the defined project area.

The present project area consists of the *'ili* of Kapalawai in the *ahupua'a* of Makaweli, Kona district, island of Kaua'i. Kapalawai consists of approximately 170 acres (TMK 1-7-05:portion 1) (Figures 1-4) and has been in the possession of the Sinclair-Robinson family since 1865. The Kapalawai project area is bounded on the west by a corn field known as 'Akia 1, on the east by A'akukui Stream, on the north by Kaumuali'i Highway and on the south by the shoreline.

This assessment was commissioned by the firms of Helber Hastert and Fee, Planners, Inc. on behalf of their client, Destination Villages Kaua'i, LLC. The assessment was accomplished in conjunction with an archaeological inventory survey of the project area conducted by Cultural Surveys Hawai'i (Zulick *et al.*, 1999 [Draft]).

### Scope of Work

This study was requested to fulfill the requirements of an environmental impact statement as well as to identify any historic properties and address any Hawaiian customary and traditional rights and their applicability to the project area. The scope of work included:

1) Examination of historical documents, Land Commission Awards, historic maps, with the specific purpose of identifying traditional Hawaiian activities including gathering of plant, animal and other resources or agricultural pursuits.

2) A review of the existing archaeological information pertaining to the sites on the property as they may allow us to reconstruct traditional land use activities of the parcel and identify present uses, if appropriate.



3) Conducting oral interviews with persons knowledgeable about the historic and traditional practices in the project area and region.

4) Preparation of a report on the above mentioned items summarizing the information gathered related to traditional practices and land use. The report will assess the impact of the proposed action on the cultural practices and features identified.

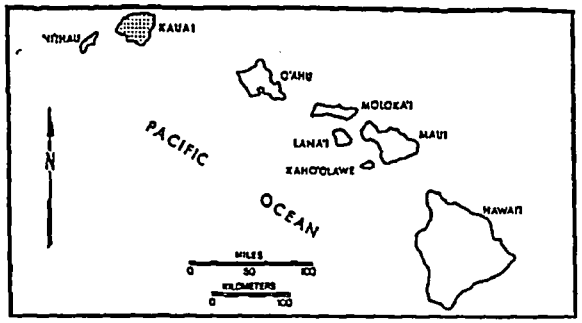



Figure 1 State of Hawai'i

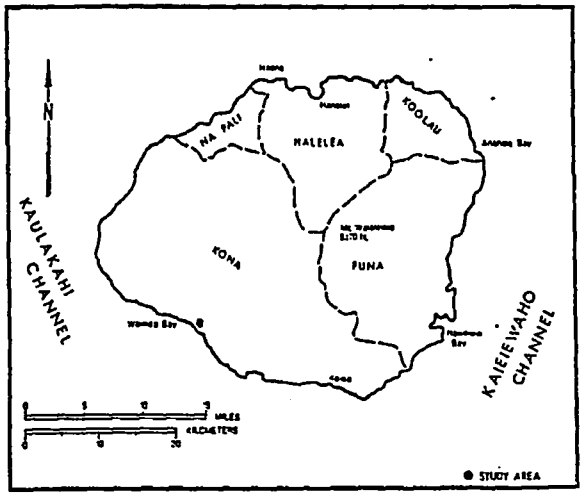
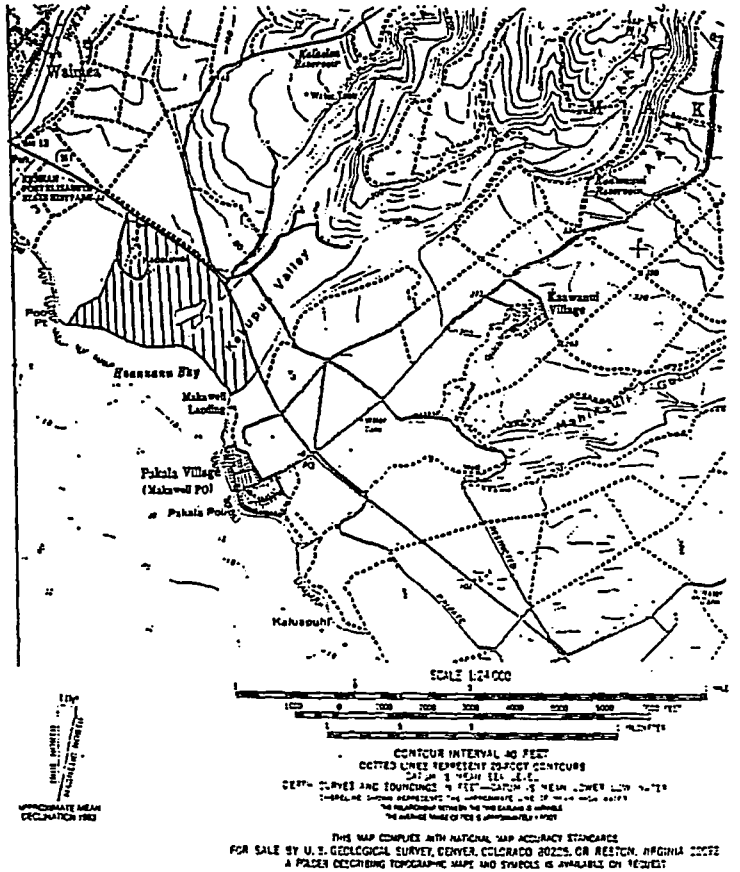



Figure 2 General Location Map, Kaua'i Island




Waimea
Kekaha
Kaumuali'i Highway
Waimea Canyon
Kekaha Sugar Mill
Kekaha Beach Park
Kekaha Kai State Park
Kekaha Kai State Park Campground
Kekaha Kai State Park Campground
Kekaha Kai State Park Campground

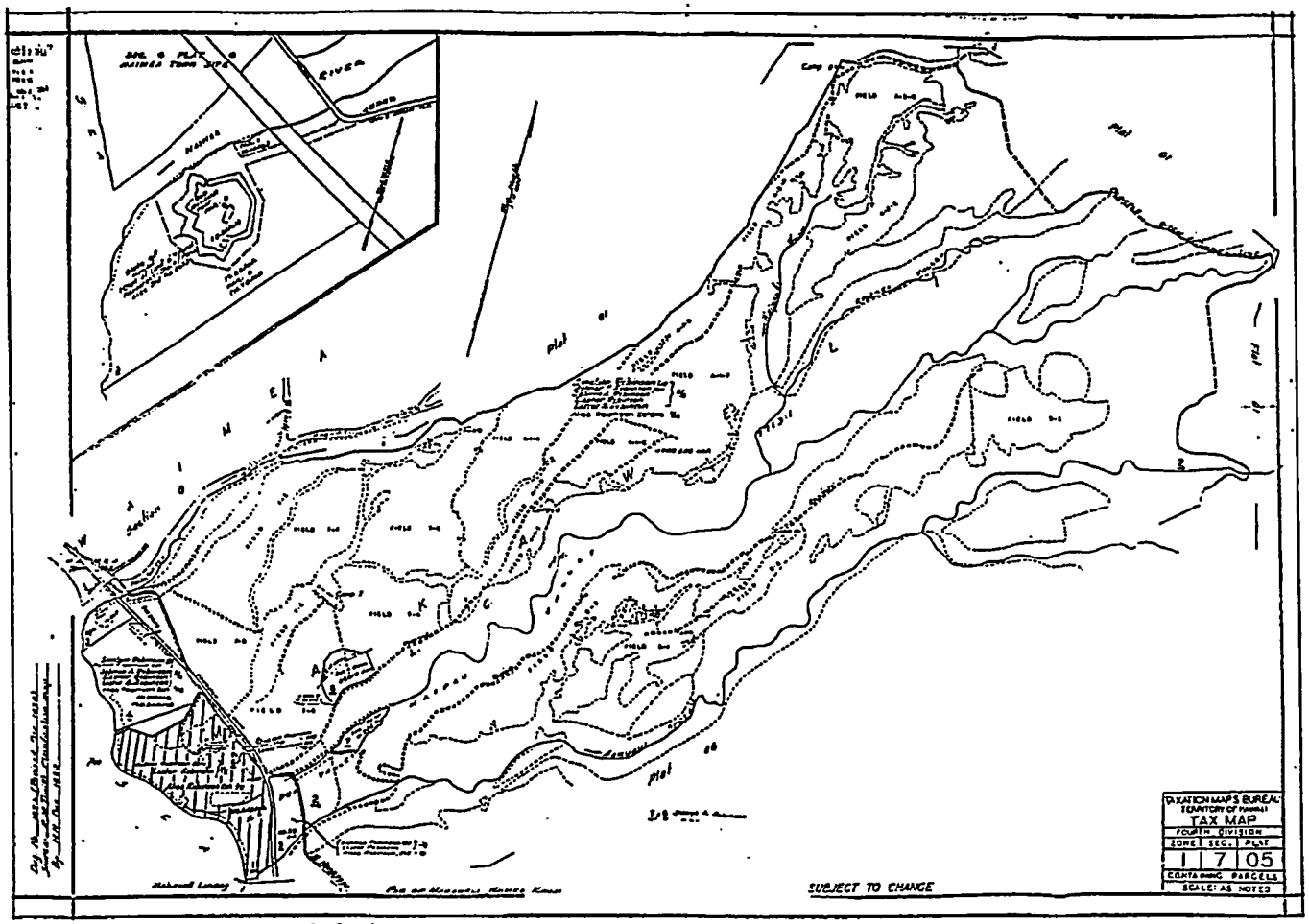



Figure 4 TMK 1-7-05 Showing Project Location

## Methods

Historical documents and maps were researched at the Hawai'i State Archives, the Bernice Pauahi Bishop Museum Archives, the Kaua'i Historical Society, the Kaua'i Museum, as well as the library of Cultural Surveys Hawai'i.

In an effort to get a good representation of the community and to contact as many potentially knowledgeable people as possible, the following agencies, organizations and people were asked to help identify and recommend any potentially knowledgeable individuals and/or give any information which might be useful to the proposed project area and development: the Office of Hawaiian Affairs on O'ahu and Kaua'i, Kaua'i Community College, Kaua'i Historical Society, Kaua'i Museum, University of Hawai'i at Mānoa - Dept. of Indo-Pacific Languages, *kumu hula*, respected *kūpuna* in the community, Warren Robinson and Bruce Robinson. Inquiries were not limited solely to the above organizations and people and other possible leads were followed up on as well.

### *Methodology for Oral Interviews*

Based on recommendations from the above people and organizations, seven in-depth interviews were conducted with a total of nine people. The informants interviewed were: 'Ohu Ho'okano, Hawila Kaleohano, Aletha Ka'ohi, Kalā Kapahu, Momi Kapahu, Kawika Kapahulehua, Ed Rice, Bruce Robinson and Warren Robinson. It should be noted that there were other possible informants contacted who were reluctant to participate in this study.

The ages of the interviewees ranged from about 50 to 81 years, which would place most of them growing up in the early 1920's and 1930's and as late as the 1950's. Many community members pointed out that the *kūpuna* who would be most knowledgeable about the project area of Kapalawai have all passed away. Except for Warren Robinson and Bruce Robinson, six of the interviewees were past employees of the Robinson family and had either worked and/or lived at the project area of Kapalawai at some time during their employment. One of the interviewees is a distant relative through a *hānai* (adoptive) relationship to Charles Gay. Of the nine people interviewed, two were female and six were of Hawaiian ancestry. Formal interviews were conducted with the individuals named above and all of the interviews were taped and transcribed. The interviews usually lasted about one and one-half to two hours. The transcribed interviews, in their entirety, are on file at the offices of Helber, Hastert and Fee, Planners, Inc. on O'ahu and at Belles, Graham, Proudfoot & Wilson on Līhu'e, Kaua'i. The interviews may be read by contacting these offices directly. Excerpts of the interviews appear in the *Synopsis of Interviews*, below and throughout this report, as well as, in the archaeological inventory survey (Zulick, *et al.*, 1999 [Draft]).

Although interview questions were not standardized for all informants, an effort was made to consistently retrieve information regarding specific topic areas. These topic areas include:



1. Age of individual and general biographical information
2. Sources of specific knowledge;
3. Specific knowledge of cultural practices and beliefs associated with project area;
4. Duration and frequency of personal familiarity with project area;
5. Kekupua fishpond, i.e., name, associated stories, springs, uses;
6. Place names within the project area and the nearby vicinity;
7. Knowledge of land boundaries within the project area and areas nearby;
8. Knowledge regarding possible settlement and land use within project area;
9. Knowledge regarding cultural sites within the project area;
10. Specific knowledge regarding the rock platform structure; and
11. Referrals to other possible informants who might have specific knowledge of the area.

Even though the majority of the informants were prior employees and had spent time at Kapalawai, most had very little knowledge of Hawaiian legends, names and cultural practices related to the project area. Their knowledge centered around their work experiences and life at Kapalawai, the plantation or the ranch during their lifetime.

A common tie which connected all the informants is that they had all known a particular native Hawaiian man named Kualo who had worked for the Robinsons. All said that Kualo lived to be 104 years old. Based on a conversation with his only surviving child, Kualo died around 1954. This would place his birth in the vicinity of 1850, just two years after the *Māhele*. All the interviewees agreed he would have been a valuable informant were he still alive today. Due to the age and memories of most of the informants, information they heard from Kualo was not retained. One informant, Hawila Kaleohano, spent about 25 years working at Kapalawai with Kualo. He relates that Kualo knew the name of the pond and had shared that information with him, but he didn't think it was important at the time and he cannot recall the name today. However, Mr. Kaleohano was able to recall a story Kualo told him about a *mo'o wahine* (a water spirit who can change forms, in this case, half-lizard and half-human) who lived in the pond and frequented a particular rock in the pond near the water's edge.

Information regarding boundaries and land use was, for the most part, consistent. An important piece of information relating to the fishpond came from Bruce Robinson who knew the names of the springs in the pond and gave valuable insight about the name. This information had been passed down to Bruce Robinson through his father, who had known Kualo.

## II. PROJECT AREA DESCRIPTION

### Location and Boundaries

The proposed project area is located at Kapalawai (TMK 1-7-05:01), within the *ahupua'a* (land division) of Makaweli in the Kona district on the island of Kaua'i. Makaweli is located between Waimea *ahupua'a* on the west and Hanapēpē *ahupua'a* on the east. The study region of Kapalawai is bounded on the north by Kaumuali'i Highway, on the south by the shoreline, on the west by a parcel of land called 'Ākia and on the east by A'akukui Stream. The town of Waimea lies approximately two miles to the west of the project area.

### Description of Project Area

The project area, known as Kapalawai, comprises approximately 170 acres. It is located on gentle sloping flats on the coastal lands of Makaweli. The region is typically very dry and dusty and receives an average of 20 inches of rain per year on the coast. (Juvik *et al.* 1998:56). The soils within the project area are Makaweli-Waiawa-Niu Association. (Foote *et al.* 1972:4) The vegetation is predominantly scrub vegetation and *kiawe (Prosopis pallida)* is abundant.

Fronting the whole length of the project area on the coast is a narrow sand beach with the nearshore area being comprised of two zones — "an inner reef flat and an outer reef front that are separated by a shallow reef crest" (Marine Research Consultants 1999:3). The water near the shore is a reddish-brown color due to terrigenous sediment from *mauka* drainage basins and this "appears to be a consistent characteristic of the area regardless of season and weather" *(Ibid:12)*. Also on the property is a six-acre inland pond or *loko pu'uone*, which, during the Sinclair-Robinson tenure, was stocked with mullet (*Mugil cephalus*) and maintained for family use and entertaining guests.

The subject parcel has been retained by the Robinson family for the past 135 years. The site of the Aubrey Robinson home, Kapalawai, was used primarily for raising purebred Arabian horses and grazing cattle. Fruit orchards and vegetable gardens were extensively cultivated for family use and a small dairy maintained. Most of the land was used as pasture land for horses and cattle and has been grubbed over more than once.



## III. DESCRIPTION OF THE TRADITIONAL CUSTOMS AND PRACTICES REGION

### Southwest Kaua'i

Traditional Hawaiian life and practices on southwest Kaua'i as they had evolved by the late 18th century, are recorded in the accounts of Captain James Cook. To the west of Makaweli is the *ahupua'a* of Waimea, which is the largest *ahupua'a* on the island of Kaua'i. The period of contact for the Hawaiian islands began when Captain Cook anchored a mile off shore at Waimea Bay, Kaua'i on January 20, 1778. Cook's squadron consisted of two ships, the *Resolution* and the *Discovery*. Cook went ashore to investigate the availability of water and the temperament of the people to see if they were friendly and if a trade for supplies could be negotiated.

> The very instant I leaped ashore, they all fell flat on their faces, and remained in that humble posture till I made signs to them to rise. They then brought a great many small pigs and gave us without regarding whether they got any thing in return or no, indeed the most of them were present[ed] to me with plantain trees, in a ceremonious way as is usual on such like occasions, and I ratified these marks of friendship by presenting them with such things as I had with me." (Beaglehoe 1967:269)

The Hawaiians afforded Cook the same respect as they would one of their high chiefs and, it is believed by many, that they took him to be the personification of one of their gods, Lono (Kuykendall, 1938:16).

The previous day, a "large pond" had been seen beyond the shore and, on the second day, a watering party was sent to replenish the ships supplies. Cook reports:

> We no sooner landed, that a trade was set on foot for hogs and potatoes, which the people gave us in exchange for nails and pieces of iron formed into some thing like chisels. We met with no obstruction in watering on the contrary the Natives assisted our people to roll the Casks to and from the pond (Beaglehoe, 1967:269)

Cook took a short walking tour of the immediate area and comments:

> I . . . took a walk up the Valley, accompaned [*sic*] by Dr. Anderson and Mr. Webber; conducted by one of the Natives . . . Our road lay in the plantations, which were chiefly of Taro [taro], and sunk a little below the common level so as to contain the water necessary to nourish the roots. As we ranged down the coast from the East in the Ships, we observed at every Village one or more elevated objects, like Pyramids and we had seen one in this valley that we were desirous [*sic*] of going to see. Our guide understood us, but as this

was on the other side of the river, he conducted us to one on the same side we were upon; it proved to be in a Moral which in many respects was like those of Otaheite. (Beaglehoe, 1967:269-270)

This *heiau*, on the west side of the river, is thought to be Kenali'i *heiau*. The *heiau* "on the other side of the river" was probably Maha'iha'i *heiau*, whose location was taken from a map by Francis Gay and later became the house site for the first missionary in Waimea, the Rev. Samuel Whitney (Bennett, 1931:104, 111).

Cook goes on to say:

> ... We returned to the beach by a different rout[e] to the one we came. Besides the Tara [taro] plantations before mentioned we met with some plantations of plantain, Sugar cane and the Chinese paper Mulber[r]y tree or cloth plant, as it is more generally called by us, there were also a few low cocoanut trees but we saw but one bread fruit and but very few of any other sort. (Beaglehoe, 1967:272)

Waimea Village during this time consisted of about sixty houses close to shore and about forty more houses behind the main settlement (Ronck, 1985:29). Cook goes on to say that on this particular excursion, his party acquired nine tons of water, 60-80 pigs, some fowl, potatoes, a small quantity of plantains and taro — all this in exchange for nails and iron pieces (Beaglehoe, 1967.:272). Captain Cook's first visit to Waimea was brief, about four days, but it left major impacts on the small village and it would never be the same again. A major impact was the introduction of new diseases for which the Hawaiians had no immunity. The effects proved to be devastating, though little was thought of it at the time.

At contact, Waimea Village was probably the largest coastal settlement on the southwest side of the island. Even though the currents were strong, Waimea Bay had a deep enough harbor where large foreign ships could anchor safely. Waimea was well cultivated with taro fields fed by an amazing engineering feat, Kiki a Ola, the famous Menehune ditch or aqueduct. Farther up Waimea Canyon, remains of terraces still exist. On the hillsides above, were walled-in areas for sweet potato. These remains are evidence that a well-developed agricultural system was in place at one time. Waimea also had an abundant fresh water supply as well. This made the village an ideal place for ships to re-provision their stores of food and water. After contact, Waimea became the political center for the ruling chiefs of Kaua'i and Kaumuali'i continued to use Waimea as the seat of government up until his death in 1824.

**Makaweli *Ahupua'a***

Makaweli, which means *"fearful features"*, refers to a landing, a land division (*ahupua'a*) and a river in what is presently called the Waimea district on the south coast of Kaua'i (Pukui *et al.*, 1974:142). An *'ōlelo no'eau* (proverb or wise saying) which sheds possible light on the meaning of Makaweli and which has been passed down over time is



*"Ho'olele ka uila o Makaweli."* Mary Kawena Pukui translates this as, "Sending the lightning of Makaweli flying." She explains that this is a play on the word *"maka-weli"* or terrifying eyes, which refers to the sending of a god on an errand of destruction (Pukui, 1983:117). At one time, Makaweli might have been known for this particular kind of sorcery or perhaps *akua lele* (flying gods) were commonly seen in this region. Specific information regarding this seems to have been lost over time.

A more ancient name for Makaweli is Ho'ānuanu which means "to cause cold" (Ibid.: 47). This older name is no longer used to refer to Makaweli *ahupua'a* as a whole; however, it is a name still used to refer to Ho'ānuanu Bay along the ocean in front of the project area.

Another interpretation of Makaweli was given by Warren Robinson, who has lived and worked the land most of his life. To him, Makaweli means "red eyes". This is because of the dry, dusty climate and, especially, the fine red dirt Makaweli is famous for, which makes the eyes red (2/9/99:pers. comm.). A similar meaning of "burning eyes" was given by Ed Rice during an interview. Following is an excerpt from the interview in which Ed describes this fine red dirt:

> ... the red dirt gets as fine as talcum powder... you could stomp your foot in it, and it will rise above your head. The dust is so fine it's actually lighter than air. It just floats up. I had always thought that the "burning eyes" came from the fact ... when the wind blows that stuff does burn. I've had my eyes full of that red dirt.

These last two interpretations are likely to be more recent interpretations of the name, Makaweli. Mr. Rice related he was told this interpretation in the 1960's, which was when he relocated to Hawai'i. As with all place names, meanings may change over time according to usage or to mark events of a particular period in time.

Detailed information about the *ahupua'a* of Makaweli is sketchy, though it can be compared to the adjacent land area of Waimea which is similar in many ways. The lower portions of Kaua'i's southwest plains, which includes Waimea and Makaweli, is dry and gets little rainfall — less than 30 inches annually with an average of 20 inches per year near the coast (Juvik *et al.* 1998:56). Water for crop irrigation and sustainability of large settlements would have been a problem.

In 1792, the H.M.S. Discovery anchored off the bay of Waimea, Kaua'i. Archibald Menzies, a surgeon and naturalist aboard the ship, writes about a shore visit with Captain Vancouver. The account gives a description of the dry, flat plains of Makaweli being covered with *pili* grass (*Heteropogon contortus*).

> ... in returning back in the dusk of the evening, we observed a large fire kindled a few miles to the eastward of Waimea [in the Makaweli direction], and spreading over the face of that plain country, which was mostly covered with dry, rank grass that burnt with great rapidity. This alarmed Captain Vancouver, who supposed that it might be a signal for commencing hostilities

> on the part of the islanders . . . the fire had been kindled to burn down the old shrivelled [*sic*] grass and low vegetables, and for no other purpose whatever, which I believe was literally the case, as I recollected well that the same fields were burnt down in the same manner when I was here a few years ago. I mentioned this to Captain Vancouver, and that the natives then gave the same reason for doing it, adding that by this means the next crop of grass grew up clear and free of stumps, and was therefore better adapted for thatching their houses, which was the principal use they make of it. (1920:32)

The account portrays a picture of what the Makaweli plains looked like in 1792. In this account, the Hawaiians are utilizing controlled burning as a method to promote regrowth of a vegetation community dominated by *pili* grass, which was a desired crop. It also is an indication that *pili* grass, commonly used to thatch houses, was an item that would have been gathered during traditional times.

However, on this drier southwestern side of Kaua'i, evidence of well-terraced and cultivated areas deep in the canyons of Waimea, Makaweli, Olokele and Hanapēpē support the idea of a large inland population rather than a coastal one. Mountain trails which led to the sea allowed for trade with coastal dwellers on the more heavily populated northern shores of Wainiha, Hanalei and Kalalau. Stories of a particular taro variety, the *ha'o kea*, was said to be fast growing and well adapted to the cold stream water and shallow soil at higher elevations. Another variety, *nē kalo a 'Ola*, was reputed to have grown in high inaccessible places deep in the canyon recesses (Handy & Handy, 1972:397). Freshets from mountain streams provided fresh water fish and shell fish such as *'o'opu (Eleotridae, Goblidae & Blennidae), 'ōpae (Palaemon)* and *hīhīwai (Neritina granosa)*. On the hillsides above the flood plains the *mōhihi* varieties of sweet potato were planted. As in other places, *kō* (sugar cane), *maia* (banana) and *pia* (arrow root) would have been grown on the outer edges of cultivated patches. Other plants such as *uhi* (yam), *'awa* (Piper methysticum), *wauke* (paper mulberry) and *olonā* (*Touchardia latifolia*) probably grew wild in the wet gulches. There would also have been *kukui* (Aleurites moluccana) as well as *'ulu* (*Artocarpus altilis*) and *kī* (*Cordyline terminalis*). Native woods would have been utilized for floats, weapons, canoes and paddles. Bird catchers would have access to feathers for leis, royal *kahili*, capes and helmets. All of these items would have provided the necessary food and supplies to sustain such a large inland population (Ibid.: 397-400).

**Place Names Analysis**

Insight into traditional life-ways and land use practices can often be gleaned from a study of place names in the vicinity. With this in mind, a list of place names was compiled with derivations (where available). Insights from these place names are discussed further below.



**Place Names in the Vicinity**

| | |
|---|---|
| Aaka Ridge | Lit. "Rolled" (Pukui *et al.* 1974:5) |
| A'a-kukui Valley | Gulch *Lit.* "candlenut root"(Pukui *et al.* 1974:5) |
| A'a-kukui | *Heiau* for human sacrifice in Kekupua (A'a-kukui) Valley (Pukui *et al.* 1974:5, 107) *Lit.* "candlenut root"(Pukui *et al.* 1974:5) |
| 'Āhuimanu | "flock of birds" a plain and marshes on the west side of Waimea River named after the thousands of wading birds that lived there. Some of this land was given to the missionaries Whitney and Ruggles (Wichman 1998:11) |
| Hipō | "purge night" site of the Russian Fort Elizabeth built by Georg Schaeffer (Wichman 1998:7) |
| Hoaka Point | "*Lit.* "Crescent" (Pukui *et al.* 1974:47) |
| Ho'ānuanu Bay | "Old name for Makaweli, Kaua'i. *Lit.*, to cause cold" (Pukui *et al.* 1974:47) |
| Holoa-wiki | "Quick decision" Houselot of the Welshman John Williams, one of the first *haole* residents on Kaua'i, located near Pu'uwahie (Wichman 1998:11-12) |
| Hukipo Ridge | USGS quad map |
| Kahana | A place just Hanapēpē side of Waimea - Kapa'ahoa is given as the name of the wind. (Nakuina & Mookini, 1990: 53) |
| Kahōluamanu | The highest cliff of Waimea Valley Kaua'i, *Lit.* "the slide [of] birds" (Pukui *et al.* 1974:65) or sled of Manu |
| Kaleinamanu Ridge | USGS quad map |
| Kaluapuhi | "*Lit.* "the eel pit" (Pukui *et al.* 1974:79) |
| Ka-mo'o-kahi | ("First land division") one of four areas watered by Kiki-a-Ola Ditch (Wichman 1998:7) |
| Kamo'o-'elua | ("Second land division") one of four areas watered by Kiki-a-Ola Ditch (Wichman 1998:7) |
| Kamo'o-ekolu | ("Third land division") one of four areas watered by Kiki-a-Ola Ditch (Wichman 1998:7) |

| | |
|---|---|
| Kamo'o-'eha | ("Fourth land division") one of four areas watered by Kiki-a-Ola Ditch (Wichman 1998:7) |
| Kinehapu'u | "male tree fern" seemingly the name of a stream near Kaunuloa (Wichman 1998:24) |
| Kinekula Ridge | Nose of ridge between the Waimea and Makaweli Rivers (USGS Map) |
| Kapaluwai | the water moss |
| Kapakohana | "naked one", brother of 'Ou-lehelehe, name of the land area ashore of Kaunuloa on the east stream bank of Kinehapu'u (Wichman 1998:24) |
| Kapua'i-o- | "Kapakohana's footprints" a site seemingly resembling footprints in stone |
| Kapakohana | near Kaunuloa (Wichman 1998:25) |
| Kaua | Lit. "the rain" surf spot off the coast of Makaweli (Wichman 1998:25) |
| Kaumakani Point | *Lit.* "Place [in] wind" (Pukui *et al.* 1974:94). An area of unusual winds and waterspouts (Wichman 1998:28) |
| Ka-unu-loa | ("the long pebble") *Heiau* for human sacrifice in Kekupua Valley (Pukui *et al.* 1974:107) Alternately identified as the landing place for canoes and traced to the etymology "long endpiece of a canoe" (Wichman 1998:24) |
| Kawai'ula'ilahi | The water on the left is the color of iced tea... the red side was called "water that turns the skin red as fire" (Wichman 1998:7) |
| Ke-ahi-lele | The landing on the west side of the mouth of Waimea River, "Flying fire," perhaps after a shooting star or a comet (Wichman 1998:9) |
| Kekupua Valley | "Valley near Makaweli...Three *heiau* for human sacrifice were here: Kū-ana-lili, A'a-kukui, and Ka-unu-loa (the long pebble)" Pukui *et al.* 1974:107) |
| Ke-olo-'ewa | Name of a ridge west of Waimea River, named after god of sorcerers and black magic (Wichman 1998:12) |
| Kiki-a-Ola Ditch | ("Container acquired by Ola", popularly known as the "Menehune ditch") |



| | |
|---|---|
| Koai'e | Major valley branching off of the Waimea River named after the species of tree that was uprooted by the Hawai'i Island hero Nāmakaokapao'o for a war club (Wichman 1998:12) |
| Koki Point | USGS quad map |
| Kū-ana-lili | *Heiau* for human sacrifice in Kekupua Valley (Pukui *et al.* 1974:107) |
| Kumuhau | ("source of hau"), name of field beside the Waimea river (Wichman 1998:7) |
| Kumu-kukui | ("source of candle-nut") name of field beside the Waimea river (Wichman 1998:7) |
| Kumu-niu | ("source of coconuts"), name of field beside the Waimea river (Wichman 1998:7) |
| Kumu-'ōhia | ("source of mountain apple") name of field beside the Waimea river (Wichman 1998:7) |
| Kumu-'ulu | ("Source of breadfruit"), name of field beside the Waimea river (Wichman 1998:7) |
| Kunini Gulch | Gulch off of the Waimea River (USGS Map) |
| Lā'au-'ōkala | "thorny tree" area on east side of the mouth of Waimea River (Wichman 1998:9) |
| Luhi | "tired" a beach of white sand directly below the Russian Fort. (Wichman 1998:26) |
| Māha'iha'i | "brittle" A small plain upriver of Lā'au-'ōkala edged on one side by twenty foot-high cliffs where there was a large sport field. Site of first home of missionaries Whitney and Ruggles in 1820 (Wichman 1998:9) |
| Mahinauli Gulch | *"Lit.* "dark moon" (Pukui *et al.* 1974:47) |
| Makaweli | Major valley branching off of the Waimea River which became a separate *ahupua'a* Lit. "Fearful features" (Pukui *et al.* 1974:142) Perhaps named in reference to the glaring, threatening eyes of religious images or the fearful eyes of the victims (Wichman 1998:22) |
| Maku Gulch | USGS Quad map |
| Manienie'ula Ridge | "Lit. "red Bermuda grass" (Pukui *et al.* 1974:47) |

| | |
|---|---|
| Menehune ditch | Popular name for Kiki-a-Ola Ditch (Pukui *et al.* 1974:150) |
| Mokihana Ridge | *Lit. Pelea anisata*...its flowers strung in leis represent Kaua'i (Pukui *et al.* 1974:154); place across the river where stone for Kiki-a-Ola Ditch was quarried (Wichman 1998:8) |
| Mokihana Valley | Major valley branching off of the Waimea River named after the fragrant endemic berry (Wichman 1998:8) |
| 'Ou-lehelehe | "protruding lips" name of a rock that was once a woman offshore of Kaunuloa (Wichman 1998:24) |
| Nihoa Gulch | Gulch off of the Waimea River (USGS Map) |
| Nonopahu Ridge | USGS quad map |
| Pākalā Point | "*Lit.* "the sun shines", possibly location of a *heiau* of the same name (Pukui *et al.* 1974:175) |
| Papa-'ena'ena | Chief's name associated with a huge hollowed out stone formerly on the beach (Wichman 1998:8) |
| Papua'a Ridge | USGS quad map |
| Peamoa Valley | USGS quad map |
| Pe'ape'a | A place just Waimea side of Hanapēpē, Makaupili is given as the name of the wind. (Nakuina & Mookini, 1990: 53) |
| Pe'e-Kaua'i | farm land watered by Kiki-a-Ola Ditch (named after the ancient homeland of the Menehune) (Wichman 1998:9) |
| Pe'eKaua'i Ditch | USGS quad map |
| Pu'u Moi | a small hill near Waimea Canyon where dried Moi fish were brought to feed Menehune for the Kiki-a-Ola Ditch |
| Pu'uoPapai | USGS quad map |
| Pu'uopai | a mountain on Kaua'i named for the shrimp gathered to feed Menehune for the construction of Kiki-a-Ola Ditch |
| Pu'u-wahie | "firewood hill" named after a mound of cut sandalwood piled up on the 'Āhuimanu plain on the west bank of the Waimea River. (Wichman 1998:11) |



| | |
|---|---|
| Wai'alae | "Mudhen stream" The name encompasses the stream valley branching off Waimea River, the waterfall and the mountanous area at its back. (Wichman 1998:12) |
| Wai-kea | "white water." For a while the two streams do not mingle...on the right the water is clear (Wichman 1998:7) |
| Waimea | or "red water" was named "because of the color of the dirt carried by the river in flood."(Wichman 1998:7) Waipao is given as the name of the wind. (Nakuina & Mookini, 1990: 53) |
| Waipao Valley | *"Lit.* "scooped water", (Pukui *et al.* 1974:227) |

The place names in the vicinity of the Kapalawai project area refer to many of the most important cultigens introduced by Polynesians which most likely formed dietary staples or were frequently used as raw materials by the people of the area. These include the well-known breadfruit ("Kumu-'ulu"), coconuts ("Kumu-niu"), mountain-apples ("Kumu-'ōhia"), candle-nuts ("A'a-kukui" and "Kumu-kukui") and *hau* ("Kumuhau"). Certain native plants are referred to including *hapu'u* tree fern ("Kānehapu'u"), *koai'e* a form of *koa* ("Koai'e Valley"), *manienie'ula*- a golden beardgrass ("Manienie'ula Ridge") *mokihana* whose frogrant fruits are symbolic of Kaua'i ("Mokihana Valley" and "Mokihana Ridge") and the *'iliahi* or sandalwood is indirectly referred to in the place name "Pu'u wahie".

Of these plants, only coconut trees and *hau* are reported to be present within the project area itself. The coconut trees could have been a subject of native gathering rights if they were planted by Hawaiian families who accessed them for traditional and cultural purposes. However, there was no evidence to suggest that this occurred and it is more likely that these coconut trees were planted by the Robinson family. The relatively quick-growing and common *hau* was probably the subject of native gathering but, there is no evidence that the *hau* within the project area itself was gathered.

The place names in the vicinity of Kapalawai are relatively rich in references to birds including "'Āhuimanu", "Kahōluamanu", and "Wai'alae" with only the last place name specific to a type of bird (the mudhen or Hawaiian gallinule; *Gallinula chloropus sandwichensis*). It seems probable that a variety of birds including the *'alae* were harvested by Hawaiians in the vicinity. It seems probable that freshwater birds associated with fishponds were regarded as "privately-owned" resources as much as the fish in the pond were. At any rate the endemic and endangered *'alae* is protected by state and federal laws.

Two animal species (both proverbial as Menehune payment) are listed: *'opai* [sic. *'opae*] (various native freshwater shrimps) and moi (thread fish; *Polydactylus sexfilis*). Both of these may have been husbanded in fishponds but it would seem certain that the interest in fishpond kept species would have been highly proprietary. Native gathering would have only applied to streams and marine shallows.

Thus while place name analysis offers insights into the traditional life-ways and land use practices of the vicinity of the project area, no gathering practices specific to the project area appear to be indicated.

**Botanical Analysis**

The botanical survey of the Kepalawai parcel by Winona P. Char (Char & Associates, April 1999) identified a total of 145 plant species of which thirteen are native and two are Polynesian introductions. Such botanical studies may offer insight into possible patterns of native gathering practices. These fifteen native plants along with known uses are presented below:

**Hawaiian Name:** *'a'ali'i*
**Other Names:** *'a'ali'i kāmakani, 'a'ali'i kāma kua, kūmakani*
**Scientific Name:** *Dodonaea viscosa*
**Ethnobotanical Uses:**The fruit and leaves are popular in lei making. (Wagner, Herbst & Sohmer:1228)
**Biogeographical status:** indigenous
**Proverb:** *He 'a'ali'i ku makani mai au; 'a'ohe makani nana e kula'i.* I am a wind-resisting *'a'aali'i*; no gale can push me over (Pukui:507).

**Hawaiian Name:** *'aki'aki*
**Other Names:** *'aki, 'aki mahiki, mākikihiki, mānienie, mānienie'aki 'aki, mānienie mākikihiki, mānienie maoli,* Seashore rushgrass, beach dropseed.
**Scientific Name:** *Sporobolus virginicus*
**Ethnobotanical Uses:** The Hawaiian name alludes to the power of this grass to exorcise spirits. In fact, it was used in ancient exorcism ceremonies. (Johnstone:27and Neal 66-67)
**Biogeographical status:** indigenous

**Hawaiian Name:** *hau*
**Scientific Name:** *Hibiscus tiliaceus*
**Ethnobotanical Uses:** The bast fibers of this species were formerly used for cordage and the light wood for the spars of the outriggers of canoes, and occasionally for the outrigger float. It also was used for floats for fishnets. Fires were started by friction from rubbing a pointed stick of a harder wood such as *Perrottetia* against a grooved piece of the much softer *hau*. The flowers and bark were also used medicinally. (Wagner, Herbst & Sohmer: 888).
**Biogeographical status:** indigenous?
**Proverb:** *Ka makani ha 'iha'i lau hau o Olowalu.* The hauy-leaf tearing wind of Olowalu. (A gusty wind). Pukui:1457

**Hawaiian Name:** *'ilima*
**Other Names:** *'ilima koli kukui, 'ilima kākaha kai, 'ilima kākula, 'ilima papa*
**Scientific Name:** *Sida fallax*
**Ethnobotanical Uses:** Flowers used for leis. (Wagner, Herbst & Sohmer: 1056) A mild laxative for babies is made by squeezing out the juice of flowers; this is called *kanakamaika'i* (Pukui & Elbert:98)



**Biogeographical status:** indigenous
**Proverb:** *Ola na 'ilima wai 'ole i ke ao 'ōpua,* Healed are the *'ilima* of the waterless places by the rain cloud ( Pukui 2487).

**Hawaiian Name:** *ilie'e*
**Other Names:** *hilie'e, 'ilihe'e, lauhili (Nī'ihau)*
**Scientific Name:** *Plumbago zeylanica*
**Ethnobotanical Uses:** This plant was used as "baby medicine" according to specimen label data (1933, Neal s.n. BISH) and apparently the sap was used to blacken tattoos in Hawai'i. (Wagner, Herbst & Sohmer: 1056)
**Biogeographical status :** indigenous

**Hawaiian Names:** *koali 'awa.*
**Other Names:** *koali 'awahia, koali lā'au, (Ni'ihau), koali pehu.*
**Scientific Name:** *Ipomoea indica*
**Ethnobotanical Uses:** Hawaiians used roots and leaves of this plant in plasters and poultices for wounds, sores, and in the treating broken bones; the seeds and other plant parts were used as a cathartic (Wagner, Herbst & Sohmer:556-7). Kaiahua has used *koali* to help people suffering from broken bones and damaged or injured ligaments, tendons, and cartilege. (Kainhua:6)
**Biogeographical status:** indigenous
**Proverb:** *He kowali, he pāka'awili.* He is like a morning-glory vine, twisting this way and that. (Pukui, 703)

**Hawaiian Name:** *kupala*
**Other Names:** *'ānunu*
**Scientific Name:** *Sicyos pachycarpus*
**Ethnobotanical Uses:** No known Hawaiian uses
**Biogeographical status:** endemic

**Hawaiian Name:** *mai'a*
**Other Names:**Groups: *maoli, pāpā'ulu, iholena. mai'a hāpai*
***Scientific Name:*** *Musa* x paradisiaca
**Ethnobotanical Uses:** An important part of the Hawaiian diet, although most varieties were forbidden to women. Besides its value as a food, the plant had many other uses. In religious ceremonies the fruit was used as an offering, the leaves, usually of the *iele* variety, to cover an altar, and the stalk was used to symbolize a man. The stalks also were used to line the *imu* (underground oven), as canoe rollers, or were mashed and used as a poultice for sprains or broken bones. The fibers and epidermis of the leaf bases of several varieties were used in *lei* making. Banana leaves were placed over the imu to keep dirt out of the food being cooked. The sap was used as a dye and it and the fruit of some varieties were used medicinally. The thick nectar of the flowers was fed to babies.(Wagner, Herbst & Sohmer: 1465)
**Biogeographic status:** Polynesian introduced

**Hawaiian Name:** *ma'o*
**Other Names:** hoary abutilon
**Scientific Name:** *Abutilon indicum*
**Ethnobotanical Uses:** No known Hawaiian uses
**Biogeographical status:** indigenous
**Hawaiian Name:** *milo*
**Other Names:** Portia tree
**Scientific Name:** *Thespesia populnea*
**Ethnobotanical Uses:** Wood and fibers used by Polynesians (Wagner, Herbst & Sohmer: 902).
**Biogeographical status:** indigenous?
**Proverb:** *He milo ka lālau, mimilo ke aloha. Milo* is the plant; love goes round and round, Said of the *milo* tree when its leaves blossoms, or seeds were used by a *kahuna* who practices *hana aloha* sorcery (Pukui 818).

**Hawaiian Name:** *naupaka kahakai*
**Other Hawaiian Names:** *naupaka (Ni'ihau), huahekili, naupaka kai.*
**Scientific Name:** *Scavola sericea*
**Ethnobotanical Uses:** Berries sometimes eaten during times of famine (Krauss:16).
**Biogeographical status:** indigenous

**Hawaiian Name:** *niu*
**Other Names:** *ololani, niu hiwa, niu lelo*
**Scientific Name:** *Cocos nucifera*
**Ethnobotanical Uses:** In Hawai'i 2 forms were introduced by the Polyneisans: *Niu hiwa,* with dark green fruit and black endocarp, used ceremonially, medicinally, and for cooking; and *niu lelo,* with reddish fruit and yellow endocarp, used more generally for secular purposes, but not ceremonially or for medicine. The trunks were used as house posts or were hollowed out to make small canoes, drums, or food containers. The leaves were used to make baskets for carrying or storage, for thatch, or to pound the ocean to scare fish into nets. The heavy base was used to tamp or pound the banks of taro paddies into shape. The leaflets were plaited into fans or balls, while the midribs were used as brooms, for a kind of jew's harp, to string *kukui* nuts for light, to construct small traps for shrimp, and for a game. The husk of the fruit was burned as fuel or its fibers were separated and used as a strainer for *kava* and other liquids; fibers also were made into a very strong rope used to make nets to hold calabashes or for lashings. It could be used to lash outriggers to canoes as saltwater did not cause the rope to deteriorate or weaken. The shell of the fruit was used for utensils for eating, drinking, or scooping; it was also used to hold and store dyes, fish lines, and other small items; and a small knee drum was made from a coconut shell with its ends removed and covered with fish skin. The water in the fruit was used as a drink; the nuts could be carried on journeys as a water source. The flesh was eaten at all stages of maturity; at the spoon stage it was eaten raw, either alone or with other foods such as poi,



while the mature flesh was usually grated and the milk extracted to be used in cooking or to make sweets. Oil extracted from the mature meat was used on the body and hair, or was spat on a rough sea to calm it, enabling fisherman to see below the water surface. The haustoria that filled the interior of a sprouting nut was eaten. (Wagner, Herbst & Sohmer:1362)
**Biogeographical status:** Polynesian introduced.

**Hawaiian Name:** *pōhuehue*
**Other Names:** Beach Morning Glory, *puhuehue*
**Scientific Name:** *Ipomoea pes-caprae*
**Ethnobotanical Uses:** Roots and leaves of this species are said to have been used as famine food, but cathartic compounds make its use dangerous. Its medicinal uses were similar to those of *Ipomoea indica.* (Wagner, Herbst & Sohmer:559).
**Biogeographical status:** indigenous

**Hawaiian Name:** *pōpolo*
**Other Names:** *'olohua, polopolo, pōpolohua (Ni'ihau)*
**Scientific Name:** *Solanum americanum*
**Ethnobotanical Uses:** This plant was used medicinally by Hawaiians for the digestive tract and sore throats. (Wagner, Herbst & Sohmer: 1269)
**Biogeographical status:** indigenous?

**Hawaiian Name:** *'uhaloa*
**Other Names:** *'ala'ala pūloa, hala 'uhaloa, hi'aloa, kanakaloa*
**Scientific Name:** *Waltheria indica*
**Ethnobotanical Uses:** This plant was used medicinally by the Hawaiians; the bitter inner bark or roots apparently worked as a pain killer especially for sore throat (Neal, 1965: Pukui & Elbert 1986) (Wagner, Herbst & Sohmer: 1280).
**Biogeographical status:** indigenous?

Thus, twelve of these native plants were utilized in some specific manner by Hawaiians and could have been sought for by native gatherers. All of these species which were utilized are, however, quite common. As Ms. Char concludes: "All of the plants can be found in similar environmental habits throughout the Hawaiian Islands. Our extensive oral history interviews did not disclose any practice of harvesting these or any other plant species within the project area.

Numerous species of plants introduced after Western contact were the subject of native gathering at some places at some times. Such introduced plants identified within the project area include *kiawe (Prosopis pallida), koli* or castor bean (*Rinus communis*) and *kuawa* or guava (*Psidium guajava*). These exotic plants tend to be very widespread in distribution and there is no reason to believe that such species were ever gathered by Hawaiians within the Kapalawai project area.

## Avifaunal and Feral Mammal Resources

The study by Phillip L. Bruner of the avifauna and feral mammals for the Kapalawai project identified a number of native bird species including:

| | | |
|---|---|---|
| Pacific Golden-Plover | *Kōlea* | *Pluvialis fulva* |
| Ruddy Turnstone | *'Akekeke* | *Arenaria interpres* |
| Wandering Tattler | *'Ūlili* | *Heteroscelus incanus* |
| Common Moorhen | *'Alae* | *Gallinula chloropus* |
| Hawaiian Duck | *Koloa* | *Anas wyvilliana* |
| Black crowned Night Herons | *'Auku'u* | *Nycticorax nycticorax* |

David Malo (1951: 39) relates that the *'Alae, Koloa,* and *Kōlea* were *"he manu ono"* or "delicious eating birds" by which we may reasonably infer that they were popularly hunted. These birds are all protected by federal and state law.

The Bruner study also documents the presence of dog and pig tracks within the project area. The map of pig distribution for Kaua'i (van Ripper and van Ripper III, 24) however shows wild pig populations over the majority of the island with concentrated densities shown at higher elevations. Thus there is no reason to believe that the project area was ever particularly good for pig hunting.



## IV. ORIGINAL SOURCE OF TITLE AND HISTORY OF LAND USE

### Land Ownership of Waimea and Makaweli: 1778 - 1848

In 1778, when Captain Cook first landed at Waimea, Ka'eokūlani was the ruling chief of Kaua'i (Kamakau, 1992:92). Upon his death in 1794, he was succeeded by his son Kaumuali'i. Because Kaumuali'i was too young to rule at the time, the kingdom was administered by his *kahu* (guardian), Nāpaikua'ana (Kamakau, 1992:162, 169). In 1810, rather than go to war, Kaumuali'i offered to cede his government to Kamehameha I. Kaumuali'i and Kamehameha must have reached a mutual understanding because Kaumuali'i was allowed to rule independently over his kingdom of Kaua'i until his death in 1824 on O'ahu, where he had resided following his marriage to Ka'ahumanu two years earlier (Ibid:253). Following Kaumuali'i's death, there was a great rebellion and a vying for political power between the Hawai'i and Maui island chiefs and the Kaua'i chiefs. It was at this time that the Kamehameha family won control of Kaua'i. The Kaua'i chiefs were punished for their rebellion and were excluded from the *kāi'āina* (distribution of lands) when the lands were redistributed.

At the end of the 1824 rebellion, as Hawaiian historian, Samuel Kamakau, notes:

> The lands held by chiefs of Hawai'i were tabu; Waimea and Makaweli were held by Ka-'ilinaoa and Ka'u'uku-ali'i . . . (1992:268)

Soon afterward Kaikio'ewa was appointed governor of Kaua'i (Ibid: 269). He held this position until his death in 1839.

Following the death of Kamehameha I, Ka'ahumanu, his favorite wife, inherited his lands. When Ka'ahumanu died in 1832, her heir was Elizabeth Kahō'anokū Kīna'u, daughter of Kamehameha I and Kaheiheimālie (Ka'ahumanu's sister). Kīna'u inherited Ka'ahumanu's *'āina* (lands) as well as the position of *Kuhina Nui* (Premier). In 1827, Kīna'u married Mataio Kekūanāō'a and bore five children. The first two sons died young. But the other three children would continue the Kamehameha legacy. Alexander Liholiho would reign as Kamehameha IV and Lota Kapuāiwa would reign as Kamehameha V. Kīna'u died in 1839 only four months after her daughter, Victoria Kamāmalu Ka'ahumanu, was born. Since Kīna'u's death was sudden and she did not leave a *kauoha* (command), it was decided by the *Ali'i Nui* (high chief) that Victoria Kamāmalu would inherit her lands and her position of *Kuhina Nui*. Kamāmalu's guardians were John 'Ī'ī and her father, Mataio Kekūanāō'a (Kame'eleihiwa, 1992:120-24).

At the time of the Māhele in 1848, Kamāmalu held seven *'āina* on the island of Kaua'i. Five of these *'āina* were relinquished to the *Mo'i* (King) and she retained two *'āina* for herself. The *ahupua'a* of Makaweli was kept for Kamāmalu (LCA 7713). Because she was only 7 years old at the time of the *Māhele*, her guardians, Mataio Kekuanāō'a and Ioane 'Ī'ī, acted on her behalf. In 1857, Kekuanāō'a and 'Ī'ī, acting as guardians of Victoria

Kamāmalu, agreed to a *Palapala Hoʻolimalima Kula* (lease for *kula* lands) to a *hui* (group) of people from Makaweli and Waimea. The group consisted of 120 people who all signed the lease. The lease reads:

> *Eia nā mea i koe ma kāa hoʻolimalima ʻana o ka loko nui i Kekupua a me nā loko liʻiliʻi, ʻo ka iʻa hoʻomalu, ʻo ka lāʻau kapu o nā kumu ʻalani i Waikea, ʻo nā loʻi Pōalima a me nā kumu nui o Māhaʻihaʻi a me Kekupua, ʻo nā kuleana o nā kānaka a me ka Pāpū kapu, ka wahie inā he mea kūʻai koe no ia ma kāa hoʻolimalima ʻana.*
>
> Translation: Here are the things exempt from this lease. The large pond in Kekupua and the small ponds, the protected [by taboo/*kapu*] fish, the sanctioned wood of the orange trees at Waikea, the Pōʻalima taro fields and the large trees of Māhaʻihaʻi and Kekupua, the *kuleana* [lands] of the people and the reserved fort; the firewood, if it is for sale, is exempted by this lease.

The "large pond in Kekupua" is the prehistoric fishpond recorded in the current project area which is known as Kekupua Pond, today.

The above exemptions are obviously a carry over of the ancient *kapu* system. The lease indicates the kinds of items that were *kapu*. Traditionally, large ponds were often reserved for the *aliʻi*. The lease also indicates that even though the *kapu* system was done away with in 1819, certain *kapu* were still being observed by the *aliʻi* and their people as late as 1857, only 8 years prior to Eliza Sinclair acquiring Makaweli *ahupuaʻa* in 1865. It is likely that these *kapu* were still being observed up until the time Mrs. Sinclair purchased Kapalawai, along with the rest of Makaweli Ahupuaʻa. As owner of the whole *ahupuaʻa*, Mrs. Sinclair replaced the *konohiki* and controlled the lands in much the same way a *konohiki* would have done. As an established relationship between the *konohiki* and the native tenants was already in place, it would have been very easy for her to maintain these same relationships and carry them over to her tenure. It is evident from the interviews that Mrs. Sinclair retained the *kapu* which were in place when she arrived. For example, fishing for mullet in Kekupua Pond was not allowed, but other kinds of fish were allowed to be caught. These same relationships were carried over to the Robinson tenure after Mrs. Sinclair's death and continued up into the time of Eleanor Robinson, when maintenance of the pond ceased and mullet were no longer actively raised.

At the time of the Māhele in 1848, Waimea Town was the largest settlement on the island. There were 196 land claims registered for Waimea while to the east of Makaweli, in the *ahupuaʻa* of Hanapēpē, 93 land claims were registered. In Makaweli, there were 117 land claims. So as the distance increases from Waimea toward Kōloa the population and number of claims diminish. However, there is a sizable population in Makaweli of soldiers at the fort in Waimea.

There were no claims filed for Kapalawai in Makaweli. (There were nine claims filed for Kapalawai in Waimea and four claims filed for Kapalawai in Hanapēpē.) However, there were two claims, #2290 and #2291, which mention Kekupua and give reference to the fish pond.



LCA #2291

Emelie Keaweamahi and Kapuniʻai claim eight *ʻāina* in Land Claim #2291. Emelie gives testimony that she received these lands from her husband Kaikioʻewa who served as governor of Kauaʻi up until his death in 1839. In 1840, Keaweamahi married [Elia] Kapuniʻai and named him as her heir.

In the claim for parcel No. 4 of LCA #2291, mention is made of:

> . . . a *kula* called Kulaamokoaluli in the *ahupuaʻa* of Makaweli, Kauaʻi . . .

The kula boundaries are described as:

> *Mauka* by John Ballon's *kula* of Kekupua
> Hanapēpē by a *kula* separating it from the *loko* called Kekupua and Kinaii
> *Makai* by public road
> Mana by a *kula* in Makaweli.

The claim for parcel No. 5 also mentions:

> . . . a *loko iʻa* in the ʻili Kekupua in Makaweli of Kauaʻi

The boundaries are given as:

> The kula of Kekupua
> Hanapepe by an *ʻili paʻakai*
> *Makai* by Kaukali [Kauhale?] Puʻuone
> Mana by two *lokos* whose names I do not know.

In the Foreign Testimony (Vol 11:183-87) given on March 26, 1851, Iona [Kamoʻopōhaku] corraborates Emelie and Kapuniʻai's claim by saying that Parcels nos. 4 and 5 were

> . . . the property of Kaikioʻewa till his death, when they fell to his widow and heir, Emelie Keaweamahi, who named Claimant [Kapuniʻai] about the year 1840 and in this way they came into Claimant's possession. No. 4 was given to Claimant's brother Hukiku by Kaikioʻewa who held it till his death, when he left it to Claimant as heir and he holds it without dispute at the present time. No. . . . 5 . . . are also held by Claimant without dispute from the time he came in possession of them till the present time.

Similar testimony by Iona [Kamoʻopōhaku] regarding locations and boundaries for Parcels No. 4 and 5 is documented in the Native Register (Vol. 11:53-56).

No. 4 - Garden Nalaanokaelele in Makaweli *ahupua'a*...
Section 4:
*Mauka* - J. Bull's pasture
Hanapēpē separating Kekupua pond, pasture
*Makai* - Government Road
Mana - In Makaweli, a pasture...

No. 5 - Fish pond Kahe in the 'ili Kekupua in Makaweli...
Section 5:
*Mauka* - Kekupua pasture
Hanapēpē - salt lake
*Makai* - Mahinauli beach
Mana - Kaunuloa pasture

The testimony goes on to say that Sections 4 and 5 "have been leased for personal gain; no objections to the present time" (Ibid.).



**Settlement Pattern for Makaweli Ahupua'a Based on the Mähele Claims**

The pattern of settlement for Makaweli *Ahupua'a* is far from clear. *Mähele* land claims of the mid 1800's often offer a good approximation of traditional patterns of land use but this is not the case at Makaweli owing to the nature of *Mähele* records for this area and changes in land tenure patterns which occurred in the early 1800's.

The enumeration of *Mähele* land claims for Makaweli is unusually complicated. In this portion of Kaua'i, many people claimed lands in more than one *ahupua'a*. There are 117 claims made by 85 claimants which either describe or award claims in Makaweli *Ahupua'a*. Of these 117 claims, 83 are awarded but some of the awarded parts are located in Waimea or even Hanapēpē.

It should also be noted that there is more than one Kapalawai on the island of Kaua'i. There is a Kapalawai in Waimea and also one in Hanapēpē, which are clearly different lands than the Kapalawai of Makaweli which comprises the proposed project area. Of the 117 claims made for Makaweli, nine claims were for Kapalawai in Waimea and four claims were for Kapalawai in Hanapēpē. There were no *kuleana* claims made within the proposed project area of Kapalawai, Makaweli. There is an *ali'i* claim specifically for the fishpond within the project area but it is not awarded.

The *Mähele* land documents suggest a pattern of the extensive exploitation of the Waimea-Makaweli-Mokuone river basin. The *ahupua'a* of Makaweli is bounded by the Waimea River on the western side at the shore. The Waimea River is fed by the Makaweli River tributary a short distance up the river, and the Makaweli River, in turn, is fed by other streams such as the Mokuone Stream. These are the stream valleys where, at the time of the *Mähele*, people were settled. Waimea, at this same time, had the greatest population on the island of Kaua'i and Makaweli's land use is closely linked to Waimea, with some claimant's living in one place and farming in the other or vice versa. There is a slight preference for a house lot in Waimea, but several have house lots in both *ahupua'a*. Visiting ships were probably supplied with food from both districts when they stopped at Waimea Bay.

The fort, at the mouth of the Waimea River on the Makaweli side of the river, had seen action in the rebellion of 1824, when O'ahu forces put down the uprising against the Kamehameha dynasty. The *koa* or soldiers at the fort were given *lo'i* lands nearby the fort so they could help raise their own food. Twenty-two of the Makaweli claims are for fort soldiers, who generally claim a single *lo'i* or *mo'o*. Most fort soldiers were given land in the *'ili* of Kaho'omano, with some others in Hakioa, both located quite close to the fort.

There are 119 (*'äpana* or pieces) in Makaweli awarded claims. Awarded *'äpana* can be seen on the tax maps for the *'ili* of Hakioa, Kaho'omano, Kakalae, Kaloulu, Kapalawai, Koleakalo Manawai, Pu'ulima, Wai'awa'awa and Waikaia all located along the Waimea River, the Makaweli River or a major western tributary of the Makaweli River (Figure 5).

A major problem in reconstructing *Māhele* era settlement patterns is that tax maps and other readily available historic maps do not show *'ili* areas for claims or awards in Huakaule, Kahalai, Kahana, Kaholo, Kaikolu, Kalī'au'ōkala, Kamaka'eli'eli, Kamo'ouli (Kamo'oali'i), Kaneli, Kaohulihau, Kapuemanu, Kaunuloa, Kiele, Kohiana, Kukuihoehoe, Kula'amokualuli, Kumuiki, Mahaihai (Mahaemae), Manini, Mokuone, Nonopahu, Ololokalau, Olokele, Palaloa, Pillamo'o, Poleiwale, Uhilau, Waikui or Wailele. It is difficult to understand the entire *ahupua'a* settlement pattern when so many of the geographic areas of settlement are unknown. Perhaps these *'ili* were all along the western-most margin of Makaweli as is the case with the geographically identifiable *'ili* but for all we know they may have been widely spread out over Makaweli *Ahupua'a*.

There frequently, however, is some location data for these "lost" *'ili*. Ka Lā'au'ōkala is a canoe landing, and we presume it is at the shore or on the Waimea-Makaweli drainage. Kahana is described in the claims as being at the *muliwai* or mouth of the river. The Mahaihai Ditch is shown on maps running alongside the Makaweli River at the junction of the Makaweli River with the Waimea River and we presume the Mahaihai claims would be along that ditch. Olokele *'ili* may have been the entire Olokele Valley. The Nonopahu claim is in the same areas as those for Koleakalo, up the river.

Of these 117 claims with 119 *'āpana*, there are 223 *lo'i* or *mo'o* (which presumably included *lo'i*) enumerated. The majority of these *lo'i 'āpana* are in Hakioa (28), Kaho'omano (26), and Kakalae (23). Thus the vast majority of *lo'i* claims were in seaward portions of the Waimea and Makaweli Rivers. There are claims for 31 house lots, and presumably, some or all of the 22 soldiers were still garrisoned at the fort. The house lots tend to be in *'ili* closer to the shore, and some along the rivers. There are 19 claims for *kula* and these are pastures or gardens scattered in among the *lo'i*. Gardens are very much a part of the Makaweli landscape and appear in the claims in several different guises. There are twelve claims for *kīhāpai*, for a *kula* garden, three others for gardens in house lots, three for a *pāhanu* (cultivated garden), and one for a taro *kīhāpai*. Many claims mention the various *'auwai* or ditches, and the ditches carry the name of the nearby *'ili* or the *'ili* is named for the *'auwai*. Three claimants claim four *'auwai*. There is also a claim for a pig pen in Kaikolu and a gobey fish enclosure in Manawai.

A potato planting claim is made by a soldier in an unknown location, but presumably near the fort. Many of the *kula* may also have contained plantings for sweet potatoes. There is a claim in Kakalae for coconut and fig trees (236F) and a coconut grove (4291B) in Mahaihai. Both mentions of coconut groves occur as markers for boundaries.

There are no *Māhele* claims for *wauke*, *olonā*, bananas, *hala*, orange or lemon trees as there are in most of the Kaua'i *ahupua'a*. Although these cultigens may have existed, they have not been mentioned. This lack of diverse cultigens may also be the result of this Makaweli River area being so closely linked with Waimea, almost as a suburb. This Makaweli area was a large food factory probably for both Makaweli and Waimea, and in fact, perhaps even more for Waimea. There is much more diversity in cultigens claimed in both neighboring ahupua'a (Waimea and Hanapēpē) suggesting that, at the time of the *Māhele*, Makaweli primarily produced food staples.

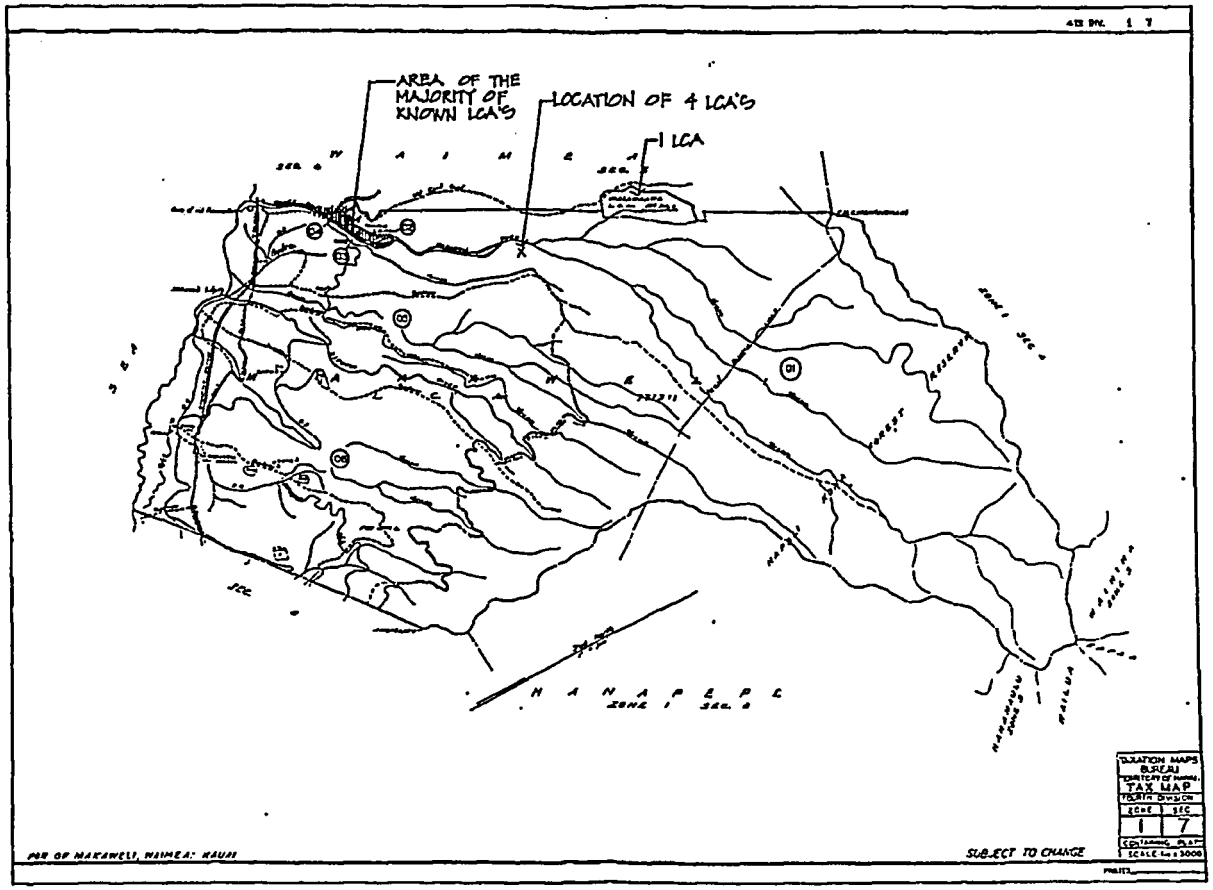



Figure 5 Map of Makaweli *Ahupua'a* (TMK 1-7) showing areas of known mid-1800's settlement

Within the Waimea-Makaweli-Mokuone valleys, area paths, *pali* and *'auwai* or neighbor's patches are the usual limit to the land claimed. A government road is mentioned several times and represents the cross-*ahupua'a* transit area. The paths go along the rivers and up through the different *'ili* providing access between the higher lands and the shore.

Claimants of large tracts, such as the *ahupua'a* or the 298+ acres for the Mission lands provide information about highly prized fish ponds and salt ponds, but little else about the land within these large areas. Three *ali'i* have claims to the entire *ahupua'a*, Ahukai wahine, Emelia Keaweamahi, widow of Kaikioewa, and M. Kekūanaō'a for Victoria Kamāmalu. Victoria receives the land of Makaweli as well as a small *'āpana* within Kaho'omano, the latter claim is slightly unusual, since usually all land not claimed by the *kuleana* tenants belonged to the chief/chiefess who was awarded the land. Both Ahukai and Keaweamahi speak about the fish pond, Kahe (also known as Kekupua Fishpond), in Kapalawai and the reader is referred to other sections of this report for that discussion.

Fishing is mentioned in the Mission claim #387, which can be seen on Tax Map Key 1-7, (Figure 6) some distance up a Makaweli River tributary. Kaumuali'i, former reigning chief of Kaua'i, gave Mr. Whitney the land of Kakalae near the juncture of the Waimea and Makaweli Rivers and the food fish *auhau* ["tax"] and all other appurtenances, with which he took possession of in the *'ili* of Kakalae and held it in peace under Kaumuali'i and all his successors until his death.

From our knowledge of Waimea and Hanapēpē, it is probably likely that the land just *mauka* of the shore provided *pili* grass for housing and that there were possibly even wetland terraces in other valleys to the west of the Makaweli River, but we have no records. The *ali'i* used the Kekupua Fishpond and the Kapalawai area. There were a few salt ponds along the shore. The *Māhele* records leave us in ignorance about the eastern and central part of the *ahupua'a*, but provide us with a very detailed record of the western end of Makaweli, which was extensively cultivated along the Waimea-Makaweli-Mokuone river valleys.

The *Māhele* land use pattern at Makaweli was very strongly focused along the seaward portion of the Waimea-Makaweli-Mokuone river valleys. In the general absence of historic or archaeological accounts about the eastern and central part of the *ahupua'a* we are left only with conjecture. It seems likely that the creation of a Waimea mission station, a major trade center and a fortification at Waimea drew people in from the surrounding country. It seems probable that habitation and agriculture were more spread out throughout Makaweli *Ahupua'a* in pre-contact times. It does appear likely, however, that the westernmost margin of Makaweli was always the most populous portion of the *Ahupua'a* owing to the well-watered flatlands of the Waimea-Makaweli-Mokuone river valleys. Thus, to the extent that the historic record truly reflects settlement patterns of the late 18th to early 19th centuries, we can only assume that there was remarkably little Hawaiian activity at Kapalawai other than use of the fishpond.



## The *'Ili* of Kapalawai

The *'ili* of Kapalawai is located in the southernmost portion of Makaweli *ahupua'a* and borders the shoreline on the *makai* side. In 1865 (see Appendix A for Sinclair-Robinson-Gay family history), Elizabeth (Eliza) Sinclair purchased the *ahupua'a* of Makaweli "according to its ancient boundaries" from Victoria Kamāmalu for a sum of $15,000. She paid $10,000 down and agreed to pay the balance in sixty days (B.C. Liber 19:416-417). Native tenant rights were not mentioned in the Warranty Deed for the sale. The records show that, from 1865 up into until her death in 1892, Eliza Sinclair bought as many *kuleana* as possible within Makaweli. It was her intention to own all of Makaweli for her heirs who would inherit her lands after her death.

The ancient meaning of Kapalawai seems to be lost in obscurity but one can make some educated guesses based on a literal translation and by studying the landscape for possible interpretations.

1. In Francis Gay's *Makaweli Place Names of 1873*, the translation for Kapalawai is given as "The-water-moss". This Kapalawai refers to the sandy beach area at Hanapēpē. Indeed, a possible meaning given by Puku'i and Elbert (1986:307) substantiate this. A variant meaning for *pala* is "seaweeds or scum". Located within the study region is a *loko pu'uone* (inland pond). In an interview with Howila Kaleohano, he states that there used to be a particular kind of *limu* (seaweed) that grew in the pond, which he has never seen anywhere else. This was further substantiated by Warren Robinson. None of the people interviewed knew the name of this *limu* nor had they seen it growing anywhere else other than in this fish pond. Following are excerpts from Mr. Kaleohano's interview regarding the *limu*.

HK: They [referring to the mullet in the pond] eat nothing but *limu*, you know, in the pond . . . And we used to go clean the *limu* because it's so thick, you cannot walk in. We used to push 'em and pile 'em on the side . . . I remember, the only time never had *limu*, [was] when the tilapia went in. 'Cuz, the cement, you see, where the outlet was, over here, the cement had crack[ed]. The tilapia went in and that was it. That was the end of the *limu*. Tilapia ate 'em all.
CSH: Now, when you say *limu*, what kind *limu*?
HK: I don't know what you call that kind *limu*, but was in that pond.
CSH: What color was it? Can you describe it?
HK: It's more like one hair, you know, the thing. And when you walk, it's all the way up to the top, and it floats. Go all the way to the bottom.
CSH: Kind of like *'ele'ele*?
HK: No, no. Not like *'ele'ele*. I don't know. That's the first time I see that kind seaweed.
CSH: And, what color was it?
HK: Green.
CSH: Light green or dark green?

HK: Real light green.
CSH: Was it smooth or did it have texture?
HK: No, no. Kind of rough. And, that's what the *limu* was.
CSH: Can you compare it to another *limu* that you've seen?
HK: No.
CSH: You never seen anything like it?
HK: No. Because I ask the old man Kualo if you can eat the *limu*. He say, "no".

2. *Palawai* could also refer to bottom lands (Ibid:311). This could be in reference to the location of Kapalawai on the flat bottom lands of the Makaweli *ahupua'a*.

3. *Kāpala* means to daub; *wai* means water, usually fresh. A possible translation could be "to daub with fresh water" (Wichman,unpublished manuscript:17).

The Robinson family has a different meaning for Kapalawai. The following is an excerpt from an interview conducted by Cultural Surveys Hawai'i (CSH) with Bruce Robinson (BR) and Warren Robinson (WR) about their knowledge of the meaning of Kapalawai:

CSH: And what do you think the name Kapalawai means? Have you heard anything from your family or other Hawaiians?
WR: Bruce, I think, knows but, I don't know.
CSH: Have you heard anything about if it's related to the *limu*? . . .
BR: No. That name belongs to that little dish kind of area in the back here [in back of garden, near the old road]. Right by the little area in back of the garden. That's where the name is actually. 'Cause the *pala* is a little shallow dish kind of thing that use to hold water. And my dad and Uncle Aylmer both said that's what that name means . . .
WR: And that would be important in those days 'cause there wasn't much water back in those days . . .
BR: There's a small little clay area right there and it goes into the *mauka* part of the garden.

Interviews with other informants did not bring to light any known meanings for Kapalawai. Other than Bruce Robinson, all informants stated they had never heard a translation for the place name of Kapalawai.

Within the Kona district, there are three different localities named Kapalawai. There is a Kapalawai in Waimea (*mauka* and not near the shoreline); there is a Kapalawai in Hanapēpē, which is a sandy beach area; and there is the *'ili* of Kapalawai in Makaweli which comprises the project area. It is very possible that all three Kapalawai have different meanings attached to them. In Hawaiian culture, place names are very important. The fact that a name has been given signifies its importance. Often, place names commemorate legendary and historical events, important activities, features and qualities of the



landscape, people's names, as well as names of gods and so forth. Likewise, place names do change over time and with usage or a place can be given a new name to commemorate a more recent event that perhaps holds more meaning and importance for the present generation. It is very possible that an older, obscure meaning for Kapalawai did at one time exist, but has not survived the passage of time. Or, perhaps, an ancient meaning of Kapalawai did refer to the *limu* that grew in the 6- acre pond on the property and the Robinson family adopted a more recent meaning which was relevant to them and their use of Kapalawai. Without a knowledgeable native informant or previously documented information, it is difficult to be certain of its traditional meaning. There do not seem to be any traditional *'ōlelo no'eau* or *mo'olelo* (stories) associated with the name of Kapalawai that might help to interpret its meaning.

### Kekupua Pond

At Kapalawai, within the project area, is a 6-acre *loko pu'uone* (inland fish pond) commonly known today as Kekupua Pond. According to the previously-mentioned land claims, the pond seems to have been known by two names: Kahe and Kekupua. Bruce Robinson clarifies that Kahe and Kekupua is actually the name of two of the three known fresh-water springs within the pond. This information was passed down to him from his father who got the information from Kualo, a native Hawaiian informant. The few *kūpuna* born in the 20th century who do remember a name for the fish pond said they knew the name to be Kekupua because of its proximity to Kekupua Stream. Some people simply refer to it as "Kapalawai Fishpond" because it is located at Kapalawai. It is likely, as Bruce Robinson suggests (*Synopsis of Interviews*), that the pond went by more than one name and the names changed over time due to common usage. Following is an excerpt from an interview with Aletha Ka'ohi of Waimea:

CSH: Now, when you were growing up, how did you know the name of the fish pond?
AK: . . . the fish pond was well known to everybody. This was a big [emphasized] fish pond. And I knew that it was Kekupua because I would walk with my father and go fishing with him. I was his bag girl.

Information obtained from the oral interviews regarding the fish pond, for the most part, was related to the Robinson era of occupation. Several people, who had been employed by the Robinsons and had either lived or worked at Kapalawai, did not even know the fish pond existed. Early turn-of-the-century photos from the Robinson family albums show the fish pond being surrounded by a very high fence. Speaking of the fence, Warren Robinson replied,

WR: The fish pond had a big fence. [A] really high, wooden fence.
CSH: Why was that?
WR: I guess guys used to come night time. (Laughs.)
CSH: Was there a problem with poaching?
WR: I guess. Otherwise, they wouldn't have built a fence there. I'm sure the people would go catch the mullet.

In the late 1930's (1937-39) Kawika Kapahulehua remembers staying at Kapalawai and discovering the fish pond. Following is an excerpt from his interview.

KK: But, you know, small kid, new place. You go around checking it out. And I first found that fish pond looking around . . .
CSH: So, . . . the caretaker let you walk around?
KK: Yeah. [I] Follow him. And he explain what he was doing. Pulling all the dead leaves, clean[ing] the pond. 'Cause, otherwise, the fish get sick. I said, "Yeah. There's lotta small fish." He says, "Yeah. And we have to feed 'em because they don't go out to the ocean. As soon as they come in, we put a very small screen to block them from going back out. But the water can go back and forth. Ocean water and fresh water mixes. So they can stay in here."
CSH: . . . Were there any other fish besides mullet?
KK: No. Just mullet

Information given by Hawila Kaleohano indicated there is a Hawaiian legend related to this fish pond which involves a *mo'o* and a particular *pōhaku* (stone) the *mo'o* frequented. Following is the interview excerpt where Mr. Kaleohano relates a story told to him by a native Hawaiian informant known as Kualo who was born around 1850.

Get one *wahine mo'o* [water spirit often seen in the form of half-human and half-lizard]. In the old days, they say beautiful lady. And he tell me, you go up there by the monkeypod tree, under the coconut, get one flat rock. So, I went there and sure enough that flat rock is still there. He said this *kupua* [supernatural being having more than one form] sits there. He said the lady is nice, beautiful. That's all he says. He said if you like see the lady you come real early in the morning. That was before in the old days. He said you go early in the morning before sunrise, you see her sitting on the rock, combing her hair.

He said one man was taken by that lady way in the old days. He said he, probably, . . . was telling lies, but. They say the side that was against the lady, all scale[s]. He said the Hawaiian guy died.

This is all the information Mr. Kaleohano could remember about the *mo'o wahine*. He did not remember any other details or if the *mo'o* had a name or if the name was associated with the fish pond. It is not known if the *pōhaku* was used as a shrine and there is no evidence to suggest that this was so.



## V. SYNOPSIS OF INTERVIEWS

Following is a brief characterization of each person interviewed, along with a short synopsis which incorporates portions of the interviews and highlights key points of the interview.

**'Ohu Ho'okano:** is of Hawaiian ancestry and was born on February 25, 1926 at Kekupua on Robinson family land, where he resided and worked until his retirement from Makaweli Ranch. The interview was conducted at his place of residence in Waimea, on April 29, 1999. At the time of the interview, Mr. Ho'okano was 73 years of age. His daughter, Nani, was present during the interview.

As he tells it, his grandparents ". . . came with the Bertrams and they went straight to Ni'ihau . . . From what I gathered, the first Robinson that came over on the sailboat, they stop[ped] in Honolulu at Waimea Bay somewhere on their way. They picked up my grandfather and my grandmother [who] went with them to Ni'ihau." Whenever visiting Kaua'i, his grandparents usually stayed at Kapalawai. Eventually, his grandparents moved from Ni'ihau and settled on Kaua'i to work for Selwyn Robinson, who ran Makaweli Ranch at the time. 'Ohu relates that they lived in the houses near the Portuguese oven, which are no longer standing today. He says, ". . . had da kine houses over here. I don't know if that's for the workers or what, but that's when my grandfather and them came over from Ni'ihau, they were staying down here before they moved out." His grandparents eventually left the employment of the Robinson family and moved to Waianuhia where they had their own place.

'Ohu says about himself: ". . . I never been too much with Kapalawai. I was living mostly up in the ranch. I was born up in the ranch, yeah? And all our life we stayed in there." Even though Mr. Ho'okano felt he didn't know much about Kapalawai, he was quite familiar with the buildings on the property, the landscape, fish pond, pump house, paddocks, dairy and many of the activities that went on there during the time of his employment. His familiarity with the project area comes from hearing stories from his grandfather, father and brother and, also, the fact that his father was born at Kapalawai and lived there before moving up to the Ranch. Following is an excerpt from his interview regarding how he began working for the Robinsons.

CSH: What is your connection to the Robinson family . . . how did you get to work for them?
OH: Well, my grandfather came up with the Robinsons but, then, my father never did go out [meaning he never left the employment of the Robinson family]. Well, he was born Kapalawai, then he worked. He stayed there 'til he went [*make* (die)] . . . He lived there 'til he worked for Robinson. And, then, after my dad died, I work[ed] with the ranch before he died. And my brother worked for the ranch all his life.

Like his father, Moses Kauhi Ho'okano, before him, 'Ohu followed in his footsteps and also worked as a *paniolo* (cowboy) for the Ranch. He reminisces about his *paniolo* days of fixing fences, driving cattle and branding:

OH: ...it's a big place, this. I travel from Wahiawā to Waimea Canyon, from there up across to Hanalei, Kalalau [and] all that.
CSH: ...By horse?
OH: By horse. But, we go and camp. We was never home. Those days we were all out... Because we have so much place to work, we have no time. One week in Waimea Canyon, one week up Makaweli, then we go to Hanalei side, stay one [or] two weeks. Then, we get to Kalalau, stay there for two weeks. ... Kalalau is the hardest one because we had to lead 'em out on the trail and the trail is only so narrow. The bulls more big than the mule. That's hard work, Kalalau. We are always on the go. We never stay. It's so big that we gotta do a lot of traveling.

He remembers that they used dogs to help round up the cattle, especially in the deep mountain forests:

When you usually drive in the forest, we cannot do nothing in the forest, cannot chase. So, what we do is just hang traps, rope traps all over and let the dog go get 'em. He chase 'em around 'til they run. All we do is take 'em out of the rope and tie 'em up and all that. He do our chasing for us... until we get 'em all together and then come straight home. And, there would be no more truck. We drive 'em all the way back to the Ranch.

Mr. Ho'okano continued to work for the Ranch until he retired.

Often, his *paniolo* activities while being employed at the Ranch interfaced with activities at Kapalawai. For example, speaking of the dairy at Kapalawai, "...Used to have the dairy... straight in back of the house. Because, I remember them milking the cows and come down. Because, we were supplying the cows for milking from the ranch."

Specific to the project area of Kapalawai, Mr. Ho'okano recalled that much of the land fronting the main house was open pasture area with horses and paddocks. The dairy was located in back of the house. The "camp houses" and the stone walls were all in place. There were also a couple of employee houses near the Portuguese oven and a few *lo'i* which the workers cultivated for their personal use. Referring to the people now living in the camp houses at Kapalawai, he says, "... all new people now. No more the old ones. I don't know where any of them now. They moved out and pau."

When he was little, he was a bag boy for his father whenever he went fishing. Referring to accessing the beach at Kapalawai for fishing, he seemed to think that the general public stayed away from the beach area fronting the project area and that most



fished at Pīkalā or down by the Russian Fort. Because he worked for the ranch, he was always allowed to hunt and fish on Robinson property, as long as he "asked permission", but accessing the fish pond was definitely off limits.

CSH: So, if you wanted to go fishing down there [the beach area], would they [Robinsons] let you?
OH: Oh yeah. I used to go. My father, when I was small, I go with him, and I follow along side the beach while he throw net. I was a bag boy. So, what he catch, put 'em in the bag.
CSH: What kind fish you used to catch down there?
OH: All kind. We catch *manini* and mullet, usually.
CSH: Could you get fish from the fish pond?
OH: No. No fishing over there. No fishing.

In regard to the fish pond, Mr. Ho'okano recalled the sluice gates, the island in the middle, and the raised embankment with coconut trees which divided the pond into two sections.

CSH: Do you know anything about the fish pond?
OH: Yeah. I know where that fish pond is. It's a big fish pond.
CSH: Do you remember the name?
OH: I don't know... It has a little island here, someplace. And, used to have the outlet here that goes down... and that outlet get blocked until the water rise up so far and then [goes] over and out...
CSH: So, when the water overflows, is that why this area is marshy?
OH: No. Get all taro patch over here. I mean, just a swamp... Have taro patches. Because, the people that used to live down here in this houses, this was their taro patch. (Referring to the milkman and caretaker who lived in houses near the Portuguese oven.)... The water comes from here in the corner here.
CSH: Inside the pond?
OH: Yeah, in the pond... And, then from here we put in one big pump house... That used to irrigate all this places here... from here all the way down here in front the [main] house and in back of the house. The pump used to pump all that... always [had] water coming out... and never did run dry that pond. Never did run dry.
CSH: Do you know anything about a spring that feeds the pond?
OH: No. I really don't know too much.

When asked about the rock structure, he was aware that it existed and he replied,

OH: That's just like one *heiau* over there. I don't know. We never — as long as I working over there, they never let us go in there because that place is fenced out, that little portion here... It was fenced out from the house.
CSH: So, you were never allowed to go there?

OH: No, no. I know, but there's something in there that they never like us go in there.
CSH: Have you heard any stories about that area?
OH: No... Just keep out of there, that's all.

It should be noted that although Mr. Ho'okano used the term "*heiau*", he did not have any concrete information to support this. He probably used it as a general term because in his experience, he had seen other known *heiau* sites up *mauka* in the Ranch area, which might have looked similar. Because the cowboys were asked to stay away from this area, he felt it might have some relation to the rock structure. He made no mention of the possibility that it could have been an agricultural clearing pile.

Mr. Ho'okano did not have any knowledge of any other sites (other than the fish pond and the rock structure) within the proposed project area. He also did not have any specific knowledge about burials at Kapalawai. His knowledge regarding burials and sites are related to his experiences as a *paniolo* working up at the ranch, in the *mauka* areas. He says,

OH: You have all the old people that lived up in the valley. When they passes [died], they put back up in Makaweli Valley.
CSH: Oh. They're not buried down here [referring to the coastal area]?
OH: No.

Mr. Ho'okano says about the old timers and the old cowboys he used to work with, "They all gone on me. Everybody's gone." About five months after the interview was conducted, Mr. Ho'okano passed away.

**Hawila Kaleohano:** The interview was conducted on May 18, 1999 at Mr. Kaleohano's home in Hanapēpē Valley. Hawila Kaleohano was born July 15, 1934 on the island of Ni'ihau. He lived there until he was sixteen years of age. In 1950, he moved to Kaua'i to seek employment and help his parents who were living in Waimea at the time. Immediately after his arrival on Kaua'i, he began working for Aylmer Robinson and Alika Robinson at Kapalawai as a laborer milking cows, fixing fences, cleaning the fish pond and doing whatever chores needed to be done around the property. He worked there for about thirty years before moving over to the sugar plantation in 1982 to continue working for the Robinsons. Twenty-five of those years were spent working with Kualo, a native Hawaiian, who was fluent in the Hawaiian language. He says that Kualo worked with them until he retired at the age of 101. He recalls that at 100 years old, Kualo was still riding his horse. About his early years of employment he says,

I started to work right away. 'Cuz, Robinson gave me job. 'Cuz my dad didn't have. So I work there 'til Aylmer died and I moved to the plantation. Sinclair gave me a job to the plantation, so I moved. 'Cuz when he retired, I took over. I was the supervisor over there [at Kapalawai]. Until Aylmer died. Then he [Sinclair] move me to the plantation because Eleanor needed only two person[s]. One yard and one gardener to work for her.



When Mr. Kaleohano came to work at Kapalawai in 1950, he recalls that the camp houses were in existence and that they had been remodeled and fixed up. Down by the fish pond, there were two other plantation-style cottages. John Rita, the milkman, had built the Portuguese oven (still standing) and lived in a house right next to it. When Mr. Rita quit, a Joe Nunes took his place and lived in the other house close by. When asked if there were any *lo'i* in the project area, Mr. Kaleohano recalls that there were about three taro patches "right around the pond" area, which both Rita and Nunes maintained for personal use.

One of Mr. Kaleohano's duties was to milk the cows for Eleanor Robinson. He says, "In the morning we drive 'em in. 'Cuz we keep the calf in the milking pen. And, then, when we get the mother inside there, we tie the cow in the chute, then we bring the calf out, and then he suck the mother, and then we pull 'em away and milk the cow. After I fill up, well, I use to milk three buckets, and then we bring 'em to the kitchen for the maid pasteurize 'em. Then, we let the cattle in the pasture again. Then in the afternoon we drive 'em in... separate the mother from the calf."

In 1950, Mr. Kaleohano reminisces that the pond was clean, just as the old photos from the Robinson family album depict it. There was no build-up of debris and overgrowth as the pond was cleaned on a regular basis. Following is a portion of the interview which discusses the fish pond.

CSH: Do you recall hearing a name for the fish pond?
HK: The old man Kualo used to tell me the name before, but, I forget. That time, we never think nothing, that you guys was going research about that place... 'Cuz, he used to tell me the story about this place, about a pond and all, but, you see, then is 1950, now, is what? '99? So I no more the kine good memory.
CSH: Do you remember anything about the story he told you about the pond?
HK: According to Kualo... This pond was here before Robinson went own 'em. He tell me one name about this pond, but, somehow I forgot. My sister-in-law tell me to sleep it. But, I try sleep, I couldn't think of the name. I know had one real nice name for this pond. He say this. The people [who] used to own this used to be the King and Queen in the old days. And then, you know, they move away. And, then, Robinson bought the property, he pay 'em cash. That's how he bought the land and the pond together.

Regarding the size of the mullet in the pond he says, "When I went to work there, used to get mullet. And the mullet, I tell you, you won't believe how big it is!... I tell you, the mullet is big like this (shows me with his hands). And the old lady used to tell me, Old lady Alika [used to] tell me, 'That's not mullet. That's shark!' 'Cuz the mullet was so big. You put 'em in the burlap bag [and] the tail stick out. You know how big the burlap bag is ... But, I tell you, that's the only place I seen the mullet that big."

Whenever Alika Robinson wanted mullet for dinner, she would send a worker to go catch it sometime in the afternoon, after lunch. Mr. Kaleohano relates that his uncle, Eddie Kahale, would catch the mullet with a gill net.

HK: She ask us for catch, say, seven mullet. So we catch. And, we cannot leave 'em there. So, maybe, we bring 'em to her. Maybe about nine or ten . . . we take 'em up to the kitchen and she pick the ones that she like. She only like about three big mullet. The biggest mullet. The rest, she give 'em to us. But, whenever she make dinner, like that, that was the specialty on the table.
CSH: For entertaining?
HK: Yeah. Steamed mullet.
CSH: How did it taste? Did it taste different?
HK: Taste good! I tell you, I never taste mullet like in there. Plenty people tell me taste muddy. They baloney! 'Cuz, I know. I eat that mullet.
CSH: Did the mullet look different as far as color or anything?
HK: No. It's the same. Because been in the pond for so many years and they eat nothing but *limu*, you know, in the pond. And we used to go clean the *limu* because it's so thick, you cannot walk in. We used to push 'em and pile 'em on the side.

When asked about the springs in the pond, Mr. Kaleohano related:

CSH: Now, what feeds the pond, as far as the water source?
HK: Spring water. There's no water stream coming in here. But, there's three spring water hole in there. Threu. And, I know that because I used to work in that pond. After lunch, Robinson make us go inside there and clean. And when you come to the spring water hole, the ground is hard. That's the only way you can tell where the spring water hole is.
CSH: It's inside [the pond]?
HK: In the center of the pond. And the water comes out steady.

Mr. Kaleohano says that in the old days ("before his time"), ". . . they used to clean the *limu* with the boat. They used to throw the *limu* inside there and go on the side." In the following excerpt, he talks about how they used to clean the *limu* from the pond when he was there.

CSH: Did you folks ever use like a boat or anything to go inside the pond when you had to get into the middle of the pond?
HK: No. Just one thick four by twelve, about 15 feet long. And I remember, they use to get spikes, iron, for put on, for pushing the *limu*, the weeds. That's the kind, not seaweeds, but, we used to call *limu*. And that's how we use to clean that pond. We push the *limu* on the side and we throw 'em out with the pitch fork.
CSH: But, the plank doesn't go all the way across?



HK: No. Because we gotta take little by little. 'Cuz we not machine for push. Gotta push what we can. That's how we use to clean that pond before.
CSH: And, how long would that take you?
HK: The only time we go in there, when half day, after lunch. Then, Robinson want us to go keep the pond clean. So, that's when we go in and push. And, somebody stay on the top and scoop the *limu* and pile 'em up.
CSH: How often would you do that?
HK: That's everyday. I remember the only time never had *limu* [was] when the tillapia went in. 'Cause the cement, you see, where the outlet was, over here, the cement had crack. The tillapia went in and that was it. That was the end of the *limu*. [The] tillapia ate 'em all.
CSH: Now, when you say *limu*, what kind *limu*?
HK: I don't know what you call that kind *limu*, but was in that pond.
CSH: What color was it? Can you describe it?
HK: It's more like one hair, thing [but, not like *'ele'ele*]. And when you walk, it's all the way up to the top and it floats. Go all the way to the bottom . . . That's the first time I see that kind seaweed.

Mr. Kaleohano further describes the seaweed as being a "real light green" in color and having a "kind of rough" texture. According to what Kualo told him, it was not an edible *limu*. By the early 1980's, when Mr. Kaleohano transferred to the Plantation, the *limu* had disappeared. He recalls that there was some water lilies growing in the pond, but not many. "But after that, nobody take care that pond. One time I went back there was full of bulrush inside there and with water lily."

Mr. Kaleohano was the only informant who said that people could fish in the pond if they asked permission. However, he reiterated that people were not allowed to fish for mullet for personal use. Here is an interview excerpt.

CSH: Was anyone allowed to fish from the pond if they wanted?
HK: Yeah. As long the people live in there, you ask. You ask Eleanor or Aylmer. They tell you to go. After work, though. Not during work hours. They allow you to go. Not to catch mullet, though. To catch all the *'o'opu* and, what you call, tilapia, [and] whatever inside. ("Had *awa*, too, inside.")
CSH: But not the mullet?
HK: No. Only when they tell you to catch for Alika them, we use to catch.

When asked about the rock structure, Mr. Kaleohano jokingly referred to it as the "*haole heiau*". He was adamant that it was a clearing mound from the adjacent cane field and that it was not a *heiau*.

HK: The archaeology people thought was a *heiau*. But, actually, it's not.

CSH: What do you know about it?

HK: That's the rock from Akia 1. That's the cane, where the corn is right now. That's Akia 1.

CSH: Oh, that's where they plowed that whole field.

HK: That whole place. Yeah. That place had nothing but rock. So, they went clean that place up, the rock, and they went take the rock and pile it over there on the railroad track.

CSH: What railroad track?

HK: They used to get, you know, in the old days. Never had truck before. They used to pull with the tractor. The Robinsons use to get railroad track. So, that's how use to, they pile 'em over there, the pile stone. When they tell me the archaeology went over there and put ribbon over there 'cuz *heiau*, that's not no *heiau*! That's all the stone from there. When they went clean that place up, right after that, the war went break out in 1941. So they had only cattle in there. Then they stop. After the war, then they plant cane inside their place.

Regarding the age of the stone walls lining the main driveway and the wall that borders the property on the western boundary, Mr. Kaleohano says, "The stone wall was there, from before. All the way out to the highway."

CSH: Do you recall hearing when that wall was built?

HK: Was there already, when I work there. I know when I was there in 1945, when I was a small boy, the thing was there already. I was living in Kapalawai that time. You see, when we come out from Nīihau, that the place we used to stay. We stay there until we go back to Nīihau again on the boat. Every time we come out, I use to stay here with my uncle Kahale and my aunt. We use to live in Kapalawai, as far as I know.

CSH: And then this [rock platform] was already there?

HK: Was already there.

CSH: Do you remember going there to look at it or playing around the area?

HK: Yeah. We use to go walk all the way down there, all the way to the beach.

CSH: You never heard Kualo talk about the rock structure?

HK: The rock structure is — 'cuz, I know. That rock is from up here. It's not no *heiau*, no nothing!

CSH: So, before 1940's when they cleared the field, that [rock platform] wasn't there?



HK: Right before the war, that's why they went go — I think their plan was to clean that pasture to plant cane but, the war break out and they stop. And that's where they went pile the stone. By the railroad track. They pull the stone over there and they unload 'em back and forth . . . And then after they finish, they took it out.

CSH: You've never heard any stories about a name for this area? Or about it being a possible *heiau*?

HK: No, nothing. . . Because all that place, you see, I used to work at the plantation. Every time we finish . . . harvest the cane, the tractor come in and plow all over the field. So we never see nothing there. No bones, no nothing. The only thing come out is rock. You be surprised. Every time we harvest that field, nothing but stone come out.

Mr. Kaleohano recalls what the vegetation was like on the property when he was a young child in the early 1940's. He says that there was grass ("Mahiki and all that"), the pastures were well-kept and not wildly overgrown. There was *kiawe* in the pastures and "all the way down the beach line . . . The only place never had *kiawe* is in the front of the house. In the front of this house, all the way to the beach, never have *kiawe* trees. But both side of the front, get *kiawe* tree."

An old iron try-pot was located at the top of the fish pond. Mr. Kaleohano explained that old try-pots (a remnant of the whaling and sugar plantation eras) were placed in the pastures and filled with sugar molasses. Licking the molasses would make the cattle thirsty, ensuring that they would drink enough water. It is also likely that the molasses provided some kind of nutrient value to the diet of the cattle.

Mr. Kaleohano had no knowledge of any settlement areas near the beach at Kapalawai.

CSH: Did Kualo say anything about, a long time before the Robinsons, did he ever talk about any Hawaiian villages down by the ocean?

HK: No. He say never did get nothing. They say, most, was up in the mountain. 'Cuz Kualo used to live up the kine, up Makaweli. Makaweli Valley, that's where he use to live. They call 'em Waikolu . . . Use to live right on the side of the mountain. They say that's where the most Hawaiians use to live. Because Hawaiian Sugar use to run the Plantation way over there. And when the Hawaiian Sugar gave up, Robinson took over. So, he say, as as he know, never use to get down there. Only the working people like Joe Nunes and Rita. That house was put there. Then the rest was Pākalā Camp. That was during Hawaiian Sugar time.

As Mr. Kaleohano tells it, access to the Pākalā surf spot and Infinity Beach, on the Pākalā side of Makaweli Landing, was opened up by Eleanor Robinson during the "time the first hippies came to Kaua'i". He says, "... the brother (Lester) use to arrest the hippies for trespassing ... and then he said he was tired of reading in the paper about getting arrested and then she opened this right of way to go down ... if anybody want to go to the beach, they have a way to go to the beach. Up 'til today it's still open. Because of her. This was her property." By the 1960's, people would use the access to the surf spot and once there, one could walk all the way down the beach to the Russian Fort. Access was allowed, "So long you no go on the property." Fishermen accessed the shoreline by asking for a pass and driving down through Akia 1 to get to the shoreline — "That's how was before in the old days." In Mr. Kaleohano's opinion, fishing used to better in the old days — "mullet, *manini*, *limu 'ele'ele*, and all kine". Here's what he had to say about the fishing along Kapalawai.

HK: Well, to me, before was better. Until this OSHA law came up. They stop the water from flowing in the ocean. That was it. Never had no fish. You know, the *limu* use to grow when the water flow to the ocean. And, when they had the law, for water flowing to the ocean because of poison or what, never had no *limu* growing on the reef. Before that [was] nice and green ... I know. I use to go dive around there and it's bare the reef. Before, it's nice and green, the *limu*. Since the law came out, *pau*. That was it.

When asked about Mahaikona Stream which runs on the east side of the fish pond through the property, Mr. Kaleohano related that, according to his knowledge, Mahaikona Stream is further up *mauka* and that the portion of the stream that runs through Kapalawai is acutally called Kekupua Stream. (This information was also confirmed by another informant, Aletha Ka'ehi.)

HK: All the way up. All the way. Mahaikona is way up in the mountain. But, the water come from there, all the way down. That's why they call it Mahaikona Stream.
CSH: But, you guys always referred to this as Kekupua Stream?
HK: Well, according to what I hear from Kualo, they use to call it Kekupua Stream.

Today, Kekupua Stream is shown on USGS maps as Mahaikona Stream, which is what everyone calls it today.

After the interview was actually ended, Mr. Kaleohano began to share a story about the fish pond that he heard from Kualo. Following is the interview excerpt.

HK: Get one *wahine mo'o* [water spirit often seen in the form of half-human and half-lizard]. In the old days, they say beautiful lady. And he tell me, you go up there by the monkeypod tree, under the coconut, get one flat rock. So, I went there and sure enough that flat rock is



still there. He said this *kupua* [supernatural being having more than one form] sits there. He said the lady is nice, beautiful. That's all he says. He said if you like see the lady you come real early in the morning. That was before, in the old days. He said you go early in the morning before sunrise, you see her sitting on the rock, combing her hair. That's why when we use to go to the pond we think about that. [Laughs.] But never did happen when we was working there.
CSH: So, if you're facing the highway, I think to the left of the pond is a big monkey pod tree. That monkeypod tree? [Not the big monkeypod with bouganvillea climbing up it on the Waimea side of pond.]
HK: When you looking this way, it's on the right. [Kekupua side of the pond] You see, the pond is like this, so she's gonna go up to the highway. Way on the *mauka* side, the monkeypod tree is right [here]. Get one big monkeypod tree. Right down [by the water's edge] get one coconut goes up like this. [Shows me with his hands how the coconut tree curves.]
CSH: And get one big flat stone?
HK: One big flat stone.
CSH: I gotta go look at it. Might be all overgrown.
HK: I think cannot see because I only look at your picture and it's all covered up. I think when they clean up that place, they will find [it]. Big flat rock. That's where the lady come out ... Nice flat stone. It's right under that tree. That's the story he tell me, but I never see.
HK: But they say they was gonna clean the pond. If they clean that pond up, would be nice. Really nice. It's good for the tourists.
CSH: So, do you think the name of the pond was related to the *mo'o wahine*?
HK: I don't know. Something like that maybe. But that's the story he told me about the pond. I look at him, I tell him, "You sure?" He said one man was taken by that lady way in the old days. He said he probably, he was telling lies, but. They say the side that was against the lady, all scale[s]. He said the Hawaiian guy died.
CSH: Oh, they got him out?
HK: The lady brought him back. And he tell his side of the story. He said under where the lady took him, she just took him under the arm and then went. He say he cannot tell where it is, but he say underneath is real nice. Nice place. He stay there for one month, then [she] brought him back. And they said he went crazy. And then the Hawaiian died. Fell in love with that [*kupua*]. [Laughs.] That's the story he told us. He tell us, right by that corner over there if you go early in the morning. So we use to sneak and go and try look early in the morning but we never see nothing. When we were working in the pasture, the first thing we try go over there, but I never did see. I guess it's not meant for us.
CSH: Did he tell you any other stories like that?
HK: No, that's the only one. That's the only one he told me about that pond. About that lady.

CSH: Oh, too bad you can't remember the name.
HK: Like I said, in those days you not interested in keeping the name. But, we was young at that time. We could care less. Now, when people ask, oh, I should have.
CSH: Did he ever talk about what the name of the pond meant. Maybe you would remember that. The meaning.
HK: Still that. I don't know. The only thing I remember [is] about the lady. [Laughs]
CSH: That was the memorable part.
HK: Yeah. Because he say, "That lady is so beautiful. If they wanna show you, you see 'em."
CSH: Did he ever say he saw her?
HK: He say he seen her. He seen her. But you gotta sneak up. You cannot show yourself. He said, before the sun rise, she stay on that stone. Beautiful lady.
CSH: Did he describe what she looked like besides beautiful?
HK: He said she have long hair, slim build, but you only can see from here up.
CSH: From the waist up?
HK: Yeah.
CSH: The other part?
HK: In the water, I guess, sitting down.
CSH: So the stone is right at the water's edge then.
HK: Just by the water's edge. That's the only thing I remember. He use to tell us the story. But we try, try, try look. But he said, "Well, if not meant for you, you wouldn't see her." That's the only story I remember. When we use to work in the pond, we came across the spring water hole, I tell, oh better not be the *[kupua]* [Laughs]. Yeah, you know. Kinda spooky. So, I use to go down. It's kinda pretty deep, you know.
CSH: How deep do you think?
HK: Oh, it's deep. 'Cause I go down all the way 'til I covered, inside the hole. I don't know now. Now, maybe it's all fill[ed] with mud. But I doubt it, because on the side was all hard, you know. You know with all the bullrush and all that. Maybe it's covered up.
CSH: So when you say it's hard around where the spring was, what do you mean?
HK: You see, the water hole [is ] right here [and] right around the hole, the ground [is] hard. The dirt is not soft when you stay away from the water, the spring water. Right around the opening, when you come close to that place, the ground hard. I guess the water coming up like that.
CSH: And then, you would actually go—
HK: Clean the *puka*. But, I can touch the bottom.
CSH: Inside the *puka*, you can touch? And that's when you can feel the water coming up?



HK: Yeah. You can feel the water coming up. Where the water coming from, I don't know. Get three water holes I know. Spring water holes in there.
CSH: So, *limu* and stuff would get stuck inside? Is that why you would clean?
HK: No, no, no. The *limu* never stuck. On the side of that hole use to be *limu*, but not where the water hole is. Water hole is always clean. But, outside of that is where use to get the *limu*. So that's why we use to go with that plank. They get a rod, a stick inside, more like a rake. So we use to push. About two guys. Push the plank on the side and just throw 'em out with the pitch fork.
HK: That's all I know. Too bad I cannot tell you the name.

On May 20, 1999, Mr. Kaleohano visited the project area with CSH representative, Ka'ohulani Mc Guire. Since the completion of the archaeological inventory survey by Cultural Surveys Hawai'i in March, 1999 much of the shrubbery on the Kekupua side of the pond has been cleared. The monkeypod tree and the coconut trees near the pond's edge were still standing. Mr. Kaleohano pointed out the spot where the *pōhaku* is supposed to be, near the water's edge. We were not able to see it because there were so many old palm leaves and coconuts lying on the top. But, he remembered the monkeypod tree and the coconut tree which marks the spot and was able to point it out to me. Of all the non-family members interviewed, Mr. Kaleohano had the most intimate knowledge of the project area. Even though he had not been there in over 15 years, he still had a sharp and accurate memory of the land and the state of things during the time he worked there.

**Aletha Ka'ohi:** was interviewed at her home in Waimea on April 30, 1999. Mrs. Ka'ohi was born on July 19, 1930. Her mother, Margaret Kamala Kama'i, was of pure Hawaiian ancestry and came from Olokele Valley in the Waimea District. Her father, of part Hawaiian ancestry, was William Goodwin. Mrs. Ka'ohi is related through marriage to Hawila Kaleohano, who is her brother-in-law. Mrs. Ka'ohi is also related to Charles Gay through a *hānai* relationship to her grandmother's first cousin, Pakuahana.

In 1928-29, Wendell Clark Bennett conducted field work on Kaua'i recording archaeological sites. His work, *"Archaeology of Kaua'i"* was published by the Bernice P. Bishop Museum in 1931. Mr. Goodwin, whom Aletha affectionately refers to as "Papa", was an informant to Bennett, especially for the Waimea and Makaweli districts, and accompanied him on his travels around the island identifying and locating sites. When asked if her father kept a journal to record his stories and knowledge about place names she replied, "No. Over here. Passed it on to over here. [Points to her head indicating whatever he passed on to her is in her memory.] . . . Everything was by memory . . . And how do you remember? I used to repeat and repeat to myself. Dad telling me something, [and] I would say, 'Oh, Papa, I need pencil.' 'No. If you cannot remember, it's not meant for you.' So, many times, I have to go into solitude. I have to have a really quiet, quiet time and then part of it is to recall what might have been said to me. And, you know, it's all in here [pointing to her head]."

Mrs. Ka'ohi is a retired librarian and she was never employed by the Robinson family, nor did she spend a great deal of time at Kapalawai. Her knowledge of the proposed project area comes from spending time with her father and from growing up in the Waimea area. When asked if her parents shared any stories of the project area with her, she replied,

> . . . we didn't do much about Kapalawai. Too private . . . My folks never knew. My dad spent more time telling me about Waimea. He said that was more promising. That's what he would say.

When asked about the name of the fish pond, Mrs. Ka'ohi replied, "The fish pond was well known to everybody. This was a big [emphasized] fish pond. And I knew that it was Kekupua because I would walk with my father and go fishing with him. I was his bag girl." As to the theory that this pond could be the same pond Captain Cook used to provision his ships with water, she disagrees and says her father never supported this theory because of the water being brackish.

As a little girl, Mrs. Ka'ohi remembers walking along the beach and being able to see the Aubrey Robinson home from the beach. The view from the beach to the house was always kept open. As to fishing along the project area, Mrs. Ka'ohi says, ". . . few [emphasized] people went fishing along there. Very few people. My dad was one."

Mrs. Ka'ohi didn't have much knowledge of the fish pond. She did see it on occasional visits with her father to Kapalawai and she remembers that it was kept "really clean. It didn't have grass growing wild." She confirms the unusually large size of the mullet in the pond — so large that you "couldn't fit [it] into a refrigerator. You had to curl it up."

As to knowledge of the rock platform, Mrs. Ka'ohi had no knowledge from her father or otherwise. She had never heard any stories about a possible site being located in that area. She reiterated that they mainly accessed the area along the beach and there would have been no need for them to go inland, and onto the Kapalawai property.

When asked about coastal settlements, Aletha related there were fishing houses along the beach, down near the Russian Fort area where her family owned a *kuleana* parcel. This parcel was a *lele*, meaning that the parcel was in two pieces, one piece down on the coast and one piece up *mauka*, in Waimea Valley, where they kept their *lo'i*. About the fishing *hale*, she says, "There were lots of them there." She has no recollection of any taro or *lo'i* being located down near the fishing houses on the beach. To her knowledge, there were no Hawaiian settlements along the Kapalawai coastline. The coastal settlements were located outside of the proposed project area, in the direction of the river and fronting the lands known as 'Akia.

Mrs. Ka'ohi did not have any knowledge of *kuleana* in the proposed project area. (Research of the Land Commission Awards indicated there were none.) It was her opinion that any *kuleana* would have been up *mauka*.



**Momi Kapahu/Kalī Kapahu:** The Kapahus are husband and wife and this was a joint interview conducted at the Kapahu residence in Kekaha on April 29, 1999. Their daughter, Joanie was present, as well as, other family members at various times throughout the interview. At the time of the interview, Uncle Kalī was 81 years of age and Aunty Momi was nearing her 76th birthday. Mr. Kapahu suggested doing a site visit to help jog his memories of Kapalawai. However, because of his health, it was decided not to do a site visit to Kapalawai, due to accessibility and the amount of walking which would have been involved.

**Ashford Kalī Kapahu** was born August 28, 1918 in Waimea, Kaua'i and has lived on the West side (Makaweli, Waimea, Kekaha) all of his life. He began working as an "ordinary laborer" for the Robinson family in 1930 when he was twelve years old and worked for them for thirty-five years before leaving their employment in 1965. His work included a variety of duties from breaking in horses, gardening, cleaning the fish pond, irrigating the pasture to trimming the *kiawe* and bougainvillea around the property.

In 1930, when Mr. Kapahu first began working there, he remembers that the fish pond was clean and not overgrown. "The only thing we had there was the bougainvillea." (These bougainvillea still grace the property today.) He recalls that a picket fence surrounded the fish pond, except for the part where the bougainvillea was overgrown. In his opinion, the fence around the pond kept the "two-legged fish out of there . . . They used to go in there throw net, you see." Following is a portion of the interview describing how the fish pond was used during the time he worked there.

> KK: It had two gates. See, when the Robinsons started to plant these Irish potatoes, we used to take 'em in there to wash, use the fish pond water to wash the potatoes, the Irish potatoes. 'Cause I used to take care the pond in there. Irrigate the pasture. Yeah, with that water, we used to wash the potatoes.

So, the fish pond water served two purposes, to wash the potatoes and to irrigate the pastures around the main house complex. The pump house at the top of the pond was built during his tenure at Kapalawai. Speaking of the pump house, he says, "I was the one that operated the pump house . . . When they started to raise the potatoes is when they built the pump house . . . It must have been in the late [19]30's, I think.

By 1930, the existing walls on the property had all been built, but the driveway was still an unpaved dirt road. As for structures on the property, Mr. Kapahu confirmed the existence of the camp houses and the two houses near the fish pond which housed the Rita and the Nunes families. There were also about four *lo'i* near the fish pond for the "ones that take care of the pasture — the old man Kualo and his [two] sons and another old man, Pukaiwa. He usually take care the taro patch." Farther down, nearer a depressed area which sometimes filled up with water, he recalls there was a water tank. And farther still, on the beach was a bath house for Eleanor Robinson.

The *kiawe* and bougainvillea on the property was always kept trimmed in those days. Mr. Kapahu recalls climbing up onto a crane so he could trim the bougainvillea, it was so tall. From the front of the main house, there was always a clear view down to the beach and this area was kept clear of *kiawe* trees. He also adds, "That time, like when the cowboys used to ride horse, they use to go all over the place. So, in order so they no get hurt riding their horse under the tree, we used to trim all that, all the branches, and make that into firewood."

When asked about the rock platform, Mr. Kapahu referred to it as a "pile" and commented,

KK: The Robinsons used to raise goats in there. Goats and sheep. We used to call 'em the "jackass pen". We used to keep the jack in there.
CSH: Was that area ever fenced in? Was there ever a fence around the platform?
KK: Around, yeah. They used to have fence around. 'Cause where the corn field side is, there's the stone wall. And then the fence used to be on the ocean side, in the pasture. A hog-wire fence.
CSH: And that was mainly to keep the goats confined?
KK: Yeah, from jumping over. See, the goats, they can only stay there for a little while, then they took some up in Hanapēpē and turn 'em loose in the forest.
CSH: Have you heard anything about that platform area? Any Hawaiian stories or any stories [about] what it could be before the Robinsons used it for goats?
KK: Oh, no. I don't know nothing about it.
CSH: Do you remember anything about it?
KK: The way I think, maybe, when the Robinsons used to move all the rocks from the field and, then, they pile them up like that.
CSH: So, you never heard anything about it?
KK: No.

Mr. Kapahu did not have any knowledge of any possible *heiau* being located at Kapalawai.

In discussing the fish pond, Mr. Kapahu confirmed the fresh water springs in the pond and he says,

KK: But, I know there's lotta spring in there. 'Cause we used to go in and push that *limu* with a plank.
CSH: And could you actually see where the water was coming up?
KK: No, you can feel. When you dive down, you can feel the difference.
CSH: About how deep was it?
KK: Oh, that days was only about four or five feet maybe — five feet at the deepest, I think.



When asked about fishing in the pond, Mr. Kapahu relates that old man Kualo would go fish in the pond — but only for the Robinson family — and not for himself. According to Mr. Kapahu, the workers who lived at Kapalawai were allowed to fish in the pond for personal use, though it seems that the mullet were off-limits to all.

Miriam Ku'uleimomi Ho'okano Kapahu (the sister of 'Ohu Ho'okano, who was also interviewed) is the daughter of Helen Leihulu Spencer and Moses Kauhi Ho'okano. She was born in Kekaha on May 25, 1923, but was raised in Kekupua, up in the ranch [referring to Makaweli Ranch, owned by the Robinson family]. Her father worked as a *paniolo* and they lived in housing provided by the Ranch. Momi, as she likes to be called, relates that both of her grandparents worked for Aubrey and Alika Robinson. Her grandfather, Uahinui Ho'okano, worked as a yard boy and gardener and her grandmother, Mariah Kepola Paekukui Ho'okano (of Molokai), was a laundry lady and housemaid for Alika Robinson. Mariah's grandfather was from Ni'ihau and Aunty Momi believes this is their connection to the Robinsons and how her family came to be employed by them. Aunty Momi worked as a nursemaid for Alika Robinson for about one and one-half years and took care of her until she passed away. After that she went to work at the Plantation clinic.

Since Mrs. Kapahu worked as nursemaid in the evenings, usually "from seven [p.m.] to seven [a.m.], her knowledge and memories of Kapalawai are mostly confined to the house and caring for Alika Robinson. She recollected the piano and the pool table out on the back porch and the uses for the different rooms in the house and which ones were used by various family members.

Mrs. Kapahu remembers that from the back porch of the main house, "You can see the *mauka* (Makaweli house) house in the evening time [when the reflection from the setting sun shine[s] on it." She says about the Robinsons,

MK: Mrs. Robinson, the old lady Alika, used to sit down over there every evening and watch *mauka*.
KK: The old man, [Aubrey] Robinson, too.
MK: We used to wheel her out there.

Both the Kapahus remember the large garden that was maintained behind the main house complex — a fruit garden on one side, which was noted for its many varieties of mango and exotic fruits as well, and a vegetable garden on the other side.

CSH: What kine vegetables had then?
KK: Oh, all kine — beets, lettuce, spinach, all kine. The Robinsons, they don't tell you what to plant. You plant what can eat.

Mr. and Mrs. Kapahu had no specific knowledge regarding the name of the springs in the pond or of any legends associated with the pond or for that matter, of any legends related to the Kapalawai project area. Their knowledge of Kapalawai was mainly related to their work experiences in the project area.

**Kawika Kapahulehua:** the son of Sarah Mamiliʻili'i Keliʻiloaʻole and Levi Kaleiki, his birth name was Elia Kuʻualoha Kawika Kapahulehua. He was born in Hilo in 1930. Three months later, his parents moved to Niʻihau to be with family and mainly to be with his grandfather who was rapidly failing in health. They arrived four days too late and by the time they arrived from Hilo, his grandfather had already been buried. Uncle Kawika is a *manaleo* (native speaker of Hawaiian language) and speaks Hawaiian fluently. Mr. Kapahulehua lived on Niʻihau until he was 13 years of age. His family moved to Pākalā, Kauaʻi and he spent the next four years working for the Robinson family doing odd jobs at Kapalawai and wherever else he was needed. At 17 years of age, he relocated to Oʻahu where he currently resides. In his spare time, he volunteers as a *kupuna* for the Department of Indo-Pacific languages at the University of Hawaiʻi at Mānoa. He also does Hawaiian translation work. He is an experienced sailor and in 1976 he served as the captain of the Hokuleʻa's maiden voyage to the Pacific. Mr. Kapahulehua is also a cousin to ʻOhu Hoʻokano and Momi Kapahu, two other informants who were interviewed for this project.

Uncle Kawika's earliest memories of Kapalawai go back to the late 1930's (1937-39), when he remembers staying at the houses near the fish pond with his family. [The houses are no longer standing today.] Whenever his family had a need to go to Kauaʻi (i.e., medical appointments), Uncle Kawika would accompany his parents and, usually, they would stay at Kapalawai — either in the houses near the pond or the houses in the "camp area".

Mr. Kapahulehua recalls "discovering" the fish pond when he was about eight or nine years old. His father needed medical care which was not available on Niʻihau and the family stayed in the houses near the fish pond at Kapalawai. Following is an interview excerpt.

KK: I first found that fishpond looking around. And, I guess the caretaker of the place, "Hey boy!" He was surprised when he spoke to me and he's trying to speak in the Hawaiian language. "*E, e hele ʻoe! Hele ʻoe!*" I say, "*No ke aha?*" He look at me, "I don't speak Hawaiian." So he spoke in English, broken English. He was surprised I answer back in English. I say, "What's wrong? I'm just looking over this place. I'm from that island over there, Niʻihau." "Oh. You speak English?" "Yes." He said, "Most people don't speak English from that island." I says, "But, I do." "Where you learn English?" "I'm learning at home by myself." "By yourself? You teach yourself?" "Yeah. I teach myself. I hear my mom, dad and uncle all speak English." So he said, "Oh, you visiting from Niʻihau?" I said, "Yes. I just wanted to see what's going on all around here." He said, "Well, this is all family property from Robinson. And there's the mullet fishpond. I didn't know about another eight years later, I was going to clean up the pond.

CSH: So getting back to that first time when you saw the fishpond, the caretaker let you walk around?



KK: Yeah. Follow him. And he explain what he was doing. Pulling all the dead leave, clean the pond. 'Cause otherwise, the fish get sick. I said, "Yeah. There's lotta small fish." He says, "Yeah. And we have to feed 'em because they don't go out to the ocean. As soon as they come in, we put a very small screen to block them from going back out. But the water can go back and forth. Ocean water and fresh water mixes. So they can stay in here"... I asked him where the water come from. He say, "Right in here there's an underground spring.

CSH: Did he, by chance, tell you if there's a name for the spring?

KK: No.

In those early days, Mr. Kapahulehua relates how exciting it was for him to visit Waimea and be exposed to things he never saw or experienced on Niʻihau — eating ice cream at the ice cream parlor, seeing the different makes of cars, the fire station with its shiny red fire trucks and so forth.

It was not until 1943, when Mr. Kapahulehua was 13 years old that he first began working for Aubrey and Alika Robinson at Kapalawai. For a short time, perhaps a month, he lived with his family in one of the camp houses at Kapalawai before moving to a larger house at Pākalā. He remembers that a "Japanese lady lived right down at the end of the road and she come up ask for us to give her all the laundry. She does the laundry and she charge a nickel a piece for each piece of the laundry. She knows we don't have any laundry place to clean up, so she help all the Hawaiian people. Sometime she and her husband bring up a pot of stew, soup, Japanese style.

Mr. Kapahulehua describes his early years working at Kapalawai.

I was unskilled labor. Going with a group of Filipino, Japanese men. Some days, we'd go fix fence. The horses and the cattle just break it up because the bottom of the post is all eaten up by termites. So what the foreman want to do is take the post off, dig the hole, the same hole. I say, "No, wrong!" "Why wrong?" "You dig a hole next to that, not the same hole. 'Cause that hole is already full of termites. So if you dig a hole right next to it, make it little bigger. Then you take another post and dig it right next to that hole, but put your cement on the bottom. And put the post on top, then you put cement all the way around, bring it all the way up, four inches higher than the hole, than the ground." He says, "Why?" "The termites in that hole cannot eat through. They gotta eat cement first."

Another of Mr. Kapahulehua's duties was to tend to Mrs. Sinclair Robinson's gardens, preparing and planting new beds, weeding and watering. One of his other responsibilities was to clean the fish pond. Mr. Kapahulehua devised a way to clean the rubbish from the pond using a rope and a hook. This is how he tells the story:

So, when we got to the fishpond I said, "Bring the hooks and the rope." [The] Filipino guy says, "What you going to do with this, my boy?" I said, "I show you what to do." And, we see two guys taking off their shoes, taking off their pants, putting on their shorts. I says, "What, you going go swimming?" "Ah, no. But I must go into water and go get the leave[s]." I said, "No need. No need go in the water." "Oh, you have a way to get the leave[s] out of there?" "Yeah. I get way to get the leave[s] out [of] there." "How?" So I show him the hook. I tie the rope to the hook, swing it, throw it right over, drag it slow, pull it fast. "Oh, this young kid, he smart, no!" So that's how we do it. So we clean all the leaves out of there, even the old ones before that. Because the guy that normally clean that, we don't know what happen to him. He hasn't been around for quite a while. There's a lot of leaves down on the bottom. But we cleaned it very good.

Mr. Kapahulehua had no knowledge of the rock structure and said he had never heard any stories about that area or the rock platform. He surmised that it could be one of two possible things, a "*heiau*" or a "rock pile" from clearing the cane fields, but, he did not know for certain what it was or if it had a specific function.

When asked about fishing and hunting, Mr. Kapahulehua said, as long as an employee asked permission, they were allowed to do so. However, certain things were off-limits, such as fishing for mullet in the pond, but one could go down to the beach and fish. In his opinion, fishing was still good, but the "*limu*, over there no good. Dirty. You gotta scrub that. By the time you get through scrubbing, hardly any *limu* left."

Mr. Kapahulehua explains that even though he worked at Kapalawai for four years, his knowledge was limited because he did not work with Hawaiian people. Mr. Kapahulehua spent a total of four years working for the Robinsons before he moved to O'ahu and joined the National Guard.

Ed Rice: is of Caucasian ancestry and moved to the Islands from Montana in 1962 with his wife and two children. Ed Rice is not related to the missionary Rice family who came to Hawai'i in 1840 and settled on Kaua'i in 1854. Ed's training and work experience has been in accounting and the financial end of business operations. Over the years, he has worked for various companies such as C. Brewer, who owned Olokele Sugar Company and leased 7,000 acres from the Robinsons, and Alexander and Baldwin, who owned McBryde Sugar. In October of 1982, Mr. Rice was recruited to work for Gay & Robinson after Selwyn Robinson fell and broke his hip. Though an outsider, Mr. Rice was interviewed at the suggestion of Warren Robinson because of his intimate relationship to the Robinson family and, also, because of his knowledge of the business end of the Robinson operations — Ni'ihau, Makaweli Ranch and the sugar plantation. He was a good friend of Selwyn Robinson and has spent much time going through old documents and paperwork in the family archives from which he has gleaned a keen history of the Robinson family. Much of the interview did not pertain to the actual project area but, rather, was centered around the Gay and Robinson operations and various aspects of the family business.



Mr. Rice and Selwyn Robinson were business associates and became friends while Ed was employed at Olokele Sugar Company. They both ran the financial and administrative portions of their respective companies. Mr. Rice relates how he came to work at Gay & Robinson (G&R).

ER: In 1980 or 1982, he [Selwyn Robinson] fell down and broke his hip. He was 90 years old at the time. He fell down in April and, in June, it became evident to everybody, including Selwyn, that he was not going to be able to return to work. So, he sent Warren down to recruit me from McBryde Sugar Company, which took a number of months. I came to work in October of 1982. Then in 1984, Selwyn died and I was on my own after that.

In Mr. Rice's opinion, the Robinson's were astute entrepreneurs. As each of Aubrey's sons came of age, they were given different responsibilities in the family business. Sinclair oversaw the sugar plantation, Aylmer oversaw business operations, Selwyn ran Makaweli Ranch and Lester managed the farm. The farm experimented in at least a half dozen agricultural endeavors, potatoes and citrus among them, as well as bee-keeping. The most successful endeavor was raising bees for honey.

Mr. Rice believes the lack of a water source in Makaweli would have affected settlement patterns at Kapalawai and the coastal plains areas and he talked about why this might be so.

Well, the history of Makaweli as I know it . . . [which is] what I have been told from various and sundry people even before I was working here . . . is that the *ahupua'a* of Makaweli had no water, which it didn't, until the Robinsons brought it here in 1905 with the Olokele Ditch . . . then, later in the 60's, I think, they built the Kō'ula Ditch and brought it out of Upper Hanapēpē Valley. Prior to that, there was no water . . . Having said that, I think that there was no cultivation anywhere on the tableland at all. Possibly in some of the valleys and gulches, but most of them don't have year-round water, so there's a limit to that . . . to go back to your original question of what Kapalawai was used for prior to the Robinsons making the homestead, I don't think it was anything significant . . . I don't think they used it for anything other than pasture land . . . Simply because of the water situation. You couldn't grow anything then.

Information obtained from informants indicated, in the 1930's, the pastures at Kapalawai were being irrigated with water from the fish pond.

When Mr. Rice first came to Hawai'i, he recalls that the hothouse behind the main complex area was in good working condition. It is unusual in that it has a dug-out earthen floor about five to six feet deep, with a series of steps that you walk down, like walking into

a basement. Today, the hothouse is dilapidated with the roof fallen in and the floor filled with dried mud. Ed relates that, in 1984, there was a "big flood" which washed out the whole area and left behind about three feet of mud.

About accessing the shoreline to fish, Mr. Rice says, "We let people go, and they fish there . . . It's been my observation [that] most of the fishing that I'm aware of takes place on the Pākalā reef . . . Now, we let people go through the corn field [Akia 1] . . . We let people go through there to get down to the beach to fish . . . It's a beach right-of-way down there, so they can certainly traverse and go back and forth. But, I don't remember seeing anybody down there fishing. Or, I haven't heard of anybody down there, right in front of Kapalawai. I don't think that there is anything there. I don't think it's a good fishing spot, myself."

Mr. Rice did not have any information about the rock structure other than that it existed. He surmised that it was a rock mound which was made when the adjacent field was cleared for cane. He further added, "It doesn't look like any *heiau* that I've ever seen or any remnants of a *heiau*. I just thought it was a pile of rocks. I've seen it for years."

Mr. Rice commented that he had worked for at least three other sugar companies and the Robinsons were the only ones who used Hawaiian place names for field designations. "When I came over here, Warren starts throwing all these Hawaiian names at me, which every field here has a Hawaiian name." While the other companies found it easier to assign a number for each field, the Robinsons retained the Hawaiian place name as the prefix and added a numerical suffix to distinguish different fields in the same area, for example, Nonopahu 5, ʻAkia 3.

**Warren Robinson/Bruce Robinson:** An interview was scheduled with Warren Robinson for May 21, 1999. The interview was conducted at the Kapalawai Offices. Also present, at Warren's request, were his cousin Bruce Robinson and Charlie Okamoto, who handles land management for Gay & Robinson.

Warren Robinson is the son of Selwyn Robinson and the grandson of Aubrey Robinson, who built the Kapalawai house. He is the patriarch of the Robinson family and currently heads the Gay & Robinson Family Partners. He is faced with the many challenges of balancing the old and the new and guiding the family operations into a new era and millenium. He resides in Kekupua Valley, where he grew up and has lived most of his life.

Warren felt he didn't have intimate knowledge about Kapalawai because he was raised up on the ranch in Kekupua. But, his recollections of Kapalawai gave an added perspective that would have been lacking without it. Speaking of his grandparents and Kapalawai, he says:

> My grandparents lived here. And as a kid I use to hang around and, when I first started out being a cowboy, we had to deliver milk cows to them. And I used to always come in here to get the cows and take them out when the calves got too old. That's essentially why. And, then every Sunday, we had a



> family dinner. The whole family got together and had dinner. And when you're growing up as a little kid, it was very hard to sit in the parlor, and to [just] sit. So, we were everywhere, from the pig pens to the fish pond and, what not, exploring.

Warren grew up in Kekupua Valley and he reminisces about the good times he had growing up there, hanging out with the *paniolo* families, and learning to be a cowboy, himself.

> Growing up in Kekupua was a real winner. You know, in Kekupua was my family — a *Haole* family and there was a Japanese family in there and there was a Hawaiian family. ʻOhu Hoʻokano was there. I think there were thirteen of them. Thirteen boys. And then one boy was Japanese. And it was really a great experience because we all played together . . . we used to go and play football. It was really the way to grow up. Just sort of like a closed society in the valley, you know. Just the three families. Like ʻOhu's grandfather — ʻOhu's grandfather was the foreman. And, I believe education should be how he taught it. Because, when you learned to rope, I don't know how many cowboys don't have fingers because they got caught in the pommel, you know, the rope. Couple of times, I didn't do what I should have done. And, we used rawhide ropes in those days. And, he'd just walk up to you, take the end of the rawhide rope, which had eight ends on it, and pound you with it. But, I tell you, you know what? We learned. I never made those same mistakes again ʻcause I didn't want to get pounded. I don't mean gently either. He really pounded you. So ʻOhu's dad was my foreman. He taught me how to be a cowboy. ʻOhu and I were, well, ʻOhu was three years older than me.
>
> ʻOhu was a good cowboy. He finally learned. But, ʻOhu, when he was fourteen or fifteen years old, you know, wasn't as good a cowboy as when he finally grew up. And, Eddie Taniguchi. He was one of our cowboys. I always respected him because hard working, yeah? Probably the hardest working man I've ever seen. I really kinda molded my[self after him], I wanted to be like Eddie Taniguchi because he worked so hard. And, I tried real hard to work like how Eddie did. I give him a lot of credit because both his parents died and he raised the family and he did very well. But, he was a good man. And there was ʻOhu's older brother, Kaipo. Essentially, the ranch foreman was Kauhi, Kaipo, Eddie. Most of them, Hoʻokano's, except for Eddie. They've been the families that have come down and been our cowboys. Those two families. I think that, probably, the family life here at Kapalawai was probably divided pretty much between Nīʻihau, the Makaweli house and Kapalawai.

Warren's education was interrupted because of World War II. By the time Warren was 13 years of age, he was following in his father's footsteps and working on the ranch, learning to be a cowboy. He speaks of those early years and his educational background:

I was going to [school at] Makaweli annex which is in Kaumakani. And, the war started and the Makaweli annex closed. It was a little chaotic at that time. So I didn't go to school for a year. I worked. When I was thirteen, I started working on the ranch. Prior to that, I'd go out with the cowboys, getting paid two bits a day. Big salary . . . after work, I was tutored by three people. It was a minister tutored me in Latin and some lady tutored me in math, and I can't remember the person who tutored me in English. After *pau hana* time, then I'd to go and get tutored in these three subjects . . . after the first year, I was sent to the mainland . . . I went to boarding school in San Rafael. The war was going on at that time. And so at seventeen, you know, I wanted to, in those days everybody was very patriotic. You wanted to serve in the army. You didn't want to hide, draft dodge and go to Canada and all. So I was looking forward to going in the army when I was seventeen. I took school right through, summer and all. So I was able to graduate in two years. So essentially, my high school education was one year of being tutored in three subjects and two years of being at this high school and I got the bare rudiments of a high school education. And, so then, I came back. I was still pretty young, you know. And, so I had a year to go before I could join the Army. So, I worked again for another year. And, by that time, the war was *pau*. So, I continued to work. Then I went to University of California, Berkeley. It was difficult because I didn't really have a good background in education. It was a struggle. I really struggled. And, not only that. But, all the veterans were coming back and they were guys in their mid-20's and all that. The competition was rough. Cal-Berkeley was a big college. They didn't care. You either sank or swam. But, it was up to you. I struggled. I really struggled. It took me five years to get through. And, then, I came back. I went in the army then. After awhile I come back here and I've been here ever since.

Warren graduated with a Bachelor of Arts in Liberal Studies. After returning to Kaua'i, he worked on the ranch and, eventually, learned the family business and took his father's place running Makaweli Ranch. But, he makes it clear that he had to work his way up through the ranks. When he returned from college, he says,

I had nothing to say at that time about the business. I was a peon. I worked as a cowboy first and was a ranch foreman and, then, finally the ranch manager. And, eventually, I ended up as the manager of the ranch and sugar company, President of the company and Chairman of the Board. I started from the bottom and worked my way up. So that's roughly the history of my growing up.

For the Robinson family, Kapalawai was considered the "family farm", with huge vegetable gardens, fruit orchards, cows for milking, and pastures which held horses and cattle. Warren comments on Kapalawai:



Well, for the family, this was truly a family farm and this was (emphasized) the farm. And, this is not to be included as the ranch. This was the family farm. Then, the ranch got started up in the mountains. And, they had milk cows, they had a lot of horses and all the pens out there, as you walk behind the house, you know, the remnants, those are all stallion pens. The milk cows, we'd milk the cows up there. We had fruits and vegetables across through here, flowers — a small flower garden there, pigs [and] goats down there, and a fish pond, plus, the ocean where they could catch fish.

Talking about the honey and bee-keeping business, Warren did not recollect when the family started that enterprise, but he remembers that in the 1950's, the Robinsons were producing about 80,000 pounds of honey a year.

. . . we had hives from Mānā to Hā'ena throughout the whole island. And, our main crop was *kiawe* honey and then the bugs came in and started stinging the *kiawe* flowers. But, for years, it was *kiawe* [honey]. And, on the other side, you get Java plum, and stuff like that, which is a white honey but, it's very bitter. The *kiawe* honey is by far the best honey. So, I guess in the sixties, we got rid of 'em. We sold 'em to somebody else. They took 'em on an airplane and took 'em to the Big Island.

An interesting tidbit Warren gave about the place name Kekupua is that for awhile, it was called the "Moorlands", because "in the winter time, Kekupua was ground fog — like the moors in old England . . . you don't see it now, but in the old days [referring to the 1930's - 1950's], you could see the fog It'd be all fog in the mornings and it'd dissipate.

Bruce Robinson: is the son of Lester and Helen Robinson. Bruce oversees the Ni'ihau operations and, because of this, he speaks the Hawaiian language fluently. Bruce and Warren are cousins.

Bruce did not say much during the interview, but he did offer what he knew about the fish pond and the springs. Following is a portion of the interview where he discusses the name of the springs, and Hawaiian names in general.

CSH: Bruce, have you ever heard a name for the fish pond?
BR: Nods his head (yes).
CSH: Do you remember what it is?
BR: The spring. Kekupua is the name of the middle spring. But, there are lots of different names that were used at different times.
CSH: That's kind of been my hunch.
BR: Yeah. And, Hawaiian names are very, very era oriented. So, you'll have one group of people — if you had told Kunlo's father to go to Kekupua, he'd go straight to the spring. He would not go to the pond 'cuz that name was not used back then. Then, later on, he was using it. They transferred names. So, you will get stories and lots of them, on Ni'ihau. It's really prevalent. You'll get stories and you don't

realize that they're talking about a different time era, [time] frame. The names may change.

WR: What was the other one?

BR: I gotta go look in my records.

CSH: So, Kekupua referred to the actual spring and not really the pond? They actually meant the spring? 'Cuz Aunty Aletha said she just always knew it as Kekupua Pond.

BR: And, in that time era, it was Kekupua Pond.

CSH: What about Kahe? Have you ever heard that as a name?

BR: Kahe is a particular portion.

CSH: Which part of it?

BR: The *mauka* portion.

CSH: This part up here?

BR: Nods his head, yes.

CSH: And, is it related to the spring at the top here? 'Cuz I understand there's a spring here and then there's one or two more.

BR: Right. That's the *mauka* spring.

CSH: Kahe?

BR: Yeah. But, see, that's not really considered part of the main spring. You have Kahe and, then, you have the next one that's got the name of Kekupua and then, Ma'o.

CSH: There's four springs?

BR: Three.

CSH: And ,do you know any stories related to the springs or the meanings of the names and why it was given those names?

BR: No.

WR: You know the water study guy? He says there's so much water coming out on this side. I always thought it was this [other] side. I thought it was coming out of this south side or outside because it changes the texture of the ocean.

BR: The fresh water?

WR: So, obviously they're not only from the fish pond, those springs, but there's [other] springs.

BR: There are others, there's something else.

Down near the beach, to the left of the "open view", is a depressed area, which informants referred to as a "pond" which occasionally held water. Warren and Bruce both explain what they know about this area.

CSH: You know in this area down here, there's this view to the beach and just to the left of it there's a marshy depressed area where it looks like it used to be wet before. It's right near the beach. In your time, was there a pond there?

WR: Never. Not in my time. That is a seep, you know. But, also in rough weather, the waves will come in there too. I know that. That's where your dad [speaking to Bruce] planted the tilapia.



CSH: 'Cuz Uncle Hawila called it a pond. He said there was tilapia there. And then he said the tilapia got into this pond [the large inland pond] and ate the *limu*.

WR: Yeah. Well, I know it used to have a lot more water than it does now.

CSH: The [little] pond?

WR: Yeah. But, it wasn't always a pond. You know, sometimes it would dry up and just be a seep, you know. And then, of course when the ocean came in, then it really filled up. I do know that Bruce's dad got some tilapia and threw 'em in there. And, I guess they got washed out into the ocean and went out in the ocean.

CSH: When was that do you think?

WR: Probably in the '50's.

CSH: When the tilapia went in?

BR: Late '50's. Yeah, late '50's.

This information was consistent with what was learned from other informants.

Almost all of the informants related that the *limu* that grew in the fishpond was not a common variety they were used to seeing. Most informants said they had never seen it before. Following is an interview excerpt regarding Bruce and Warren's knowledge of this, seemingly, peculiar type of *limu*.

CSH: Do you know the name of that *limu* in the pond? [speaking to Bruce]

BR: No.

CSH: Uncle Hawila said he's never seen it anywhere else. He said he's only seen it in that pond. He thought it was unusual. He couldn't remember the Hawaiian name.

WR: Funny *limu*, you know. It's completely different. It's probably a fresh water *limu*. But, you don't see it around too much. Maybe that's why. I know, when you throw net, and the mullet, they'll spin when you throw the net out. They're gone, you know. And, they go down in that *limu* and they hide. And, then one by one they come up and they get caught in the net.

CSH: How would you describe it? Can you compare it to another *limu* that we have nowadays?

WR: It looks very similar to the stuff on the beaches, you know, and the *limu* that grows in the fresh water ditches. You know, I never really analyzed it. But, just by looking, I would say it could be that type of *limu* that grows in our ditches.

CSH: And what color is it?

WR: It's a quite a bright green, you know. Not light and not <u>real</u> [emphasis] dark. Somewhere in-between. It catches your eye.

When asked about the meaning of the name Kapalawai and whether the name was related to the *limu* in the pond, Bruce offered the following explanation.

BR: No. That name belongs to that little dish kind of area in the back here. Right by that little dish area in back of the garden that's where the name is actually.
CSH: Kapalawai?
BR: Yeah. 'Cuz the *pala* is a little shallow dish kind of thing that use to hold water. And, my dad and Uncle Aylmer both said that's what that name means.
WR: And, that would be important in those days 'cuz there wasn't much water back in those days.
CSH: Right.
BR: There's a small, little clay area right there. And, it's right in the back here and it goes into the *mauka* part of the garden.

The interviews were a valuable part of the assessment for documenting and providing information about people, land use, boundaries, place names and, also, helped to explain the lack of cultural practices within the project area. This information provides a more complete picture of the history of the project area, both past and present, and documents how the land was utilized during the Robinson tenure. The interviews are also valuable for developing interpretive themes which could be incorporated into the development of the proposed project area.



## VI. NATIVE HAWAIIAN SITES AND ACTIVITY AREAS PERTAINING TO THE PROJECT AREA

### Burials

The present assessment study was accomplished in conjunction with an archaeological inventory survey of the project area (Zulick *et al.* 1999 [Draft]). During the Archaeological Inventory Survey (*Ibid.*) one human burial, in association with a Hawaiian cultural layer, was documented. The burial is likely to be prehistoric-early historic native Hawaiian. The cultural layer and burial were designated State Site # 50-30-9-792 (Feature A and B, respectively). For recommendations and mitigation treatment, the reader is referred to the Archaeological Inventory Survey (*Ibid.*).

It is well-documented that native Hawaiians often interred their dead in sandy deposits near coastal areas. Based on the large areas of sandy deposits within the proposed project area, it is possible that other burials are present. However, it should be noted that the large areas of sandy deposits are primarily located within a strip of land zoned "Conservation" which will not be developed.

### Trails

Research of old maps did not show any marked ancient Hawaiian trails within the project area. The earliest map which depicted the project area was an 1891 "Map of Kaua'i, compiled from Government and private surveys of lands belonging to Gay and Robinson." There were no records of trails leading to the fish pond or to the nearshore areas. In fact, the fish pond is unmarked on many of the early maps. However, this does not infer that trails through the project area were non-existent as it is probable that there were trails leading from the upland areas to the coast where marine resources could be accessed.

Given that Eliza Sinclair purchased the *ahupua'a* of Makaweli in 1865, it is possible that access along any ancient trails which may have run through the project area were cut off and, thus, these trails did not appear on late 19th century maps, much less any Gay and Robinson maps.

Handy and Handy, who did their research in the 1930's, wrote about some Kaua'i trails. They specifically mention the Kukui Trail, the Koai'e Trail and a third trail which begins above Waiahulu Stream beyond the Po'omau junction. These three trails are inland (*mauka*) and to the west and outside of the project area. All other Kaua'i trails mentioned pertain to the valleys along the Nā Pali coast which is to the far north and outside of the project area.

*Heiau* and Shrine Sites

When Wendell Bennett conducted field work from 1928-29, he recorded four *heiau* nearby the project area and within Makaweli. In addition to these four *heiau*, there were three other *heiau* identified by Thomas Thrum, in 1907, which Bennett was unable to locate. These *heiau* may indicate patterns of sacred practices that possibly included the present project area. Thus, these *heiau* are discussed below.

Site 43. Mahaʻihaʻi Heiau, as noted by Thrum (1907:38), was located on the east side of Waimea River and by 1907, it was "completely destroyed". The 1891 Gay & Robinson Map shows the area of Mahaihai being east of the Waimea River and *mauka* of the Russian Fort.

Site 44. Aʻakukui Heiau, located in Makaweli at east branch of Kekupua valley near junction. Described by Thrum as, "A paved and walled *heiau* in good preservation." (Bennett 1971:111)

Informant, Aletha Kaʻohi, the daughter of William Goodwin (an informant to Wendell Bennett) reiterated she did not know or hear of any specific *heiau* within the proposed project area. She was aware of Aʻakukui *heiau* in Kekupua Valley.

Informant, ʻOhu Hoʻokano, confirmed the existence of a "big *heiau*" near where he lived in Kekupua Valley, *mauka* and outside of the proposed project area. Following is a portion of his conversation about the heiau.

CSH: Do you know the name of that *heiau*?
OH: No. I only know that's a and that's all . . . It's a big *heiau*. Because I remember when we was small that things used to travel from the *heiau* to the fish pond — to Kapalawai fish pond (he is referring to Kekupua Pond in the project area). The people use to travel at night.
CSH: Oh, the night marchers.
OH: Yeah . . . We were small. Every time we like run go out, my mother used to grab our ear [and say,] "Leave 'em alone!" . . . They chant. From my house, from where they come, they pass in front my house . . .

This "big *heiau*" is likely to be the Aʻakukui Heiau which Thrum and Bennett both identified.

Site 45. Kaunumelemele Heiau, located in Makaweli on the ridge near the junction of Hikilei and Kunalele valleys. Described by Thrum as, "An open platform *heiau* in good condition. (Ibid.)

Francis Gay notes that Kaunumelemele (also, Kaunamelemele) was simply called Melemele, which means "small yellow *heiaus*". He further notes that it was a *heiau* above the head of Kahakinnakamahu Valley (Gay 1873:7).



Site 48. Kuwiliwili Heiau
Said to have been located just below Makaweli Camp 3, which site is now in the cane fields. Thrum describes this *heiau* as, "A large, high walled enclosure of *poʻokanaka* class now destroyed." At the location mentioned there is nothing to indicate a structure but a pile of rocks gathered from a cane field (Bennett 1971:112).

The locations of the above four *heiau* lie outside of the proposed project area.

As mentioned above, Bennett was unable to locate three other *heiau* in Makaweli which had been identified by Thomas Thrum:

Site 8. Peʻeamoa *heiau* in Makaweli. Described by Thrum as "An unwalled *heiau*" (Bennett 1931:152)

Site 9. Kapakaniau *heiau* in Makaweli. Described by Thrum as "A paved, open platform *heiau*; in good condition" (Ibid.).

Site 10. Naulili *heiau* in Makaweli. Described by Thrum as, "An unwalled sacred place; flat ground" (Ibid.).

As for the *moʻo* associated stone in the fish pond identified by Hawila Kaleohano, very little is known about it. It is possible that it could have been used as a shrine for offerings, but there was no evidence to suggest this.

Heiau in Kekupua

Kekupua, identified by Bennett as the location of Aʻakukui *heiau*, is the name of the land area immediately adjacent and to the east of Kapalawai. Research for the present study indicates that the place name Kekupua may have formerly encompassed portions of the present project area, including the fish pond. Today, Kekupua is most commonly associated with Makaweli Ranch headquarters and most people consider Kekupua to be *mauka* of Kaumualiʻi Highway, where the headquarters is located. The limited information that has survived to the present suggests that Kekupua may have been an important locale. A dispute among 19th century *aliʻi* involved Kekupua. In 1847, Ahukai, wife of Kaumualiʻi, disputed Kekāanaōʻa's claim (for Kamāmalu) for Makaweli and she filed a claim for "the whole *ahupuaʻa* of Makaweli, Kauaʻi, excepting parts held by valid title by the common people and missionaries." (F.T. vol. 11:232-233)

When Kaumualiʻi reigned on Kauaʻi, he gave Makaweli to his *kaikuahine*, Kaʻilinaʻa, from Kawiliwili to its boundary with Waimea. When Kaumualiʻi died, Kalaimoku sent Kahalaʻia to govern Kauaʻi. Kauaʻi rebelled against Kahalaʻia and Kalaimoku, and when the fighting was over on Kauaʻi, Kalaimoku gave Makaweli to Kahalaʻia, and Kahalaʻia gave Makaweli to me, as it had been occupied by my *makuas*. When Kinaʻu died, Kekauluohi returned me

to Kaua`i and /she said/ to the King that Makaweli was for me. No one opposed it until 1845, when Kekūanaō`a took Makaweli and some other lands belonging to me. (N.R. vol. 9:4-5)

Supporting testimony from `Opunui and two other witnesses substantiate Ahukai's claim.

These lands are the old possession of Kaumuali`i, Claimant's wife from her ancestors, from Ka`eo, the old King. They fell to Kaumuali`i, who left them to his Sister Kaihinea [and] she to her daughter Ka`u`ukuli`i, who held them in peace till 1845. When Kaua`i fell to the windward chiefs in [the] time of Kaumuali`i these lands remained in quiet possession of Ka`u`ukuli`i's family and in the rebellion of 1824 were not disturbed, nor ever till 1845 when Kekūanaō`a took possession of the *Ahupua`a* of Makaweli, but without consent of Ka`u`ukuli`i, and has held it ever since against his will. The reasons are, he asked her to give him Kekupua, an `ili in Makaweli, which she refused, for which he took away Makaweli *Ahupua`a*. (F.T. vol. 11:232-33)

Further indication of the importance of Kekupua is the possible presence of two additional *heiau* which both Thrum and Bennett did not locate. These two heiau were documented in a 19th century oral history project conducted by the students of Lahainaluna School on Maui. An interview with Kanakaheleiā by a Lahainaluna student was conducted in Waimea, Kaua`i on August 22, 1856. The interviewer describes Kanakaheleiā and proceeds to record his testimony:

He is well acquainted with Waimea and is an old man who was born when Kaumuali`i was King of Kaua`i in the days when the *kapus* were still in force. He was grown up when Kaumuali`i married Ka`ahumanu. Because of this fact, I knew that he was old and so I questioned him on the old tales of Waimea and nearby places and these are the things he told me . . .

The *Heiau* of Kekupua

1. A`akukui was a *heiau* that stood at *Kekupua*.
2. Kaunuloa was another.
3. Kuanalili was another.

These were *heiaus* in which human sacrifices were offered, but Kuanalili had a *lele* altar, that is, a high place on which to lay the victims. When the *kahuna* thought that it was the proper time, then the victims were carried to A`akukui or to Kaunuloa. Kapuahi and `Aimoku were priests who officiated in these *heiaus*. There were more priests but these were the principal ones. Kaumuali`i was the chief to whom these *heiaus* belonged. There are no other places of importance there. (Lahainaluna Students' Compositions, #15)



Kanakaheleiā also says:

I knew two of Kaumuali`i's high priests, one was Kū`ohu and the other was Kapuahi. He had many other priests but these were the heads of them all and they offered up the human sacrifices. The others obeyed the orders of these two. (Ibid.)

Kanakaheleiā also mentions a secret cave site related to Kekupua named Hakinkamahu:

This cave was used for holding personal property but not the bones of chiefs. No chief was ever laid away in it, but tapas, clothing, and canoes were carried into it. All the property in this cave was burned up after Humehume's battle. Nothing was left. These are the marks whereby it could be located: Kekupua was the place, it is situated in the upland on the hill of Hakiakamahu, on the edge of the precipice. It is only a small promontory attached to the hill above and below it is the precipice.
This secret cave belonged to Kaumuali`i and Ki`ilau was the man in charge of it. (Ibid.)

In an interview with `Ohu Ho`okano, it was suggested that there might be a connection between A`akukui *heiau* and Kekupua Pond. Mr. Ho`okano indicated that night marchers often traveled between A`akukui *heiau* and Kekupua Pond.

**Fishing Grounds, Marine Resources and Shoreline Access**

In ancient Hawai`i, the *konohiki* of an *ahupua`a* managed the fisheries for the *ali`i nui*. Traditionally, the marine resources of an *ahupua`a* (from the shoreline to the edge of the reef) were shared by the *konohiki* and the tenants of the *ahupua`a*. Anything beyond the reef was considered open fishing grounds for all. The tenants were required to reserve part of their catch for the *ali`i nui* and the *konohiki*. Often, a particular area or marine species would be *kapu* (forbidden) to the native tenants and were reserved for the chief. In the *ahupua`a* of Makaweli, during the time when Kiokio served as the *konohiki*, the *kapu* (prohibited) fish was *`o`opu* (HEN Notes I:1582, BPBM Archives).

In the case of a large *loko pu`uone* such as Kekupua, these kinds of large ponds were usually reserved for the *ali`i* and would have been off-limits to the tenants. It appears that Kekupua must have been of some significance to the *`ali`i*. In 1846, Kekuanaō`a "took possession of the *Ahupua`a* of Makaweli, but without the consent of Kauakūali`i, and has held it ever since against his will. The reasons are, he asked her to give him Kekupua, an *`ili* in Makaweli, which she refused, for which he took away Makaweli *Ahupua`a*" (Foreign Testimony 232-233;Vol. 11). It is likely that the mullet would have been reserved for the *ali`i* and it would have been a valuable resource for a chief to have control over. The *loko pu`uone* was one of the reasons the *`ili* of Kekupua was probably highly valued by the *ali`i*.

In regards to the pond, it is apparent that Mrs. Sinclair continued many aspects of the *kapu* system which were in place prior to her arrival, such as the practice of reserving the mullet for personal use and sharing the "catch" with the tenants. As indicated by the interviews, these practices were carried over and continued up into the time of Eleanor Robinson. During the Robinson tenure, Kekupua Pond was known for the unusually large-sized mullet it produced.

Kanakahelelā mentions two *ko'a* or "fishing grounds for letting down ropes". One relates to Kekupua within Makaweli. The other, though it is not certain, may be the same Ka 'ilo pā 'ia which is located in Makaweli. Descriptions of both fishing *ko'a* are given below.

> Hiki is another fishing ground. Puechulunui is in Mahinauli. It is a promontory on the upland side of Kikihale. When it appears to be above the ditch of Kekupua and a sand mound appears to be close by [that is one landmark]. When the black stone in Mahinauli appears above Pu'u Ale'ale'a, that marks the position of the canoe. There are many more fishing grounds but their landmarks cannot be clearly defined. (Ibid.)

> Hinaia is another fishing ground. When the point [or brow] of Kiki a 'Ola appears above the black hill of Kailiopaia that is the lower mark. There is a black rock on Mahinauli when it looks as though it had been lifted and placed on Pākalā a rocky point on the shore, that marks the position of the canoe. (Ibid.)

On the 1891 Gay and Robinson map, the place name of 'Kailiopaia' is marked within the *'ili* of Kapalawai,. In Francis Gay's ledger notes on Makaweli place names, he translates Ka 'ilio pā 'ia as *the fenced in dog*. He records that "it is a pond which was named for a supernatural dog" (Bishop Museum Archives 1873). It is interesting to note that the literal meaning of Kekupua is:

> Demigod or culture hero, especially a supernatural being possessing several forms (as Kama-pua'a and Laenihi); one possessing *mana*; to possess *kupua* (magic) powers. (Pukui & Elbert 1986:186)

It is not certain where this particular Ka 'ilio pā 'ia is located or if it is the same as the one noted on the 1891 Gay and Robinson map. Interviews with people in the community did not give any indication of a fish pond in the area marked on the map. No one had any recollection of the name, "Ka 'ilio pā 'ia", or of any legendary stories related to a supernatural dog.

Several of the interviewees talked about fishing along the Kapalawai coastline. *Moi* [Threadfish (*Polydactylus sexfilis*)] seems to be the most commonly mentioned fish caught in the area. One fisherman indicated that, besides *moi*, there is also *'ōio* [Ladyfish, bonefish (*Albula Vulpes*)] and *pāpio* (young *ulua*) and also a seaweed he called "ambalan". He indicated that the better fishing and seaweeds (*kohu* and *ogo*) are to be found on the Pākalā



side of Makaweli Landing, just outside of the project area (Toshio Ikeda, Pers. Comm.) The general consensus was that marine resources (fish and *limu*) were not particularly good along Kapalawai due to the terrigenous sediments in the water.

On picking *limu* at Kapalawai, Aletha Ka'ohi says, "I don't remember my folks picking there. They'd come out to Pākalā and get their *limu*." Most everyone indicated, if they went fishing along there, they would fish and pick *limu* at Pākalā or down past 'Akia, nearer the Russian Fort portion of the coastline.

Aletha Ka'ohi remembers that when she was a young girl the "... Robinsons had fences all the way down to the water so you couldn't pass ... And their thing was the cattle but, no, it was to keep people out." When asked about this, Warren Robinson responded,

> "No, we allow people to go in there and fish. We let 'em go down by the Russian Fort ... They walk along the beach ... The only fence I know is the one that kept the bulls and the cattle from interacting along there ... During the war now, there was barbed wire along the beach completely. The army put barbed wire right around this island. I don't know when that would be. When she was kinda a little kid. Maybe that's what she saw.

In regard to access issues, it seems clear that in the past, if you were employed by the Robinsons, access to the shoreline for fishing and the *mauka* areas for hunting and gathering was allowed as long as one asked permission. The one exception was the mullet in Kekupua Pond which was reserved for family use. It is not clear if this standard applied to the community-at-large. There are those who felt, that for whatever reasons, they were not free to access the Kapalawai shoreline. Certainly, the previous generations of Robinsons had a different attitude about access and dealt with it differently. Bruce Robinson acknowledged that, perhaps in times past, older Robinson generations did try to restrict access along the shoreline. However, this is not true today. The present generation of Robinsons have made an attempt to work with the community by allowing shoreline access from either Pākalā or the Russian Fort side of the property. This was confirmed through the interviews conducted and by community members. While working in the project area, people were seen strolling along the beach or sun bathing and a few fishermen were pole fishing. Based on proposed plans, shoreline access will be improved by providing additional access areas and public parking from within the proposed resort (DEIS 10/99:1-19).

### Native Hunting

During fieldwork for this assessment study, pig tracks were observed in the garden area behind the main house complex; however, it was obvious that pigs were coming down from across the highway to forage for food and fallen fruit from the trees in the garden area behind the garage. A literature search did not reveal any evidence that native hunting practices were carried out in the area and there is no reason to believe that the area provided good hunting grounds. The majority of the project area has been grubbed and used as pasture for cattle and horses for over 100 years.

### Large Rock Platform

During the course of the archaeological inventory survey of the present project area (Zulick *et al.* 1999 [Draft]) a large oval platform measuring 48.5 m (155 ft.) by 23 m (73.5 ft.) was recorded in the northwest portion of the project area. No reference to the structure could be located in previous archaeological studies. However, as mentioned earlier in this report, Wendell Bennett (1931:152) was not able to locate three *heiau* previously listed by Thomas Thrum in 1907. The function of the platform is listed as "unknown" in the inventory survey. The lack of any recovered midden, charcoal or artifacts made defining its age and function a problem.

Whenever a construction of this size is recorded, questions arise as to its nature and significance. During the course of this present assessment, an attempt was made to obtain testimonies from individuals familiar with the property who may have knowledge of the platform. The two individuals (Hawila Kaleohano and Kalā Kapahu) who had specific information about the platform both stated that it was a clearing pile for the fields in Ākia which is adjacent to the platform. Following is an excerpt from an interview with Hawila Kaleohano in which he relates his knowledge of the large rock platform:

HK: The archaeology people thought was a *heiau*. But, actually it's not.
CSH: What do you know about it?
HK: That's the rock from ʻĀkia 1.
CSH: What is ʻĀkia 1?
HK: That's the cane, you know where the corn is right now?
CSH: Yeah.
HK: That's ʻĀkia 1 right there.
CSH: Oh, that's where they plowed that whole field.
HK: The whole place. Yeah. That place had nothing but rock. So they went clean that place up, the rock, and they went take the rock and pile it over there on the railroad track.
CSH: What railroad track?
HK: They used to get, you know, in the old days. Never had truck before. They used to pull with the tractor. The Robinsons use to get railroad track. So that's how they use to pile ʻem over there, the pile [of] stone. When they tell me the archaeology went over there and put ribbon over there ʻcause *heiau*, that's not no *heiau*! That's all the stone from there. When they went clean that place up, right after that, the war went break out in 1941. So they had only cattle in there. Then they stop. After the war, then they plant cane inside their place.
CSH: In ʻĀkia?
HK: ʻĀkia 1. That's where all the stone came from.

Mr. Kaleohano's statement was further corroborated by Bruce Robinson (Pers. Comm. 5/21/99). When clearing the cane fields of rocks, it was a common practice to move the rocks to one area and neatly stack them into cairns or mounds (Ed Rice Interview:5/19/99).



As brought out in the Archaeological Inventory Survey (Zulick, *et al.*, 1999 [Draft]) the presence of "curious" sub-features of the rock platform (a paved depression and a well-constructed pit), as well as the large size, which would have required considerable time and effort to construct and pave the entire surface, provide reasonable doubt as to the function of this site. For these reasons, the site is being recommended for preservation *(Ibid.)*.

### Prehistoric Fishpond

State Site #50-30-9-765, known as Kekupua Fishpond and documented in *Mōhele* records, was the only historic property found to which a tradition was associated. An oral interview with Hawila Kaleohano relates a *moʻo* legend and a particular *pōhaku* near the pond's edge where the *moʻo* would reveal herself. The actual *pōhaku* could not be seen due to fallen debris and overgrowth of the pond, but it seems likely that the stone still remains just under the water near the edge of the pond.

Traditionally, *moʻo* are associated with fish ponds, springs and water resource areas which they guard and protect. They are known to take on more than one form (*kino lau*), many times taking on the form of a part-human or human. These guardian *moʻo* are not the small house lizards we commonly see today. *Moʻo* could take on terrifying forms, and perhaps were more dragon-like than anything else. Samuel Kamakau describes *moʻo* as having "extremely long and terrifying bodies" (1964:83). Often, large ponds were associated with a particular named *moʻo*, who was worshiped and to whom offerings were made.

The presence of a *moʻo* in a pond ensured that fish would be abundant and that the health and productivity of the pond, as well as the welfare of the people making the offerings, would be maintained. Some *moʻo* were known to protect the welfare of the people when they were mistreated by overbearing landlords and chiefs. Retaliation was achieved by withdrawing the abundant supply of fish. There are many Hawaiian legends about *moʻo*. Some famous *moʻo* in Hawaiian culture are Hauwahine of Kawainui and Kaʻelepulu ponds, Kihawahine of Maui, Kanekuaʻana of ʻEwa and Laniwahine of ʻUkoʻa in Waialua, just to mention a few.

Often, *moʻo* would reveal themselves in the form of beautiful human beings. Sometimes this appearance foretold a catastrophic event (Ibid.). Or, sometimes, the *moʻo* would use their beautiful transfigured forms to lure humans into their watery underworld where they, too, would be transformed into *moʻo*.

## VII. SUMMARY

Native Hawaiians traditionally accessed the coastal areas for gathering and subsistence and for trade. Though there is no record of coastal trails and no LCA record of native tenant *kuleana* parcels within the proposed project area of Kapalawai, it is likely that native Hawaiians did practice traditional gathering and use rights in the project area and the off-shore waters prior to Eliza Sinclair's acquisition of the *ahupua'a* of Kapalawai. An 1857 lease between the guardians of Victoria Kamāmalu and a group of 120 people from Makaweli and Waimea indicate that the *kapu* (protected/tabooed) items exempted from the lease were the orange trees at Waikea, the large trees of Māhā'ihā'i, the fort, the Pō'alima taro fields, the small and large ponds in Kekupua, the *kapu* fish (*'o'opu*), and firewood — if it was for sale for personal and monetary gain. Thus, for example, firewood for personal use could be gathered, along with any other traditional resource items not mentioned, such as *pili* grass for thatching, *hau* for cordage, plants for medicinal use, and marine resources in the off-shore waters. It is likely that any existing resources were utilized unless a specific *kapu* was placed on a particular item, as mentioned above. It is clear from the historic records that Kekupua Fishpond was reserved for the chiefs and, thus, the mullet would have been *kapu* to the native tenants. When Eliza Sinclair acquired Makaweli *Ahupua'a*, she became, in a sense, a "chief" in that she controlled the whole *ahupua'a* and its resources, which would have included the fishpond. It is evident that she continued the practice of reserving the mullet for personal use and kept the pond resources *kapu* to the native tenants. It is also likely that other *kapu* which were in place at the time of her arrival were also retained. Some of these practices were carried over into the Robinson tenure. Thus, even though there were many changes occurring in the overall social and economic structure of Hawaiian society following the *Māhele*, there was a continuity of the *kapu* system as it existed in 1865 when Eliza Sinclair purchased the *ahuapua'a* of Makaweli.

Research and oral interviews identified one historic property associated with two cultural traditions — the legend of a *mo'o* and a rock near the pond's edge where the *mo'o wahine* sits and can be seen and the *huaka'i pō* or night marchers. Very little is known about this particular *mo'o* who resides at Kekupua Pond. The pond is significant in that it houses the home and watery realm of the *mo'o*. Traditionally, *mo'o* were revered and worshiped and shrines on which to lay offerings were constructed. The presence of a *mo'o* in a pond contributes to the productivity of the pond, as well as, to the health and welfare of the people. Though the stone cannot be seen due to fallen debris, it is likely that the stone exists and is still there. As stated in the Archaeological Inventory Survey (Zulick, *et al.*, [Draft]), "Any restoration efforts will be accomplished in consultation with the State Historic Preservation Division" (1999:125). It is recommended that prior to commencing restoration work on the pond, Hawila Kalcohano be contacted to identify the exact location of the stone. The recommendation is that the stone be preserved in place.

Another cultural tradition related to the significance of the fish pond is the *huaka'i pō*, or the tradition of the night marchers. In the Hawaiian tradition, night marchers are the souls of those who have passed on and are no longer here in physical body. On certain nights (the nights of the gods, Kū, Akua, Lono, Kāne and Kiloa), the procession of ghosts



can be seen and heard as they travel to familiar places they once frequented while here on this earth. "They used to march and play games practically on the same ground as in life. Hence each island and each district had its own parade and playground along which the dead would march and at which they would assemble" (Beckwith 1978:200). Sometimes the sound of drums and chanting can be heard, their *kukui* torches seen, and the sounds of laughter and talking heard. It is said that the *huaka'i pō* usually takes place after the sun sets and ends before dawn breaks. 'Ohu Ho'okano mentioned that, as a young boy, he often heard the sound of drums and noisy din of the night marchers as they "travel from the *heiau* to the fish pond — to Kapalawai fish pond" (also known as Kekupua Fishpond). Mr. Ho'okano was the only informant who had any knowledge about this tradition in relation to Kekupua Fishpond. Little is known about the actual path itself, except that the night marchers travel a path which passes A'akukui Heiau, goes to Kekupua Fishpond and returns *mauka* where they started from.

The issue of access to the shoreline is a non-issue as there are currently two public access routes adjacent to the east and west boundaries of the project area. The community is free to utilize these access routes and walk along the shoreline from Pākalā all the way to the Waimea River. In addition to this, the present project plans include commitments to improve shoreline access by providing access routes from designated public parking areas from within the proposed development.

Investigations for the present assessment study have failed to turn up evidence of traditional customs and practices presently being exercised in the 170-acre parcel known as Kapalawai. This reflects the geographic location of the parcel, as well as the nature of the land tenure. The project area is located on the flat pasture lands of Makaweli near the coast. There is no abundant source of surface water other than Kekupua Fishpond, which is fed by three underground springs. The *ahupua'a* of Makaweli has always belonged to the *ali'i* and it is very likely that this particular fish pond was reserved solely for their use and it would not have been accessible to the *maka'āinana* or common people. A document search did not disclose any *kuleana* (native tenant) claims within the project area, though this does not mean that native Hawaiians were not living in the area. The oral interviews, which were a part of this assessment, did not indicate there were any Hawaiian settlements within the project area. The general consensus among the informants interviewed was that known settlements tended to be closer to the Russian Fort and Waimea where there were more abundant sources of water and food resources. Archaeological evidence and research of Hawaiian trails within the *ahupua'a* support the settlement of a larger coastal and inland population concentrated near the seaward portion of the Waimea-Makaweli-Mokuone river valleys. The historic record reflects very little Hawaiian activity at Kapalawai other than use of the fish pond.

The Sinclair-Robinson family has owned the *ahupua'a* of Makaweli, which includes Kapalawai, since 1865. Because Kapalawai was utilized by the family as a ranch, farm and dairy, and because the family preferred complete privacy regarding all of their lands, it was not possible for outsiders to go onto the property unless they had been invited or had received permission to do so. Thus, if any traditional customs and practices had been carried out at Kapalawai prior to the family's arrival, these were most likely discontinued

during the 135 years of the family's ownership. Anyone who might have been pursuing these customs and practices have long since passed away. During the oral history phase of this assessment none of the interviewees could recall being told by Kualo or their elders of any cultural practices occurring in the project area. As a result of the above, it is not likely that Hawaiian traditional customs and practices will be affected by the proposed development.



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## APPENDIX A: History of the Sinclair-Gay-Robinson Family

The matriarch and pillar of the Sinclair family was Elizabeth (Eliza) McHutchison Sinclair, born April 26, 1800 in Glasgow, Scotland. Eliza, as she was called, hailed from an influential Scottish family. At the age of 18 she accompanied her father on a business trip where she had the good fortune to meet Francis Sinclair, a captain in the Royal Navy. About one year later, in 1819, they were married. Captain Sinclair resigned from his post in the Navy and took a position at the Inland Revenue Office in Edinburgh, the city of his birth. Here at Edinburgh, all six of their children were all born.

Eliza was ambitious and wanted to provide a firm inheritance for her children. It just so happened that the Royal Navy was offering generous portions of land to retired officers in the newly developing colony of New Zealand. Eliza must have been a very self-reliant and progressive woman for her time to embark on such an adventure at her age (39 years) and with six children, no less — the youngest being seven months old. So in October of 1839, the family bade farewell to their native Scotland bound for adventure and a new life in New Zealand.

Upon arriving in New Zealand in 1841, the family learned they were unable to settle on their lands due to disputes with the native Maori, so they settled temporarily in Wellington instead. During this time, Captain Sinclair built a ship from hand-hewn logs and traveled up and down the coast trading along the way. In 1843, the family settled in Pigeon Bay at Craigforth, the home Captain Sinclair and his sons had built. The family was very resourceful and were pioneers in the truest sense of the word. They raised cattle and sheep and the "men" of the family became adept at boat building.

In 1846, a tragedy occurred. Captain Sinclair, along with his oldest son, George, and daughter Jane's fiancé, Alfred Wallace, sailed to Wellington for supplies. With him, he had taken the family earnings and the year's harvest. The ship and its passengers were lost at sea and were never recovered. Eliza Sinclair was left on her own with little money to support her remaining five children in a rugged and far-off land.

Eliza Sinclair must have been a resourceful and strong woman to survive the tragedy in her life. She had a level head on her shoulders and in time was able to turn things around and prosper again. In 1848, daughter Jean married Captain Thomas Guy, a whaling captain. In 1850, another daughter, Helen, married Charles B. Robinson, a prominent gentleman who lived fifteen miles away in Akaroa. Two years later, Helen left her husband Charles Robinson never to return again. She and son, Aubrey, returned to Craigforth to live with the rest of the family.

Seeking excitement and new adventure, the family decided to set sail for British Columbia or California in search of new land and a change in lifestyle. It was convenient that Jean's husband, Thomas Gay could sail a ship. Along with the family's personal possessions, the 'Bessie' was well-supplied with food, livestock, and everything needed to

start up a new home again on a new frontier. In April of 1863, the Sinclair-Robinson-Gay families said good-bye to their New Zealand home for good. Eliza Sinclair was 63 years old at the time.

It is not clear whether the 'Bessie' stopped in Honolulu enroute to Victoria on Vancouver Island. At any rate, British Columbia did not suit the families' plans, so upon a suggestion from a family acquaintance, they set sail for the Pacific and Hawai'i.

The 'Bessie' arrived in Honolulu on September 17, 1863. The Sinclair's immediately began looking for large tracts of land to purchase. Disappointed with what they saw, the family decided to head for California in search of better prospects. King Kamehameha IV, hearing of their plans to leave, offered them the island of Ni'ihau. Unusually heavy rainfall was recorded for 1861-63 and Ni'ihau was exceptionally lush and green when the two Sinclair brothers, Francis and James, did a site inspection of the island. Excited at their discovery, they hoped to re-establish the cattle and sheep business they had left behind in New Zealand. The two brothers accepted the King's offer and purchased the island of Ni'ihau for $10,000 in gold.

Supposedly, the King was happy to sell Ni'ihau because it had become a financial burden for him. In the middle of the business negotiations, Kamehameha IV died and Lot Kamehameha V became the next king. This explains why Kamehameha V's name (rather than Kamehameha IV) is on the land documents.

In 1865, Eliza Sinclair purchased the *ahupua'a* of Makaweli (21,844 ac.) from Victoria Kamāmalu Ka'ahumanu for $15,000. A new home was built in the cool uplands of Makaweli and sometime in the early 1870's the Sinclair family moved from Ni'ihau to settle there. This home, situated at about 1800 ft. elevation became known as the 'Makaweli house' that is mentioned in so many of the early journals of visitors to Kaua'i.

The Kapalawai house was built by Aubrey Robinson for his wife Alice Gay Robinson. The exact date of construction is not known, but the house was probably built around the mid- 1890's. There was no date on the original house plans, but the Robinsons have a photo of the house with the date 1897 written on the back (Ed Rice 5/19/99:pers. comm.). The house is aproximately 22,000 sq. ft. and has 45 rooms. There are 13 bedrooms and 13 bathrooms (Kaua'i Historical Society, General Subject Files: Kapalawai).

Speaking of the family's use of Kapalawai, Bruce Robinson says:

> Well, for the family, this was truly a family farm . . . this is not to be included as the ranch . . . the ranch got started up in the mountains . . . they had milk cows, they had lots of horses . . . We had fruits and vegetables, . . . flowers, . . . pigs, goats . . . and a fish pond, plus the ocean where they could catch fish . . . (Interview 5/21/99)



Warren's memories of Kapalawai include:

> So the children would come every Sunday for dinner. And after dinner, we'd usually sing hymns and my grandmother would read from the prayer book . . . I was more connected with getting into mischief as a kid than anything else. You know, running all over, playing tag. Can you imagine growing up in that house? . . . it was a super place to play in as a kid. (Ibid)

The Sinclairs began ranching in Hawai'i when they bought the island of Ni'ihau in 1865. There they raised Merino sheep and Shorthorn cattle from the continental United States, Australia and New Zealand. Aubrey Robinson was the first to bring purebred Arabian horses to Hawai'i in 1884 and he maintained stables at Kapalawai. He imported game birds (pheasant and quail) as well as trout and bass which were placed in Waimea and Makaweli streams.

In 1889, Francis Gay and Aubrey Robinson formed the family partnership known today as Gay and Robinson (G&R). Through this partnership, the various family businesses, i.e., Makaweli Ranch and Makaweli Plantation were managed. By the early 1880's the Robinson's got involved in the sugar business not only by planting their own crops, but also by leasing large tracts of land to Hawaiian Sugar Company. The Robinsons were always looking for new and creative ways to utilize their land. For many years, they raised bees for honey and experimented with other agricultural crops.

The Robinson Family Partners is a separate business entity which represents the land owners of the family lands. This partnership was set up to protect the lands and ensure that all lands stay within the family, as well as to preserve these lands for future generations of Robinsons. Today, Warren Robinson, son of Selwyn Robinson and grandson of Aubrey Robinson, is the family patriarch and President of the Board.

In speaking of the Robinson legacy, Ed Rice, retired CEO for the Robinsons, talks about the Robinson work ethic and their attitude about the land,

> . . . it was a love of the work and the land that drives these guys. It's what drives that young man who just drove away [Alan Robinson], and his father, and his father['s father]. In a bigger sense, and this has to do with what the Robinson empire means to the family, it was a way to husband the land. You didn't walk away and leave it with no usefulness . . . even if it cost you money, you put it to some kind of constructive use. That's what ranching is. (Interview 5/18/99)

The Sinclair-Gay-Robinson family heritage is rich in history. Their pioneering spirit is still evident in their determination to preserve the past and the legacy that Eliza Sinclair started.

## APPENDIX B: Ahupua`a Boundaries for Makaweli

Taken from the Interior Department Records, Land Numbered Docs 331-340, Doc. 336*, "found in papers of John Dominis"; on file at the Hawai`i State archives.

Makaweli
Commencing upon the sea, at the mouth of the Waimea River and upon its easterly bank, running from thence N. 25° E. 3 chains, along the easterly bank of said river, thence 50° E. 15 chains up the easterly bank of said river, thence N. 33° E. 17 chains up the easterly bank of said river, thence N. 22° E. 9 20/100 chains up the easterly bank of said river, thence N.10° E. 19 chains up the easterly bank of said river, thence N. 31° E. 34 chains up easterly bank of said river, thence N. 1° W. 6 80/100 chains crossing the mouth of Makaweli River, to the easterly bank of Waimea River, thence N. 24° W 26 chains up easterly bank of Waimea River, thence N. 2° E. 9 chains up easterly bank of Waimea River to a stake, thence N. 85° 20' E. 16 80/100 chains, passing between the hills of land called Palaw and Puulima, to a rock standing upon the edge of the pali bounding the valley of Waimea on the East, thence N. 60° E. 20 chains to a rock near the edge of the pali, bounding the valley of Makaweli on the West, being bounded by the land called Waimea belonging to His Majesty the King, thence N. 30° W. 16 chains to a Cactus bush, upon the top of the pali facing the sea, and about midway between the valleys of Waimea and Makaweli, thence N. 6° 45' E. 15 chains, to the top of the Hill called Nahaleokoo to a certain Cactus bush, bounded by the land called Waimea, thence N. 17° 45' E. 150 chains to the top of the Mountain Peak called Kalehuahakihaki, bounded by the land called Waimea, thence S. 50° E. 40 chains along the top of a Mountain range to the top of the peak called Naulili, thence N. 15° E. 65 chains along ountain Range to top of peak called Kahana, which forms a part of the Mountain Range which bounds the Valley of Makaweli on the West, thence N. 65° E. 330 chains following the Mountain Range on the West of Makaweli Valley to the Westerly side of the range called Waialeale, thence S. 16° E. 128 chains passing along the Westerly side of said Range of Hills called Waialeale, thence S. 25° W. 258 chains, following the Mountain Range of Hills which bound the valley of Hanapepe on the West, to the peak called Nahaunakahenalu, thence S. 16° E 10 chains along the top of the range of Hills on the Westerly side of Hanapepe Valley, bounded by land called Hanapepe, belonging to His Majesty the King, thence S. 20° E. 40 chains, along said range of Hills, thence S. 6° E. 9 chains along said range to a stake thence S. 24° W. 22 chains to the top of the peak called Ahualehu, thence S. 38° W 267 chains passing down the side of said Hill and crossing the plains to two flat stones standing opposite each other upon the Road fartherest [sic] Makai leading from Hanapepe to Waimea, bounded by land called Hanapepe, thence S. 35° W. 29 chains, passing over the top of the Hill called Kawilwili to a monument of stones upon the sea, bounded by the land called Hanapepe, from thence following the sea to point of commencement.

Comprising an area of 21,844 Acres.

*[Note: The above boundaries for Makaweli are the same as those given in Royal Patent 4476 (LCA 7713) to Victoria Kamāmalu Ka`ahumanu]



## APPENDIX C: `Ōlelo No`eau Associated with Makaweli

O.N. #1097: *Ho`olele ka uila o Makaweli* (Sending the lightning of Makaweli flying.)
A play on *maka-weli* (terrifying eyes), this saying refers to the sending of a god on an errand of destruction.

O.N. #1662: *Ka wai `ula `iliahi o Waimea.* (The red sandalwood water of Waimea.)
This expression is sometimes used in old chants of Waimea, Kaua`i. After a storm Waimea Stream is said to run red. Where it meets Makaweli Stream to form Waimea River, the water is sometimes red on one side and clear on the other. The red side is called wai`ula `iliahi.

O.N. #2910: *Waikāhi o Mānā* (The single water of Mānā.)
When schools of *`ōpelu* and *kawakawa* appeared at Mānā, Kaua`i, news soon reached other places like Makaweli, Waimea, Kekaha, and Pōkī`i. The uplanders hurried to the canoe landing at Keanapuka with loads of *poi* and other upland products to exchange for fish. After the trading was furnished, the fishermen placed their unmixed *poi* in a large container and poured in enough water to mix a whole batch at once. It didn't matter if the mass was somewhat lumpy, for the delicious taste of fresh fish and the hunger of the men made the *poi* vanish. This single pouring of water for the mixing of *poi* led to the expression, "*Waikāhi o Mānā*"



# H

## TRAFFIC IMPACT ASSESSMENT

WILBUR SMITH ASSOCIATES

# KAPALAWAI RESORT
# TRAFFIC IMPACT STUDY

Prepared for

HELBER HASTERT & FEE

Prepared by

WSA

March 1999



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# Chapter 1
# INTRODUCTION

The Kapalawai Resort project site is located on the southwest portion of Kauai, just over one-half mile east of the town of Waimea. The 170-acre site includes the former Robinson Family residence and the lands to the southeast of the residence along the makai side of the Kaumualii Highway. The Kapalawai Resort would extend eastward from the present driveway at the Robinson Family residence to the Aakukui Stream, a distance of about 4,500 feet. (See Figure 1-1.)

The Kapalawai Resort will include approximately 250 guest units, developed as stand-alone and duplex-type units. The resort will also include dining, swimming pools, tennis courts, and other amenities for its guests. Portions of the former Robinson Family residence and related structures will be retained as a museum intended to preserve the history of this portion of Kauai.

Access to the Kapalawai Resort will be provided by two one-way driveway connections to Kaumualii Highway. The existing paved driveway to the Robinson Family residence will serve as the entrance driveway. The exit driveway will intersect Kaumualii Highway at the location of the existing driveway to plantation homes, located about 480 feet east of the entrance driveway. (See Figure 1-2.)

The purpose of this study is to assess the traffic impacts of the planned Kapalawai Resort project on the nearby portions of Kaumualii Highway. The Project assessment addresses the following:

1. The number of trips generated by the facility.
2. The magnitude of the traffic increases on Kaumualii Highway near the Project.
3. Traffic conditions at the intersection of the Project driveway connections with Kaumualii Highway.
4. Project impacts upon traffic conditions at the key intersections near the Project.
5. Identification of any actions that may be appropriate to mitigate Project traffic impacts.

The traffic assessment focuses on conditions during the morning and afternoon peak traffic hours of a weekday and a Saturday. The assessment reflects conditions in year 2002, the year in which the Project is planned for full operation.

# Chapter 2
# EXISTING CONDITIONS

The Kapalawai Resort is planned for a 170-acre site along the makai side of Kaumualii Highway, with the site extending from the highway to the shoreline. The former Robinson Family residence and several plantation houses , currently occupied, are located in the northwest portion of the site. The remainder of the site is used for livestock grazing.

Waimea Town is located on the west side of Waimea Stream, just over one-half mile northwest of the site, with Kaumualii Highway providing access to and through the Town. Most of the commercial uses in Waimea Town are located along Kaumualii Highway or Waimea Road, the street mauka (north) of and parallel to Kaumualii Highway. Residential areas are located both mauka (north) and makai (south) of Kaumualii Highway. Access to the Waimea Canyon and Kokee areas are located west of Waimea Town.

The area between the Project site and Waimea Town is primarily occupied by agricultural lands. The Fort Elizabeth historic site is located on the makai side of Kaumualii Highway on the east bank of Waimea Stream. Pioneer Hi-Bred is currently constructing an agricultural research and processing facility along the mauka side of Kaumualii Highway, about midway between the Project site and Waimea Stream.

The area to the east of the Project site is occupied by agricultural lands. Several small villages are located on either side of Kaumualii Highway, with the closest being the Pakala Village and Post Office, located approximately one mile east of the site. The Kaumakani Mill is located about 2.5 miles east of the Project site, with the Kaumakani Village located east of the Mill.

## EXISTING ROADWAY SYSTEM

Kaumualii Highway is the major roadway serving the areas in the vicinity of the Project site. This roadway and the key cross streets in the area are discussed in the following paragraphs. The numbers of lanes and type of intersection controls at the key intersections included within the study assessment are depicted in Figure 2-1.

- **Kaumualii Highway** - This two-lane State highway is the major roadway providing access to the south and southwest areas of Kauai from Lihue westward to the Pacific Missile Range (Barking Sands) installation. This roadway passes through Waimea Town and most of the commercial uses have developed on the properties located adjacent to the roadway. The intersections with all cross streets in Waimea Town and other roadways in the vicinity of the Project site are controlled by STOP signs on the cross street approaches. The highway segment adjacent to the Project site is rural in character with a posted speed limit of 50 mph in both directions. The posted speed limit in Waimea Town is 25 mph. Parallel parking is permitted along both sides of the roadway within Waimea Town. The section east of the site has a posted speed limit of 50 mph with speed





reductions to 35 mph at the key intersections with the Pakala Village Road and the Kaumakani Mill Road.

- **Ala Wai Road, Waimea Town** - This two-lane street intersects Kaumualii Highway at the west end of the Waimea Stream bridge, and is the intersection closest to the Project site within Waimea Town. The roadway connects to Waimea Road, and provides access to the residential areas on either side of Kaumualii Highway, as well as the park area on the makai side. A single traffic lane is provided on each of the four approaches to the intersection.

- **Panako Road, Waimea Town** - This two-lane street extends one block mauka of Kaumualii Highway to provide access to Waimea Road and the commercial uses and parking areas along Waimea Road. The street extends several blocks makai to provide access to the Ishihara Market and the adjacent residential areas. On the mauka side, the approach to Kaumualii Highway is wide enough to permit vehicles turning right to pass by vehicles waiting to turn left or continue straight across the intersection. Only a single lane is provided for the makai-side approach. No turn lanes are provided on Kaumualii Highway although the curb parking is restricted near the intersection, thus allowing use by vehicles turning right or by through vehicles passing by vehicles waiting to turn left.

- **Menehune Road/Hapule Road, Waimea Town** - Menehune Road connects to the west end of Waimea Road commercial area as well as provides access to residential areas mauka of Waimea Road. The intersection with Waimea Road is located only about two car lengths from Kaumualii Highway. The Menehune Road approach to Kaumualii Highway has sufficient width to allow right-turn vehicles to pass by vehicles waiting to turn left. Hapule Road provides access to the commercial uses and residential area makai of Kaumualii Highway.

- **Pakala Village Road** - This gravel roadway provides access to the Pakala Village and Makaweli Post Office on the makai side of Kaumualii Highway and to the Kaawanui Village on the mauka side. Both approaches of this gravel roadway provide sufficient width to allow right-turn vehicles to pass by vehicles waiting to turn left.

- **Kaumakani Mill Road** - This paved two-lane street provides access to the Mill and village on the makai side of Kaumualii Highway. A short right-turn lane has been constructed on the eastbound approach of Kaumualii Highway.

- **Kaumakani Village Road** - This gravel roadway provides access to the Thrifty Mart and adjacent village area. The gravel roadway provides sufficient width to allow right-turn vehicles to pass by vehicles waiting to turn left. The Thrifty Mart has a direct exit driveway connection to Kaumualii Highway located east of the gravel roadway.

## EXISTING TRAFFIC VOLUMES

Near the Project site, the State of Hawaii Department of Transportation (DOT) periodically makes 24-hour machine counts of traffic along Kaumualii Highway at the intersection with Menehune Road/Hapule Road (Count Station #17-A), and east of Pakala Village Road at the Mahinauli Stream Bridge (Count Station #15-D). The most recent weekday count at Menehune Road was made June 17, 1997, and the most recent weekday count at the Mahinauli Stream station was made June 24, 1997. Based on these counts, the daily volumes of vehicles on area roadways are as follows:

| Location | Weekday Volumes |
|---|---|
| Kaumualii Highway | |
| East of Pakala Village Road | 10,200 Vehicles |
| East of Menehune Road | 11,300 |
| Menehune Road | 2,300 |
| Hapule Road | 720 |

The State DOT has not made any weekend traffic counts along Kaumualii Highway in recent years. Saturday and Sunday traffic counts are available for Kuhio Highway at the Count Station #CC-2 near Kilauea. Daily traffic counts were obtained from that location for the month of January 1998. The counts indicated that traffic volumes along Kuhio Highway were higher on Saturdays than for Sundays, with the highest hourly volumes on either day occurring during the midday and early afternoon. For the weekdays, Fridays had the highest volumes, with the afternoon peak hour volumes slightly above those for Saturday.

On weekdays, the traffic impacts of the Kapaiawai Resort is expected to be greatest during the morning and afternoon commute peak periods when some resort employees would begin/start their work shifts, combined with guest arrivals and departures. On a Saturday, the highest resort traffic volumes would likely be generated during the early afternoon as a result of shift changes during that time as well as guest arrival/departures and local resident arrivals/departures of the beach, restaurants, and other facilities of the resort.

Wilbur Smith Associates (WSA) conducted special traffic turning movement counts during Friday January 15, 1999 to represent traffic on a weekday afternoon and on January 16, 1999 to represent traffic on a Saturday afternoon. The counts were recorded for each 15-minute period between 6:00 and 8:30 AM and 3:00 and 6:30 PM on Friday, and from 11:00 AM to 4:00 PM on Saturday. The highest one-hour counts in the each of the three periods are used to represent peak traffic volumes during the two weekday peak hours and for the Saturday peak hour. The traffic volumes recorded for these periods are depicted in Figures 2-2 and 2-3 for a weekday and a Saturday, respectively.

### Weekday Peak Hour Volumes

The highest weekday morning traffic on Kaumualii Highway near the Project site occurred between 6:30 and 7:30 AM, with a total of 724 vehicles in both directions. Traffic volumes along Kaumualii Highway were higher to the east and west of the Project site, with peak hour volumes on those sections approaching 800 vehicles. Traffic volumes were higher in the westbound travel direction, most likely due to workers commuting to Barking Sands Pacific Missile Range facilities. Within





Waimea Town, the traffic on the mauka leg of each intersection was much higher than the volume on the makai side of Kaumualii Highway, with Menehune Road having higher volumes than Panako and Ala Wai Roads.

The highest traffic volumes on Kaumualii Highway during the Friday afternoon generally occurred between 3:45 and 4:45 PM when a total of 964 vehicles were counted near the Project site, or about 26% higher than the morning peak hour. As in the morning, the traffic volumes along Kaumualii Highway increased eastward and westward from the Project site. Traffic volumes were higher in the eastbound direction in the afternoon.

Within Waimea Town, the traffic volumes on the cross street were generally two to three times higher than the volumes during the morning peak hour. The highest volumes occurred on the mauka legs of Panako Road and Menehune Road, with totals of almost 300 vehicles on each. These volumes reflect concentration of businesses and parking in the area adjacent to these streets.

### Saturday Peak Hour Volumes

The highest volume of traffic on Saturday was recorded between 1:45 and 2:45 PM. The Saturday traffic volumes along Kaumualii Highway were similar to those in the weekday morning peak hour, with 719 vehicles near the Project site. For the cross streets, the Saturday traffic volumes were higher at most locations and for most movements than those recorded during the weekday morning peak hour, but less than those recorded during the Friday afternoon peak hour.

## EXISTING TRAFFIC CONDITIONS AT KEY INTERSECTIONS

Traffic conditions were analyzed for the Friday morning and afternoon one-hour periods that have the highest volumes of traffic and for the Saturday afternoon peak hour.

### Methodology for Analyzing Levels of Service

The Transportation Research Board (TRB), a division of the National Science Foundation, has developed standardized methods for use in evaluating the effectiveness and quality of service for roadways and streets. Different methodologies are available for analyzing traffic signal-controlled intersections and other types of roadways.

The TRB evaluation methods use a concept known as level-of-service (LOS). This concept describes facility operations on a letter basis from A to F, which signify excellent to unacceptable conditions, respectively. The methods generally compare traffic volumes on a facility to the facility's theoretical capacity. Capacity is estimated based on the facility's physical characteristics (e.g. number and widths of lanes), traffic characteristics (e.g. types of vehicles), and type of traffic controls. The comparisons are frequently referred to as the volume-to-capacity ratio (V/C). The methodologies are described in the *1994 Highway Capacity Manual* (1994 HCM)[1].

Signal-Controlled Intersections - Traffic conditions at traffic signal-controlled intersections were evaluated using the Operations Analysis methodology described in the 1994 HCM. Using this

[1] *Highway Capacity Manual*, Special Report 209, Transportation Research Board, Third Edition 1994.

method, the level-of-service is based on the average delay time per vehicle passing through the intersection. The delay time, calculated in seconds, is the result of the phasing and timing of the traffic signal as well as the intersection's physical layout and the composition of the traffic. Average delay time and level-of-service are estimated for the entire intersection, for each roadway approach, and for each traffic movement or lane group. A description of the characteristics and criteria associated with LOS A through LOS F is provided in Figure 2-4.

The methodology also calculates a ratio of actual or estimated peak hour traffic volumes to the theoretical capacity of the intersection. This ratio indicates the proportion of available capacity being used by traffic volumes and where there is unused capacity available for future traffic increases. This volume-to-capacity ratio (V/C) reflects the physical characteristics of the intersection and the traffic characteristics, and is somewhat independent of the efficiency of the traffic signal phasing/timing.

Unsignalized Intersections - At intersections with STOP sign controls, the level of service was calculated using the 1994 HCM procedures for intersections with STOP or YIELD signs. In this methodology, the six levels of service, A through F, are used to describe traffic conditions for those movements that must yield to other movements:

- Left-turn out of the side street or driveway;
- Through movement from the side street,
- Right-turn out of the side street or driveway; and
- Left-turn into the side street.

Through vehicles on the major streets are not required to yield to other movements at two-way STOP controlled intersections.

The general indicator of intersection delay is determined by calculating the one-hour capacity for each key movement, based on the conflicting traffic volumes, and then comparing the number of vehicles making that maneuver to the calculated capacity. The unused or "reserve" capacity for the movement is then used to identify a delay time and a level-of-service for that movement. Unlike analysis at signalized intersections, an overall intersection level-of-service is not calculated, but a level-of-service is calculated for each lane group subject to the STOP or YIELD condition.

The level-of-service criteria for unsignalized intersections with STOP or YIELD controls is defined in Table 2-1.

### Intersection Conditions

The traffic conditions at each of the key intersections are summarized in Table 2-2 for the weekday peak hours and the Saturday midday peak hour. The conditions indicated in the table are for the traffic movement at each intersection that experiences the longest wait time (delay) to travel through the intersection. For these STOP sign-controlled intersections, the longest delay usually occurs for the higher volume left-turn movement from the cross street, such as the left turn movement from Menehune Road at its intersection with Kaumualii Highway.





During the weekday morning peak hour, the left-turn movements at each of the six key intersections included in the study operated with short delays averaging between 9.5 and 11.2 seconds, equivalent to levels of service (LOS) B or C.

Average delays for the left-turn movements during the Friday afternoon peak traffic hour were higher at each of the intersections than the delays for the morning peak hour. This resulted from the higher

**Table 2-1**

**LEVEL-OF-SERVICE CRITERIA FOR UNSIGNALIZED INTERSECTIONS Kapalawai Resort Traffic Impact Study**

| LOS | Average Stopped Delay (seconds/vehicle) |
|---|---|
| A | <5.0 |
| B | 5.1 - 10.0 |
| C | 10.1 - 20.0 |
| D | 20.1 - 30.0 |
| E | 30.1 - 45.0 |
| F | >45 |

Source: Highway Capacity Manual, Special Report 209, Transportation Research Board, Chapter 10, 1994.

volume of through traffic along Kaumualii Highway during the afternoon peak hour, which provides fewer gaps for vehicles to exit the side streets, combined with a higher volume of vehicles turning left at several of the cross streets.

The longest Friday afternoon peak hour delays were calculated for the vehicles turning left from makai-bound Menehune and Panako Roads in Waimea Town. The delays for these left-turn movements averaged approximately 22 to 23 seconds, equivalent to LOS D. Field observations indicated that delays by left-turn vehicles on Menehune Road did occasionally interfere with vehicles exiting Waimea Road to turn right onto Kaumualii Highway. The left turn traffic at the other study intersections operated at LOS C conditions.

For the Saturday midday peak hour, the delay for most of the left-turn movements wee similar to those for the weekday morning peak hour. The exception was the turns from the Kaumakani Village Road, where the average delay (17.5 seconds, LOS C) was the same as for the Friday afternoon peak hour.

**Table 2-2**
**EXISTING CONDITIONS AT KEY INTERSECTIONS**
**Kapalawai Resort Traffic Impact Study**

| Kaumualii Hwy. Intersection and Traffic Movement | Friday Morning Peak Hour | | Friday Afternoon Peak Hour | | Saturday Midday Peak Hour | |
|---|---|---|---|---|---|---|
| | ADPV | LOS | ADPV | LOS | ADPV | LOS |
| Menehune Road | | | | | | |
| Makaibound Left Turn | 11.2 | C | 23.0 | D | 11.9 | C |
| Panako Road | | | | | | |
| Makaibound Left Turn | 9.5 | B | 21.9 | D | 10.4 | C |
| Ala Wai Road | | | | | | |
| Makaibound Left Turn | 10.3 | C | 15.9 | C | 9.6 | B |
| Pakala Village Road | | | | | | |
| Maukabound Left Turn | 9.8 | B | 15.4 | C | 9.9 | B |
| Kaumakani Mill Road | | | | | | |
| Maukabound Left Turn | 10.3 | C | 14.0 | C | 9.3 | B |
| Kaumakani Village Road | | | | | | |
| Maukabound Left Turn | 10.5 | C | 17.5 | C | 10.2 | C |

ADPV = Average delay per vehicle, in seconds.
LOS = Level of service for the traffic movement.

Wilbur Smith Associates; February 10, 1999.





# Chapter 3
# 2002 CONDITIONS WITHOUT THE PROJECT

The Kapalawai Resort is planned for completion and full operation by early year 2002. Forecast traffic volumes and conditions are presented for early in year 2002 without the Kapalawai Resort Project as a base from which to identify the incremental effects of the Project.

## ROADWAY IMPROVEMENTS

No major modifications are expected for the roadways near the Project site by year 2002. The State DOT plans to construct left-turn lanes on Kaumualii Highway at several intersections that have higher volumes of vehicles turning left from Kaumualii Highway. Left-turn lanes are planned for Kaumualii Highway at the intersection with the Pakala Village/Post Office Road and with the Kaumakani Mill Road. The left-turn lanes should improve traffic safety at these intersections and reduce delays to through traffic caused by vehicles waiting to turn left. The additional lanes should not have a significant effect on the delays to traffic entering Kaumualii Highway from the cross streets at these locations.

## TRAFFIC GROWTH WITHOUT THE PROJECT

No major new development projects are anticipated for the areas near the Project site by early 2002. Traffic increases over the next three years are expected to primarily result from increases in activity levels for the existing commercial and recreational uses in the southwest Kauai area, and small infill development or small increments of new developments in the area. An annual area growth factor was used to estimate the traffic increases from these sources. In addition, the Pioneer Hi-Bred facility being constructed near the Project site would add traffic along the adjacent section of Kaumualii Highway.

### Area Traffic Growth Factor

The traffic growth factor for the roadways near the Project site was based on the traffic counts for the nearest count station along Kaumualii Highway for which historic count data was available. Traffic count data from State DOT count stations #15-D and #17-A, located along Kaumualii Highway in the study area, was available for the period between 1993 and 1997, which indicated average annual increases of 1.6 to 1.8% along Kaumualii Highway. Based on these counts, the average annual growth rate of 1.8% was used to represent traffic increases for the next three years, both for weekdays and weekends. This annual rate provides an increase of 5.5% over the three years.

### Pioneer Hi-Bred Facility

The Pioneer Hi-Bred facility is expected to employ approximately 50 workers. This work force is estimated to generate approximately 23 and 22 peak vehicle trips during the weekday morning and afternoon peak hours, respectively. The routing for these trips was based on local traffic patterns. No vehicle trips were added to the Saturday midday peak hour.

### Weekday and Sunday Peak Hour Volumes

The growth factor was applied to all traffic movements at the key intersections near the Project site, and the Pioneer Hi-Bred trips were added to the weekday traffic volumes. The resultant traffic volumes for the weekday and Saturday peak hour periods are depicted in Figures 3-1 and 3-2, respectively.

## TRAFFIC CONDITIONS AT KEY INTERSECTIONS

The traffic conditions for the left-turn movements from the cross streets at the key Kaumualii Highway intersections are summarized in Table 3-1.

**Table 3-1**
**2002 CONDITIONS AT KEY INTERSECTIONS WITHOUT PROJECT**
**Kapalawai Resort Traffic Impact Study**

| Kaumualii Hwy. Intersection and Traffic Movement | Friday Morning Peak Hour | | Friday Afternoon Peak Hour | | Saturday Midday Peak Hour | |
|---|---|---|---|---|---|---|
| | ADPV | LOS | ADPV | LOS | ADPV | LOS |
| Menehune Road Makai-bound Left Turn | 12.4 | C | 27.6 | D | 13.0 | C |
| Panako Road Makai-bound Left Turn | 10.3 | C | 26.5 | D | 11.2 | C |
| Ala Wai Road Makai-bound Left Turn | 11.2 | C | 18.1 | C | 10.3 | C |
| Pakala Village Road Mauka-bound Left Turn | 10.8 | C | 18.0 | C | 10.6 | C |
| Kaumakani Mill Road Mauka-bound Left Turn | 11.4 | C | 15.6 | C | 9.8 | B |
| Kaumakani Village Road Mauka-bound Left Turn | 11.5 | C | 20.1 | D | 10.9 | C |

ADPV = Average delay per vehicle, in seconds.
LOS = Level of service for the traffic movement.

Wilbur Smith Associates; February 10, 1999.





In the weekday morning peak hour, the critical left-turn movement from each of the study intersections is forecast to operate at LOS C.

In the weekday afternoon peak hour, the critical left-turn movements at the Menehune and Panako Road intersections would remain at LOS D, although the delay times would be approaching the threshold for LOS E (30 seconds). The additional traffic at the Kaumakani Village Road intersection would worsen conditions to LOS D for the left-turn traffic at that intersection. The other left-turn movements would remain at LOS C.

The delays to left-turns at each of the intersections would increase by around one second or less for the Saturday midday peak hour. Left-turn traffic conditions would worsen to LOS C for the intersections with Ala Wai and Pakala Village Roads (from LOS B). The other intersections would remain at their existing LOS B or C conditions.

# Chapter 4
# 2002 CONDITIONS WITH THE PROJECT

The Kapalawai Resort is planned for completion and full operation by early year 2002. The traffic assessment reflects a peak season level of use of the Project for both a weekday and a Saturday.

## PROJECT DESCRIPTION

Destinations Villages Kauai, LLC plans to develop the Kapalawai Resort project on a 170-acre site approximately one-half mile on the Lihue (east) side of Waimea Town.

The Project will have an estimated 250 units for visitor accommodations, constructed as stand-alone cottages or duplexes. The guest facilities will include two dining facilities and on-site recreational areas for swimming tennis, and other activities. The present Robinson Family residence and related structures will be maintained as a museum facility to preserve the history of this portion of Kauai.

Access to the Kapalawai Resort will be provided by two one-way driveway connections to Kaumualii Highway. The existing paved driveway to the Robinson Family residence, located near the western (Waimea) boundary of the site, will serve as the entrance driveway. The exit driveway will intersect Kaumualii Highway at the location of the existing driveway to plantation homes, located about 480 feet east of the entrance driveway.

## VEHICLE TRIP GENERATION

The number of vehicle trips to/from the Project was estimated using the average trip generation rates for a full-service resort hotel (land use category #330) as compiled in *Trip Generation*[1] by the Institute of Transportation Engineers (ITE). The ITE trip rates for a resort hotel are generally higher than those for either Waikiki or Neighbor Island hotels. Therefore, the use of the ITE trip rates should provide a conservative (high) estimate of the number of trips generated by the Kapalawai Resort Project.

The trip rate selected for weekdays was based on the number of occupied rooms, rather than other available rates based on total rooms or total number of employees. The rate based on occupied units is more reflective of peak season. The ITE Saturday rate for occupied units is about twice the weekday rate. This large differential was due to only one observation for Saturday for this rate basis, which may have included unique features that resulted in higher weekend use unrelated to the number of guest units. The ITE Saturday rate was used since it should fully reflect any weekend use of the Resort's dining and other facilities by local residents, as well as visitors to the museum. The estimated numbers of weekday and Saturday vehicle trips was based on an occupancy level of 90% of the units, which reflects a high usage day in the peak season.

[1] *Trip Generation, Sixth Edition*, Institute of Transportation Engineers, 1997.





In addition, public access would be permitted to the beach areas of the site. For forecast purposes, it was assumed that a peak of approximately 40 parking stalls would be used by residents using the beach areas. The trip rates per parking space are based on typical usage rates for these types of uses.

The trip rates and the numbers of vehicle trips estimated for the Project during the weekday and Saturday midday peak hours are summarized in Table 4-1.

**Table 4-1**
**VEHICLE TRIP GENERATION FOR THE PROJECT**
**Kapalawai Resort Traffic Impact Study**

| Item | Morning Peak Hour | | | Afternoon Peak Hour | | | Daily |
|---|---|---|---|---|---|---|---|
| | To Project | From Project | Total | To Project | From Project | Total | |
| **Trip Generation Rates (1)** | | | | | | | |
| Resort - Weekday | 0.30 | 0.17 | 0.47 | 0.29 | 0.30 | 0.59 | 8.00 |
| Saturday | NA | NA | NA | 0.615 | 0.615 | 1.23 | 13.43 |
| Beach - Weekday | 0.04 | 0.01 | 0.05 | 0.085 | 0.0165 | 0.25 | 2.00 |
| Saturday | NA | NA | NA | 0.17 | 0.33 | 0.50 | 4.00 |
| **Estimated Vehicle Trips for Weekday** | | | | | | | |
| Resort | 67 | 39 | 106 | 66 | 67 | 133 | 1,800 |
| Beach | 2 | 0 | 2 | 3 | 7 | 10 | 80 |
| Totals | 69 | 39 | 108 | 69 | 74 | 143 | 1,880 |
| **Estimated Vehicle Trips for Saturday** | | | | | | | |
| Resort | NA | NA | NA | 138 | 139 | 277 | 3,020 |
| Beach | NA | NA | NA | 7 | 13 | 20 | 160 |
| Totals | NA | NA | NA | 145 | 152 | 297 | 3,180 |

(1) Resort rates per occupied room for resort and per parking stall for beach area.
NA = Not included in the analyses

Wilbur Smith Associates; February 10,1998.

The Project is estimated to generate a total of about 1,880 vehicle trips on a weekday during the peak visitor season and about 3,180 vehicle trips on a Saturday. In the weekday morning peak hour, about 108 vehicle trips would be generated to or from the Project, including arriving and departing employees. Higher levels of guest activity in the afternoon peak hour would result in 143 vehicle trips to or from the site, with the trips almost evenly split between vehicles entering and exiting the Project. A total of 297 vehicle trips could be generated by peak use on a Saturday afternoon, which would reflect a special event at the site that attracts local residents and/or visitors from other resort areas.

## PEAK HOUR TRAFFIC VOLUMES

The Project vehicle trips were distributed and assigned to the adjacent roadway system based on the existing traffic patterns in the study area. Slightly more trips were assigned to/from areas east (Lihue/Poipu side) of the Project than to the west (Waimea Town side). The resultant year 2002 traffic volumes at the key intersections near the Project are depicted in Figures 4-1 and 4-2 for the weekday and Saturday peak hours, respectively.

The Project is estimated to increase the peak hour volumes on Kaumualii Highway just to the east of the site by 8% during the weekday peak hours and by 20% on a Saturday with special events at the site. To the west, the Project traffic would add an estimated 6% increase to the weekday peak hour volumes and 18% to the Saturday peak hour volumes on Kaumualii Highway near the site.

## TRAFFIC CONDITIONS AT KEY INTERSECTIONS

Traffic conditions during the weekday and Saturday peak hours with the Project is summarized for each key intersection in Table 4-2.

### Project Driveways

The left-turn movements into and out of the Project driveway connections to Kaumualii Highway are forecast to operate at very acceptable conditions for each of the peak hour periods. As listed in Table 4-2, the vehicles turning left from the mauka-bound exit driveway would operate at LOS C during each period. The left-turn movement from westbound Kaumualii Highway would operate at LOS A with the forecast volumes.

Based on the forecast peak hour volumes and traffic conditions, STOP sign controls would be appropriate for the exit driveway.

### Nearby Key Intersections

In the weekday morning peak hour, the conditions for the critical left-turn movement from each of the study intersections is forecast to remain at LOS C. The Project would increase the average delay by about one second or less for the left-turn movement at each intersection.





**Table 4-2**
**2002 CONDITIONS AT KEY INTERSECTIONS WITH PROJECT**
**Kapalawai Resort Traffic Impact Study**

| Kaumualii Highway Intersections and Traffic Movement | Friday Morning Peak Hour | | Friday Afternoon Peak Hour | | Saturday Midday Peak Hour | |
|---|---|---|---|---|---|---|
| | ADPV | LOS | ADPV | LOS | ADPV | LOS |
| Menehune Road | | | | | | |
| Makai-bound Left Turn | 13.3 | C | 31.4 | E | 16.0 | C |
| Panako Road | | | | | | |
| Makai-bound Left Turn | 11.0 | C | 31.2 | E | 14.2 | C |
| Ala Wai Road | | | | | | |
| Makai-bound Left Turn | 12.1 | C | 20.3 | D | 12.8 | C |
| Project Driveways | | | | | | |
| Mauka-bound Left Turn | 11.7 | C | 19.6 | C | 16.6 | C |
| Westbound Left Turn | 3.5 | A | 4.4 | A | 3.7 | A |
| Pakala Village Road | | | | | | |
| Mauka-bound Left Turn | 11.8 | C | 20.7 | D | 13.6 | C |
| Kaumakani Mill Road | | | | | | |
| Mauka-bound Left Turn | 12.5 | C | 17.6 | C | 12.2 | C |
| Kaumakani Village Road | | | | | | |
| Mauka-bound Left Turn | 12.7 | C | 23.0 | D | 13.8 | C |

ADPV = Average delay per vehicle, in seconds.
LOS = Level of service for the traffic movement.

Wilbur Smith Associates: February 10, 1999.

In the weekday afternoon peak hour, the Project traffic would increase average delay for the critical left-turn movements at the Menehune and Panako Road intersections by about 4 to 5 seconds. This increase would worsen the conditions to LOS E, from LOS D. Given the forecast LOS E conditions, the afternoon conditions at these two intersections were checked against the warrants for installation of traffic signal controls (see "Potential Mitigation").

For the weekday afternoon peak hour, the additional traffic at the Pakala Village Road intersection would increase average delay to LOS D for the left-turn traffic at that intersection. The left-turn movements at the other intersections would remain at LOS C.

The delays to left-turns at each of the intersections would increase by about 2 to 3 seconds for the Saturday midday peak hour. Left-turn traffic conditions would worsen to LOS C for the intersection with the Kaumakani Mill Road (from LOS B). The other intersections would remain at the LOS C conditions forecast without the Project.

## POTENTIAL MITIGATION ACTIONS

Mitigation actions were considered at the Kaumualii Highway intersections with the Project driveways and with Panako and Menehune Roads.

### Project Driveways

The analyses indicate that STOP sign control is appropriate for the exit driveway approach to Kaumualii Highway for the year 2002 peak hour conditions.

Left-turn storage lanes are typically considered for locations where 100 or more vehicles turn left in a one-hour period. Because of the high speeds along this section of Kaumualii Highway, it is recommended that a left-turn lane be provided for the vehicles waiting to turn left from westbound Kaumualii Highway into the Project entrance driveway. This would reduce the potential for accidents as well as delays to through traffic. The length of the left-turn storage lane should be sufficient to accommodate at least 3 or 4 waiting vehicles, or a minimum of 100 feet in length.

Separate left- and right-turn lanes are recommended for the exit driveway at the intersection with Kaumualii Highway to minimize any delay to vehicles turning right from the driveway.

A right-turn deceleration lane is recommended on westbound Kaumualii Highway at the entrance driveway for the Project for safety purposed and to minimize delays to through traffic.

### Panako and Menehune Roads

The analyses indicate that the increased volume of Project and non-Project traffic at these two intersections with Kaumualii Highway would result in increased delays by vehicles turning left from the cross streets. The traffic turning left from the makai-bound approach of each street is expected to experience delays equivalent to LOS E for the Friday afternoon peak traffic hour. The conditions for traffic turning left from the mauka-bound approaches are forecast as LOS D at Panako Road and LOS C for Hapule Road (opposite approach of Menehune Road).

Installation of a traffic signal at one or both of these intersections would be one method of facilitating this left-turn movement, given the delays in waiting for a gap in Kaumualii Highway traffic. The State DOT would have to approve any installation of a traffic signal along a State highway. Except for rare exceptions, the State DOT will not approve a traffic signal for a location unless it satisfies one or more "warrants" for installation of a traffic signal.

Highway officials have adopted a series of these "warrants" that govern consideration of a traffic signal at a location.[3] If a location does not satisfy one or more of the warrants, a traffic signal is not appropriate; if it satisfies one or more warrants, a traffic signal *may be considered* as a potential action to improve operations or safety.

The forecast conditions at the two intersections with Kaumualii Highway were assessed relative to two of the warrants:

[3] *Manual on Uniform Traffic Control Devices*, U. S. Department of Transportation, Federal Highway Administration, 1988.





- **Warrant #10 Peak Hour Delay**
  The initial criteria for this warrant is that the minor street approach must experience total delay of at least four vehicle hours for a single lane approach and five vehicle hours for a two-lane approach, during the peak one-hour period.

  Neither of the intersections satisfy this requirement since the estimated total delay in the worst peak one hour (Friday afternoon peak hour) is 0.54 vehicle hours at the Panako intersection and 0.52 vehicle hours at the Menehune Road intersection, with these total delays substantially below the minimum requirement for either a single- or two lane approach.

- **Warrant #11 Peak Hour Volume**
  For the number of lanes at this intersection and the Friday peak hour volumes along Kaumualii Highway, this warrant would require either:

  1. A minimum of 75 vehicles exiting the higher volume approach of the cross street in the peak hour if that approach has only a single approach lane.

  2. A minimum of 100 vehicles exiting the higher volume approach of the cross street in the peak hour if that approach has two approach lanes (separate left- and right-turn lanes).

  The makai-bound approaches on both streets has a single wide lane that permits right-turn vehicles to pass by the waiting left-turn vehicles, thereby functioning as two approach lanes. The Panako Road approach has 75 peak hour vehicles, while the Menehune Road approach has 143 vehicles in the afternoon peak hour. However, the left-turn and through volumes, those with the long delays, amount to only 31 vehicles at Panako Road and 48 at Menehune Road.

  The Panako Road intersection does not satisfy this warrant, while the Menehune Road intersection does meet the minimum volume warrant as a result of the very high volume of vehicles turning right from this approach.

The Menehune Road approach would pose a traffic operations problem with the installation of a traffic signal. The traffic signal would result in the queue of waiting vehicles stacking beyond and blocking the left-turns from the Waimea Road approach to Menehune Road. The Panako Road intersection provides the better geometric layout for installation and operation of a traffic signal as a result of its slightly longer block length between Kaumualii Highway and Waimea Road.

Due to the marginal satisfaction of the minimum warrants and the potential queuing problems on the mauka side of the intersections, a traffic signal does not appear appropriate at the intersections for year 2002. If a traffic signal is installed in the future, the Panako Road intersection would likely provide the better location due to the longer block length. A signal at Panako Road would also benefit the Menehune Road traffic by providing gaps in the westbound traffic flow along Kaumualii Highway. If a signal were to be installed at Panako Road, the 2002 Friday peak hour volumes would approximate 54% of intersection capacity and would operate at LOS B.

The installation of STOP signs on all four approaches (four-way STOP control) would not be appropriate for either intersection due to the much higher volumes on Kaumualii Highway as compared to either of the cross streets.





# Chapter 5
# SUMMARY AND CONCLUSIONS

Destinations Villages Kauai, LLC plans to develop the Kapalawai Resort project in the southwest portion of Kauai approximately one-half mile east of Waimea Town. The Project will be located on a 170-acre site on the makai side of Kaumualii Highway, a site that includes the Robinson Family residence and the agricultural lands to the east of the residence.

The Project will have an estimated 250 guest units plus restaurants, swimming pools, tennis courts and other amenities for the guests. The present Robinson Family residence and related structures will be maintained as a museum. Public access will be provided to the beach area.

Access to the Kapalawai Resort will be provided by two one-way driveway connections to Kaumualii Highway, to be located at the present driveways to the Robinson residence and the plantation houses to the east of the residence.

## EXISTING CONDITIONS

Traffic conditions were analyzed at the key intersections near the Project site for the morning and afternoon peak hours on a Friday, and the midday peak hour on a Saturday. These include the intersections of Kaumualii Highway with Pakala Village Road, Kaumakani Mill Road, and Kaumakani Village Road to the east of the Project, and the Ala Wai Road, Panako Road, and Menehune Road intersections within Waimea Town to the west of the Project. The left-turn movements from each of these STOP sign controlled cross streets presently operates at acceptable conditions (LOS B, C or D at each).

## 2002 CONDITIONS WITHOUT THE PROJECT

General area growth in economic activity and small development is estimated to increase peak hour traffic volumes by about 6% by year 2002. With this increase, the traffic operations at each of the key intersections near the Project site are expected to remain at acceptable conditions during the weekday and Saturday peak hours.

## 2002 CONDITIONS WITH THE PROJECT

On a peak season weekday with 90% occupancy of the units, the Project is estimated to generate 108 and 143 vehicle trips in the morning and afternoon peak hours, respectively. On a peak season Saturday, the Project is estimated to generate up to 297 vehicle trips during the midday peak hour, a number that would reflect a large volume of visitors from other hotels or local residents attending an event at the Project site. The Project would increase traffic volumes on Kaumualii Highway adjacent to the site by about 6 to 8% during the weekday peak hours, and by 18 to 20% for the Saturday midday peak hour.

With the forecast year 2002 peak hour traffic volumes, the Project driveway approach to Kaumualii Highway should operate at acceptable conditions with STOP sign control. To improve operations

and safety at this Project driveway intersections with Kaumualii Highway, the following measures are recommended:

- Provide separate left- and right-turn lanes for the exit driveway approach to Kaumualii Highway. With separate lanes, vehicles turning right would not be delayed by vehicles waiting to turn left.

- Provide a left-turn stacking lane on the westbound Kaumualii Highway approach to the intersection with the entrance driveway. With the left-turn storage lane, vehicles waiting to turn left into the entrance driveway would not block and delay the eastbound through traffic. A storage length of 100 feet is recommended for the left-turn lane, which would be sufficient for four automobiles, or three automobiles and one bus.

- Provide a right-turn deceleration lane on westbound Kaumualii Highway for vehicles entering the Project driveway to minimize delays to through traffic.

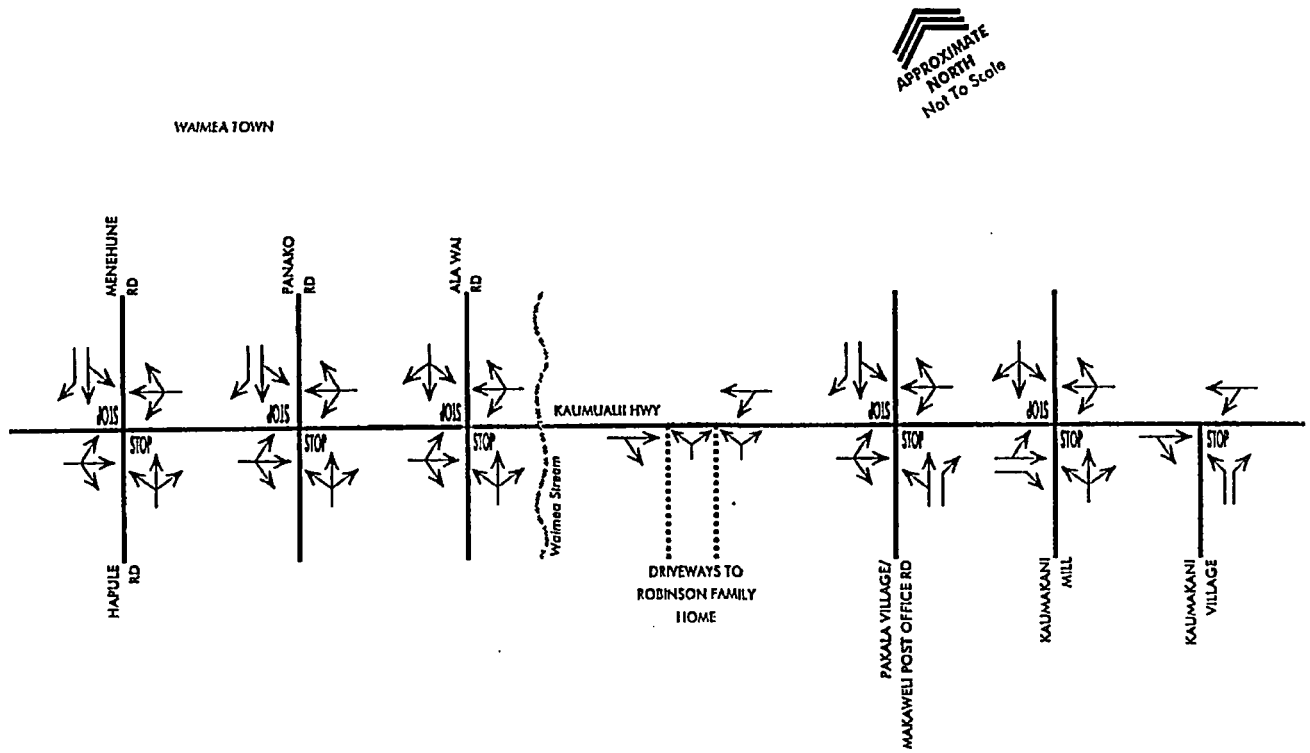
The Project traffic is not expected to significantly impact traffic conditions at the key intersections near the site during the weekday morning or Saturday midday peak hours. During the weekday afternoon peak hour, the Project traffic was estimated to add about 4 seconds to the average delay for the vehicles turning left onto Kaumualii Highway from the makai-bound approaches of Panako Road and Menehune Road, which would worsen conditions to LOS E from LOS D. This indicates long delays for the left-turn vehicles during this peak hour. Conditions at the other intersections would be at very acceptable levels during the weekday afternoon peak hour.

The weekday afternoon peak hour volumes and traffic conditions at the Panako Road and Menehune Road intersections were checked against the minimum traffic warrants that should be satisfied to allow consideration of a traffic signal at either intersection.

- The forecast 2002 traffic volumes and delays do not satisfy the minimum warrants needed for installation of a traffic signal at Panako Road.

- The forecast peak hour volumes at the Menehune Road intersection do exceed the minimum needed to satisfy the volume warrant and allow consideration of a signal, but the Menehune Road traffic volume is predominantly vehicles turning right that would benefit little from a signal. The peak hour delay is only about 10% of the minimum necessary to satisfy the delay warrant. The installation of a traffic signal would result in a waiting queue of vehicles that would likely interfere with traffic operations at the nearby intersection of Waimea Road with Menehune Road. Therefore the installation of a traffic signal does not appear desirable for the forecast year 2002 conditions.

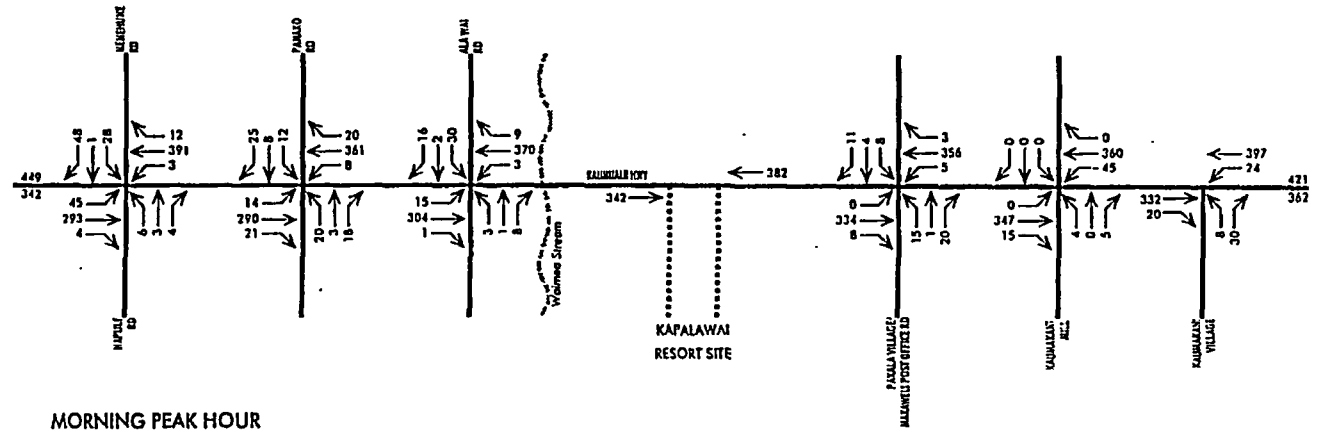
The traffic conditions at these intersections should be periodically monitored to assess whether conditions may warrant installation of a traffic signal or other actions in the future.

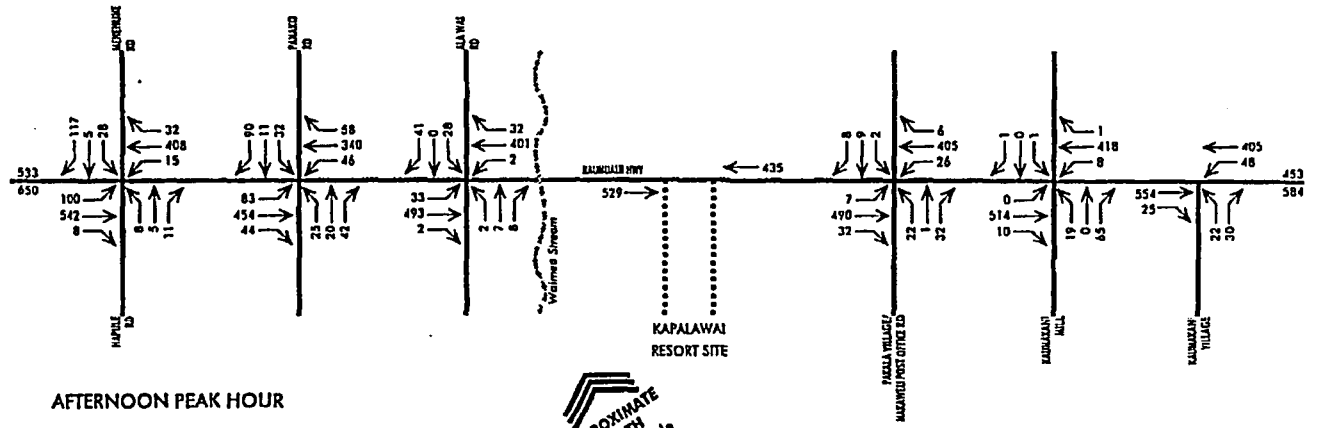



WILBUR SMITH ASSOCIATES

Figure 2-1
**EXISTING ROADWAY LANES AND TRAFFIC CONTROLS**

338940\BASE-3/30/99



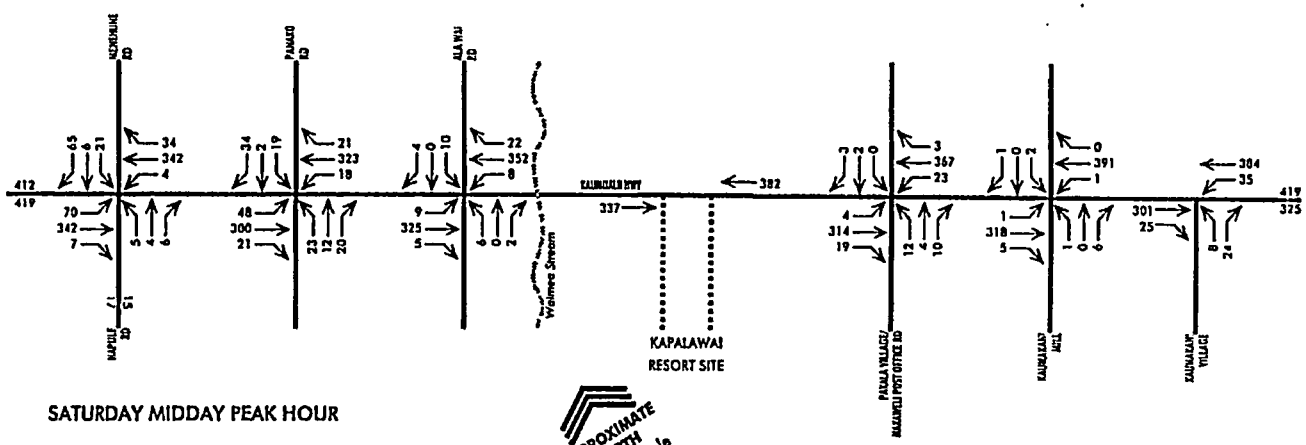




WILBUR SMITH ASSOCIATES

Figure 2-2
**EXISTING WEEKDAY PEAK HOUR TRAFFIC**

338940\BASE2-4/1/99




WILBUR SMITH ASSOCIATES

Figure 2-3
**EXISTING SATURDAY MIDDAY PEAK HOUR TRAFFIC**

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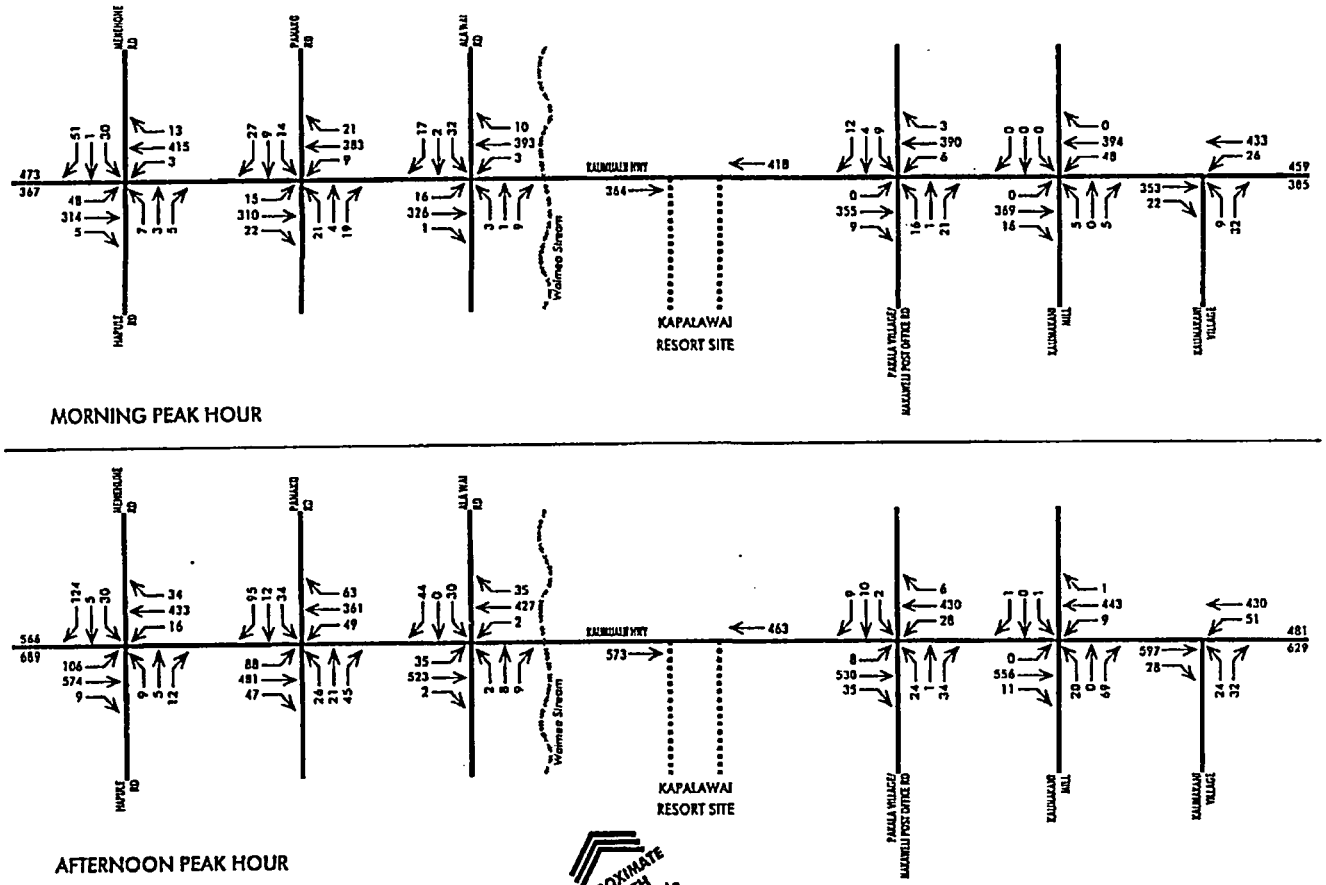



Figure 3-1

**2002 WEEKDAY PEAK HOUR TRAFFIC WITHOUT PROJECT**

WSA WILBUR SMITH ASSOCIATES

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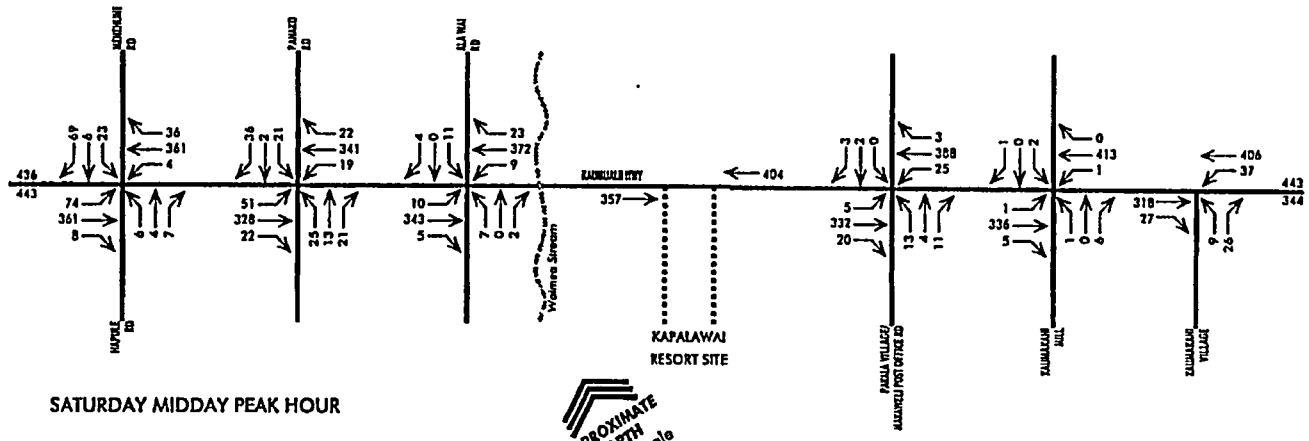
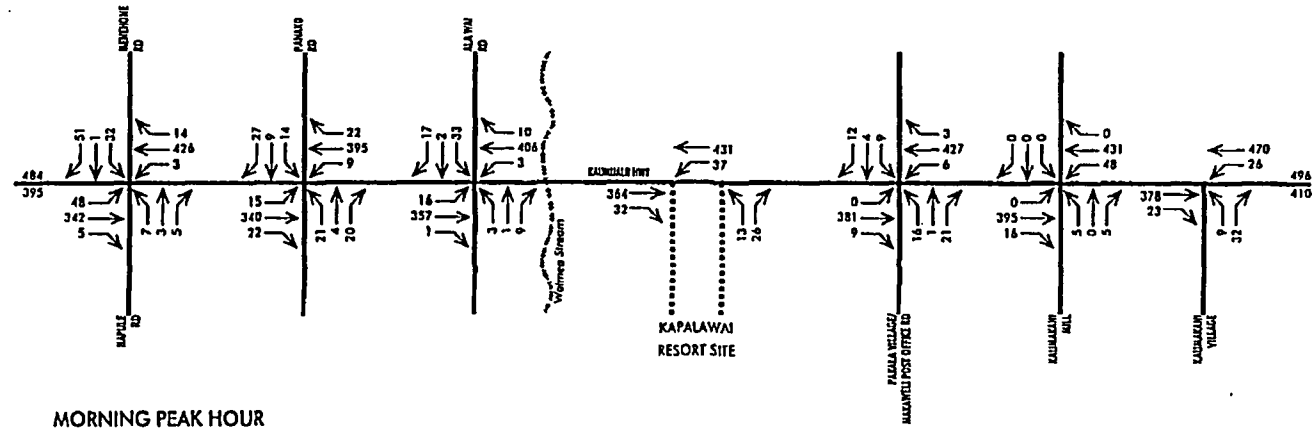


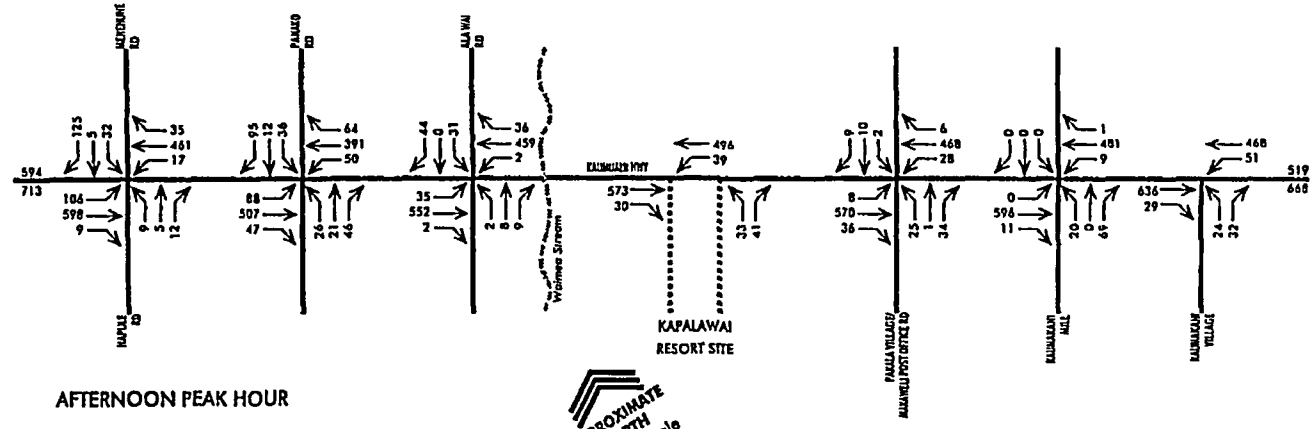

Figure 3-2
**2002 SATURDAY MIDDAY PEAK HOUR WITHOUT PROJECT**

WILBUR SMITH ASSOCIATES

338940\BASE2-4/1/99




MORNING PEAK HOUR

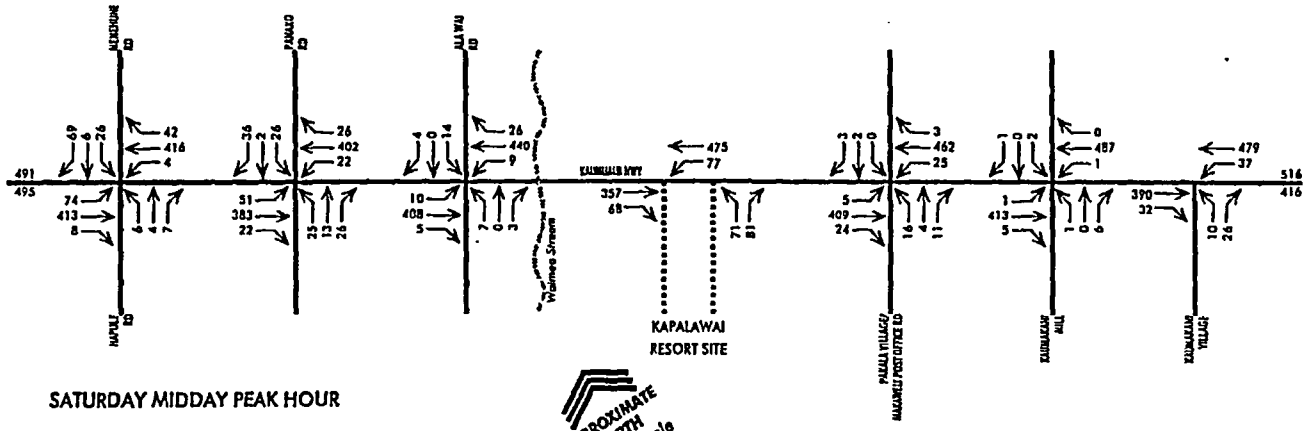



AFTERNOON PEAK HOUR

APPROXIMATE NORTH
Not To Scale

WSA WILBUR SMITH ASSOCIATES

Figure 4-1
2002 WEEKDAY PEAK HOUR TRAFFIC WITH PROJECT
338940\BASE2-4/1/99




WILBUR SMITH ASSOCIATES

Figure 4-2

**2002 SATURDAY MIDDY PEAK HOUR TRAFFIC WITH PROJECT**

338940\BASE2-4/1/99



# I

## UTILITIES AND PRELIMINARY DRAINAGE REPORT

WAGNER ENGINEERING SERVICES, INC.

# Civil Engineering Report
*for*
# Kapalawai Resort
# Kapalawai, Kauai, Hawaii

September 27, 1999

*Prepared for:* Helber Hastert & Fee
Grosvenor Center, Mauka Tower
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813

*Prepared by:* Wagner Engineering Services
P.O. Box 851
Hanalei, Hawaii 96714

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September 27, 1999

Mr. Scott Ezer, Senior Associate
Helber Hastert & Fee
Grosvenor Center, Makai Tower
733 Bishop Street, Suite 2590
Honolulu, Hawaii 96813

Subject: Civil Engineering Report
Kapalawai Resort
Kapalawai, Kauai, Hawaii

Dear Mr. Ezer:

We are pleased to provide you with the attached Engineering Report update for the Kapalawai Resort. The Report has been prepared according to the scope of our proposal dated January 28, 1999, and the Master Plan provided by your office.

Mahalo for the opportunity to have been of service, and we look forward to future involvement with the project.

Very truly yours,

Ronald J. Wagner, P.E., L.S.

## Introduction

The Kapalawai Resort is located on the west side of Kauai, between the towns of Waimea to the west, and Makaweli to the east. The site is bounded to the north by Kaumuali'i Highway, and to the south by Hoanunu Bay.

The property is owned by Robinson Family Partners, Gay & Robinson, Inc., and Bruce Robinson, which have used the land for the family residence, garden and limited cattle grazing. The Kapalawai Master Plan plans to develop the approximately 170 acre site to resort use, including 250 cottages along the beachfront, and various support facilities related to resort use, including recreational facilities and restaurants.

This report addresses various engineering aspects associated with development of the property.

- Three different watersheds are tributary to the property, conveying storm water runoff to the site which pass under Kaumuali'i Highway. Adequate flood protection must be provided to protect proposed structures from storm events. Additionally, drainage systems must be provided to provide for proper drainage of the site.
- The cottages, restaurants and other facilities will generate wastewater, which must be managed appropriately.
- The resort will require electrical, telephone and cable television service.
- A potable water system will be required to service the site, but is not included within the scope of this report.
- The resort will generate a significant amount of solid waste to be disposed.

This report provides solutions and recommendations for these aspects of the resort.

## Summary

Analysis of the various engineering aspects of the Kapalawai Master Plan indicates that the following measures should be taken.

Flood protection of proposed structures can be provided by elevating structures along the coastal flood zone to the flood zone elevation, and elevating structures to the determined flood fringe elevations in the vicinity of the existing watercourses. Additionally, site drainage systems are proposed in streets and parking areas to provide for vehicular safety, and for the drainage of runoff away from buildings. Drainage systems outlet at existing watercourses or detention areas prior to entering the ocean.

The County's nearest wastewater treatment facility is located approximately 2.5 miles distant just west of Waimea Town. It's present service area extends only as far east as the Waimea River and no further west than the plant itself. The plant capacity is 300,000 gpd and is presently operating at design capacity. Preparation of facility expansion plans was began sometime ago but the plans have not been completed. The County presently has no plans to expand the service area.

As such, a project of this magnitude requires its own wastewater collection system, treatment plant and effluent disposal system. The collection system includes four wastewater pumping stations to deliver the raw sewage to the treatment plant. As no municipal wastewater treatment plant is available in the area, a new plant is proposed, which will treat the sewage to a minimum of R-2 quality, per State of Hawaii Department of Health standards. The treated effluent will then be used for irrigation purposes, on or near the project site. The ultimate irrigation use will be a significant factor in determining the level of treatment of the wastewater.

Electrical, telephone and cable television utilities are readily available on existing overhead lines on Kaumuali'i Highway on the mauka boundary of the property. Riser poles will route these facilities underground to serve the proposed entirely underground system.

Generation of solid waste by the project shall be minimized by implementation of aggressive recycling programs, to help lessen the impacts on the County of Kauai's available landfill capacity.

Site development work for the project will require County of Kauai grading permits, as well as County review of the drainage analysis and building protection precautions. Other potential permits include a Department of the Army permit, from the U.S. Army Corps of Engineers for the bridge crossings of the stream, State Health Department permits, Clean Water Act permit, a National Pollutant Discharge Elimination System (NPDES) permit, also a stream alteration permit from the State Department of Land and Natural Resources.

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Flood Hazard Areas

According to the Flood Insurance Rate Map (FIRM) for Kauai County, Hawaii, Panel 160 of 225 (March 4, 1987), a portion of the site, varying in width from three hundred to six hundred feet wide along the shore, lies within Special Flood Hazard Area Zone AE (Elevation 11). All structures within the Special Flood Hazard Area must be elevated above 11 feet MSL. The flood hazard areas are illustrated on Figure 2.

Off-Site Drainage

Three off-site drainage basins are tributary to the project. According to the United States Geological Survey Map, Hanapepe and Waimea Canyon Quadrangles, they are, from west to east, the Nonopahu Ridge drainage basin (830 acres), the Waipao Valley drainage basin (4,617 acres), and the Aakukui Valley drainage basin (3,107 acres). All three drainage courses drain under Kaumuali'i Highway to the project site, and into Hoanuanu Bay. See Figure 1 for an illustration of these drainage basins.

*Nonopahu Ridge Drainage Basin*

In the 100-year storm event, the Nonopahu Ridge drainage basin generates a peak flow of 1,578 cubic feet per second (cfs). Storm water from the drainage basin sheet flows makai and is also collected in a manmade ditch found in the plantation's Akia field system. Two existing 36" culverts convey runoff under Kaumuali'i Highway to the project site. The culverts do not have the capacity to accommodate the 100-year storm event, so the highway may be overtopped during the 100-year storm event or flows back up and drain to other outlets under the highway.

Makai of the highway, the manmade ditch continues, conveying runoff and sugarcane irrigation filter discharge from the 36" culvert towards the ocean to a "bog" area near the shore. The bog area is used as a settling basin by the plantation for the runoff and irrigation water. Development of the Kapalawai Master Plan will require that a drainage course be provided to safely convey runoff from major storm events without adversely impacting the development. A six foot deep trapezoidal grass channel, bottom width of thirty feet and overall top width of fifty-four feet, will accommodate the 100-year storm with two feet of freeboard. The new channel will route runoff through the west portion of the project and outlet into a retention basin in the vicinity of the "bog" area which will allow for sediment collection and controlled release to the sea.

Gay & Robinson Inc. is presently constructing a new retention basin within the Nonopahu drainage basin mauka of the highway for collection of silt and runoff. Collected runoff will then be pumped for irrigation of mauka lands. The basin capacity is approximately 3.4 acre – feet, which will only have a minimal impact on the peak discharge during a major storm, but will assist in silt and sediment control. Additionally, the retention basin will control minor storm and irrigation discharges from reaching the project site.





*Waipao Valley Drainage Basin*

In the 100-year storm event, the Waipao Valley drainage basin generates a peak flow of 5,491 cubic feet per second (cfs). The Waipao Valley drainage basin concentrates into Mahaikona Stream and is conveyed under an overpass on Kaumuali'i Highway, and then into a well defined, rock wall reinforced drainage channel all the way to the ocean. The existing stream is approximately thirty-six feet wide, three to four feet deep, and clear of flow obstructions. However, in the 100-year storm event, the stream will flood, and structures within the 100-year flood fringe must be elevated above the base flood elevation.

The water surface elevation immediately makai of the highway will be approximately 13' MSL, dropping soon to 12' MSL. From there in the makai direction, the Zone AE Special Flood Hazard Area at 11' MSL controls the regulatory water surface elevation.

*Aakukui Valley Drainage Basin*

In the 100-year storm event, the Aakukui Valley drainage basin generates a peak flow of 3,794 cubic feet per second (cfs). The Aakukui Valley drainage basin watercourse is conveyed under an overpass on Kaumuali'i Highway, and then into a drainage channel all the way to the ocean. The existing watercourse is approximately twelve feet wide, two to three feet deep, and overgrown in places. In the 100-year storm event, the watercourse will flood, and structures within the 100-year flood fringe must be elevated above the base flood elevation. The water surface elevation at the highway is dictated by the backwater effect of the Special Flood Hazard Area Zone AE along the shore at 11' MSL. All structures within the Aakukui Stream flood fringe makai of the highway must be elevated above elevation 11' MSL.

Construction within Flood Hazard Areas

Structures constructed within the flood fringe of the Waipao Valley watercourse must be elevated such that the lowest supporting member of the lowest floor is at or above the 100-year storm event water surface elevation. Structures within the flood fringe must have the lowest floor elevated to, or above the 100-year storm event water surface elevation. All structures constructed within flood hazard areas must also comply with all the requirements of Section 15-1, Flood Plain Management, of the Kauai County Code. The flood hazard areas affecting the project are illustrated on Figure 2.

On-Site Drainage

Aside from the three existing watercourses from Waipao Valley, Aakukui Valley and the ditch from Nonopahu Ridge which traverse the project site, the remainder of the site

slopes from the highway to the ocean at approximately four percent immediately makai of the highway, to approximately one percent at the shoreline. The natural sheet flow drainage pattern has a minimum erosive effect on the site.

Peak flow runoff for a 100-year storm event from the site will increase from approximately 310 cfs in the undeveloped condition, to 589 cfs in the developed condition. The increase of 279 cfs in the 100-year storm event is insignificant when compared to the total offsite flow of 10,863 cfs from the three mauka watersheds which are tributary to the property.

It should be noted that the spring-fed fishpond proposed for the project is not a significant factor in the drainage of the property. Land immediately upstream of the fishpond will sheet flow into the pond, and the fishpond will overflow into the ocean, not into one of the existing drainage courses. During a significant storm event, the fishpond will be inundated.

Drainage systems are proposed in certain areas to control flooding of access roads and parking areas. Drainway 'A' (the proposed grass-lined channel) will outlet to a retention area near the west boundary of the project at the shore. Drain line 'B', a storm drain system, will out into Drainway 'A'. Drain line 'C', a storm drain system, will outlet into an open lawn area downstream of the fishpond. Drain line 'D', a storm drain system, will outlet into the Mahaikona Stream flood fringe area. The remainder of the site shall be graded to approximate the existing condition, to promote sheet flow runoff from the property. The proposed drainage systems are illustrated on Figure 2.

Proper and regular maintenance of the existing streambeds and the proposed grass-lined channels is essential to ensure maximum flood protection for the project. Maintenance of Aakukui Stream, which is currently overgrown in some places, will significantly improve its capacity. Below is a listing of the peak discharges during 10 year, 50 year, and 100 year storm events for the various basins considered.

| Drainage Basin | $Q_{10}$ (cfs) | $Q_{50}$ (cfs) | $Q_{100}$ (cfs) |
|---|---|---|---|
| Nonopahu Ridge | 513 | 1,193 | 1,578 |
| Waipao Valley | 1,823 | 4,168 | 5,491 |
| Aakukui Valley | 1,258 | 2,879 | 3,794 |
| On-site (undeveloped) | 94 | 262 | 310 |
| On-site (developed) | 306 | 532 | 589 |

TABLE 1 – PEAK RUNOFF





Collection System

The proposed wastewater collection system includes approximately 14,600 linear feet of gravity sewer main, 15,500 feet of sewer laterals, 4,200 linear feet of force main, 44 sewer manholes, 4 sewage pumping stations and one sewage treatment plant. Three of the pumping stations are located near the shoreline in order to receive flows from the proposed cottages and the other proposed facilities along the beach. These three pumping stations lift wastewater to the main pumping station for the project, which will lift waste to the sewage treatment plant. The proposed collection system is illustrated on Figure 3.

The four pumping stations will be equipped with backup power generation capability in the event of a power failure by the electric utility.

Proper design, operation, and maintenance of the pumping stations will assist in controlling odor problems. However, in order to prepare for the possibility of unforeseen odor problems, the stations should be designed to readily accommodate the addition of odor scrubbers, biofilters, or other appropriate odor-inhibiting appurtenances.

Sewage Treatment Plant

Wastewater flows can be estimated by considering an estimated return of potable water to the sewer system based upon certain return factors, as shown in the table below.

| | | | | Projected Water Use | | | Projected Wastewater Flow | |
|---|---|---|---|---|---|---|---|---|
| Land Use | No. | Unit | Use Rate (GPD/Unit) | Year Round Average | Peak Season (MGD) | Return Factor | Year Round Average | Peak Season (MGD) |
| Cottages | 200 | ea. | 300 | 0.0675 | 0.1313 | 85% | 0.0481 | 0.0722 |
| Restaurants (2) | 240 | seats | 40 | 0.0288 | 0.0144 | 85% | 0.0092 | 0.0184 |
| Fitness Center | 2,000 | sq ft. | LS | 0.0050 | 0.0075 | 85% | 0.0033 | 0.0049 |
| Snack Bar | 50 | seats | 40 | 0.0020 | 0.0030 | 85% | 0.0013 | 0.0020 |
| Tennis Clubhouse | 2,000 | sq ft. | LS | 0.0050 | 0.0075 | 85% | 0.0033 | 0.0048 |
| Admin. (Village Center) | 11,132 | sq ft. | 200 per 1,000 sq ft | 0.0022 | 0.0033 | 85% | 0.0014 | 0.0022 |
| Registration Building | | | LS | 0.0018 | 0.0015 | 85% | 0.0007 | 0.0010 |
| Cart Storage | | | LS | 0.0010 | 0.0015 | 85% | 0.0007 | 0.0010 |
| STP and Maintenance | | | LS | 0.0020 | 0.0030 | 85% | 0.0013 | 0.0020 |
| Existing Plantation Homes | 8 | ea. | 400 | 0.0032 | 0.0048 | 85% | 0.0018 | 0.0028 |
| | | | | Totals: | 0.1185 | 0.1778 | 0.0680 | 0.1020 |

TABLE 2 – PROJECTED WASTEWATER FLOWS

A proposed wastewater treatment facility must also be capable of accommodating peak diurnal flows from the development. According to the County's Maximum Rate of Flow Chart, by Babbit, a peaking factor of 5.0 should be applied to the peak season flow of 0.1020 MGD, for a peak flow of 0.51 MGD.

Estimates for wastewater flow must also include infiltration. A common limit for an acceptable level of infiltration in a sewer system is approximately 500 gallons per day per

inch-mile of pipe. As shown in the table below, this results in an estimated infiltration rate of 20,000 gallons per day, or 0.02 MGD. The treatment plant must therefore be sized for an average flow of approximately 0.12 MGD, and a peak flow of 0.53 MGD.

| Pipe Diameter (inches) | Total Length of Pipe (feet) | Infiltration (gallons per day) |
|---|---|---|
| 6 | 15,480 | 6,795 |
| 8 | 14,600 | 11,061 |
| | | 19,856 |

TABLE 3 – ESTIMATED INFILTRATION

Treatment of the wastewater to the R-1 level according to State of Hawaii Department of Health Standards would ensure the greatest facility in reuse of the effluent after treatment. However, treatment to R-2 levels would also provide satisfactory treatment and allow for certain options in effluent reuse.

Disposal

A sewage treatment plant produces a solid product (sludge, or biosolids), and a liquid product (effluent) for disposal or reuse.

*Biosolids*

The biosolids can be safely disposed of at the County's Kekaha Municipal Landfill, as the County does with the biosolids from its own wastewater treatment plants. The biosolids must pass a 'Paint Filter Test' at the landfill to ensure that it is sufficiently dewatered prior to disposal.

The biosolids can also be used in a small on-site composting operation. Combined with greenwaste generated from landscaping maintenance operations on the project, compost could then be reused to enhance the development's landscaping.

*Effluent*

Options for disposal of the effluent include ocean outfall, injection well, rapid infiltration and irrigation. The best possible use of the effluent, especially on the west side of Kauai where weather is hot and dry and water is a precious resource, is to reuse the effluent by irrigation. Therefore, the method of choice for disposal at Kapalawai will be irrigation.

The 3.5 acre orchard adjacent to the treatment plant provides an opportunity for disposal of the effluent by drip or spray irrigation. In order to dispose of the average flow of 0.1 MGD, approximately one inch of water per day must be irrigated over a 3.5 acre area. If the effluent will be treated to the R-1 level, it may be used to spray irrigate other areas around the development with few restrictions, whereas R-2 quality effluent could be used for drip irrigation.





The County of Kauai's only municipal solid waste landfill is located in Kekaha, approximately seven miles to the west. The landfills capacity and life span was severely shortened after receiving waste from Hurricane Iniki in 1992. At present, the landfill has about 5 ½ years of capacity remaining.. The Kapalawai development will implement aggressive recycling programs to minimize its impact on the County's diminishing landfill capacity.

Based upon other resorts in the state, a project the size of the Kapalawai development can be expected to generate seventy to ninety cubic yards of waste per week. Much of this waste is recyclable, as follows (on a weekly basis):

| RECYCLABLE WASTE | | |
|---|---|---|
| Item | Source | Approximate Weekly Volume |
| Cardboard | Delivery of packaged goods; miscellaneous | 5 to 10 cubic yards |
| Glass | Food storage containers from restaurants; miscellaneous | 3 cubic yards |
| Aluminum cans | Beverage containers; miscellaneous | 1 cubic yard |
| Paper | Administration and registration offices; miscellaneous | 1 cubic yard |

TABLE 4 – RECYCLABLE SOLID WASTE

Garden Island Disposal is the only commercial solid waste hauler on the Island. Garden Island also has contracted with the County of Kauai to handle recycling of the above materials. The key to any successful recycling program is maintaining a clean, uncontaminated waste stream. The Kapalawai project should be able to recycle approximately 15% of its solid waste, as indicated above.

In addition, the following items may be diverted from the landfill:

*Plastic:* Currently, only number 2 plastics are recyclable on Kauai. Though not a significant portion of the waste stream, recycling of plastic fits in well as part of a larger recycling program, and may grow to include other types of plastic in the future.

*Food Waste:* Restaurant food waste can be composted on-site and reused in project landscaping.

*Greenwaste:* The volume of greenwaste generated from landscape maintenance can be significant. The greenwaste can be composted on site, or delivered to the Kekaha landfill where the County already has a greenwaste program in operation.

Electric, telephone and cable television service from Kauai Electric, GTE Hawaiian Tel and Garden Isle Telecommunications are readily available on overhead lines on Kaumuali'i Highway.

Services will be brought underground from one or more of the several utility poles fronting the project, and looped through the development to serve the various buildings. High voltage primary electric service will be extended to several different points within the project and transformed for service to the various buildings. The cottages are to be serviced with power only and telephone and cable service will be extended to common area such as the restaurant and other guest service areas. The proposed underground service is illustrated on Figure 4.



1. Standard Handbook for Civil Engineers, Third Edition, Frederick S. Merritt, 1983

2. Manual of Septic-Tank Practice, U.S. Department of Health, Education and Welfare, 1972

3. Potable Water and Irrigation Systems to Supply the Kapalawai Resort, Island of Kauai, Hawaii, Tom Nance Water Resource Engineering, March, 1999

4. Sewer Design Standards, Department of Public Works, County of Kauai, June, 1973

5. Storm Drainage Standards, Department of Public Works, County of Kauai, February, 1972

6. Kauai County Code, 1987

7. Erosion and Sediment Control, Guide for Hawaii, Soil Conservation Service, 1981.

Soil Survey of Islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii, Soil Conservation Service, 1972.

| Storm Drainage | | | | |
|---|---|---|---|---|
| Item | Quantity | Unit | Unit Cost | Cost |
| grass swale | 2,500 | lf | $80 | $200,000 |
| 18" storm drain | 1,100 | lf | $40 | $44,000 |
| 24" storm drain | 800 | lf | $55 | $44,000 |
| 30" storm drain | 500 | lf | $60 | $30,000 |
| 36" storm drain | 300 | lf | $70 | $21,000 |
| 42" storm drain | 300 | lf | $80 | $24,000 |
| drainage inlet | 15 | ea | $5,000 | $60,000 |
| drainage structure | 7 | ea | $10,000 | $70,000 |
| | | | storm drain total: | $523,000 |

| Wastewater System | | | | |
|---|---|---|---|---|
| Item | Quantity | Unit | Unit Cost | Cost |
| 6" sewer | 15,400 | lf | $25 | $397,000 |
| 8" sewer | 14,500 | lf | $35 | $511,000 |
| 6" force main | 4,200 | lf | $30 | $126,000 |
| sewer manhole | 44 | ea | $7,500 | $330,000 |
| sewage pumping station | 4 | ea | $75,000 | $300,000 |
| sewage treatment plant | 1 | ls | $600,000 | $600,000 |
| composting facility | 1 | ls | $100,000 | $100,000 |
| effluent irrigation system | 1 | ls | $100,000 | $100,000 |
| | | | wastewater total: | $2,464,000 |

| Electrical, Telephone, Cable Television (Infrastructure Only) | | | | |
|---|---|---|---|---|
| Item | Quantity | Unit | Unit Cost | Cost |
| conduit-HE, HT, CATV | 8,600 | lf | $5 | $43,000 |
| conduit-HE for Cottages | 19,700 | lf | $2 | $39,400 |
| pullboxes-HE, HT, CATV | 28 | ea | $2,000 | $56,000 |
| pullboxes-HE | 40 | ea | $750 | $30,000 |
| transformers-HE | 24 | ea | $2,200 | $52,800 |
| trench | 28,300 | lf | $4 | $113,200 |
| | | | electrical, telephone, cable tv total: | $334,400 |

| Roadways & Parking | | | | |
|---|---|---|---|---|
| Item | Quantity | Unit | Unit Cost | Cost |
| pavement | 300,000 | sf | $2 | $600,000 |
| bridge | 1 | ea | $100,000 | $100,000 |
| finish grading | 400,000 | sf | $0.20 | $80,000 |
| | | | roadways total: | $780,000 |

| | | |
|---|---|---|
| | subtotal: | $4,091,400 |
| contingency | 10% | $409,140 |
| | total: | $4,500,540 |

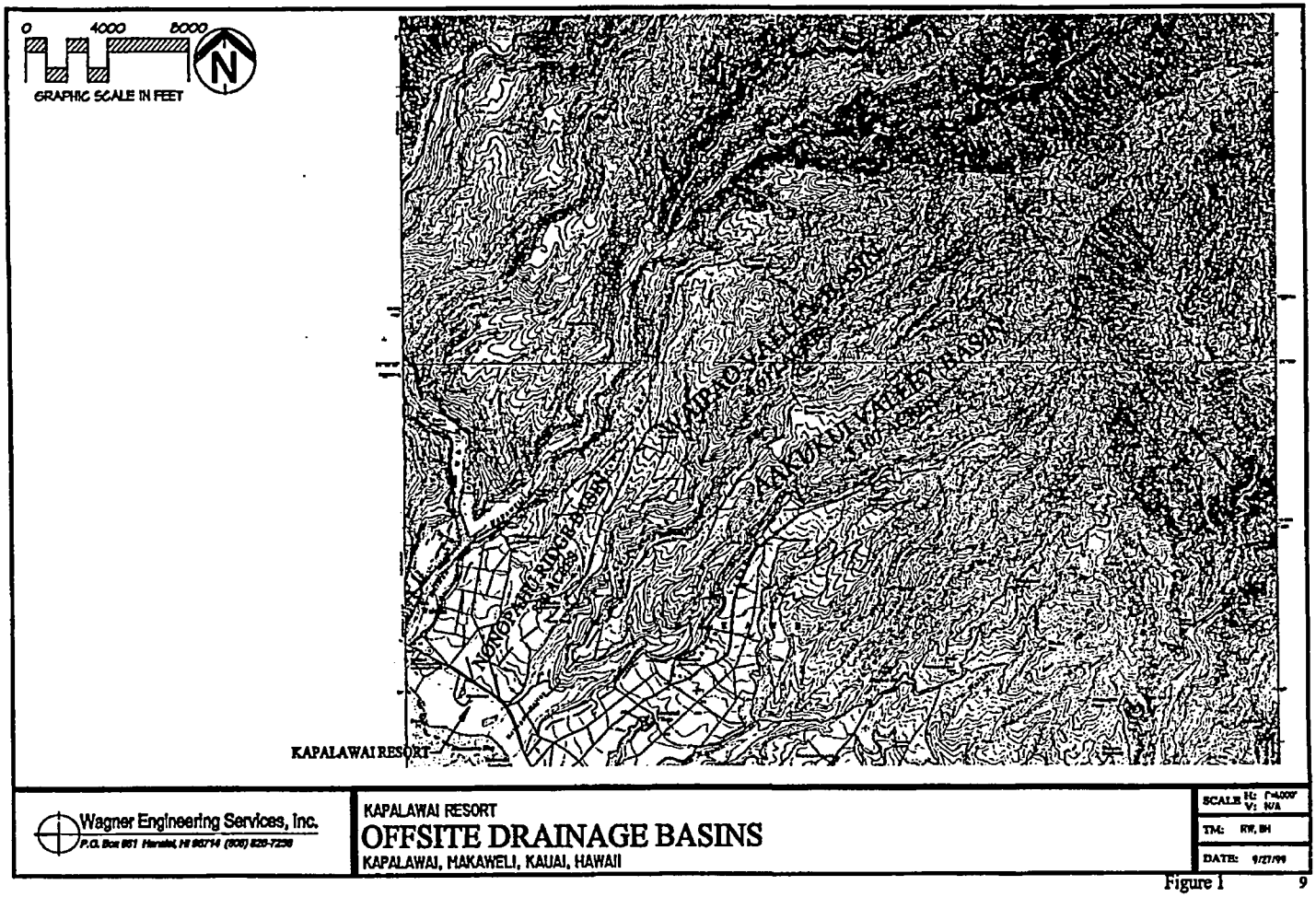

0
4000
8000
N
GRAPHIC SCALE IN FEET
KAPALAWAI RESORT
Wagner Engineering Services, Inc.
P.O. Box 861 Hanalei, HI 96714 (808) 826-7236
KAPALAWAI RESORT
OFFSITE DRAINAGE BASINS
KAPALAWAI, MAKAWELI, KAUAI, HAWAII
SCALE H: 1"=4000'
V: N/A
TM: RW, BH
DATE: 9/27/99

Figure 1

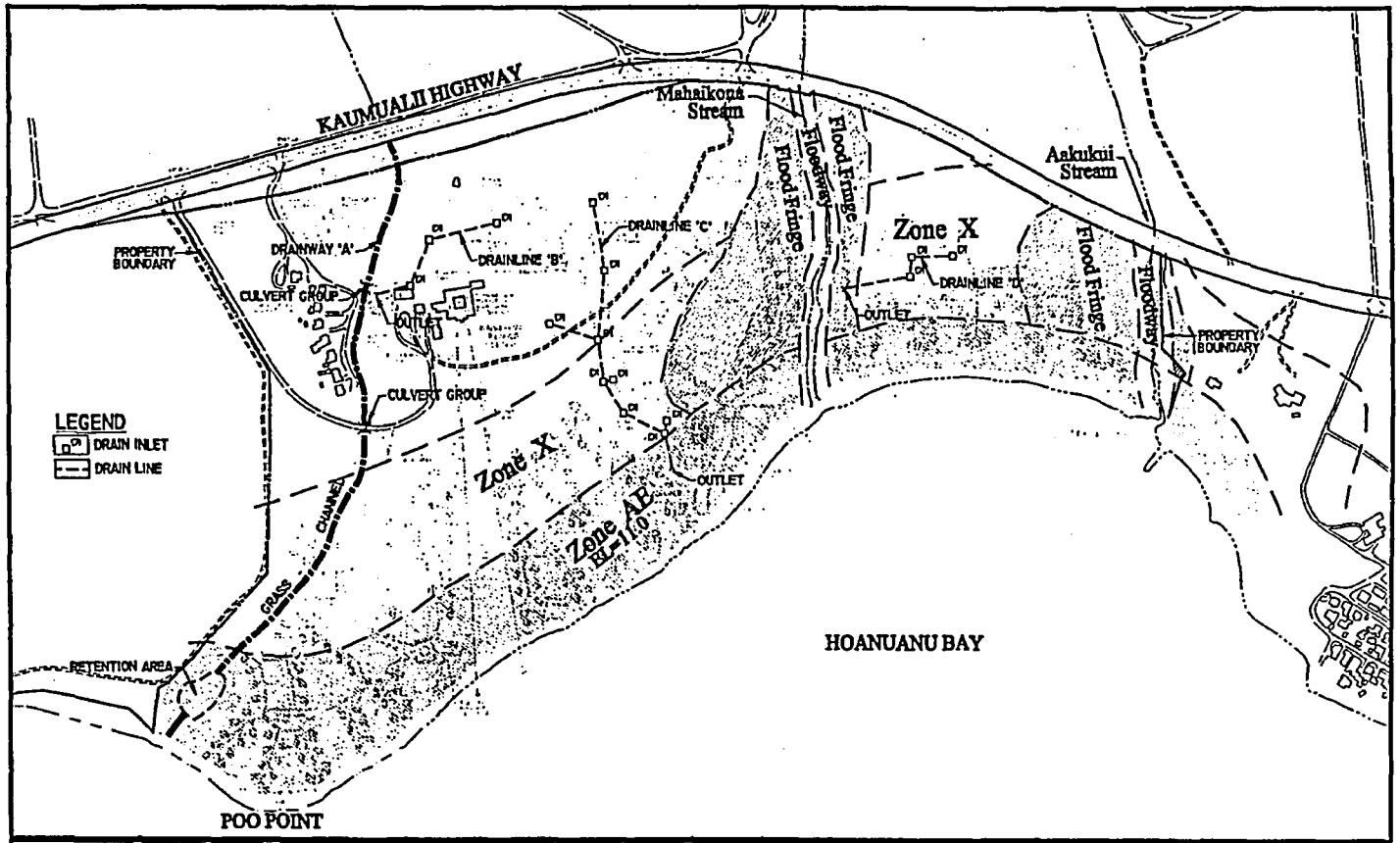

KAUMUALII HIGHWAY
Mahaikopa Stream
Aakukui Stream
Flood Fringe
Floodway
Zone X
PROPERTY BOUNDARY
DRAINWAY 'A'
DRAINLINE 'B'
DRAINLINE 'C'
DRAINLINE 'D'
CULVERT GROUP
OUTLET
LEGEND
DRAIN INLET
DRAIN LINE
Zone AE
EL=1.0'
CHANNEL
GRASS
RETENTION AREA
HOANUANU BAY
POO POINT
Wagner Engineering Services, Inc.
P.O. Box 861 Hanalei, HI 96714 (808) 826-7256
KAPALAWAI RESORT
PRELIMINARY DRAINAGE PLAN
KAPALAWAI, MAKAWELI, KAUAI, HAWAII
SCALE H: 1"=400' V: N/A
TM: RR, BR, LD
DATE: 9/27/99

Figure 2

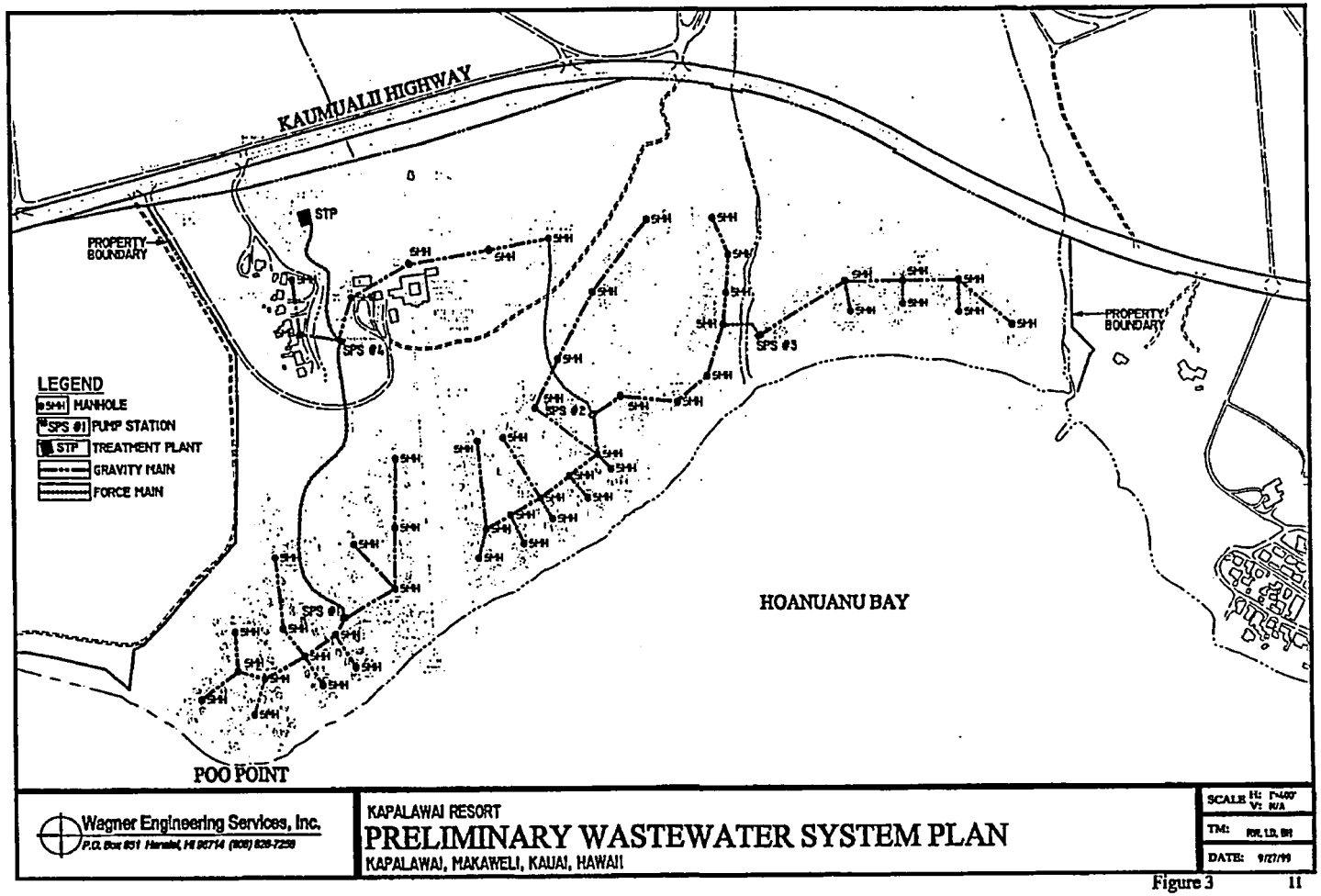

KAUMUALII HIGHWAY
STP
PROPERTY BOUNDARY
SPS #4
SPS #3
SPS #2
SPS #1
PROPERTY BOUNDARY
LEGEND
MANHOLE
PUMP STATION
TREATMENT PLANT
GRAVITY MAIN
FORCE MAIN
HOANUANU BAY
POO POINT
Wagner Engineering Services, Inc.
P.O. Box 851 Hanalei, HI 96714 (808) 826-7259
KAPALAWAI RESORT
PRELIMINARY WASTEWATER SYSTEM PLAN
KAPALAWAI, MAKAWELI, KAUAI, HAWAII
SCALE H: 1"=400' V: N/A
TM: 5-5-001: 89
DATE: 9/27/99

Figure 3

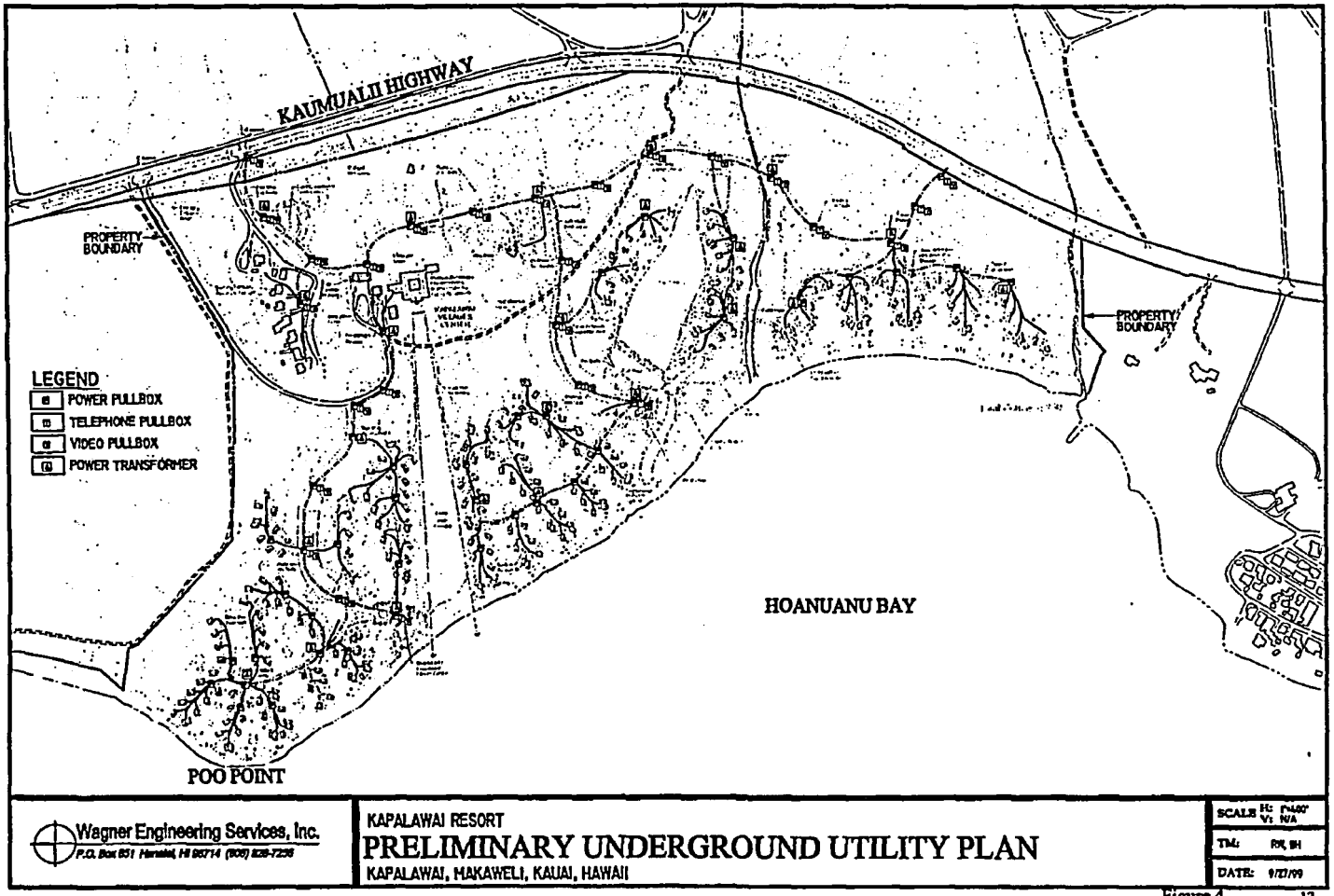

KAUMUALII HIGHWAY
PROPERTY BOUNDARY
PROPERTY BOUNDARY
LEGEND
POWER PULLBOX
TELEPHONE PULLBOX
VIDEO PULLBOX
POWER TRANSFORMER
HOANUANU BAY
POO POINT
Wagner Engineering Services, Inc.
P.O. Box 651 Hanalei, HI 96714 (808) 826-7236
KAPALAWAI RESORT
PRELIMINARY UNDERGROUND UTILITY PLAN
KAPALAWAI, MAKAWELI, KAUAI, HAWAII
SCALE H: 1"=400' V: N/A
TM: RK 9H
DATE: 9/27/99

Figure 4



# J

## POTABLE WATER AND IRRIGATION SYSTEMS

TOM NANCE
WATER RESOURCE ENGINEERING

# Potable Water and Irrigation Systems to Supply the Kapalawai Resort, Island of Kauai, Hawaii

*Prepared for:*

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Honolulu, Hawaii 96813

*Prepared by:*

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680 Ala Moana Boulevard - Suite 406
Honolulu, Hawaii 96813

March 1999

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## Introduction

This brief report describes the potable water and irrigation systems that would be developed to supply the Kapalawai Resort on the southwest shoreline of the island of Kauai. Both of these systems will be privately developed and operated because service from the Kauai Department of Water (DOW) is not available in this area. DOW's Waimea system ends at the Waimea River, 0.8 miles west of Kapalawai. It does not have sufficient source capacity if its pipelines were extended to the project site. DOW's system serving the Hanapepe area ends four miles to the east of Kapalawai.

The choice to develop a dual (potable and irrigation) water system will take advantage of the supply potential of the five-acre, spring-fed pond which exists in the center of the project site. Drawing water from this lake will augment its natural turnover rate, improving its water clarity while providing irrigation supply. It also allows elements of the potable system to be downsized accordingly.

## Projected Water Use

Table 1 is a compilation of projected potable water use for the project. Use rates for this projection are generally in accord with DOW standards. The project's year-round average potable water use is projected to be approximately 0.12 million gallons per day (MGD). Peak seasonal use may be about 50 percent greater or approximately 0.18 MGD.

The areas to be irrigated by the non-potable system are listed in Table 2. Year-round and peak season evapotranspiration rates of landscaping have been estimated from the rainfall and evaporation data of nearby Station 962.00 (Olokele Sugar Company's Field 30) with an additional 10 percent allowance for application inefficiencies. Kapalawai is a generally dry area with about 25 inches of rain annually. Its rate of evaporation often exceeds 10 inches in summer months and 90 inches annually (Table 3). Based on these data, irrigation application rates in the summertime may be as high as 10,200 gallons per day per acre. Year-round irrigation use for the project is estimated to be 0.35 MGD. In the summer months, the rate could be as high as 0.66 MGD.

## Hydro-Geologic Conditions

The project area lies on a wedge of coastal sediments which are comprised of alluvium on the inland side and grade into beach sands on the coastal side. On the mauka side of the highway, most of the land is covered by the island's later stage Koloa volcanics. However, there are outcrops of the



Table 1

Projected Potable Water Requirements of the Kapalawai Resort

| Land Use | No. | Unit | Use Rate (GPD/Unit) | Projected Water Use | |
|---|---|---|---|---|---|
| | | | | Year-Round Average (MGD) | Peak Season (MGD) |
| Cottages | 250 | Ea | 350 | 0.0875 | 0.1312 |
| Restaurants (2) | 240 | Seats | 40 | 0.0096 | 0.0144 |
| Fitness Center | 2,000 | $Ft^2$ | LS | 0.0050 | 0.0075 |
| Snack Bar | 50 | Seats | 40 | 0.0020 | 0.0030 |
| Tennis Clubhouse | 2,000 | $Ft^2$ | LS | 0.0050 | 0.0075 |
| Admin (Villages Center) | 11,132 | $Ft^2$ | 200/1000 $ft^2$ | 0.0022 | 0.0033 |
| Registration Building | -- | -- | LS | 0.0010 | 0.0015 |
| Cart Storage | -- | -- | LS | 0.0010 | 0.0015 |
| STP and Maintenance | -- | -- | LS | 0.0020 | 0.0030 |
| Existing Plantation Homes | 8 | Ea. | 400 | 0.0032 | 0.0048 |
| Total | | | | 0.1155 | 0.1777 |

Table 2

Projected Irrigation Supply Requirements
for the Kapalawai Resort

| Land Use | Irrigated Area (Acres) | Required Supply | |
|---|---|---|---|
| | | Average (MGD) | Peak Season (MGD) |
| Roadways | 5.9 | 0.0329 | 0.0602 |
| Orchard | 3.5 | 0.0195 | 0.0357 |
| Villages Center | 9.2 | 0.0513 | 0.0938 |
| Plantation Houses | 3.2 | 0.0178 | 0.0326 |
| Cottages | 42.5 | 0.2369 | 0.4335 |
| Total | 64.3 | 0.3585 | 0.6559 |

Note: Applied rates are the irrigation deficit, as defined in Table 3, increased by 10% for application inefficiencies. These are equivalent to 5575 and 10,200 GPD/acre for year-round average and the peak season.



Table 3

Rainfall and Pan Evaporation From Station 962.00
(Field 30 of Olokele Sugar Company)

| Month | Long-Term Average | | | Dry Year - 1970 | | |
|---|---|---|---|---|---|---|
| | Rainfall (Inches) | Evaporation (Inches) | Irrigation Deficit (Inches) | Rainfall (Inches) | Evaporation (Inches) | Irrigation Deficit (Inches) |
| January | 4.72 | 5.22 | 0.00 | 5.46 | 5.08 | 0.00 |
| February | 2.80 | 5.30 | 2.50 | 0.74 | 5.52 | 4.78 |
| March | 2.60 | 7.03 | 4.43 | 0.08 | 8.32 | 8.24 |
| April | 1.77 | 7.77 | 6.00 | 0.22 | 9.73 | 9.51 |
| May | 1.10 | 8.96 | 7.86 | 2.06 | 10.11 | 8.05 |
| June | 0.47 | 9.40 | 8.93 | 0.00 | 10.46 | 10.46 |
| July | 0.51 | 9.68 | 9.17 | 0.44 | 10.49 | 10.05 |
| August | 0.91 | 9.50 | 8.59 | 0.00 | 10.65 | 10.65 |
| September | 0.94 | 8.24 | 7.30 | 0.87 | 8.43 | 7.56 |
| October | 2.44 | 7.71 | 5.27 | 2.23 | 7.46 | 5.23 |
| November | 2.56 | 6.16 | 3.60 | 2.84 | 5.18 | 2.34 |
| December | 4.09 | 5.50 | 1.41 | 0.69 | 6.91 | 6.22 |
| Annual | 24.80 | 92.94 | 68.14 | 15.39 | 98.34 | 82.57 |

Notes:
1. Pan evaporation data for Station 962.00 taken from Ekern & Chang (1985).
2. Adjusted long-term average rainfall taken from Giambelluca, Nullet, & Schroeder, 1986.
3. Rainfall for Station 962.00 in 1970 obtained from unpublished data in the files of the State Water Commission.

older Makaweli formation (as mapped in MacDonald, Davis, & Cox, 1960) which are directly inland from the project site and also comprise the ridge which separates the Waipao and Aakukui Valleys. These outcrops suggest that the more recent Koloa lavas in this area are likely to be a relatively thin cover over the older lava formation. Based on changes in ground slope and water quality data from the spring-fed pond discussed subsequently, the seaward limit of the Koloas in this location may actually end somewhere beneath the project site rather than extend to and beyond the shoreline.

The five-acre, spring-fed pond on the project site is an interesting feature. Although it is now almost half filled with silt and is heavily overgrown by vegetation, there are two discrete springs which are easily identified by water quality and temperature contrasts. By these same indications, there are also other springs in the pond which are more difficult to specifically locate. One of the two easily identifiable springs is at the inland end of the pond (Site 1 on Figure 1). Its water is relatively warm (72.0° F), has a notably high silica concentration, and has a salinity as low as many sources of drinking water (Table 4). This water is likely to be discharging from the Koloa formation, possibly at its seaward end.

As this water moves across the pond, its salinity becomes slightly elevated and there is some dilution of its silica concentration (Sites 2 and 3 on Figure 1 and in Table 4). The second identifiable spring is in a hydraulically separate arm of the pond which is much closer to the shoreline (Site 4 on Figure 1). Water issuing from the bottom of this makai portion the pond is much colder (67.5° F), has only about half the silica concentration, and is lower in nitrogen and phosphorus. The temperature and silica differences suggest that the two identifiable springs are discharging from different aquifers. Water from the makai spring may be derived from the older Makaweli volcanics at depth and its nutrient levels may be altered by passage through the coastal sediments into the pond.

Figure 2 presents the recorded water level variation in the pond at three different locations: at the upper (mauka) end of the main pond; at the makai end of the main pond and about 80 feet away from the rectangular culvert which connects to the makai pond; and in the makai pond, about 100 feet downstream of the connecting culvert. These water levels are about five feet above mean sea level. At all three sites, there is a level fluctuation in response to the ocean tide, with slightly less amplitude and greater lag time at the upper end of the main pond.

The connecting culvert has provisions for the installation of a gate to isolate the two ponds, although the actual gate is no longer in place. Based on numerous observations, there is a continuous mauka-to-makai movement of water through the culvert. Using a Pygmy propeller-type velocity meter



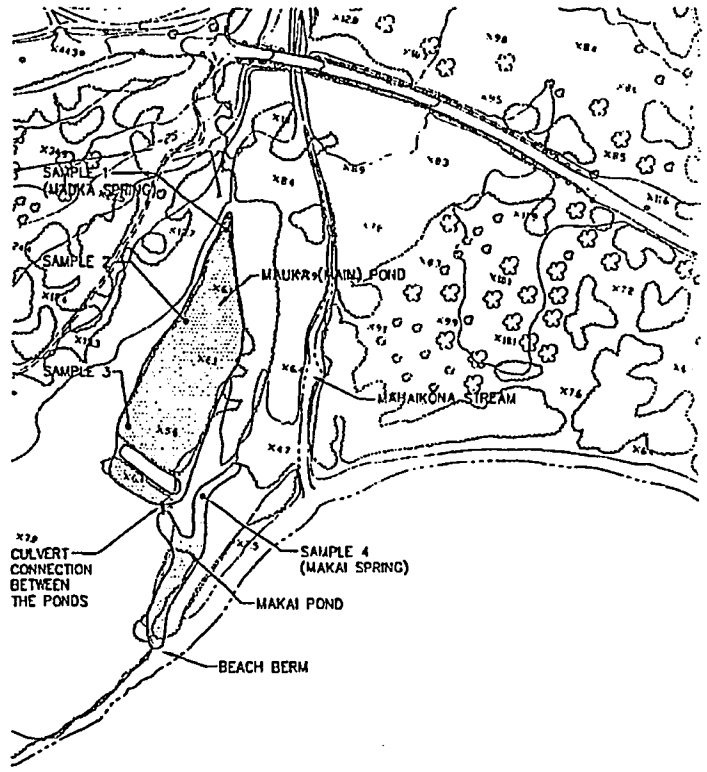



FIGURE 1
WATER QUALITY SAMPLING SITES
AT THE KAPALAWAI POND

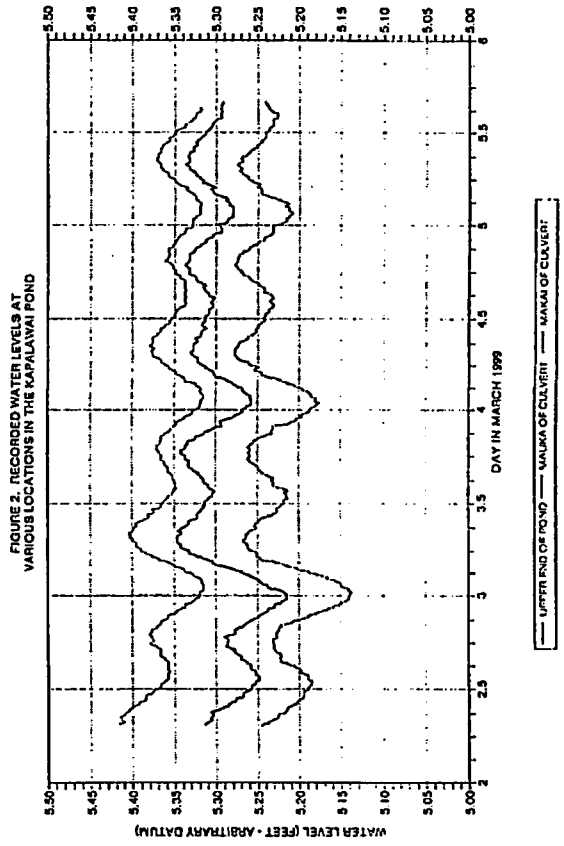
Table 4

Water Quality at Selected Locations of the Five-Acre, Spring-Fed Pond

| Constituent | Units | Sampling Site | | | |
|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 |
| In-Situ Temperature | °F | 72.0 | 72.7 | 72.8 | 67.5 |
| Chlorides | MG/L | 90 | 191 | 244 | 220 |
| Salinity | PPT | 0.324 | 0.438 | 0.690 | 0.518 |
| Silica (as $SiO_2$) | MG/L | 55 | 55 | 51 | 29 |
| Nitrate (as N) | MG/L | 2.11 | 2.35 | 1.24 | 0.03 |
| Ammonium (as N) | MG/L | 0.02 | 0.02 | 0.02 | 0.19 |
| Dissolved Organic Nitrogen | MG/L | 0.16 | 0.19 | 0.27 | 0.44 |
| Total Nitrogen | MG/L | 2.29 | 2.56 | 1.54 | 0.68 |
| Phosphate (as P) | MG/L | 0.14 | 0.16 | 0.11 | 0.06 |
| Dissolved Organic Phosphorus | MG/L | 0.02 | 0.02 | 0.02 | 0.03 |
| Total Phosphorus | MG/L | 0.16 | 0.18 | 0.13 | 0.09 |

Note: Samples collected by TNWRE on December 18, 1998 and analyzed by Marine Analytical Specialists.





and the culvert's dimensions, this discharge rate was measured to be 1.8±0.1 MGD on both falling (March 1, 1999 at 8:00 a.m.) and rising (March 5, 1999 at 4:00 p.m.) tides. These measurements approximate the net discharge rate of springs in the larger, mauka pond. This flow combines with spring flow in the makai pond and discharges through the wave-built beach berm at the seaward end of the makai pond. Despite the significant magnitude of this flowrate, no leakage through the berm is visible or detectable as a change in nearshore salinity, even at low tide.

No wells have been drilled upgradient of the project site where supply for the potable system will have to be developed. Based on the surficial geology, the well would be started in Koloa lavas but is likely to reach the older, Makaweli formation of the Waimea series lavas before reaching sea level. As such, groundwater in this lower formation would be the source of supply for the potable system.

Elements of the Potable Water System

Sizing criteria for all elements of the potable water system conform to DOW's standards. The most important of these are as follows:

- Well pumping capacity will provide the maximum daily use in a 16-hour pumping period. Based on the projections in Table 1, this translates to a minimum well pump capacity of 185 gallons per minute (GPM).

- The potable system will provide fire protection, so the following two criteria are applied for reservoir storage: (1) the volume must be equivalent to the maximum daily use without credit for inflow from the well pump; and (2) the volume must provide the maximum day rate plus fire flow for the duration of the fire with the reservoir 3/4 full at the start and credit for well inflow. The maximum daily use is 0.177 million gallons (MG). Based on RR-10 zoning, fire flow requirement is 1500 GPM for two hours. This translates to a storage requirement of 172,550 gallons. A nominal 0.20 MG storage tank is the appropriate choice using either sizing criterion.

- Pipelines are sized to deliver the peak hour flowrate at not greater than 6 feet per second velocity and with a minimum residual pressure of at least 40 psi. Pipe sizes must also be adequate to deliver the 1500 GPM fire flowrate, coincident with the maximum day flowrate, with a minimum residual pressure of 20 psi.



The potable water system meeting these design criteria is illustrated on Figure 3. A 0.20 MG storage reservoir would be located with a spillway elevation at 200 feet on the mauka side of the highway. A single 8-inch well, outfitted with a 200 GPM, 15 horsepower submersible pump, would be located next to this tank. Standby well pumping capacity would be provided with a back-up pump and motor stored in the control building onsite. If it is necessary, the well's shallow-set submersible pump could be replaced with this back-up unit in a matter of hours. The 2900-foot long, mauka-makai transmission pipeline, which would be micro-tunneled beneath the highway, would be 12-inch ductile iron. The onsite pipelines shown on Figure 3 would be 8-inch ductile iron. Smaller pipes, which would provide service to the cottages and other buildings, are not shown.

Elements of the Non-Potable Irrigation System

The heart of the irrigation system would be an automated pump station situated at the mauka end of the pond at the site of a now abandoned pump station formerly used for sugarcane irrigation (its location is shown on Figure 3). It would consist of three pumps of varying capacities, a small, pressure tank, and automated controls that operate the pumps to maintain pressure in the distribution system for a wide range of irrigation application rates. The station capacity would be able to deliver the peak seasonal use rate of 0.68 MGD in a 6-hour (11:00 p.m. to 5:00 a.m.) irrigation period, equivalent to a maximum delivery rate of about 1830 GPM. This capacity is similar to typical golf course pump station. The distribution network, which is not shown on Figure 3, would consist of PVC or HDPE pipeline and irrigation controllers. Its design would be completed after the landscape plan is finalized.

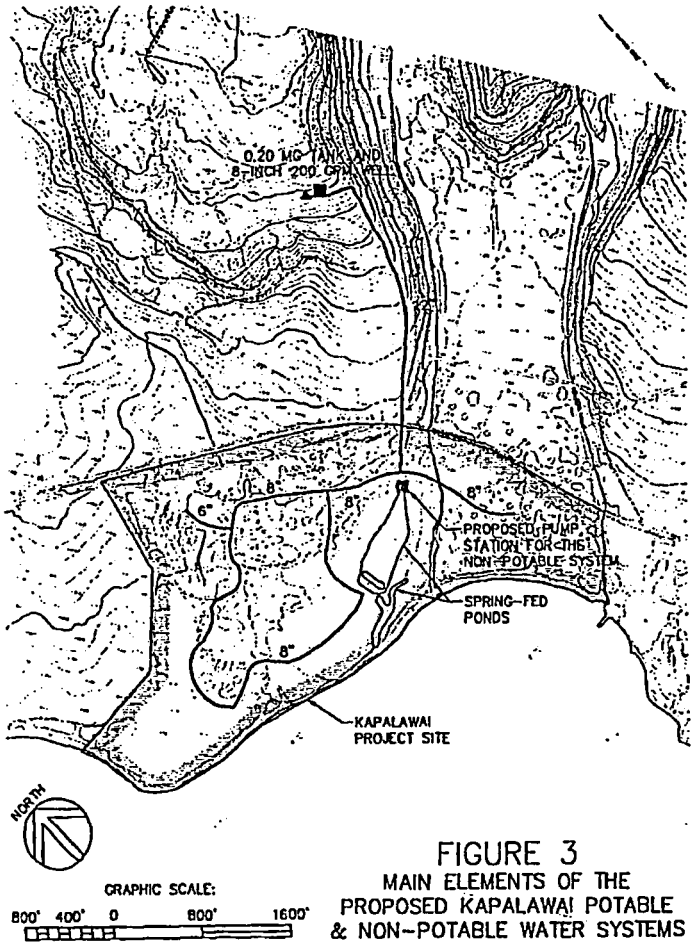



FIGURE 3
MAIN ELEMENTS OF THE
PROPOSED KAPALAWAI POTABLE
& NON-POTABLE WATER SYSTEMS

**References**

Ekern, P.C. and Jon-Hu Chang. 1985. Pan Evaporation: State of Hawaii, 1894-1983. Report R74. Department of Land and Natural Resources, State of Hawaii.

Giambelluca, T.W., M.A. Nullet, and T.A. Schroeder. 1986. Report R76, Department of Land and Natural Resources, State of Hawaii.

MacDonald, G.A., D.A. Davis, and D.C. Cox. 1960. Geology and Ground-Water Resources of the Island of Kauai, Hawaii. Bulletin 13, Hawaii Division of Hydrography, State of Hawaii.

State of Hawaii. 1985. Water System Standards, Planning, Materials, Construction, and Standard Details. State of Hawaii.

**KAUAI PLANNING COMMISSION**
**PUBLIC HEARING**

A continued public hearing of the Planning Commission of the County of Kauai was held on **April 27, 2000**, in the Lihue Civic Center, Mo'ikeha Building Meeting Room 2A-2B. Following Commissioners were present:

Mr. Gary Baldwin, Chair
Dr. Ramon de la Peña
Mr. Gary Heu
Mr. Edward MacDowell
Ms. Abigail Santos

**Absent**
Mr. Dane Oda
Mr. Robert Kaden

Chair Gary Baldwin opened the public hearing at 1:39 p.m. and following are statements, in effect, of the proceedings:

**General Plan Amendment GPA-2000-1 = Destination Villages Kauai, LLC. (To amend the General Plan designation for 160 acres of land from Open and Agriculture to Resort, Makaweli.)**

**Zoning Amendment ZA-2000-2 = Destination Villages Kauai, LLC. (To Change from Open District (O) and Agriculture District (A) to Resort District (RR-10), Makaweli.)**

Chair: If the applicant on this particular project has no objections we would like to take this as a "Dual Public Hearing" and keep the records for both individually but to allow people to testify only one time instead of on each hearing. The applicant's representative Mr. Belles has nodded in the affirmative so we will go with… You're on.

***ZA-2000-2***

Staff, Keith Nitta, identified the location of the property utilizing 1000-Scale Zoning Map, which is map being amended, and presented staff report. Thank you.

Chair: Thank you. Commissioners any questions? [NONE] Nobody! Is the applicant present?

Mr. Michael Belles, Attorney: Good afternoon Mr. Chairman, members of the Planning Commission. For the record my name is Michael Belles representing Destination Villages Kauai.

I'd like to thank Planner Mr. Nitta for his staff report and overview. I think it states as distinctly as possible why we're here before you again today. I'd like to remind you what I said back in January 27th, 2000 when we opened the General Plan Amendment hearing that this is, in all likelihood, going to be a rather lengthy process. We have the General Plan Amendment; we have a Zoning Amendment; there's a Boundary Amendment that'll be pending before the State Land Use Commission. And, assuming all those three permits are ultimately issued we will be back before the Planning Commission for an SMA Permit; Class IV Zoning Permit; and a Project Development Use Permit. So, we're looking at some time.

And, I apologize again because a lot of what we are going to be telling you is repetitive, but in order to maintain the sanctity of the record we do have to discuss the minimum issues again and again just to make sure that the records are intact.

I understand what the chairman said at the outset of the meeting, and what Mr. Nitta said in the course of his report, that the intent procedurally is to have both the Zoning Amendment process and the General Plan Amendment process merge together so that they can be processed simultaneously or on a parallel course.

Toward that end, and I'd like to direct this to the Deputy County Attorney Mr. Kobayashi, I think it would be important for us procedurally, if we could and if it pleases the Chair and the Commission, to incorporate by reference in these proceedings all that proceeded in the hearing that we had on January 27, 2000 so that it will negate the need to have to repeat a lot of the information over again.

Mr. Blaine Koyayashi, Deputy County Attorney, County of Kauai: That's fine.

Chair: County Attorney has no problem with that. I certainly would have no problem with doing so by virtue of that reference all-preceding hearings and information received therein and now are incorporated into these hearings.

Mr. Belles: Thank you very much, Chairman.

As part of the presentation we have in attendance Mr. Lew Geyser the President of Destination Villages Kauai. But, because his statement was included from before, and in view of the fact that you've had the opportunity to listen to that presentation coupled with the site inspection that we had this month, I don't think it'll be necessary to have him speak to the general issues of his development background, or what his vision is for the property. Because, I think the application largely speaks for itself.

I will, however, propose that we have Mr. Scott Ezer, the Senior Associate with our Planning Consultant Helber, Hastert & Fee out of Honolulu to provide a brief overview, especially for those members of the general public who have not been to the prior meeting and for those members of the viewing general public who have not seen this project discussed in any kind of detail before. So, I'd like to introduce Mr. Scott Ezer and we'll go over, very briefly, the general schematics of the development proposal.

Chair: Thank you Mike.

Mr. Belles: Thank you.

Mr. Scott Ezer: Mr. Chair, members of the Commission, it's easier for me if I stand up, and I'll be referring to some of the display boards I have with us today. And, again, I know you've been through this now and at least twice in my previous comments before the Commission in January and during your site visit a couple of weeks ago. But having...

Chair: Excuse me, could you just state your name for the record?

Mr. Ezer: For the record certainly, my name is Scott Ezer, I'm a Senior Associate with Helber, Hastert & Fee a Land Use Planning Firm in Honolulu.

Again, as most of you were with us on our site visit a couple of weeks ago you may have more questions, or more detailed questions, that maybe did not occur to you the first time I was here. But, what I'd like to do is just again go through an overview of the project and how it relates to the property itself.

This is the Waimea Town side of the property, the other side of the board is the Hanapepe side, this is Makaweli Landing. And, there are some natural features that are easily identifiable on the property, there are two streams, Aakukui Stream which is on the Hanapepe side and actually borders the property on that side, and the Mahaikona Stream which runs almost through the middle of the property and a 6.5 acre inland fishpond, which as many of you saw during the site visit is overgrown with many different kinds of vegetation and there's a lot of silt and noxious weeds growing in the pond.

Other features that are currently on the property are the former Robinson family residence, which was constructed in 1897, and the house was continuously lived in by the family from that period, late 1890's until 1988 when the last occupant Ms. Eleanor Robinson died. And since that time the house has been vacant, and it is still used occasionally by the family for occasions but no one is living in the house on a full-time basis.

As you can see from the photo, and also from your visit to the property, the house is in remarkably good condition, including many of the rooms which contain furniture from turn of the century and other items that belonged to the family which really give a flavor for what life was like and what the family... the lifestyle the family had when they first came onto the property.

Proposal for the project includes complete restoration of the fishpond, cleaning it out and restoring it to it's former condition which was open water. And, the hope is that we will be able to have a functioning fishpond as a result of the efforts of cleaning it out. The intent also is to restore the house and repaint, replace, refurbish and reuse.

The house will be used for a multitude of different uses. There will be some admin space in there, and there'll also be some space devoted to a museum. And if you look in the right corner of this board this represents the floor area, footprint for the home. And the areas in pink would be given over to a museum, and those include three main rooms on the makai side of the property of the residence which are the family room; the dining room; and the library; and also some accessory rooms, the kitchen; the linen room; and a dish room. The remainder of the house would go for... there would be some meeting rooms and also some administrative space. So, the plan is to restore the house and restore the fishpond as the centerpieces of the property.

The rest of the property will be devoted... You can see spread out on the Makai half of the property, 250 cottage units that are bungalow-type in their design at least as we have envisioned them for now. We've done some preliminary work, and had Glen Mason of Honolulu who's a renowned architect in working with historic structures, you can see from these renderings that we're going for a very simple look. We're trying to have the architecture evoke a plantation style and a plantation atmosphere. Each one of the individual units would not have... there would be no kitchens, no telephones, there would be a lanai and each would be individually entered.

To complement the architectural features of the house and the cottages we also took a first attempt in looking at a design for one of the restaurants that would be located on the property. This would be the main restaurant, located just makai of the fishpond, and again you can see what we've tried to do is capture the flavor of the architectural style of the period and also the architectural style of the house. So, the attempt is to have the style and the physical elements of the property unified in their relationship to the house.

The cottages themselves would be spread out throughout the property giving each individual cottages a sense of privacy. And the intent here is that when people come to Kapalawai they will leave their cars and they will use the property in a pedestrian manner so that they can walk around on the property and get a feel for what it's like without the need for a car.

There'll be three sep…, actually four parking areas on the property. Three parking areas along this side of the property would be for people who would be staying in the cottages to park, but they'd have to walk from the parking lot to their unit. Again, getting people out of their cars and enjoying and getting in touch with the physical aspects of the property. There's also a parking area just on the mauka side of the house, and that would be primarily for employees. Members of the public would be able to park in any of the parking areas if they wanted to go visit the beach, and there would be parking spaces in each one of these parking areas dedicated for public access. So, members of the public who want to park there and go to the beach would have some place to park.

In addition to the main restaurant there would be a second restaurant on the Waimea end of the property. There would be a third eating facility, but more of a snack bar, on the Hanapepe side. The sport courts would be located more up in the general area of the house. We're also providing an on-site Wastewater Treatment Plant, the wastewater from the resort would be treated on-site, treated to such a level that it would be useable back on the property and recycled as irrigation water. So, there will be no injection wells, no effluent sent into the ocean, everything will be treated onsite and will be returned on-site in the form of irrigation water. I might add that the potable water for the property will come from a private well that will be paid for; developed; maintained; and operated by the developer on other Robinson family property which is just mauka from Kapalawai. So, the wastewater system and the potable water system will all be developed at the expense of the developer, operated and maintained by the developer.

Other irrigation water on the property will be taken from the fishpond. We've had a hydrogeologic study done for the property by Tom Nance and what we found was that there are three springs in the fishpond which contribute about 2 million gallons of water a day to the pond, the water after it bubbles out of the springs eventually finds it's way into the ocean. In past years the family has used the water from the fishpond to irrigate the property, and I think many of you saw evidence of that by the pump house and the pipe line coming out of the pump house going to the rest of the property, and that's how they actually pump water throughout the property.

There are also eight existing employee homes on the property. Currently, four of them are occupied by either former employees or relations. and Mr. Geyser has made a commitment that all of those people will be allowed to remain to live in those homes.

One other feature I'd like to point out, and I think again a lot of you noticed that when we were on the site visit, in front of the house going down to the ocean represented in the light green area on the map here the last occupant of the home, Eleanor Robinson, when she passed away she left an item in her will that required that this open corridor be maintained as a spatial relationship between the house and the ocean. And, in fact, that is the case today, that area is open and free of large vegetation, there's certainly no trees in that corridor and it's the intent of the developer to maintain that view corridor as well.

This maybe a little difficult to see. I'd just quickly like to run through the historic and cultural resources that we've found on the property. We had Cultural Surveys of Hawaii do an archeological inventory survey for us and during the course of their inventory survey they identified six historic sites on the property.

The main site is the former residence and the buildings associated with the former residence, and there are a large number, about 13 or 14 buildings that are grouped with the main house.

The first grouping, as I mentioned before, those eight former employee homes, this is a picture of one of them, you know very typical plantation style home. They were built in the early 1950's, and as I said before, four of them are currently occupied.

Another building associated with the residence is a former guest home which is just on the makai side of the house that is also occupied, it is not occupied... it's presently occupied by an employee of Gay & Robinson (G&R).

There's another building which is a former servant's quarters which is now the office space for Robinson Family Partners.

Another major building is a former carriage house which is in quite dilapidated condition today. There are a number of older vehicles stored in that carriage house but that building is not in very good condition. So, and there's some lesser buildings, a greenhouse and a tackroom but those are the main buildings associated with the former home.

There are also a number of rock walls on the property, as you enter the property from Kaumualii Highway on either side of the driveway there are walls; there's a number of walls associated with the former employees homes down over here; and there's also a wall which goes along the Waimea end of the property, that's a boundary wall; and also some walls along the Kaumualii portion of the property. So that's a second site.

The third site is the fishpond, we've already talked about the fishpond.

A forth site is Portuguese oven which is located in the makai area of the property and makai of the fishpond. Interestingly, the Portuguese oven was probably built in the early part of the 20th Century by a former employee, a Portuguese gentleman by the name of John Rita. According to the information that we found through our inventory survey he built the oven for his wife who did indeed bake Portuguese Sweet Bread in there. It's in rather good condition, and I would also add that all of the historic sites that we've identified will be preserved. We don't intend to take anything down with the possible exception of some of the buildings associated with the house that just cannot be preserved, we haven't made a final decision on some of those buildings. So, the Portuguese oven is the forth-historic site.

The fifth historic site is a rock platform on the Waimea side of the property, it's a rather unique site in that the archeologists and many people who've come to view this rock platform really don't know exactly what it is. There is oral testimony that we've received from people who worked for the family, who indicated it might have been used to bring rocks in from an adjacent agricultural field when they were clearing that field during World War II or around World War II. But, because of it's anomalies structure and the feature, the way it's built, it's really inconclusive as to what it may or may not have been.

Nevertheless, this rock platform or rock mound will be preserved as is and there will be a good buffer around it and there's no intent to have anything intrude upon the platform.

The sixth historic site that was found is in the makai Waimea side of the property. In the course of doing the archeological inventory survey, Cultural Surveys Hawaii did twenty three test trenches for subsurface excavation looking for any evidence of previous habitation or use of the property. In this corner they found in a series of about six trenches a continuous, they call it "cultural layer", in the cultural layer they found some charcoal, some mitten shell pieces, bone fragments and things of that nature to indicate that at least previous use of the property. In one of the trenches they also found human burial, the burial was reintered and the Kauai Burial Council was notified in the course of the progression of this project through the entitlement process. There will need to be a burial treatment plan that is developed and approved by the Kauai Burial Council.

And I think quickly that's a general overview of the project. And, I would certainly entertain any questions you might have at this point.

Chair: Commissioners any questions? Commissioner Heu.

Mr. Gary Heu: Scott, first of all thanks very much for that tour that you folks gave us when we came out for the site visit, it was very enlightening. I just have a couple questions.

The first is very specific and I'm not sure if you'll have that level of detail at this point in time. The second is much broader.

The first question is in regards to the Fire Department's concerns regarding emergency vehicle access and that sort of thing, having a 20 foot wide fire lane. How does... I mean, I see the layout there and it looks great, and I'm just wondering how that will impact the development, and if you guys have had any chance to take a look at that?

Mr. Ezer: In fact, we have contacted the Fire Department and will be meeting with them very soon, probably in the next week or two, to go over some of those details.

Mr. Heu: Because it seems like it has a fairly substantial impact in terms of what you were trying to do there with the clustering of the units and trying to keep everything very pedestrian-like and...

Mr. Ezer: They will need to get emergency vehicles, and all of the cottages will need to be accessible to emergency vehicles, and we can do things without fully paving. I think that will take care of their concerns. But, as I said, we have been in contact with them and we will be sitting down for some more detailed discussions with them in the next couple of weeks.

Mr. Heu: Okay, thank you. Again, the second question is a little more broad in scope. And, that is the West Side communities, particularly Waimea/Kekaha close-knit communities, and I know you guys have been doing a lot of work in terms of doing some outreach and trying to get community input and sharing the information on the project. But, nonetheless, a development of this size is substantial for the West Side, and for almost anywhere on Kauai. And, I'm just wondering if maybe you could share with us... I don't know if Mr. Geyser would be in a better position to answer this, but from a developer's perspective how you see this project assimilating into the larger West Side community?

Mr. Lew Geyser: Good afternoon, my name is Lew Geyser, I'm President of Destination Villages. I think that all of our studies indicate from a traffic standpoint, from a overall population standpoint, that the affect really is not as great as it would sound. The object here is to attempt to create a development which will allow people who already live in the community area to work in the community and be able to work for us, for this development. And, to help create… to enable the community to create something more for itself without overburdening the community. And, I do realize that it's a lot of units but I think that overall in relationship to the number of acres and what is available on the West Side that it will not overburden the community. And, all the traffic studies and the other studies that we've done would indicate that.

Other than that we have gone into the community and talked with an enormous number of people in the community and I think that they, from the response we're getting, they would agree with that. Does…

Mr. Heu: I guess when I was thinking of assimilation I was thinking of… although you know we're talking about a low-impact resort here and I think that from what we've seen you guys have done a real nice job of planning it out. I'm just thinking that a development of this scale is something new and different for the West Side, obviously. And, again, how you bring a development like this into a community and kind of meld it into the community as opposed to being separate from it. And, what your thoughts are there in terms of helping the community not only in it's acceptance but making Kapalawai development part of the larger community.

Mr. Geyser: Well I think one of the things that we really want to do is we want to try and hire as best we can locally. We're working with the Kauai Community College (KCC) on that, the object is to create the kind of job that's not a menial job and create enough of those jobs so that it will benefit the West Side and to bring those people from the West Side and have West Side people trained to be able to do it. Or Kauai people, in general, rather than importing people. My basic philosophy in all the things we've done, for example in Bermuda, is has been to hire Bermudans first, and that's what I would want to do here.

The second thing we do is we try not to run our own concessions, we try to end up getting the local people to generate the kind of entrepreneurial instinct to create the concessions that the people who are coming to this kind of a development are going to want to have. They're going to want to be able to go fishing; they're going to want to be able to go swimming; windsurfing; they're going to want to be able to go hiking; they're going to want to understand Waimea Canyon; they're going to want to know what Kauai is about, what kind of plants there are this property is just loaded with gorgeous trees that are overgrown and hidden that if we can take some of that out you're going to just see a different kind of property. We're going to need people to explain what those plants are, what was it like to live in Hawaii when that fishpond was really going? What was it like to live in Hawaii when the Robinsons first came? What was it like to develop a plantation system to bring in the water? All of these things are things that are natural curiosity on the part of the tourist, and who, given a chance to get out into the community, will take advantage of it rather than sticking them in a typical air conditioned room hoping to keep them right on the property. The object is to get them out, to get them to learn what it's like to live here and to go home to talk about it to other people. I don't know if that answers…

Mr. Heu: That helps thank you.

Chair: Thank you Mr. Geyser. Commissioners any other questions for Mr. Geyser or Mr. Belles? [NONE] Mr. Belles.

Mr. Belles: I'd just like to offer a few comments in summary and it will again be repetitive of what was said at the last meeting in January and what was discussed on the site inspection with you but I think based on what Mr. Geyser just said and what Mr. Heu observed in his site inspection as well as our first public meeting and I think its important to note that the first public hearing we had there were over thirty speakers, and the vast majority of those strongly supported this project. And, coming from all walks of life and representing every part of the West Side community, and people that were clearly being impacted by this project and I think when you look at the number of meetings we've had and you used the phrase "outreach", yes that is something that Mr. Geyser has really tried to impress upon his representatives, myself included, to work closely with the community. And, he's given us a free rain for almost a year and a half right now to have regular community meetings, meet with anybody who wants to talk to us about the project and not simply to listen to us tell them what we want to do but to listen to the community and see what they, in fact, want to see happen on this site that will benefit not only the developer but benefit everyone in the community. And, it's because of that feedback that the developers received that a lot of the ideas that you've heard in January and that you've heard today why we came up with those responses to a lot of the input and the feedback we received from the community.

An amphitheater that will allow for musical concerts and other types of halau, various activities from the community to participate here where they don't have a forum today. To allow a canoe club to have a facility on site to operate a canoe. To have fishing demonstrations on the property. To allow local people to intermingle with people from the mainland so that you don't simply have people from Butte, Montana; San Francisco; and New York and all the points in between meeting with one another from the mainland but really having a place to integrate with local people and conversely giving local people an opportunity to talk to people from the mainland in a setting that's unlike any other resort environment that you have in the State of Hawaii, really, other than with a possible exception of Kona Villages.

This is a unique experience, it's something that hasn't been tried before and I think that's one of the reasons why the community hopes that this is successful not only for the developer but for the community. Because, when you think about it what are the options and what are the alternatives? You can leave the land as it is today, which translates to no public access whatsoever, nobody seeing the resources that you folks had an opportunity to view when you had the site inspection. And, allowing the community to use this as an economic resource. Again, this is something that's being shared with the community, that's not being used exclusively by a developer, and it's something that allows the community to display, their wares, strut their stuff so-to-speak in a resort type of an environment. And when you look at the density 1.5 units per acre that's not even close to anything that we have on this island.

Typically, you have a minimum of RR-10 in a Resort Destination Area, here you've got it spread over approximately 160 acres. And you saw the lavish landscaping that there was on the property which is going to be embellished with additional landscaping in the future. So, there's a lot of room to put stuff on this property and it's not just for the tourists coming here to visit and a lodging but it's something that allows local people to have recreational activities on the property where they never had it before, to have business opportunities where they never had it before. And, if there's ever a project that's low-impact for a community that's very close-knit like the West Side this seems to be the most tailor-made project one could

expect or hope to have that would also be economically viable and that isn't government subsidized in the West Side community. And, I'd like to think for those reasons we've gotten a great deal of support.

When you think about this project and all the publicity it's had for over a year and a half all the opening houses that we've had on the property, Channel 9 News coverage, all the major print media have covered this as a front page newspaper article. The support has been overwhelming and I think had the project been developed in a different fashion, if it had bene your stereo typical high-rise fronting the shoreline, higher density without the inviting opportunities for local people and without capitalizing on the inherent historic natural resources that you have on the property you wouldn't have received that type of a reception.

So, I think for all those reasons and for what you've pointed out with the outreach that Mr. Geyser has provided the community we've gotten the support that's made it a pleasant surprise for everybody, and for that reason we hope that it's successful.

And I think as I said before it's low-impact, low-density, low-rise, I've gone through all those phrases before. It's an opportunity to provide for historic preservation, and a public access where it was never available before. And, I don't know of many downsides to this project other than the alternative of not doing it at all. So, I think it balances out and the balance is clearly in favor of the community and the best interest of the public health, safety, and welfare of the West Side community.

So, those will be my closing comments and summary, and again we'll invite any comments you may have otherwise we'll turn it over to the public and hear from the people what they have to say about it.

Mr. MacDowell: I'd like to make a comment, I'd like to thank you for the tour that we had of the property and I think what was particularly good for me to see was Mr. Robinson who is in charge and Mr. Geyser just a low-key way they had of answering the questions, and particularly Mr. Robinson in a [INAUDIBLE] manner the way he had of coming across with questions and always coming back to the care of the community which the Robinson family, at least in my thirty years, and a lot of them on the West Side had, you know, in various degrees, and I think that kind of… at least for me showed the low-key way he had of sharing his plans with [INAUDIBLE]… I appreciated it.

Chair: Commissioners any other questions of Mr. Geyser or Mr. Belles? [NONE] Thank you all for your help. We'll now open it up to the public for comments on either one of the, either the General Plan Amendment or the Zoning Amendment, your comments will be reflected in both records just for knowledge. Any member of the public wish to come up?

Ms. Lisa Dunford: My name is Lisa Dunford, I am a G&R employee but I'm here today to speak to you as a youth advocate. I am involved with the Waimea Boys & Girls Club and I am a Sunday school teacher. There are many impressive young people in the West Kauai community and I'd like to share two of them with you today.

The first is the son of a fellow G&R employee, Shane Castillo, this is a young man who really has a green thumb. When he was in high school, at Waimea High School, he grew carnations and orchids which his father shared with all of us ladies in the office. I ran into Shane and his son last summer, right before

he left for the University over in Iowa, he's majoring in Agriculture. And, I asked him, "when you're pau what are your plans, are you going to come back to Kauai and work for G&R or are you going to grow flowers on your own?"

It was really neat, he looked me straight in the eye and said "I'm going to grow flowers and do landscaping for the Resort at Kapalawai, I'll be graduating in four years and they should be ready for me by then." And, I thought that was really neat, I mean, here's a kid who really knows what he wants in life, where he wants to go and how he's going to get there.

Another young woman that I know in the community through her involvement in the Boys & Girls Club, she's in their entrepreneur program for high school kids, her name is Tasha Tonaguchi and she is a Senior at Waimea High School, she also is in the program..., the Culinary Arts Program, at KCC here. She's a real sharp little go-getter. Her plans are very interesting in that when she graduates she plans on transferring to UH West Hawaii Campus and starting her career there on the Big Island, and she has no plans on returning to West Kauai. And that bothered me a little bit. So, when I talked to her mom I asked her why does she not want to be here on West Kauai, you know it's such a great community?

And she said, "well that's my fault, ever since my kids were small I've told them that if they want to make something of themselves they have to leave here." And, to me, that's really a disappointing thing to have that kind of an attitude. And that's the primary reason why I think this resort is a good thing, because it gives hope to our youth who have given up hope on staying and living in our West Kauai community. And, we also won't disappoint the youth who are counting on us to make our community a better place for them to live, have jobs, and raise families. I really appreciate your time and letting me speak.

Chair: Thank you. Commissioners any questions?

Ms. Dunford: And I'm very nervous.

Chair: You did very well.

Ms. Dunford: Okay, thank you.

Chair: Thank you. Commissioners any questions? [NONE] Thank you very much. Next! That's all we've got? No, Bill Peay.

Mr. Bill Peay: Good afternoon Commissioners. My name is Bill Peay with the West Kauai Community Development Corporation, and you've heard a lot about this resort in detail. But there's a broader picture, especially for looking at General Plan and Zoning Ordinances, and how are the actions and moves of this proposal meshing with the actions and moves of the community at large?

As you know, our organization has been involved for several years now in seeing some changes happening on the West Side. And what you're looking at in terms of this resort does appear to fit very nicely in with the general changes that are happening on the West Side. Those being, things like the introduction of a West Side High Technology and Visitors Center. That's been put into place with an objective of helping economic development on the West Side by capturing some of the visitor traffic heading up to and from Waimea Canyon, and helping stop them so they can explore some of the shops and restaurants on the West Side.

You've seen the revitalization of the Waimea Theater now and that has been an economic project that has brought a whole new level of quality of life to our West Side residents as well as visitors. They can go to the movies again, have dinner, and have a really good time without coming all the way out to Lihue.

So, as you see this resort project coming on-line and it's low-impact, it's outside of town, but at the same time it offers the opportunity to bring yet another level of quality of life and integration to a West Side community that is growing economically but growing carefully as not to upset or change the quality of life or structure of the way they want to present themselves as West Side communities.

Another thing I'd like to point out is we have an ongoing grant through the Department of Business, Economic Development and Tourism (DBEDT) for a historical cultural sugar corridor. And that process is going to help educate our visitors, as well as our residents, about the traditions in the sugar heritage industry here. And there's a lot of signage going to be happening, not signage, brochures and information for visitors so that they can get an enriched experience about the sugar heritage and culture. Well this resort dovetails, exactly, into that. And, as you see, the areas that are going to be protected and kept and grown are going to provide an integration with the ongoing project for exploring sugar heritage.

So, we're looking at a General Plan process, we're looking at a Zoning process. And I'd just like to leave you with the concept that this does appear to be dovetailing very nicely into those types of changes taking place on the West Side, at the direction of our West Side community, that fit and integrate completely into the whole spectrum.

So for the West Side, West Kauai Community Development Corporation our board has been supportive of this project. We've had community meetings on that, they've been video taped and aired on Hoike, and your certainly welcome to have a copy of that tape if you'd like to review them personally of the community testimony at those meetings. We've been very happy with the support of the developers in coming forward and putting their information before the public and offering the opportunities whenever necessary or desired to engage in conversation and things like an amphitheater added on have been developmental change induced by imputs from the community. So, we have a developer that's listening.

So, thank you very much and we do support this project.

Chair: Thank you Bill. Commissioners any questions?

Mr. MacDowell: I have a question. Do you work in the tourist industry, or do you work for G&R or anything?

Mr. Peay: Me, personally, I do not work in any capacity with the tourist industry, G&R or otherwise. I'm a retired PMRF Civil Servant out there who's been nabbed to try to help grow the community's economic development. Tourism is one area, we also work in Agriculture with diversified Ag, High Technology with the Tech Center, but I have no financial ties with them at all.

Chair: He's a computer genius.

Mr. Peay: A web wizard these days.

Mr. MacDowell: But you're more or less a citizen advocate, because I know you've been involved.

Mr. Peay: Yah. I'm just con... I really like to see everybody have an opportunity to improve themselves and their quality of life if they can. I've been fortunate in my career and my life to have landed into good job, and I... a lot of training and a lot of effort on my part, but a lot of opportunities came my way too. I've got some skills in facilitating and speaking and writing and I try to give those back to the community, however I can. And, I know there's a lot of people who'd love to come up here

and talk they just haven't… it's scary to do. So, I try to when I can talk on their behalf, on my behalf. But, as a private citizen as well as a representative I think this is a great project it really looks good.

Mr. MacDowell: Thank you.

Mr. Peay: Your welcome.

Chair: Thank you Bill. Commissioners any other questions? [NONE] Thank you very much.

Mr. Peay: Thank you.

Chair: Next.

Mr. Charles Okomoto: Good afternoon Commissioners, my name is Charles Okomoto I'm an employee of Gay & Robinson. I was last here on January 27, 2000 and at that time I presented a petition signed by 64 employees of Gay & Robinson supporting the General Plan Amendment and the resort.

At that time I told you more than…, the company was in a furlough mode and more than half of the employees at that time were not working. I also mentioned that once they get back to work I will continue with the petition and Gay & Robinson has started back in the harvesting operation and almost all of the employees are now back at work. Some are still on furlough and I would like to present as a follow-up an additional 169 employees who signed the petition in favor of the resort. So, the grand total number of employees that have signed is 233 and that represents almost 90 percent of the employees of Gay & Robinson and I think we could have gotten almost 100 percent, but we haven't been able to get in contact with all of them yet. Thank you.

*[[ATTACHMENT #1]*
*Mr. Charles Okomoto*
*Submitted Signed Petitions*

Chair: Thank you Mr. Okomoto. If you can just hand that to Commissioner MacDowell there I guess he's your closest person, he'll take it from there.

Mr. Okomoto: Sure.

Chair: Any other questions for Mr. Okomoto? [NONE]

Mr. Okomoto: Oh, I'd like to make one comment real quick on the petition, there's some names that are lined out and it's marked duplicate because we had so many employees who were so eager to sign they signed twice, so I went through and I eliminated the duplicates.

Chair: Thank you very much for the diligence. I believe Ian was standing next, nope I guess not.

Mr. Tsutomu Kojiri: My name is Tsutomu Kojiri, I'm a resident of Pakala, and I've gone out to the village there in support of this project and I got 92 names here in two days and in all my house-to-house visit, there was just only one that refused to sign this petition. So, I think I can say that it's almost 99 percent.

*[[ATTACHMENT #2]*
*Mr. Tsutomu Kojiri*
*Submitted Signed Petitions*

Chair: I'd say that's pretty close. Thank you Mr. Kojiri. Commissioners any questions? [NONE] Thank you very much. Next, Ian you jumped up so come on up.

Mr. Ian Emberson: Good afternoon, Ian Emberson from West Kauai and I represent the business community and just in general how important this resort is to helping the businesses there and the people finding employment. I've come across a lot of people that have applied for mortgages and I've seen a lot of displaced sugar workers and I see the kind of financial statements they have and usually there ain't much there so something like this to provide some alternate employment.

And, talking to tourists I've come into contact with people that are really looking for a different type of resort, they don't necessarily want to stay in the high-rise, they want more natural setting and this seems to offer it so I'm here in support. Thank you.

Chair: Commissioners any questions for Ian? [NONE] Your done, thanks. Anybody else? Cheryl is up.

Ms Cheryl Lovell-Obatake: For the record my name is Cheryl Lovell-Obatake I'm a resident of Nawiliwili, Niumalu and Kalapaki. My mother is from the West Side of the Toniguchi family and I am compelled to respond to this application.

I had the opportunity to look at the site, I think it was on the 14th of this month [April], but anyway I did go on-site with the Kauai Historic Preservation Review Commission, get to know the land, get to feel the land, and walk the land. I did not get a EIS Statement at that time of my walk, however, felt very sensitive while walking on the land. And, I've prepared my testimony in writing. [Ms. Lovell-Obatake read her testimony].

*[[ATTACHMENT #3]*
*Testimony--Ms Cheryl Lovell-Obatake's*

Chair: Thank you Cheryl. Commissioners any questions? [NONE] Thank you very much. Next, anybody else? Go ahead.

Mr. Joseph Punilei Manini: I hope I'm the last one because usually the first people and the last people get chance to talk. For the record, my name is Joseph Punilei Manini, Sr.

I am from Waimea, I've worked with the Gay & Robinson Company for 56 years and 10 months. So, I know the West Side pretty well, I lived there all my life, I'm 69 years old, and I'll be 70 this coming December.

I worked there as a cowboy for 20 years and I worked there afterwards as a equipment operator. I was the one that cleaned that area that is being proposed. There's a lot of things that have not been said by the developer fraction, or by Belles & Proudfoot, or whoever the attorneys are. They're not saying that the they know that that cliff part portion is a heaue, they're not saying that the pond originally never used to flow in the pond, it used to flow on the opposite side in the Kopapa Stream which they call Mikona Stream now the bridge and that two waters from the ponding days use to go out to the mouth of the river which they used to call Muliy palaoa. They say they had the pond there, but that water was going out and goes there, used to service taro patches along the bank coconut.

And, some of the things Keith Robinson might say is right but Keith Robinson is way younger than me, so when I worked for the Robinsons he was still walking around with his father and he was young. Warren Robinson and I is only two years difference he's two years older than me, so we might consider ourselves as the Kamaainas. Personally, I'm not against the family, I worked for the family a long time and I think we have good relationships talking with each other. But, I was in court, because I was

opposed to one property they was claiming in Waimea next to the landing, and their attorney from Maui said that "Mr. Manini…" he says to the judge, "Mr. Manini has not yet claimed his estate from his family, and so how can he claim that?

So they gave the case to the Robinson Family Partners. Now, Robinson Family Partners is a subsidiary from Gay & Robinson, Inc. and they still don't own the land as far as I'm concerned. I got three deeds over here, that if you open up the deeds it's composed of twelve title deeds. Whether you go to the lands for ownership from the Kamahamaha Estate, or whether you go to the lands from the Puni Estate I still end up as the owner of the property. Gay & Robinson, Inc., like you heard, came there in the 1880s, but if you really studied it the Knudson's write about that, Obare Robinson came to Honolulu in 1863 in September. But in January 1863 the land was already deeded to us, by Kamahamaha IV, and Kamahamaha IV died two months after Obare Robinson came, and Obare Robinson came to Honolulu at the age of ten years old. That's their grandfather!

So it's real interesting because if the family themselves don't study the genealogy they won't know the genealogy. But the point is this, who owns the land? All of the plantations on Kauai are claiming the lands for Victoria Kamamalu, the Robinson Family claims the land from Victoria Kamamalu, the same as they claim it on the Apana I of Victoria Kamamalu 7713. Now, Kikiaola, that's Kikiaola, Kikiaola claims one from Apana 42 so they hold hands together that's why you can see the paper over here, between the Fayes and the Robinsons holding hands together in conspiracy with the County. Good for me to read that thing what is in here, my testimony, because my testimony is a complaint in opposition to the Commission for having the right to determine whether they have the right to build on this land that is not theirs, because its only lease land. Victoria Kamamalu could only give out lease lands. So if you go in the indices the lands were leased, it's all written in this testimony. The land is only leased to Victoria Kamamalu, but then if you look real good Victoria Kamamalu had no right to the lease, Kamahamaha had no right to the lease because there's no Crown Lands on Kauai, because Kauai was never overthrown my Kamahamaha it was always with Kaumualii.

Now, if the foreigners or anybody who is not Hawaiian or Kanaka cannot see that, maybe that's why I'm part white and I'm part Kanaka, or Hawaiian, because I can see both sides. Now, how can the County… this Planning Commission approve the billing over there? I never heard any body say that they owned the land I only heard a Hawaiian woman say, they think that all the land around is Robinson land. But yet Robinson going to the church, the Protestant church, I have documents, but maybe you're meeting in arbitration or we arbitrate on them or mediate we can talk about them because we get more time. You'll find that the… actually, the minister from their church told them to return the land to Pua because that land is not Kapalawai that land is Kapua. If you look in Ursula Emerson's map in Fitzgerald's book "Early Mapping of Hawaii" read the book.and look at the island of Kauai and you look at that area. Put them on the Xerox machine and magnify them and look at them, it says it's Kapua because that's Pua's property, so they change them to Kapalawai. But then you look in the other document it shows there as Hanapepe because Kapalawai is in Hanapepe, and Kapua is Hanapepe but yet they call it Makaweli. They did a lot of name switching in the whole area. They called it Makaweli because they relocated the Makaweli people that was on the land and they relocate them in Makaweli Valley and that's where they ended up.

Now the plantations could only come on the land and claim the land whether it's Amfac or Robinsons or…, I'm not pinpointing anybody you know what I mean, or Kekaha Sugar or whatever, the Kekaha Sugar is a lease land of course. This other lands, Grove Farm and all that is through Victoria Kamamalu. But is Victoria

Kamamalu a legal document? The Royal Patent or whatever they have, all Royal Patents; the Commission awards; warranty deeds; title deeds; fee simple or whatever it's all land and property. If you go back to the big Miheli, Kamahamaha III he was the founder of that. It's all written in English, it's written in Royal Patent…, I have the number here wait, it's written in the Royal Patent. You cannot… they cannot claim the lands in the manner that they did and say that the lands belong to them and they can just develop them. It's in 5311… 1153 Royal Patent, 1153. It's in the book "*The Great Miheli*", it's very small, you have to put them on something to enlarge them and you can read it because it's written in English. In all the Royal Patents and those awards from the Kamehameha III they're all written in English. Any deeds that were deeded to the natives in the lands we presented to the natives as legal deeds, they were not written in English they were written in native language and they were written in ah… if it was from Kamehameha IV it would be written in Kealii Mamulio Okalolela a Kapue Hoana Kuleana in other words, Kealii Mamulio was the youngest of the Kamehamehas, never had the Kamehameha after that. If you have any Kamehameha after that was made from the foreigners that came here, Kamehameha V or Kamehameha VI or whatever. But, it's real interesting how, if this Commission acts on approving this stuff then you would be in violation of Public Law 105-150.

Whereas, the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as if people roll over their initial lands to the United States either through their monarchy, through a [INAUDIBLE], or through referendum. In other words, they never vote or do anything, or agree with what the United States leave with Kamehameha on the overthrow. So, how can they have any rights? And the United States plainly states that… they plainly states them… in the House Library of Congress. It says this in the House Library of Congress, this record, recorded and compared in the Law Library of Congress Sessions of the Unites States of America, extension of the 60th Congress of the 1907, 1909 135 Part 2 to AE2-111 Statute No. 2209, 2210, Proclamation No. 827 dated December 4, 1908, by Theodore Roosevelt, President of the United States. Important part, "whereas, by Joint Resolution to provide for Annexing the Hawaiian Islands to the United States, approved July 7, 1898, the succession of the Government of the Republic of Hawaii to the United States of the absolute fee and ownership of our Public Government"… and then they have that good word over there that says "or Crown Lands." The United States of America by it's Congress, and it's President Theodore Roosevelt, only accepted the Crown Lands of the Kamehameha Estate in the Joint Resolution to provide for the Annexing the Hawaiian Islands dated December 4, 1908." In this document it says, see Exhibit G Page 8 and 15, "according to history, Kamehameha…", we're talking about Kamehameha because all the lands that have been claimed by the plantations and also this project that this in…, in so called Kapalawai, it's been claimed through the Kamehameha Estate because Victoria Kamamalu is the granddaughter of the Kamehameha I.

Now, according to history, Kamehameha did not conquer, nor overthrow, the Executor of Polynesia, the Ruling Chief of Kanaka Maoli Nation named Puni, the chief with the red feather cloak head dress, last Ruling Chief Kaumualii, Executor of Polynesia and also Ruling Chief of the nine islands [INAUDIBLE]… or capital of Puni. Therefore, according to International Law, conquest is defined by Bouvie's Law Dictionary, 1914 Edition, as the taking of the Sovereignty of a country by force-of-arms, exercised by an independent power which reduces the [INAUDIBLE] to a submission by the independent powers empire.

Chair: Mr. Manini…

Mr. Manini: Yah!

Chair: As you probably know this Commission has no jurisdiction over Public Law nor does it have any jurisdiction over ownership of the land.

Mr. Manini: I am aware of this.

Chair: Okay. So, can we get back to the testimony for or against this particular resort, which is all that we can… which is all that's in our purview of legal…?

Mr. Manini: If I can read this, just a little bit more?

Chair: Okay, a little bit more.

Mr. Manini: Maybe you can satisfy what your saying.

Chair: Okay, a little bit more.

Mr. Manini: Yah, little bit more

Chair: Little bit more.

Mr. Manini: Just give me a little bit more time, just like you gave the first guys.

Chair: The first guys are the applicants, that's a little different.

Mr. Manini: And I'm the person that it opposed to that.

Chair: Right.

Mr. Manini: So, this is a complaint, this complaint is filing opposition to approval of any type of plan concerning Land Use, Land Sales, Development and/or collecting of any typed of revenues in the Years 2000 by the County of Kauai and Niihau to stop this conspiracy and interference of implementation by the Kauai County or it's Planning Commission, or any other parties within this defacto government who are without proper jurisdiction and authorization to govern on this private estate. This private estate is 99-193279, that's recorded in the Bureau of Conveyances and a certified copy is here.

Now, this independent power, I'm saying that therefore according to International Law conquest is defined by Bovier's Law Dictionary's 1914 Edition as the taking of the sovereignty of a country by force of arms exercised by an independent power which reduces the [INAUDIBLE] to a submission of the independent power's empire. For further insight of understanding what constitutes a conquest look to the definition of the words independent power, the right ability of faculty which is not subject to control; restriction; modification; or limitation from any outside given source.

Now, in view of the aforementioned one could conclude that it takes an unconquered nation to conquer another nation. Remember, Kamehameha was not that Nation nor did he control an empire. So, furthermore, Kamehameha did not conquer the Nation of Puni. Puni Poho is executive for the Kanaka Maoli Natives of Polynesia. Kamehameha was merely acting in his own self interest with no power, no authority, no jurisdiction to constitute an overthrow accomplished. Therefore, all of the properties acquired through the Kamehameha Estate, like the ones the County is talking about, all of the properties acquired by the Kamehameha Estate are Crown Lands and it's null and void for this estate does not legally exist. So, what you've deciding on this estate is not legal, because if it doesn't exist Kamehameha never had an estate. And they claim it's ownership from the land is from Victoria Kamamalu the same as the lands in the Waimea side, Hapana 42, which the Fayes claim is theirs.

The only plantation people that came here to plant cane, they talk about living here for 100 years! I have my genealogy here from 200 BC. Then we come way after that, we can come from the 10th Century, and has all the names over there and I can say that we were here for the 10th Century. The findings of these people that went over there and found the… well you know that water place by that pond, the fishpond, they say that according to the newspaper, they say that… the people… that pond was there before the 10th Century. I can say to you it was way before then, that is a true fact. But, the thing I'm saying is they don't own the land, they don't have the right to develop that land because they don't own it. They're only leasing the land and the leases were terminated January 1, 2000 by the entity who is the rightful owner.

Chair: And, I understand what you're saying but, again, that's a matter for the courts to decide not for us to decide.

Mr. Manini: Well…

Chair: As far as we can… they are the legal owner and unless it's judicated somewhere else in a court of law.

Mr. Manini: If it's the court to decide then…, it's impossible for the court to decide because then you… I don't know what part you're talking about but if you're talking about the court on Kauai, they don't have jurisdiction.

Chair: Well again that's a different argument for powers way above my food chain level. But I thank you.

Mr. Manini: Yah. So you like to cut me short?

Chair: No I've given you 20 minutes, that's not short, most people limit it to 3 minutes, I gave you 20. I figured that was…

Mr. Manini: Well, I still think that…

Chair: And you asked for a little bit more and I gave you a little bit more.

Mr. Manini: I still think you don't have jurisdiction to approve or disapprove.

Chair: I understand that and I've got a gentleman over there in the right corner named Blaine Kobayashi who's, well up on that and you and he can discuss that, as to jurisdiction. It's way beyond my pay grade, which is zero. You know I'm not going to debate that. That's Blaine, he's got lots of education, lots of smarts. I can't argue one way or the other I'm not going to. There's courts that have to do that.

Mr. Manini: There's only one court that can do that, it's the International Court. I've got the copy over here, you folks can read it because when you read it's better because there even is a lean on the property.

Chair: We'll be glad to take that as written testimony.

Mr. Manini: Then you're attorney over there can see if it's legal or illegal.

Chair: That's for… he'll be glad to read it.

Mr. Manini: And one more attorney over there, the head person.

Chair: He's not an attorney.

Mr. Manini: Mr. Crowell must be the attorney.

Chair: He's the head person but he's not an attorney.

Mr. Manini: But anyway…

Chair: There are a lot of attorneys sitting in this room but none of them are sitting in front of you, a whole bunch back there, a couple of them over here.

Mr. Manini: What I said to you is some of the things that are in here.

Chair: I understand.

Mr. Manini: That's usually what you do, what is written in here is that plus a lot of more things that cannot be explained right here unless we have a trade or we go through arbitration.

Chair: I'll guarantee I'll read it and I'm sure Blaine will read it.

Mr. Manini: So give it to your attorney.

Chair: You can but you might give to Mr. MacDowell since he's closest

Mr. Manini: You can laugh all you want.

Chair: Thank you Mr. Manini.

Mr. Manini: One day I'll get the last laugh.

Chair: Nobody's laughing. I'll read it.

Mr. Manini: Make sure you read it because…

Chair: I will, you can give me a test on the next hearing. I'll read it.

Mr. Manini: Could I ask one other question?

Chair: Sure.

Mr. Manini: It doesn't concern this hearing but if the people don't like to listen they can step out. I want to ask you about the Salt Pond area because…

Chair: No, no, no, that one I'm going to stop you on.

Mr. Manini: I don't want to ask, I don't want to speak about the issues, I just want to ask…

Chair: No, no, no!

Mr. Manini: I just want to ask the Commission when is that meeting going to be?

Chair: That's up right now, different issues, there is no scheduled date at this time.

Mr. Manini: No scheduled date.

Chair: No sir.

Mr. Manini: Will the scheduled date be published in the paper?

Chair: Absolutely, and knowing Mr. Curtis sitting over there on the right he will probably put it in the headlines.

Mr. Manini: That's what I wanted to ask.

Chair: Subject, of course, to his managing editor but my guess is that the next scheduled date for that hearing whatever it be, whenever it be will probably be on the front page of the Garden Island. Although that of course would be up to Mr. Curtis [INAUDIBLE]…

Mr. Manini: He's going to write them according to his mind.

Chair: But he'll probably put it on the front page, unless there's something awful hot that same day.

Mr. Manini: I hope he writes and we get it in the paper. Sometimes he puts them only in one paper, he doesn't put em in the paper that they drop free by your yard.

Chair: Oh no he may not, that's a different… You got to pay the bucks to buy his paper. I can't guarantee it's going to be in Wednesday's paper. Plus you got to subscribe, it pays his salary so he can sit here and write these stories. Oh, I'm sorry did you have a question?

Mr. MacDowell: Mr. Chairman, Mr. Manini thank you for these and I'm going to request to get a copy because there's some [INAUDIBLE]… the great Mahelli in here I want to read it myself. There's a first time out of a… I saw this [INAUDIBLE] right here and I'd like to read it so.

Chair: Thank you we'll get copies.

Mr. MacDowell: You'll make copies?

Mr. Manini: I gave you set so you folks can make copies for the Commission and where ever you folks like to make copies that's [INAUDIBLE]…

Mr. MacDowell: Thank you.

Chair: Don't forget your water.

Mr. Manini: Oh, thank you. I had to pay $1.23 for this.

*[ATTACHMENT #4]*
*[(2) Documents Submitted by*
*Mr. Joseph Punilei Manini*

Chair: Thank you Joe. Anybody want to try following that one? Come on Judy.

Ms. Judy Dalton: Okay, yah, tough act to follow. My name is Judy Dalton, I'm giving testimony for the Sierra Club Kauai Group.

Chair: Okay.

Ms. Dalton: We have serious reservations about the proposed Kapalawai Resort Development. While the developers are to be complimented on their efforts to create a resort that is low-density and aims to minimize environmental impacts, we find that the proposed construction of the resort is inappropriate at the present time, and more seriously is inappropriately located. The change of zoning and construction of the resort is inappropriate at this time. I will elaborate on each one of these points. Kauai already has, at present, more than enough zoning for resort development. This together with a recent approval of the Kukuiula Development as well as other existing resorts that are to be planned… that are planned to be reopened means that we will soon exceed our Island's carrying capacity.

To elaborate on the location of the resort is inappropriate. There's no compelling public benefit or reason for extending the resort into the SMA Zone. Most of the structures would be

visible from the beach, thereby not complying with the following policies and objectives of the Coastal Zone Management (CZM) 205A2, which states the following objective. Protect, preserve and where desirable restore or improve the quality of coastal scenic and open space resources. The plan to locate structures within close proximity to an undeveloped beach, as the project proposes, does not protect and preserve the quality of Coastal Scenic and Open Space Resources, therefore, the project does not comply with this guideline.

Coastal Zone Management 205A, 2B, 3B insure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline. While the cottages are nicely designed to blend in with the environment they're a [INAUDIBLE] placement close to a natural shoreline would interfere with public views to and along the shoreline.

Coastal Zone Management 205A, 2B, 3D. Encourage those developments which are not coastal dependent to locate in inland areas. The Kapalawai Resort Environmental Impact Statement (EIS) explains although the proposed use is not coastal dependent, and that's right in the EIS that it says that it's not coastal dependent, many other successful resorts on Kauai and throughout the state are typically located on oceanfront parcels.

Our comment is, since it is not coastal dependent then this project must be encouraged to locate further inland to be in compliance with the Coastal Zone Management Program. Since the majority… since the project, as presented, is located within the Special Management Area (SMA) and, therefore, within SMA jurisdiction, to be exempt from the SMA Rules and the CZM Guidelines the project would need to be located mauka of the SMA Boundary. Thank you very much.

Mr. MacDowell: I have a couple questions. Keeping with my theme I guess, obviously, you don't work for G&R so that's…

Ms. Dalton: That's correct.

Mr. MacDowell: Where do you work?

Ms. Dalton: I'm a retired school teacher.

Mr. MacDowell: Okay, very good. Thank you. So, and you live on… do you live on the West Side of the island?

Ms. Dalton: On the east shore.

Mr. MacDowell: On the east shore! You alluded to… okay a couple questions, 200 of the immediate residence of the Pakala area support the project, do you have any sort of respectful or disrespectful comments about their relationship with the land, and their…?

Ms. Dalton: I think that many of them will think that the jobs, the really good paying jobs will go to them and that it's not always the case. And I think that they will feel the crunch in housing as more and more move down to the West Side and make their housing situation very critical and raise their rents and they will be in the same situation as many people on the North Shore now with being squeezed out of the rental market, the housing market for purchase as well.

Mr. MacDowell: Okay, thank you on that. And, then you alluded to carrying capacity.

Ms. Dalton: Hmm huh.

Mr. MacDowell: That's kind of like a phrase, it says a lot and I'm a little… I'd like to have a definition of what carrying capacity is?

Ms. Dalton: Infrastructure, also the environmental capacity to take on this many more visitors, we are not really… we really don't know whether or not the environment can take on that many more visitors. And so, before we invite that many more people to the island we should be sure that we are capable of supporting that many visitors because the environment can suffer as a result.

Mr. MacDowell: Well, when should the carrying capacity have been deemed?

Ms. Dalton: I believe there should be a study to determine that, there could be an Environmental Impact Study on that.

Mr. MacDowell: Okay so if it's deemed that the carrying capacity is too much right now, how do we get rid of the people that are here?

Ms. Dalton: You don't get rid of the people here, you keep what we have but we don't need to expand any more than we have to.

Mr. MacDowell: And, just personally, do you rent any rentals units yourself?

Ms. Dalton: I do for my mother, she has a vacation rental.

Mr. MacDowell: Thank you very much.

Chair: Judy, have you determined a quantitative number for the… Excuse me, has the Sierra Club… [TAPE CHANGE]

Ms. Dalton: That's okay we'll get it down.

Chair: You've alluded in your testimony, which is all that I'm referring to not your law suit against me and HTA, but you referred… could you just read that part about the carrying capacity that you've written in your testimony since we don't have a written copy? It's right near the beginning, you said that…

Ms. Dalton: Okay, this together, okay Kauai already has at present more than enough zoning for resort development and that came out during the Kukuiula hearings…

Chair: That's… go on

Ms. Dalton: So this, together with the resent approval of the Kukuiula Development as well as other existing resorts that are planned to be reopened means that we will soon exceed our island's capacity.

Chair: Okay, stop. You said carrying capacity at the beginning, so you have determined that the current inventory of properties, along with Kukuiula, along with this proposal, will exceed the carrying capacity! That's what you just stated in your testimony. So, therefore, you… Sierra Club as much has obviously determined the carrying capacity at 7,000 property units on Kauai, plus a proposed 500 for A&B, plus…

Ms. Dalton: You're point is…?

Chair: And if this were the grow…

Ms. Dalton: Your point is well taken.

Chair: That means that the Sierra Club has now decided that the carrying capacity for Kauai is 7,502 units.

Ms. Dalton: Hmm, I really think I should have said that it is assumed that it could exceed the carrying capacity and that a study should be made so we would know for sure. Because, on one hand we…

Chair: That's a different testimony.

Ms. Dalton: Yah. On one hand Kapalawai is assuming that it will not exceed, and we're suggesting that it could, and nobody knows for sure unless there's an Impact Statement.

Chair: But you have an EIS for Kapalawai. Have you read it?

Ms. Dalton: Yes I have.

Chair: Okay, and do you have any problems with the EIS that is written by them as far as the carrying capacity and the visitor count and the social economic impact?

Ms. Dalton: I think…

Chair: Not as far as the other things you mentioned.

Ms. Dalton: Okay, I think for that particular area there's going to be really high density, there's going to be more units there than are presently suggested that there might be. Once that the resort permit would be give it would allow for even far more than the amount of units that they're proposing at the moment. And, say for example they would want to sell it then who knows someone might even triple that capacity which would be allowed with the R-10 Zoning.

Chair: Boy that's a stretch. But let's use…

Ms. Dalton: Could happen!

Chair: What the… let's use the existing application which is all that we really can talk about.

Ms. Dalton: Hmm huh.

Chair: What would be the increase in the average visitor daily census because of this resort? And, what percentage of that would be compared to current average daily visitor census?

Ms. Dalton: I could just think in terms of numbers, roughly 250 a day.

Chair: And percentage, to what we currently have now?

Ms. Dalton: The percentage I have no idea what percentage extra that would be.

Chair: Okay.

Mr. MacDowell: I have another question. How far from the beach should these buildings be built?

Ms. Dalton: Right now they're proposed to be 40 feet from the beach and that would interfere with the Coastal Zone Management Program for the State which says that Coastal Zones on or along the beach should be protected. And, this is a Natural Area, that it's one of our rare wild places here on Kauai, and so we would like to see that natural aspect of it preserved as much as possible which could be done by a substantial setback. Another reason we want setbacks is because of the possibility that people

would resort to seawalls, especially down in that area they've had to do that and at consequence to other coastal areas. In order to save the coast lines we have to setback so that we don't feel that we have to revert to seawalls and revetments to try to protect the coastline which only destroys it.

Mr. MacDowell: So, on that particular portion of beach, 40 foot is too close to the beaches, and you suggest a further setback?

Ms. Dalton: According to the Coastal Zone Management Program it is.

Mr. MacDowell: Okay. And what about the other parts of the island?

Ms. Dalton: Well, wherever it's already developed it's too late. If there's any place that…

Mr. MacDowell: Well if we're talking carrying capacity now.

Ms. Dalton: Hmm, that's one of the aspects of it yes.

Mr. MacDowell: And, since carrying capacity is an ambiguous word, so technically what we could be saying is that if we're 40 feet and that's a carrying capacity that may not carry, maybe the new building that might be anticipated 40 feet maybe shouldn't be built there and let it alone because carrying capacity hasn't …

Ms. Dalton: I see this as two different aspects, carrying capacity is numbers and what you're suggesting about the setback has to do with protection of coastal views and not to have to depend on some hardening of the coastline in order to protect the development later on.

Mr. MacDowell: Okay. Are you here as an individual or as for the Sierra Club?

Ms. Dalton: For the Kauai Group of the Sierra Club.

Mr. MacDowell: Okay, so the Sierra Club is saying, adamantly, that 40 feet setback here is too close?

Ms. Dalton: Umm, that has been our consensus yes.

Mr. MacDowell: Okay. And it's…

Ms. Dalton: In an undeveloped area, in an undeveloped area, other areas where it's already developed we would also ask for a setback. The main concern here is that it's an undeveloped area, we want to preserve the views and at the same time protect the coastline in case there's erosion there.

Mr. MacDowell: Okay. So, a developed area then building up closer is fine?

Ms. Dalton: As much as possible if we could be setback in accordance with the other development. For example, if you… you know with a new hotel that's coming in and right next door there's another hotel I think that they would want to be on the same line as the other hotel. For example, I don't want to mention any names but some of the hotels that are coming up and so I… I'm not going to speak out against those hotels because there are hotels there already and it's not a wild and natural area that needs to be protected. The coastline should be protected as much as possible in those areas so, as I mentioned before, you wouldn't… people wouldn't be considering seawalls and revetments to try to protect their property.

Mr. MacDowell: Thank you.

Ms. Dalton: Thank you.

Chair: You mentioned undeveloped land?

Ms. Dalton: Yes.

Chair: How does the Sierra Club feel about private property rights?

Ms. Dalton: Their… I think that the Coastal Zone Management Program supersedes property rights to the extent that if public views or for public resource which are the beaches, if they are to be jeopardized that then the State would step in, I don't know for sure but it seems like according to the rules and the guidelines that that is something that could happen.

Chair: It sounds like a takings to me, doesn't it sound like to you?

Ms. Dalton: The law is there.

Chair: Right, and there's a law to protect private property rights.

Ms. Dalton: It's all a matter of interpreting the law.

Chair: And there's a law to protect private property rights, the rights of people to own property.

Ms. Dalton: And if that… if that… if private properties were the only determination for what would happen to the rest of the coastlines in the State of Hawaii we would have condos and hotels built to the waters edge.

Chair: It's not the only determination but it is certainly part of the equation.

Ms. Dalton: Hmm huh.

Chair: And you have to weigh the community interests with the private property rights of the individual.

Ms. Dalton: Exactly, and I think when push comes to shove if you're trying to protect our most important visitor drawing card, which is our beaches…

Chair: That's not true. Please site your survey that you're doing.

Ms. Dalton: I… yes I cited this survey…

Chair: What survey?

Ms. Dalton: The Maui Survey.

Chair: And the Maui Survey of 1,000 people was done by an organization called Maui Tomorrow, which is affiliation with the Sierra Club. Can you site an independent survey done with an independent market research firm that sites beaches as our number one visitor attraction?

Ms. Dalton: The Hawaii Coastal Zone Management says that's true as well.

Chair: I'm asking you can you site a survey done by an independent market research firm anywhere in the State of Hawaii by any organization that sites beaches as our number one visitor attraction?

Ms. Dalton: Hawaii Coastal Erosion Management says that in their program that just came out last year.

Chair: There is no visitor survey that I'm aware of taken by an independent organization other than Maui Tomorrow that talks about beaches as our Statewide number one attraction. So, I guess you and I…

Ms. Dalton: I think we need to have one with our Environmental Impact Statement that we… [INAUDIBLE]…

Chair: We have many surveys on visitor attractions and what brings the people here, they all have been done by independent market research firms.

Ms. Dalton: And if they're not… if they're not the beaches and our beautiful coastlines what would it be?

Chair: It's not beaches I'll bring you the report or send you the report if you will give me your address.

Ms. Dalton: I would like to see the report.

Chair: Okay, it's available on the Web.

Ms. Dalton: Thank you.

Mr. MacDowell: So, Mr. Chairman, so what I'm gathering is if there's a coastline that has condos and various [INAUDIBLE] and there's various buildings, and there's a certain segment of it "X" number long that is undeveloped that that should remain undeveloped?

Ms. Dalton: We would like to see that happen, and I think most of the people would like to preserve the rest of our very few beaches that are undeveloped.

Mr. MacDowell: Okay. So, like if there's condos going along and there's a little place in there where the view can be seen from the beach as well as from the highway that should remain undeveloped as much as possible.

Ms. Dalton: If it's already developed then it's already gone.

Mr. MacDowell: This is the only view [INAUDIBLE] have of the ocean. Normally, you can see the ocean beautifully from the road, from the beaches, and see the mountains from the beach and you can see the beach from the road, it's a corridor.

Ms. Dalton: You'd have to take it in a case-by-case basis and take a look at it.

Mr. MacDowell: But prior to that you were just saying that these corridors were important from the Sierra Club's perspective.

Ms. Dalton: Yes they are.

Mr. MacDowell: Okay, so is that a case-by-case basis or is that a statement based on what the Sierra Club believes?

Ms. Dalton: We try to protect the beaches and Natural Areas as much as possible and we… for example in Kukuiula it's already a highly developed area and so I can imagine that if they were building close to the beach that it wouldn't have as much of an impact as it would with Kapalawai because it's completely natural and we would like to see that saved as much as possible.

Mr. MacDowell: Okay, so you're saying it's okay to build in Poipu then because it's built up around it?

Ms. Dalton: Once…

Mr. MacDowell: I'm trying to get to the point…

Ms. Dalton: Once it's already taken and developed it's already too late is what I'm saying. So, the places where it's not too late, for example Kapalawai, let's try to save those places.

Mr. MacDowell: Okay, thank you.

Ms. Dalton: You're welcome.

Chair: Commissioners any other questions for Judy? [NONE] Thank you very much. Anyone else? Okay, one more, Dave Walker.

*[ATTACHMENT #5]*
*Testimony from the Sierra Club*
*Submitted by Ms. Judy Dalton*

Mr. Dave Walker: Chair Baldwin, members of the Commission I'm here as a past president of the West Kauai Business, our new president is not able to come today and wanted me to read a letter to support the project here at Kapalawai, I won't read it all. We represent forty businesses and about 1,000 employees of those businesses and have a list of those with us.

I'd like to point out I have coached track for 25 years and I heard earlier testimony from Lissa Dunford about kids leaving the islands. That's quite true, I don't see many of the kids I coached anymore, that's 25 X 40 which is a lot of kids, and when I see them I'm surprised and they're living all points away from Waimea. And, currently, some of the kids that are going to Community College, my daughter's classmates, they're asking about the project. They are very keen to see it happen, they want jobs, they want to stay here. So, that's interesting they're coming up and asking me about it because they know me. So, obviously, from that point of view I'd like to see it happen.

An interesting point that Mr. Manini made about the land in question that Gay & Robinson had by the pier is now owned by the State and has been cleaned by many people in Waimea and [INAUDIBLE] everybody on the West Side. So, that's been done and I think that the Kapalawai will be the same, and the openness of the project will allow the west Kauai residents to enjoy that area and perpetuity.

One other thing, recently, we had a big storm on the North Shore, a lot of winds and if you ever did ride to the West Side it was like the whole of the North Shore came to West Kauai. It took 15-20 minutes to ride from Kikiaola Harbor to the bridge at Waimea. And, when you pass Kapalawai area it was two lanes all the way from the bridge to the Post Office, which was probably a couple hundred cars, and all kinds of people were walking down there. The area's no longer a secret, many people are going there, and they were not surfers they were beach goers. And, as many of the West Siders know, it's not a swimming beach, it's not a body surfing beach or a plastic floating mattress beach with the attendance there, obviously, the Kapalawai project would provide… they would provide good signage and good information for those people to go elsewhere and be in a safer environment, that's another aspect that I'd like to point out. Any questions?

*[ATTACHMENT #6]*
*Dave Walker*
*Submitted Testimony from Mark Nellis, President*
*West Kauai Business & Professional Association (WKBPA)*

Chair: Commissioners any questions for Dave?

Ms. Santos: Obviously, they didn't respond to that survey about going to the beach, they like going anyway to the beach. The day it was raining you said on the north shore everybody was going to the beach.

Mr. Walker: It was incredible.

Ms. Santos: Just wanted to point that out to Gary.

Mr. Walker: Well, they had nowhere else to go. The only place that had sun was a little pocket…

Chair: You might want to stop here. This is a personal jab from Commissioner Santos to Commissioner Baldwin! (Jokingly) This was her taking a shot when she had an opening and it was a very good one too, I must compliment her.

Mr. Walker: Sorry about that.

Chair: No, you were almost the perfect straight man.

Mr. Walker: Oh, okay.

Chair: Thank you very much Mr. Walker. Any other questions? Can I have a show of hands who else wants to talk so I can decide… I got Bruce, and I got young lady in black, that's it just two more? That's it, okay two more. You can hang in there for a little bit right guys.

Mr. Bruce Pleas: Good day, my name is Bruce Pleas. I have a letter here that I'd like to… was asked to submit as testimony to the commissioners.

Chair: Okay.

Mr. Dee Crowell, Director Planning Department: Can we get a copy?

Mr. Pleas: Okay. Thank you Planning Commissioners for having today, most of today, to receive testimony on Kapalawai. I'd also like to thank Mike Belles on supplying any and all information pertaining to Kapalawai to me. And also to Warren Robinson, the Robinson Partners, Bruce Robinson, Lew Geyser on making available the Kapalawai area for public field trips. The next field trip for the public to attend to the best of my knowledge, at this point, will be with the State Land Use Commission (LUC) in the near future. You can get hold of the State Land Use Commission at 1-808-587-3822 if the public wishes to go view Kapalawai. I hope the public takes up this gesture of good faith from Robinson and Lew Geyser to go see first-hand what this area is before decisions are being made on this.

Some information on proposed land use for the West Side, what we have here is, this is from the Citizens Advisory Committee (CAC) meetings, I don't know how many people on the West Side if they're aware of what is being planned for the West Side, Kapalawai is just part of it. We have Makaweli Resort, which is resort units, marina and commercial which is on the beach side, the makai side. We have Makaweli Residential which is proposed Urban Residential with residential units and a golf course and that is on the Mauka side. This is all available through the CAC and this has printed.

Here's the County of Kauai May 14th, 1999 Planning Commission date on this, this is, I assume, some sort of official document. This was made available to the CAC, this will point out exact areas that are being done.

- Makaweli Resort Area #1;
- Kapalawai, Open 170 acres, 250 Hotel Units;
- Makaweli Resort Area #2;
- Pakala 55 acres scheduled for Resort;
- Makaweli Resort Area Kalua Apuhi Agriculture scheduled for Resort 222 acres.

This covers the entire area from Kapalawai to the mill, that's all the sandy beaches, this is an area that people use and live, do we want this to happen?

Okay, we also have Kikiaola which will cover the area from Waimea to Kekaha…

Chair: Bruce, it sounds like you're testifying on the General Plan, and we'll be having a meeting on that on the West Side on May 30th, 2000.…

Mr. Pleas: No, this is Land Use. Okay thank you.

Chair: Can we stick to…

Mr. Pleas: Okay.

Chair: We've got eight hours down there.

Mr. Pleas: I know you guys have a long one, it looks like you're getting to the end though.

Chair: Okay, so can we stick to Kapalawai?

Mr. Pleas: Okay. Clarification on my views. I'm not against controlled, locally-built resort development on Kauai. We'll make an example, Waimea Plantation Cottages over the last 10-15 years is a good example of what the West Side should have. This did not impact the West Side very much it was slow growth, it was built by local people.

I am against resort development on coastal lands, especially coastal lands that are rich in unique historical sites such as are found at Kapalawai. The Kapalawai area contains an important six plus (6+) acre Hawaiian fishpond; one burial site found so far; a Hawaiian Habitation layer; a rock platform; possibly a heau is adjacent to documented homes of Kauai's Alii. That area is in the corn field between Kapalawai and the Russian Fort, that is the fishpond supply the Alii with their fish, this is a very sacred area if you're familiar with Hawaiian areas, fishponds, are kapu to the normal people and they are for the Hawaiian Alii.

What needs to be done is a more thorough and archeological study covering the entire proposed resort area. When we went on the field trip, and I went with them, we walked to the platform. On the way there we found a Hawaiian Ass laying on the ground, you can check with Randy Wichman. I would presume it is a Hawaiian artifact, I wont say that is exactly what it is, he was excited over it. You should get the County Historical Preservation Review Commission's report on their field trip to there, I think you'll find it very interesting. But there are archeological sites there that have not been fully studied. Before anything can be done on this resort, anything even passed, it must be deferred until you have complete archeological sites, every single one of them to the best of their knowledge done.

Okay, the resort area is also home to three endangered species, Hawaiian Hoarie Bat; Koala; and the Common More Hen all of which will be affected or possibly eradicated from the area by the proposed resort development. The proposed resort area contains Sinclair Robinson family residence and many adjacent historical buildings from 1890 to the present which are falling into a state of disrepair, with some of these adjacent historical buildings slated to be torn down. This area is such great historical uniqueness it is not to be found anywhere else on the West Side, this is not an area to put a resort in, this is an area to preserve. The West Side will benefit just as well from preserving this area for visitors, children and local people to come see than it will to put a resort there. And to put a resort there I have yet to see a resort that preserves entirely the history of the area.

We have such a unique time here, we're on a Y at the West Side, we need jobs, we need business. We can supply business and jobs by turning this area into a museum, turning it into an area that is totally restored. We can put a resort... I'm not against a resort, 250 rooms; 500; even put 1,000 rooms on the mauka side, spread it out from Waimea to Hanapepe on areas that are not culturally; historically; archeologically; environmentally; or ecologically threatened and make true eco-resort. Let's put a resort there that is an eco-resort, it has hot water, powered by the sun; it has solar panels as Doctor Aiken has given testimony on Gary Hoisers tape when he was over here too that people can view on Hoike if they'll run it again. That will supply electricity to the grid and it will be a true eco-resort. Let's not have this place drain our electricity.

Okay, alternates to what is done. Mike Belles says an alternate, we just leave it alone, let's do this... we can't do anything... the alternates are limited. An alternate plan for this area, we need to restore all the Hawaiian sites all the Sinclair Robinson residence and adjacent buildings to their full original statues. Conserve the Beach area as a community beach park, the only Keiki-friendly swimming beach area close to Waimea Town for both local and visitor use; restore the Aakukui and Mahaikona Steams, these are streams listed in the EIS. These are not streams these are ditches, these are straight line ditches.

The streams, as Mr. Manini said, went different ways and if you look on the topographical and the soil maps on the EIS, check out where the fill lands are you can see where the streams used to go. Also there's a little area where the surfers walk down there's a fill land there, when they dug the post to put the new fence in four feet down, they went through four feet of fill land then you ran into a six inch layer of white sand and below that was dark black, I believe it was sand I never got to check it out but that was beach sand there. There was beach all the way up to there or there was at one time Tsunamis that came through that brought beach sand up there.

To restore the streams back to the original and natural courses you would preserve the ecology and improve the habitation area for the endangered species. You can locate the resort on mauka side of Robinson lands that are marginal agricultural and pasture use, which are not of historic or cultural value, that have beautiful views of either the ocean or forest areas. Restoring the area would provide more economic benefit to the adjacent towns of the West Side as there would be 300 to 1,000 visitors daily. This is just my own opinion, this is not from any survey.

Coming to the West Side to view the restored area, use the beach park, which along with the resort located on the mauka area of the Robinson Land there would still be substantial..., approximately 300 persons for 250 units, from the developers final EIS amount of people staying at the resort. And also, there would be the same amount of workers working at the resort for people on the West Side.

Restoring the streams back to their natural course would bring back many native species and would add another dimension of activities for both residents and visitors to engage in which will provide economic benefit to the area.

We're looking at a multi-layered economic benefit to the area not just a single-layer. A single-layer is your resort, multi-layer, what do people come to Hawaii for? They come to see Hawaii as it was. An editorial by Sue Dixon, I believe it was about a week and a half ago on Sunday in The Garden Island, mentioned... addressed this issue and it says, "*The past is what people are going to come to see.*" And that is what is true for Hawaii, especially Kauai, Kauai is unique in that area. You can

go to resorts anywhere in the world, you can get blue water in Mexico and go there cheaper, you come to Kapalawai you get brown water and sharks. So, let's look at it realistically, let's do the best what we can do for west Kauai, let's not just build resorts and hope it turns out good. You know in your heart what will turn out good if we do it right. And just think of "*Waimanalo Blues*", that song, think of it that says it in one song.

Okay, they were mentioning when all those people came when it rained on the West Side, it rained all over and everybody came to the West Side to go to get the sun. There were 130-cars parked at Kapalawai, if that would have been in the same as a high surf warning when the surfers came, you would have had 80-surfer cars there, that's 210 cars. Is the project developer going to be able to provide that many parking areas for people to use the beach? On a normal day now we have a small usage, there's ten cars there, tourists going to the beach, it's not hugely overpopulated they come to be alone on the beach. Surfers use it, generally, during the season, you're average… I documented last year, you have 20… during the summer season 20-25 cars there on off days, you'll have 40-50 cars there during every day and that's at one given time, people come surf for two hours and leave. Now, are we going to restrict beach access by having them go through the resort. And look at a resort, how many resorts can handle that amount of people coming in and out constantly? And this is from half an hour before sunrise till half an hour after dark, we have to address this. This is why this is not an area for a resort.

Back to the historic sites, throughout the whole thing they have a board that shows the preliminary plans for it, it has units directly over the burial site, it has units around fishponds. I think they should have at least for the final EIS began to change their plan, that's where Judy Dalton got her 40 feet the units were from, that's where she got that from. She has never got a copy of the final EIS, has not been provided to her as the Kauai Representative of the Sierra Club. So, she did not know that written in it, it says they'll have a 100 foot setback of all units. I believe it's the developers fault they did not change their chart, their map excuse me. That should be reflected in their map. That is, I call, below par work on their part.

Also, too the developer says "It's going to hire locally", but there's not a local architect that can draw on Kauai? All the people that he has hired so far, I won't say all I would say many of them are from off island. We don't see the local people working yet. If he was true to what he said then the architects should be from Kauai. We have people that need work! Why has this not been done?

Okay, where else can we go here?

Chair: How about we go it in a shorter time?

Mr. Pleas: Okay. Since that was with Land Use, but since we're doing Resort zoning too RR-10, 10 units per acre is that true? Dee is that what that means?

Mr. Crowell: Let me put this one to rest. RR-10 means they can put in 20 units per acre.

Mr. Pleas: RR-10 means they can put 20 units per acre.

Mr. Crowell: Twenty hotel units.

Mr. Pleas: Okay…

Mr. Crowell: But, they are applying for only 250 units, if we say in the ordinance amendment that that's all they're limited to then that's what they're limited to. They cannot go and put in more units than that without going through this whole process all over again.

Mr. Pleas: Okay. And, what happens if the developer goes belly up and decides to sell?

Mr. Crowell: Then whatever successor comes in would have to…

Mr. Pleas: The successor has to abide by the same thing. Okay, umm, I still have reservations about RR-10 because what that does basically is say you're going to be able to put 1500 units on there if they bring out some legal things. Even so you have written minutes…

Chair: Mr. Pleas he just explained to you what you have to go through to do that.

Mr. Pleas: Yah, okay, but you have to go through this whole thing again.

Chair: Right. So, if they're asking for X and you just multiplied that by six times and he just got finished explaining to you in order to even go one more you got to go through this whole process which endures over a year and a half.

Mr. Pleas: Good. Well everybody knows that now.

Chair: Okay.

Mr. Pleas: Over twice, sometime it takes twice to get through thick heads.

Chair: Okay, fine.

Mr. Pleas: Okay, gone through the beach access Plan, I've just one last thing, when I came in my wife called me she was going through an Atlas doing some school work with the kids, this is an Atlas published in 1998. In Hawaii it had right there the first sentence, "the rapid development of tourism and growth of resorts are destroying the Island's unique flora and fauna." This is in an Atlas the kids are reading in school. Is this what Kauai and Hawaii is doing now and we are perpetuating it? Let's take the different road, lets go the way of preserving what we have. Lewis Geyser says he wants to preserve the West Side, well I wish he would just go down there take one good look and let's not change a thing. The tourists will come to see what Kauai was. If you put resorts in you start putting this much resorts in west Kauai is gone. Thank you.

Chair: Bruce what is the name of the Atlas you're referring to as a source data and who is it's author?

Mr. Pleas: Okay, the Atlas is "D.K. Student Atlas", it's a family learning book. If you give me your e-mail or something I will send you the exact one of it, and matter of fact if you can't find it I will be glad to drive from the West Side to bring it to you.

Chair: I'll be glad to give you my e-mail.

Mr. Pleas: Sure. Do you want to give it to everybody so they can all come bother you?

Chair: I think that everybody in this room has my e-mail.

Mr. MacDowell: Mr. Chairman, I have a couple questions for Bruce. Bruce, I feel the passion and I hear the passion with which you're saying but I have a couple questions. You live on

the West Side?

Mr. Pleas: Yes I do.

Mr. MacDowell: Do you work on the West Side?

Mr. Pleas: I am self-employed there. I have worked for a surf shop, finishing the surf boards in Koloa for 25 years. I have started my own business back then as doing surf board repairs. I also, lately, have been doing an internet swell forecasting service for surfers throughout Hawaii; I do a report for Peru; I'm in the process of getting ready to do a swell forecasting for Japan; I also do the triple-crown surfing for the last eight years doing all their forecasting. I have lived on the West Side for 23 years, I have lived on Kauai for 28 and I have seen what has happened to Poipu and what has happened to our island.

Mr. MacDowell: I hope that the swell forecast doesn't bring more surfers down to Pakala. But, in any event, my children were, they both went to Kakaha School, Waimea High and then now they're both. One is living in the mainland after UH and the other is still in Honolulu after UH. And, I know that many people feel that jobs, jobs, jobs isn't a necessary component of keeping families together. But, history has dictated that jobs put food on the table, keep families together and you have to have development of some sort to keep the economy together. Many people aren't blessed with wealth where they can come here and live as a resort environment, they're forced to work. And, so I feel that many people regard, particularly the 200 people that have lived and worked or that have given their testimony in form of a written petition to the Robinson family in support of this might attest to that necessity for jobs as well. Do you have any comments on that?

Mr. Pleas: I support the Robinson family, I support the jobs, the sugar needs to survive. Also, anything the Robinsons have to do to survive is very good, but I think they are taking a little bit of a different track from what I would suggest. I think jobs are very important, I think if you look at it carefully that there are areas that is a viable tourist destination that are not coastal areas.

Also on the families on the West Side. Jobs in resorts are generally low-paying or mid-paying, I don't see $25-$30 an hour jobs throughout a resort, that is what is needed to support a family.

Mr. MacDowell: Absolutely.

Mr. Pleas: Now, the West Side community, the families need to do what they used to do. They used to grow their own food, they used to go fishing. Now days fishing isn't as good, pollution is taking care of a lot of that they're not able to do that. We need to restore Kauai back to what it was ecologically 50 years ago so these families could go back to do what they were doing. They didn't need money back then, they grew what they needed to live on. You know this is what... and if you start building resorts you're dependent upon resorts and they're not good paying jobs. You have resorts come in, your rents are going to go up, that's been proven throughout Poipu and Lihue. When Hemmeter came in advertisement $1200 for any house. I knew plenty of people that were paying $400 were kicked out so they could get the $1200. This will happen on the West Side, the rents will go up. You look in the newspaper, how many places are for rent in the West Side now each week? One, maybe three. How can we support more people coming in? In the EIS it states

86 construction workers are going to have to come from off island, where are they going to stay? One suggestion I've had is they stay at Waimea Plantation Cottages because they have openings. Well then why are they building a new resort for if Waimea Plantation Cottages have empties?

See, now this is what I'm getting at, we need to go back to where we were. You know families need to be done, Robinson needs to survive, Robinson is an integral part of the West Side. I will support anything reasonable that they need to survive on. You know, like I say, I wouldn't even bother a 1,000 units back on the mauka side that are spread out that visitors want to come to. I have no problem with it, it's just that this area, this unique Kapalawai area…, if you take the tour with them and you go see what it is, it's unique.

This is not an area for resort, if it was just… and if it's good Ag Land, of course, Robinsons don't want to use it. So, they're in a Catch-22 situation, you know you can't use this because it's good Ag Land, it takes money from the things but you… you know oh this is a kind of viable tourist destination so we'll put it over here, but it has historical significance.

So, I think they need to look out into the vision, identify areas throughout their holdings that they can put really viable tourist destinations. Some of you mentioned that the visitors all come down and they are all for the resort and everything, I have talked to ever single person that comes to Pakala that is a visitor I have yet to find one that wants a resort there. They all left Poipu to come down here to Pakala, and they think oh it's great there's nobody here. And, they support wholeheartedly having a museum area they would come and visit. And, with Robinson developing that as museum area right now they could be making money out of the house right there, they have a tour setup at the mill, and they could bring people down there right now to make money.

Chair: Mr. Pleas that's not true, they would need a Special Permit to do that.

Mr. Pleas: Well, then they would have to go get one and I hope the State or whoever issues those Special Permits would be very lenient and do it very quickly.

Chair: The County, this Commission.

Mr. Pleas: Well then good. You should offer yourself to go ahead and help the Robinsons to do that they need money. Let's get them down there, there are people that would go there every day to go through what I went through and see what's there.

Chair: Okay, Mr. Pleas we can't do that because at this point in time we need to adopt some rules for that, but it's a nice thought.

Mr. Pleas: Okay.

Chair: Commissioners, any other questions for Mr. Pleas?

Mr. MacDowell: But, thank you for your passion, and I don't think the architects… Just one thing on the architects, they're having a hard time designing the little rooms they're doing right now, but at least they've done locally. They've got Belles, Mike Belles' group there, and you know most of the people that I see they're using…

Mr. Pleas: Yah, I met with the architect he was very good, he was real interested.

Mr. MacDowell: They took us on a tour.

Mr. Pleas: Yah. And, also I would hope that you would listen to the County Historical Preservation Review Commission (HPRC), their report. And I would like to see, if not individually, maybe the whole group go with at least Randy Wichman and Mr. Kikuchi and a few of them and see what their view is on it. I think you missed out a lot by not inviting them or not having them or whatever the circumstances were that you guys didn't go together on your field trip. I think you missed a lot on that because it was very informative to have people that were knowledgeable in this area, they presented a lot of interesting questions to the archeologists that were… have done the EIS.

Mr. MacDowell: I would have loved to have heard from…

Mr. Pleas: You'll hear from them, I believe they're going to be doing something, May 4th, 2000 they have their meeting. And so I hope you defer all of this for as long as possible until everybody's all happy and until I'm actually up here smiling. And say okay, because I think you'll see too much of me from further… till this is either done or over with or whatever it is.

Chair: Thank you Mr. Pleas. Thank you very much. The final requested speaker is the young lady in the black dress in the back.

Ms. Emiline Ehu: Hi, my name is Emiline Ehu, and I come from the West Side, I was born in Waimea and went to school there. I'm representing an entity that hires individuals on the West Side. I have no connections with Gay & Robinson other than my granddad was a civil engineer for Gay & Robinson many, many years ago. So, I'm not even in the tourist industry.

I am in support of this resource despite what I know what Mr. Manini said, and that does not frighten me that the ownership is in question. But, I understand that this is not the place for that decision.

However, I am in favor of the resort because I employ 20 people on the West Side and every single day I get a call for other people asking me if I have jobs, or openings, today I received three calls. I have a folder that's about this thick with applications and these applications are less than 12 months old. The majority of these applications are people that would qualify for work at the resort and I see that there is a need. I wish I could hire all of them because I feel so sorry for so many of them, I don't have the resources for them. And so I see where the resort would be the answer for this and that is the main reason why I support this resort, because it will mean jobs for a lot of those people who's applications I hold.

I'm also in favor… I grew up there, I used to see the beaches, I heard about the fishpond, I heard about the Robinson Mansion, I never got to see it. And, I'm just hoping that this will give me an opportunity to have freedom to see it, I never had the freedom to see it. And I think there is a lot of people who grew up on the West Side too that would certainly like to see it and have the opportunity to come and go within that area.

As for the surfing, I see there's a lot of surfing going on in the Kapalawai area and I see how dangerous it is when they're parking along the main highway, along Kaumualii Highway. And I think if we had some way of providing safer parking for that I would feel so much more comfortable, especially when I'm traveling along that, and I believe that the resort will help to facilitate that.

That's about it and I'd like to say thank you for having me and if you have any questions.

Mr. MacDowell: Thank you. Maybe a couple comments on surfing When I first started surfing there you could drive right down to Pakala Camp, there's a park right there.

Ms. Ehu: Yah.

Mr. MacDowell: And then some people created some trouble and then we'd park down at Waimea and we'd run along the beach except for when you were looking out for Robinson and the closest way which was when you were running across the field that they kept the bulls in.

Ms. Ehu: Yah.

Mr. MacDowell: But it is a dangerous situation.

Ms. Ehu: It is yah. I traveled through that every evening and see that.

Mr. MacDowell: I've never gotten caught but… the statute of limitations ran out you know.

Chair: Commissioners any other questions for Emiline? [NONE] Thank you very much for coming. There was nobody else that had raised their hand, has anybody changed their mind and wants to talk? [NONE] Okay, we're done. Mr. Belles do you wish to have any final comments on behalf? You're done. [NONE] Mr. Geyser? [NONE] He doesn't have anything. What Mr. Belles says no so it's…

Okay at this point we will continue the public hearing on the General Plan Amendment GPA-2000-1 pending receipt of the final comments on the EIS as mandated by the law.

Mr. Crowell: When would that be?

Chair: June 22nd, 2000 I think is the final date according to the submission… [TAPE CHANGE] …and as both public hearings are continued, the final comments for the EIS is June 22, 2000 to the appropriate parties, which is Mr. Belles.

Mr. Belles: It's only the appeal period.

Mr. Crowell: Still…

Chair: Appeal period, okay got it. Thank you for my correction. Okay, so both the public hearings are continued to a later date in history. Thank you all for coming, thank you all for your patients.

Mr. MacDowell: Mr. Chairman, Judy if you want to borrow my EIS you're more than welcome to it I've got some more information in my office.

Chair: Hold on, I'm going to state a date as soon as my friend gives me one.

Mr. Crowell: The 22nd or July 13th?

Chair: Do you want June 22nd or July 13th?

Mr. Belles: I'm afraid that June 22nd is the 60th day, so if it's on that day or the day after I'm afraid that there might be some technical or procedural irregularity that might require a deferral, so I'd rather be safe than sorry and go for the first meeting in July.

Chair July 13th.

Mr. Crowell: July 13th.

Mr. Belles: That'll be fine thank you.

Chair: So, both (GPA-2000-1 and ZA-2000-2) public hearings will be continued until July 13th, the first meeting in July.

Mr. Belles: Thank you.

Chair: Thank you very much.

This portion of the hearing was closed at 3:57 p.m.

Respectfully submitted,

Catherine L. Iwai

CATHERINE L. IWAI
Commission Support Clerk

ORDINANCE NO. PM-2001-356 BILL NO. 2004, Draft 2

A BILL FOR AN ORDINANCE AMENDING CHAPTER 8,
KAUAI COUNTY CODE 1987,
RELATING TO ZONING DESIGNATION IN MAKAWELI, KAUAI
**(Kapalawai Resort, LLC, Applicant)**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. The zoning designation for that certain area in Makaweli, Kauai, identified as TMK: 1-7-05:1, and as shown on Zoning Map ZM-200 and on the map attached hereto and incorporated herein as Exhibit ZA-2000-2 (Exhibit A), is hereby amended from "Agriculture District (A)" and "Open District (O)" to "Resort District (RR-1)," "Resort District/Special Treatment-Cultural District (RR-1/ST-C)," "Open District/Special Treatment-Resource District (O/ST-R)," "Open District/ Special Treatment-Public District (O/ST-P)," "Open District/Special Treatment-Cultural District (O/ST-C)," and establishment of view corridor and Transition Areas 1, 2, and 3, subject to the following conditions:

1. **ZONING DESIGNATIONS:**

As shown on the attached Exhibit "A," the following are zoning designations and acreage the project:

(a) Resort District (RR-1) – 127.93 acres.

(b) Resort/Special Treatment-Cultural District (RR-1/ST-C) – 18.02 acres.

(c) Open/Special Treatment-Cultural District (O/ST-C) – 11.43 acres.

(d) Open/Special Treatment-Resource District (O/ST-R) – 11.46 acres.

(e) Open/Special Treatment-Public District (O/ST-P) – 2.88 acres.

2. **SPECIAL RESTRICTIONS:**

As shown on the attached Exhibit "A," the following are design and project development controls to supplement the zoning designations:

(a) **Transition Area 1** - Shall be along the shoreline and be 200 feet deep, measured from the edge of the Conservation District and/or the O/ST-R zone, and be subject to the following restrictions:

(i) Single-story buildings only.

(ii) A maximum allowable land coverage of 20%.

(iii) A maximum building height of twenty (20) feet for the resort units measured from all points of the building.

(b) **Transition Area 2** - Shall be a 200 feet deep area around the fishpond. This zone shall be subject to the following restrictions:

(i) Single-story buildings only.

(ii) Limit of 800 square feet per resort unit (including each unit in a duplex). Lanais and decks will not count, but should not exceed one-third of the floor area or 200 square feet whichever is less.

(iii) Only one tier of buildings.

(iv) An average distance of forty (40) feet between buildings.

(v) A maximum allowable land coverage of 20%.

(vi) A maximum building height of twenty (20) feet for the resort units measured from all points of the building.

(c) **Transition Area 3** - Shall be a 100 feet deep area around the RR-1/ST-C zone which includes the Robinson family residence and the resource area on the western boundary of the project. This zone shall be subject to the following restrictions:

(i) No resort units.

(ii) Single-story buildings only (single-family detached residences for employee and/or affordable housing are permitted).

(iii) No commercial buildings.

(iv) The density of this zone is transferred to the RR-1 zone.

(v) A maximum building height of thirty (30) feet for all buildings measured from all points of the building.

(d) **Overlap of Transition Areas.** Transition Areas 1 and 2 have some overlap around the fishpond. In this case the stricter restrictions apply.

(e) **View Corridor** – A view corridor from the Robinson family residence (as specified in the application and EIS) to the shoreline shall be established and maintained to preserve the views to the ocean. The requirements stated in Section 8-9.7 of the CZO shall apply to the view corridor.

**3. ZONING AMENDMENT CONDITIONS:**

Approve the zoning designations specified in Section 1, subject to the following conditions:

(a) The applicant shall comply with conditions of the State Land Use Commission Decision and Order dated April 6, 2001.

(b) In keeping with prior commitments and representations made by the applicant, the applicant shall, in the forthcoming SMA and Zoning Permit process, provide appropriate documentation pertaining to historic preservation philosophy and methodology of the proposed development including the preservation of the carriage houses and green house.

The applicant shall also provide appropriate historic preservation documentation and information as recommended by the Kauai Historic Preservation Review (KHPRC) Commission in its July 3, 2000 memorandum (on file) in conjunction with the forthcoming permit process. Also, the Department of Land and Natural Resources – State Historic Preservation Division (DLNR – SHPD) and the KHPRC shall be given the opportunity to

provide further comments as more detailed historic preservation information and plans become available.

(c) As recommended by the State Historic Preservation Division of the Department of Land and Natural Resources (DLNR):

(i) Five historic sites are to be preserved, as documented in the inventory survey report. A detailed preservation plan for these sites must be submitted to the State Historic Preservation Division (SHPD) for approval. This plan must include buffer zones, interim protection measures (if needed), and long-range preservation measures. Before land alteration can occur, minimal buffer zones and interim protection measures need to be approved and the SHPD must verify in writing that this plan has been successfully executed.

(ii) One historic site may undergo some data recovery (site 764, the Robinson plantation house complex) as not all buildings may be preserved. A data recovery plan must be submitted to the SHPD for approval for any building to be demolished.

(iii) The proposal to preserve the burial within site 792 must be submitted to the Kauai Island Burial Council for approval. A burial treatment plan (covering preservation concerns) must be reviewed and approved by the Burial Council.

(iv) Archaeological monitoring shall occur for all altering construction in the shoreline sand areas outside of site 792, to cover the possibility of inadvertent burial finds or finds of small remnants of subsurface habitation deposits. An archaeological monitoring plan (Scope of Work) must be submitted to the SHPD for approval. The SHPD must verify in writing when the plan has been successfully executed.

(d) The applicant shall comply with the requirements of the Fire Department as specified in their December 2, 1999 letter to the Planning Department (see attached).

(e) The applicant shall meet all applicable requirements of the County Department of Water and the County Department of Public Works at the time of permitting.

(f) The applicant shall comply with the comments of the State Highways Division dated March 8, 2000 to the Planning Department (see attached).

(g) The applicant shall comply with all applicable requirements of the State Department of Health at the time of permitting.

(h) The Resort District (RR-1) zoning shall:

(i) Have a maximum density of two hundred-fifty (250) resort units. This zone has the capacity to also allow for three (3) additional single-family residential units. This additional density shall apply towards covering three (3) of the eight (8) existing plantation homes.

(ii) Allow those uses that are permitted within the resort zoning section of the Comprehensive Zoning Ordinance, including administration functions, maintenance functions, and small conference facilities. The support facilities such as the sewage treatment plant,

pump stations and other accessory uses that are necessary to operate the infrastructure shall also be permitted. The amount of amenities allowed as permitted uses shall however be limited to those uses specified in the zoning amendment application (two restaurants, a snackbar, luau grounds, public/passive recreation area, museum, bar/lounge, three swimming pools, fitness center/beach club, sports courts, amphitheater, and public parking/access.

(iii) Be required to provide one paved parking stall per hotel unit.

(iv) Be restricted to a maximum building height of thirty-five (35) feet for non-resort unit buildings.

(v) Be restricted to only duplexes for attached units; i.e. no more than two units shall be attached under one roof. The floor area for each unit in a duplex shall not exceed 800 square feet. Decks and lanais shall not count, however shall not exceed one-third the floor area or 200 square feet, whichever is less.

(vi) All units shall not exceed 800 square feet of floor area. Decks and lanais shall not count, however shall not exceed one-third the floor area or 200 square feet, whichever is less.

(vii) Not allow the resort units to be higher than thirty (30) feet which shall be measured from all points of the building.

(i) The Planning Department shall be granted authority to determine the course of action needed to address any changes to the project; i.e. whether legislative action involving an amendment to the ordinance or an administrative process involving the Planning Department and/or Commission. Increases in density, changes in uses, or other major changes that could alter the complexion of the project shall require County Council action. Slight variations and minor modifications to the project would qualify for administrative action.

(j) In addition to the State Land Use Commission's Decision and Order conditions pertaining to public access and amenities, the following improvements shall be constructed and/or provided prior to occupancy of the resort units:

(i) A comfort station for public use.

(ii) An outdoor shower facility for public use.

(iii) A passive public recreation area to allow for picnicking and passive day uses not less than two and one half (2.5) acres in size.

(iv) A public parking lot consisting of thirty (30) paved parking stalls with an overflow parking area of twenty (20) stalls.

(v) In the event that the applicant's proposed driveway connection to the beach parking lot cannot be implemented due to DOT concerns, an access onto Kaumualii Highway for use on an emergency only basis to be resolved with the Fire Department.

(vi) A fifty (50) foot wide lateral beach access easement be provided along the shoreline portion of the project site. This fifty (50) foot easement shall run along the entire shoreline frontage of the property and be granted in favor of the County of Kauai. This lateral

beach access shall be open 24 hours a day for unrestricted pedestrian use to enable the public to traverse (non-motorized) along the beach area. The long-term goal of such lateral access easements is to keep connecting the easements to enable the public to eventually traverse to and through beaches for recreational purposes throughout the island.

The exact amount of land area along with its alignment and configuration for public use (parking, comfort station, showers, passive recreation area, and walking trail) shall be resolved with the Planning Department during the permitting process. This public use area shall be designated as a public easement in favor of the State of Hawaii (to be consistent with the Land Use Commission's decision and order).

Further, provision of these improvements will enable the project to qualify for a 50% Park Dedication fee credit.

(k) There shall be no encroachment of commercial buildings or any resort units within any of the Open/Special Treatment districts.

(l) The existing foliage along the highway frontage within the Open/Special Treatment – Resource District (O/ST-R) shall not be removed. Maintenance trimming and planting of additional landscaping are allowed. The intent of this condition is to ensure that the buildings within the project are not seen from the highway and to ensure that the existing vegetation along the highway remains in its current state.

(m) Signage along the highway shall be reviewed and approved by the Planning Department and shall follow the County's sign ordinance. Direct lighting shall not be permitted. Indirect lighting is allowable.

(n) The applicant shall be made aware of condition 12 of the Land Use Commission Decision and Order that requires the applicant to participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed development in designs and schedules accepted and determined by the State Department of Transportation (DOT). Agreement between the applicant and the DOT as to the level of funding and participation shall be obtained prior to the applicant acquiring County zoning or prior to building permits if County zoning is not required.

(o) A landscape plan which includes an inventory of all major landscape elements covering major plants (within the Special Treatment and Transition Areas) that are existing, proposed to be removed, remain, and new landscaping shall be approved by the Planning Commission as part of or prior to issuance of the applicable land use permits (SMA, Zoning, and/or Use Permits) for the project.

(p) The Open District (O) zoning with the Special Treatment overlays qualify for one single-family residential unit per acre. This Open zone density shall be transferred to the RR-1 portion and be used only to cover part of the density for the eight (8) existing plantation homes (the additional RR-1 density will be used to cover part of the 8 homes) and for affordable and/or employee housing. The additional remaining density shall only be allowed if used for affordable and/or employee housing. If not used for these purposes, the remaining Open zoning should not yield any residential densities.

(q) The Applicant shall provide fifteen (15) employee housing units, on site, that shall be single family detached dwellings, including both two-bedroom and three-bedroom models, with all units being affordable to and

benefiting Kauai households earning no more than eighty percent (80%) of the Kauai Median Household Income, pursuant to housing income standards maintained by the Kauai County Housing Agency. The affordable units shall remain affordable to and benefit households earning no more than eighty percent (80%) of the Kauai Median Household Income for a period of at least twenty (20) years and compliance to the income restriction shall be monitored by the Kauai County Housing Agency.

(r) The Planning Department shall be allowed to refine the alignment of the zoning for this project based on the evaluation of more detailed information. Such administrative refinements shall not include changes to density and major changes to the alignment of the zoning district lines.

(s) Sufficient employee parking above and beyond the requirement for the hotel units shall be required during the permitting stage.

(t) Substantial construction of the hotel shall be completed within five years from the effective date of this ordinance. If substantial construction is not completed within this time, the Planning Commission shall initiate proceedings to rezone the property to the designations existing prior to the date of this ordinance.

(u) The applicant is advised that prior to and/or during construction and use, additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).

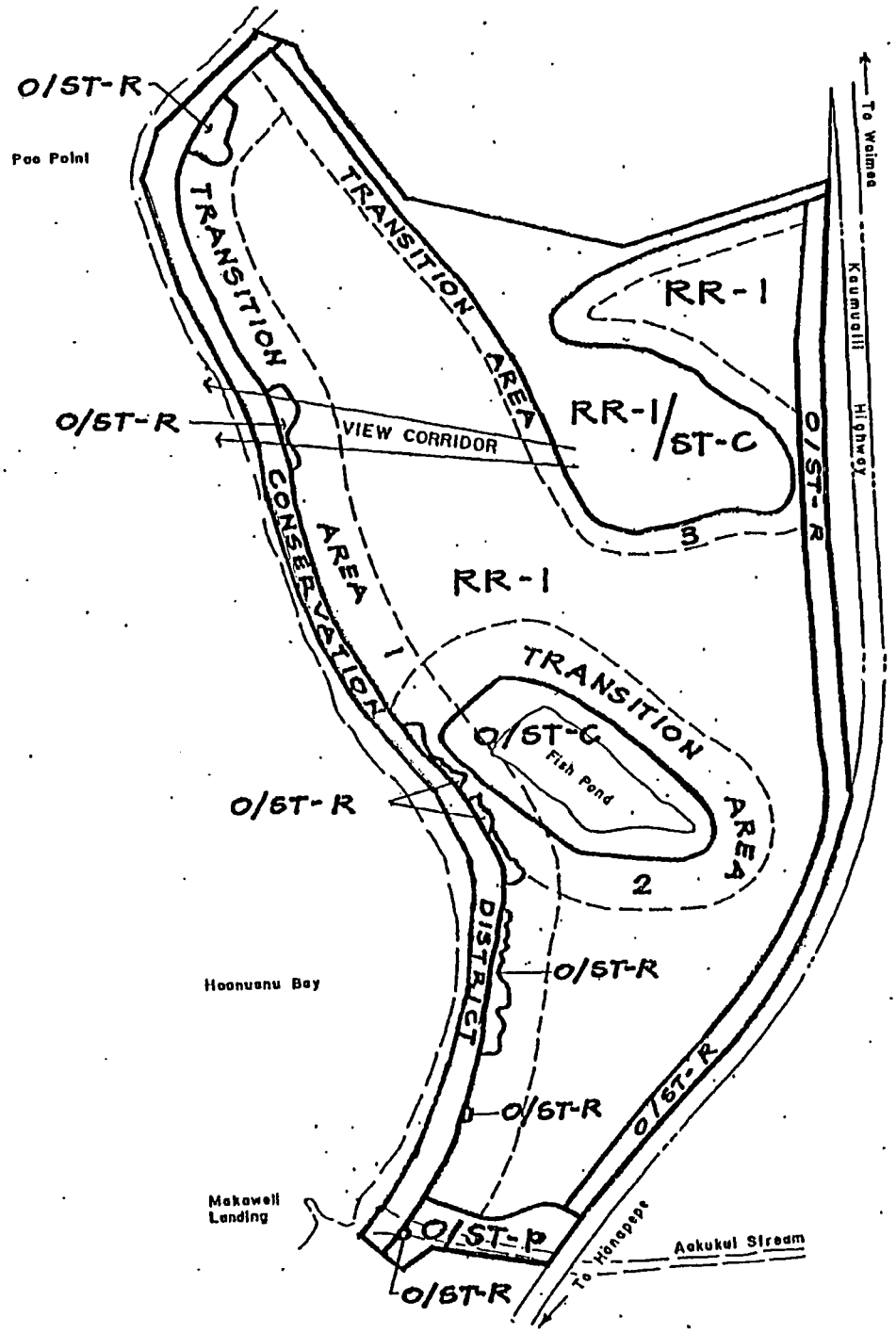
SECTION 2. The Planning Commission is directed to note the change on the official Zoning Map on file with the Commission. All applicable provisions of the Comprehensive Zoning Ordinance shall apply to the area rezoned herein.

SECTION 3. This ordinance shall take effect upon its approval.

INTRODUCED BY: /s/ RANDAL VALENCIANO
(By Request)

DATE OF INTRODUCTION:
**October 18, 2001**
Lihue, Kauai, Hawaii

(a:bills:2004D2 kapalawaiZON/ki:ao)




LOCATION MAP SHOWING
PROPOSED AMENDMENT TO ZONING MAP ZM-200
FROM AGRICULTURE DISTRICT (A) AND OPEN DISTRICT (O)
TO RESORT DISTRICT (RR-1); RESORT DISTRICT/SPECIAL TREATMENT-CULTURAL DISTRICT (RR-1/ST-C); OPEN DISTRICT/SPECIAL TREATMENT-RESOURCE DISTRICT (O/ST-R); OPEN DISTRICT/SPECIAL TREATMENT-PUBLIC DISTRICT (O/ST-P); OPEN DISTRICT/SPECIAL TREATMENT-CULTURAL DISTRICT (O/ST-C); AND ESTABLISHMENT OF VIEW CORRIDOR AND TRANSITION AREAS 1,2, AND 3
MAKAWELI, WAIMEA, KAUAI, HAWAII
TAX MAP KEY 1-7-05:1

ZA-2000-2

EXHIBIT "A"

MARYANNE W. KUSAKA
MAYOR

DAVID K. SPROAT
FIRE CHIEF

COUNTY OF KAUA'I

FIRE DEPARTMENT
MO'IKEHA BUILDING
4444 RICE STREET, SUITE 295
LIHU'E, KAUA'I, HAWAI'I

December 2, 1999

Keith Nitta
Planning Department
County of Kauai
4444 Rice St., Suite 473
Lihue, Hawaii 96766

COPY

RE: Fire Department Comments
Kapalawai Resort - DEIS
Waimea, Kauai, Hawaii

Appendix J – Pages 9 & 10 - Elements of the Potable Water System:

The Applicant proposes to construct a nominal 200,000 gallon (0.2 million gallon) storage tank for the private water system which would be used to supply the maximum daily use consumption as well as the required fire protection for the RR-10 zoning per Department of Water requirements (minimum of 1500 GPM for 2-hours duration). The tank was so sized following two criteria: (1) The volume must be equivalent to the maximum daily use without credit for inflow from the well pump; and, (2) The volume must provide the maximum day rate plus fire flow for the duration of the fire with the reservoir ¾ full at the start and credit for well inflow. The maximum daily use is estimated to be 0.177 MG.

The Applicant's storage requirement of 172,550 gallons is substantially less than our calculations assumed by their data. The formula for calculating Storage Volume is:

$$V = 4/3\ T_f (Q_m + Q_f - Q_p)$$

| | | |
|---|---|---|
| $V$ | = required storage volume, mil. gal. | |
| $T_f$ | = fire duration, day | (2-hours/day = 0.083) |
| $Q_m$ | = maximum day demand, mgd | (.177 mg) |
| $Q_f$ | = fire flow, mgd | (1500 gpm = 2.16 mgd) |
| $Q_p$ | = pump input, mgd | (200 gpm @ 16-hours = .192 mdg) |
| | | (200 gpm @ 24 hours = .288 mgd) |

The Applicant sized the storage tank at 200,000 gallons, which is approximately 16% larger than their calculated value of 172,550 gallons. Our calculations on the other hand resulted in the following:

**Assuming 24-hours pump operations: V = 226,700 gals. + 16% = 263,000 gallons**
**Assuming 16-hours pump operations: V = 237,300 gals. + 16% = 275,268 gallons**

**Therefore, storage tank capacity should be a minimum of 0.275 MG or may be rounded to 0.3 MG rather than the 0.2 MG as reported. The private water system shall comply with the installation/testing/maintenance standards of NFPA 22, Water Tanks for Fire Protection; NFPA 24, Private Fire Service Mains; NFPA 25, Water-Based Fire Protection Systems; and the appropriate installation/testing/maintenance standards of the County Department of Water; State Department of Health; etc.**

Other than the above, we have found no other representation in the DEIS that addresses or resolves the other areas of concern as described in our comments reply dated 08/18/99. We await review of the Applicant's proposal to incorporate these features into detailed plans.

In addition, the fire alarm system for the cottages shall be incorporated into the Museum Building and other major structures. We also recommend that the Museum be fire sprinklered to further protect and preserve the historical structure.

**Sincerely,**

**David K. Sproat**
**Fire Chief**

**Mike Kano, Captain**
**Fire Prevention Bureau**

State of Hawaii
Highways Division
3060 Eiwa Street, Room 205
Lihue, Kauai, Hawaii 95766
Phone: (808) 274-3111 Fax: (808) 274-3116

COUNTY OF KAUAI
'00 MAR 13 P1:12
PLANNING DEPT.

# MEMORANDUM

HWY-KE 4.000193

Date: March 8, 2000

To: Mr. Dee Crowell, Director
Planning Department
County of Kauai

From: Steven M. Kyono, P.E.
District Engineer

Subject: Zoning Amendment Petition for
Zoning Amendment ZA-2000-2
Destination Villages Kauai, LLC
TMK: (4)1-7-05: Por. 1

Review of zoning amendment petition for the subject project has been completed and we have the following comments:

A. . Page 10 , Item (3)-Transportation Facilities of the Zoning Amendment Petition:
(Re: Bullet points 1, 2 & 3)

1. A 6-feet wide, striped, median strip shall be installed separating the new left turn storage lane from the opposite direction through traffic.

2. In addition to separate left and right turn lanes at the exist driveway, an acceleration lane shall be construction for right turning vehicles.
Refuge lane for left turning vehicles exiting the project shall be installed.

3. Revise Bullet Point #3 statement to read: "A right-turn deceleration lane is recommended on **eastbound** Kaumualii Highway at the entrance driveway for the Project for safety purposes and to minimize delays to through traffic".

B. Other General comments:

1. Street lights are recommended at the entrance and exit driveway connections to Kaumualii Highway.

2. The entrance and exit driveways shall be separated such that all turn storage lanes, acceleration and deceleration lanes, median and pavement transitions, refuge lanes, etc., are safely, and adequately, provided for. Project map shows an approximate separation between the entrance and exit driveways of about 500 feet. This separation distance appears inadequate to accommodate the proposed highway improvements.

3. All project signs shall be located outside of the State Highway Right of Way.

4. One way entrance driveway and one way exit driveway shall be designed to provide safe control of all vehicle movements from/to Kaumualii Highway. "ONE WAY-DO NOT ENTER" signs, other traffic signs, pavement striping, concrete curbing, and/or, raised pavement markers shall be used to control all vehicle movements to, and from, the project site.

5. In order to accommodate the highway improvements, widening of Kaumualii Highway in the vicinity of the entrance and exit driveways will be required. The improvements shall also include 6-feet wide paved shoulders on both sides of the highway.

4. Design of all highway facilities shall conform to State Highway Division Standards and shall also be in accordance with the AASHTO standards for highway design. Construction plans for the Kaumualii Highway improvements shall be submitted to the State Highways Division for review/approval.

   No construction shall commence within the State Highway Right of Way unless, and until a "Permit to Perform Work Upon State Highways" has been obtained by the owner/developer, and/or, the contractor.

5. Existing highway drainage shall not be impeded in any way. Where necessary to accommodate the highway improvements, existing drainage facilities, including culverts, headwalls, drain inlets, etc., shall be extended as required.

6. Where required, existing guardrails, traffic signs, pavement striping, etc, along Kaumualii Highway shall be relocated, and/or, adjusted as necessary.

7. Utility relocation work along Kaumualii Highway shall be the responsibility of the applicant. Utility relocation work may include, but is not limited to: a) relocation of electrical/telephone poles, cables, pullboxes, etc.; b) relocation of cable TV facilities; c) relocation of water lines, etc.

8. In our review of General Plan Amendment GPA-2000-1, for the project, we had recommended that only one entrance/exit driveway be permitted to serve the project (HWY-KE 4.991330). The applicant has expressed a desire to retain separate entrance and exit driveways to the project site.

   Subject to our review and approval of the applicant's plans for the driveway and highway improvements, we will reconsider our initial recommendation and may permit separate entrance and exit driveways to serve the project.

9. In order to mitigate, and/or, avoid, impacts to State Highway facilities, this office reserves the right to impose, and/or, add, additional conditions as necessary.

If you have any questions, please call Steve Morikawa at 274-3118

SM:es

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2004, Draft 2, which was passed on second and final reading by the Council of the County of Kauai at its meeting held on December 20, 2001, by the following vote:

| | |
|---|---|
| FOR ADOPTION: Asing, Baptiste, Hooser, Kaneshiro, Tokioka, Valenciano, Kouchi | TOTAL - 7, |
| AGAINST ADOPTION: None | TOTAL - 0, |
| EXCUSED & NOT VOTING: None | TOTAL - 0. |

Lihue, Hawaii
December 21, 2001

Peter A. Nakamura
County Clerk, County of Kauai

ATTEST:

Ron Kouchi
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

December 21, 2001

Approved this 24th day of

December 2001.

Maryanne W. Kusaka
Mayor
County of Kauai

BEFORE THE PLANNING COMMISSION

OF THE COUNTY OF KAUAI

| | |
|---|---|
| In the Matter of the Petition to<br><br>AMEND ORDINANCE NO. PM-2002-356 AS AMENDED IN PART BY ORDINANCE NO. PM-2006-385 FOR REAL PROPERTY SITUATED AT KAPALAWAI, MAKAWELI, ISALND OF KAUA'I, STATE OF HAWAI'I, KAUAI TAX MAK KEY (4) 1-7-005:001, KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII INC., A HAWAII CORPORATION, ROBINSON FAMILY PARTNERS, A HAWAII GENERAL PARTNERSHIP, BRUCE B. ROBINSON, ALICES EST ROBINSON.<br><br>In the Matter of the Petition to<br><br>FOR THE REVOCATION OF SPECIAL MANAGEMENT AREA USE PERMIT SMA(U)-2002-6, PROJECT DEVELOPMENT USE PERMIT PDU-2002-15, AND CLASS IV ZONING PERMIT Z-IV-2002-20 AND REPORT PERTAINING TO KAUA'I TAX MAP KEY (4) 1-7-005:001, KAPALAWAI, MAKAWELI, ISLAND OF KAUA'I, STATE OF HAWAI'I, KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII INC., A HAWAII CORPORATION, ROBINSON FAMILY PARTNERS, A HAWAII GENERAL PARTNERSHIP, | DOCKET NO. ZA-2026-2<br><br>DECLARATION OF JAMES RATKOVICH |

BRUCE B. ROBINSON, ALICES EST ROBINSON.

# DECLARATION OF JAMES RATKOVICH

I, JAMES RATKOVICH, declare as follows:

1. Since May, 2025, I am the CEO of Ratkovich Ventures. From May 2014 to May 2025, I was the Managing Director, Real Estate Equity & Development Platform for Salem Partners LLC.

2. Since 2022, I have been assisting KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII INC. ("Kerzner") in developing the Kapalawai Resort Project ("Project"), that is to be constructed on the parcel designated as TMK No. (4) 1-7-005:001, consisting of two lots designated as Lot 1 (consisting of 26.548 acres) and Lot 2 (containing 144.03 acres) ("Property").

3. Unless specifically stated otherwise, I submit this declaration based upon my personal knowledge and belief.

4. Kerzner has retained G70 to assist the development of the Project.

5. Since 2021, I have attended numerous meetings with various officials acting on behalf of the County of Kauai, including the Planning Department, as discussed in Attachment A to the Declaration of Max W.J. Graham.

6. Additionally, I participated in the following meetings with the County Planning Department personnel:

   a. August 25, 2022 - Zoom meeting with Ka'aina Hull and G70

   b. June 1, 2023- Meeting with Planning Department personnel

   c. February 21, 2024- Meeting with Romio Indica, SMA Manager

7. As discussed in the Declaration of Jeffrey Overton, following the meetings with the County, Kerzner continued to engage with consultants, work to refine the new proposed design to be responsive to the County's suggestions.

8. This work had cost Kerzner substantial sums of money. To date, Kerzner has spent more than $5 Million on the Project.

9. At a meeting on April 18, 2024, the KPD informed me for the first time that it was considering seeking to change the zoning for the Property.

10. Prior to the meeting on April 18, 2024, the County had neither informed me that it considered the Project to have been abandoned, nor had the County ever asked me if the Project had been abandoned.

11. I have never informed the County that the Project has been abandoned. To the contrary, in each of the meetings I had with the County, I informed the County of Kerzner's interest in the Project, its financial commitment to the Project, and the progress of working on the Project.

12. Prior to the April 18, 2024 meeting no one speaking on behalf of the County ever informed me that the County considered the shoreline appeal to have been resolved or considered the eighteen month construction period set forth in Ordinance No. PM-2006-385 to have been started.

13. Further, I was never given any notice by the County that the eighteen-month construction period had commenced, let alone expired.

14. Until March, 2025, the County had not informed me that it was going to require compliance with Chapter 343 of the Hawaii Revised Statutes as a prerequisite to the submission

of the proposed amendment to the proposed amended zoning ordinance (Exhibit D to the Declaration of Jeffrey Overton) to the Planning Commission.

15. Had the County informed Kerzner that it considered the zoning to have been expired or that it was seeking to change the zoning earlier, it is likely that Kerzner would not have spent the substantial sums that it did in working to develop the Project.

I DECLARE UNDER PENALTY OF PERJURY, that the foregoing is true and accurate to the best of my personal knowledge and belief.

DATED: 11-5-2025, November 5, 2025.

James Ratkovich

JAMES RATKOVICH

BEFORE THE PLANNING COMMISSION

OF THE COUNTY OF KAUAI

| | |
|---|---|
| In the Matter of the Petition to<br><br>AMEND ORDINANCE NO. PM-2002-356 AS AMENDED IN PART BY ORDINANCE NO. PM-2006-385 FOR REAL PROPERTY SITUATED AT KAPALAWAI, MAKAWELI, ISALND OF KAUA'I, STATE OF HAWAI'I, KAUAI TAX MAK KEY (4) 1-7-005:001, KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII INC., A HAWAII CORPORATION, ROBINSON FAMILY PARTNERS, A HAWAII GENERAL PARTNERSHIP, BRUCE B. ROBINSON, ALICES EST ROBINSON.<br><br>In the Matter of the Petition to<br><br>FOR THE REVOCATION OF SPECIAL MANAGEMENT AREA USE PERMIT SMA(U)-2002-6, PROJECT DEVELOPMENT USE PERMIT PDU-2002-15, AND CLASS IV ZONING PERMIT Z-IV-2002-20 AND REPORT PERTAINING TO KAUA'I TAX MAP KEY (4) 1-7-005:001, KAPALAWAI, MAKAWELI, ISLAND OF KAUA'I, STATE OF HAWAI'I, KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII INC., A HAWAII CORPORATION, ROBINSON FAMILY PARTNERS, A HAWAII GENERAL PARTNERSHIP, | DOCKET NO. ZA-2026-2<br><br>DECLARATION OF JEFFREY OVERTON; EXHIBIT "A" |

BRUCE B. ROBINSON, ALICES EST ROBINSON.

# DECLARATION OF JEFFREY OVERTON

I, JEFFREY OVERTON, declare as follows:

1. I am a principal planner who oversees G70's work on master plans, environmental impact studies, and land use entitlements for private developments and government projects.

2. I specialize in securing land use permitting approvals for a wide range of projects, many of which face challenging environmental and community issues.

3. I have more than 40 years of professional experience in this area.

4. I have completed environmental impact statements (EIS) and master plans for more than 150 projects, including resort complexes

5. Since 2021, I have been assisting KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII INC. ("Kerzner") in developing the Kapalawai Resort Project ("Project"), that is to be constructed on the parcel designated as TMK No. (4) 1-7-005:001, consisting of two lots designated as Lot 1 (consisting of 26.548 acres) and Lot 2 (containing 144.03 acres) ("Property").

6. Unless specifically stated otherwise, I submit this declaration based upon my personal knowledge and belief.

7. Kerzner has retained G70 to assist the development of the Project.

8. Attached as Exhibit "A" to my Declaration is a true and correct copy of a letter dated November 5, 2025 addressed to the Planning Commission that summarizes the current status of G70's work on the Kapalawai Project.

9. Since 2021, I have attended numerous meetings with various officials acting on behalf of the County of Kauai, including the Planning Department, as discussed in Attachment C to my November 5, 2025 Letter.

10. As set forth in my November 5, 2025 Letter, the Kauai Planning Department first raised the potential for seeking a change of zoning for the Kapalawai Project at a meeting on April 18, 2024. Prior to that meeting, neither the Kaua'i Planning Department, nor anyone else associated with the County ever informed us that the County had any intentions of seeking to change the Resort zoning of the Project. Further, the County never informed us that it considered the Project to be "abandoned" or that the shoreline appeal to have been resolved.

I DECLARE UNDER PENALTY OF PERJURY, that the foregoing is true and accurate to the best of my personal knowledge and belief.

DATED: Honolulu, HI, November 5, 2025.

JEFFREY OVERTON

111 S. King Street
Suite 170
Honolulu, HI 96813
808.523.5866
www.g70.design

November 5, 2025

Mr. Francis DeGracia
Planning Commission, Chair
Kaua'i County Planning Department
4444 Rice Street, Suite A473
Lihue, HI 96766

**Subject:** **Regarding Proposed County Zoning Amendment (ZA-2026-2)**
**Summary of G70 Design, Planning and Environmental Studies (2022-2025)**
**In Support of Kapalawai Resort. TMK: (4) 1-7-005:001**

Dear Chair DeGracia and Honorable Members of the Planning Commission:

Group 70 International, Inc. (dba G70) is an architecture, civil engineering, land planning and environmental consulting firm based in Honolulu. In 2022, G70 was retained by Kerzner International (applicant and lessee) to provide master planning, conceptual design, environmental assessment compliance, and land use permitting services.

Over a three-year period, G70 helped formulate plans for Kapalawai Resort as a unique sustainable low-density plan which integrates the historic Robinson family estate home and restores the culturally-significant Kekupua Fishpond. The 2025 resort plan introduces a high-quality village concept and provides significant workforce housing, in concert with the objectives of the West Kaua'i Community Plan and Kaua'i Destination Management Plan. The 2025 plan is consistent with the zoning designations of Tax Map Key (4) 1-7-005:001 approved by Ordinance No. PM 2001-356, as amended in part by Ordinance No. PM-2006-385.

To assist the Planning Commission in this evaluation, G70 provides the following attachments as exhibits for consideration regarding County Zoning Amendment (ZA-2026-2).

A. 2025 Site Plan for Kapalawai Resort
B. 2000 Site Plan for Kapalawai Resort
C. Timeline of Meetings with the County
D. Proposed Zoning Amendments
E. Technical Studies Status
F. Ka Pa'akai Report
G. Anticipated Timeline for Environmental Permits and Land Use Entitlements

In support of the required environmental assessment compliance and land use entitlements, an updated plan (2025 plan) [**Attachment A**] for the construction of a resort was prepared. In comparison to the plan prepared in 2001 [**Attachment B**] for the establishment of Ordinance No. PM 2001-356, the 2025 plan is designed to maintain the rural character of the West Kaua'i region. As such, the plan features a 134-unit low-density resort, which is 116 fewer resort units than are included in the existing zoning Ordinance No. PM 2001-356, as amended in part by Ordinance No. PM-2006-385, as well as the existing Permits for the Project.

[1]The Constraint District was enacted by Ordinance No. 935 on November 14, 2012.

In comparison to the 2001 plan, the 2025 plan proposes a low-impact hospitality resort development aligned with the County sustainability initiatives and significantly reduces total number of resort units. Reducing the number of units and incorporating managed retreat design strategies limits the extent of site development work, thereby minimizing potential impacts on existing noise levels, soils and topography, nearshore water quality, biological resources and impacts from natural hazards. Designed and operated as a low-impact sustainable resort, the resort seeks to minimize the consumption and generation of water, wastewater. The short-term buildout and long-term operation of the resort is anticipated to generate and diversify employment opportunities in the West Kaua'i region.

To proceed with the implementation of the 2025 plan, meetings were held with the County to review the project plan, design, and operations and general conformance to the conditions of design and development identified in Ordinance No. PM 2001-356. Additionally, meetings were held to discuss the required environmental permits and land use entitlements to proceed with the construction of the resort. A timeline of meetings is provided in **Attachment C.**

In the meetings with the Kaua'i County Planning Department, we discussed a number of suggestions to improve the resort plans, including aspects that the Department felt would improve the plans. G70 modified the project plans to address positive comments from the Department. At no point did the County mention that the project zoning timetable had expired.

Review of the conditions related to the design and development of a resort identified in Ordinance No. PM 2001-356, as amended in part by Ordinance No. PM-2006-385 and the 2025 plan revealed that the ordinance would need to be amended. Subsequently, to proceed with the 2025 plan, the last meeting that was held with the County was in February 2025 to discuss ordinance amendments that would protect the natural environment and allow the Applicant to proceed with the implementation of the 2025 plan. In April 2025, the proposed amendments were filed with the County [**Attachment D**].

In support of the environmental permits and land use entitlements, technical studies to carefully evaluate the 2025 plan against 2025 baseline conditions have been completed and/or are underway [**Attachment E**]. Over 20 investigative and technical studies will be completed, with over half of these studies completed.

Most recently, a Ka Pa'akai report was completed in July 2025 in support of the proposed zoning amendment and forthcoming environmental permits and land use entitlements [**Attachment F**]. The purpose of the Ka Pa'akai report is to identify cultural resources or practices that may occur in relation to a project area, and determine if a proposed action will affect the identified cultural resources and practices, and offer mitigation recommendations to protect Native Hawaiian rights should the proposed action be implemented. To identify cultural resources and practices in the project area, background research and ethnographic interviews were conducted. Interviewees were selected as they were either referred, had or has ties to the Kapalawai project area or vicinity, is a known Hawaiian cultural resource individual, is a known Hawaiian traditional practitioner, or was referred by other cultural resource professionals. A total of five individuals were interviewed as part of the Ka Pa'akai report. Based on background research and ethnographic interviews, the project area has and continues to support a suite of cultural practices. These practices were primarily undertaken by those granted access and gathering

privileges by the landowner. Cultural practices identified include netting and fishing, limu and kiawe wood gathering, hunting and subsequent imu making. Surfing was also identified despite limited beach access and the murky and sharky nature of the waters. Cultural archaeological resources identified in research and interviews include the loko i'a and associated kū'ula or heiau and kauhale for caretakers of the loko i'a and human burials. Interviewees noted that public access and cultural practices have been by invitation only since the property was purchased in 1865.

Based on the existing cultural practices and resources at the site, it is recommended that the resort operator prioritize and maintain access for Native Hawaiian cultural practices. Additionally, it is recommended that the resort is designed to maintain and preserve cultural resources. Details of the recommended mitigation strategies may be found in **Attachment F** and should be considered as part of proposed amendments to Ordinance No. PM 2001-356, as amended in part by Ordinance No. PM-2006-385. The 2025 plan provides the opportunity to improve access, specifically related to Native Hawaiian cultural practices and resources which has been limited for over 100 years.

As discussed in this letter, the 2025 plan reduces the number of hotel units, and is designed and operated as a low-impact sustainable resort. The 2025 plan has been carefully designed to maintain the rural character of the West Kaua'i region and maintain open space including environmentally and culturally sensitive areas. With careful design consideration to the natural environment, the implementation of the resort will revitalize the site and improve public access, which has been limited for over 100 years.

Due to the timing of the past evaluation, the Kauai County Planning Department has informed Applicant that it believes that a Supplemental EIS is needed to evaluate the construction and operation of a resort against 2025 baseline conditions, as a prerequisite to having the new proposed zoning ordinance brought before the Planning Commission.

The EIS process is initiated with the publication of an EIS Prep Notice followed by a Public Scoping Meeting. It is anticipated that the Supplemental EIS Prep Notice and Public Scoping Meeting will be completed in Quarter 1 of 2026 [**Attachment H**]. Following the EIS Prep Notice and Public Scoping Meeting, it is anticipated that the Supplemental EIS will be completed by the end of the 2026 calendar year [**Attachment H**]. Notably, technical studies to support the Supplemental EIS and forthcoming land use entitlements have been and/or are underway. Technical studies that are underway are anticipated to be completed in the first half of 2026.

The Applicant has prepared an updated site plan to fulfill the resort zoning designation approved by Ordinance No. PM 2001-356, as amended in part by Ordinance No. PM-2006-385 which has been further adopted in the County of Kaua'i's Zoning Map, General Plan, and West Kaua'i Community Plan. The Applicant has undertaken several efforts to proceed with the implementation of the updated plan, including proposed zoning amendments and technical studies to support the forthcoming environmental permits and land use entitlements.

The required environmental permits and land use entitlements are underway and will provide opportunities for government agencies and the community to participate in the environmental review process. Moreover, proposed zoning amendments will provide the public with the

opportunity to participate in the zoning and land use regulations for the design and development of the resort.

A meeting with the Kaua'i Planning Department was held on April 18, 2024, to clarify the status of the appeal regarding the shoreline certification and its relation to the Ordinance condition requiring substantial completion within 18 months from the date of the shoreline certification appeal. The County stated that if the Department of Land and Natural Resources (DLNR) confirms that the appeal was resolved as of a specific date, the County may be required to downzone the property.

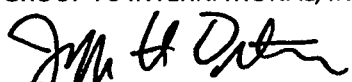
Following that meeting, we were informed that the shoreline certification was not resolved, and the matter was still pending. Then, the team proceeded with potential amendments.

Subsequently, the County definitively stated that it was expecting HRS 343 compliance prior to submission of the proposed zoning ordinance to the Planning Commission. Prior to that meeting, neither the Kaua'i Planning Department, nor anyone else associated with the County ever informed us that the County had any intentions of seeking to change the Resort zoning of the Project. Further, the County never informed us that it considered the Project to be "abandoned" or that the shoreline appeal to have been resolved.

Please contact me at (808) 351-4200 if you have questions or require additional information.

Sincerely,

GROUP 70 INTERNATIONAL, INC. dba G70



Jeffrey H. Overton, AICP, LEED AP
Principal

cc: Jim Ratkovich, jratkovich@salempartners.com
Bill Witte, bwitte@salempartners.com
David Louie, dml@ksglaw.com
Joseph Stewart, jas@ksglaw.com
Mike Belles, MJB@Kaua'i-law.com
Max Graham, MWG@Kaua'i-law.com


SITE PLAN - ZONING
TO WAIMEA
KAUMUALII HIGHWAY
EMPLOYEE HOUSING
EMPLOYEE + GUEST PARKING
MEETING & BANQUET FACILITIES
CLUBHOUSE RECREATION
WASTEWATER FACILITY
RETAIL
MAIN LODGE
RESTAURANT
SUPPORT FACILITIES
RESTAURANT
RESTAURANT/ RECREATION
RESORT UNITS
SPA
RESORT UNITS
KEKUPUA FISH POND
LOUNGE
RESTAURANT/ RECREATION
RESORT UNITS
HO'AIKUANU BAY
PUBLIC ACCESS
MAKAWELI LANDING
LEGEND
0'
200'
400'
800'
KAUAI KAPALAWAI




UNIT TYPE & GROSS AREAS

| | | |
|---|---|---|
| 1 BR/DUPLEX | 800 sf/ unit | |
| 250 Units | 200,000 gsf | |

250 Total Units
200,000 Interior GSF Total

Lanais, pools, exterior circulation not shown in calculations

# SITE PLAN - 2000 (EIS)

*One&Only* - KAUAI KAPALAWAI

| ATTACHMENT C: Timeline of Meetings with the County | | |
|---|---|---|
| **Date and Location** | **Attendees** | **Brief Overview** |
| **8/25/2022 - Zoom** | • Kaaina Hull<br>• James Ratkovich<br>• Bill Witte<br>• Rene Matsumura<br>• Jeff Overton | A project overview was presented, including existing conditions, prior planning concepts, the proposed concept, and a summary of land use classifications and the entitlements process.<br><br>A discussion of the previously approved EIS from 2000 and if there is a need for an updated EIS was had, and it was advised that legal counsel should provide an opinion. The county advised a Ka Pa'akai analysis should be provided with an updated Cultural Impact Assessment. |
| **6/1/2023 In-Person at County of Kauai Offices** | • Kaaina Hull<br>• Planning Staff<br>• James Ratkovich<br>• Bill Witte<br>• Stephanie Iona<br>• G&R Representatives<br>• Rene Matsumura<br>• Mike Belles<br>• Max Graham | The discussion focused on the existing Ordinance's development standards.<br><br>The County agreed to review the applicant's position that the prior EIS, prepared for the General Plan update, remains valid since the updated plan already designates the area as a Resort Area.<br><br>The County confirmed it would accept the SMA application before State LUC review and agreed that the Ka Pa'akai study would be a separate report.<br><br>The County proposed a working session to review prior entitlement conditions and the current plan. They requested building elevations, particularly for coastal or sensitive areas, and a matrix comparing past entitlement conditions and D&Os. |
| **8/3/2023 In-Person at County of Kauai Offices** | • Kaaina Hull<br>• Jodi Higuchi-Sayegusa<br>• Romio Idica<br>• Dale Cua<br>• Jeff Overton<br>• Rene Matsumura<br>• James Ratkovich<br>• Bill Witte<br>• Mike Belles<br>• Max Graham | To further the understanding of the development entitled in the existing ordinance and the proposed plan, a comparative analysis was presented. Review the proposed site plan and related issues, including building setbacks, heights, lot coverage, and density, as shown in the architects' drawing package. As requested by the County, the applicant provided floor plans and elevations for each unit and the main lodge were shared, illustrating scale, height, program, and architectural character. The county requested perspectives from the surf break looking back at the site. |
| **9/27/2023 In-Person at County of Kauai Offices** | • Kaaina Hull<br>• Planning Staff<br>• Rene Matsumura<br>• James Ratkovich | Kevin Kudo-King from Olson Kundig provided an overview of the One&Only brand and a brief introduction to several of their other properties. He also shared a comprehensive deck that included site plans, unit and lodge drawings, and a new rendering depicting the view from the surf break looking back toward the site. The overall concept— preserving open space, and |

| | | |
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| | • Mike Belles<br>• Kevin Kudo-King | blending seamlessly with the natural environment—was clearly conveyed through the design approach and selected materials. |
| **2/21/2024 In-Person at County of Kauai Offices** | • Adam Roversi<br>• Jim Ratkovich<br>• Bill Witte<br>• Rene Matsumura<br>• Jeff Overton<br>• Kira Ramos | **Housing Department Meeting**<br>Initial meeting with the Housing Department to present the project plan, review the 2001 Ordinance as it relates to housing, and discuss the proposed workforce housing component. |
| **2/21/2024 In-Person at County of Kauai Offices** | • Romio Indica<br>• Jim Ratkovich<br>• Bill Witte<br>• Rene Matsumura<br>• Jeff Overton<br>• Kira Ramos | The meeting included an update on the master plan and a review of its alignment with the 2001 Ordinance. Exhibits were presented, and it was agreed that G70 would follow up with the County on specific details. |
| **4/18/2024 In-Person at County of Kauai Offices** | • Kaaina Hull<br>• Jodi Sayegusa<br>• Mike Belles<br>• Max Graham<br>• Jim Ratkovich<br>• Bill Witte<br>• Jeff Overton | **County Attorney's Review of the Ordinance and the Condition of the Ordinance Regarding the Shoreline Survey and DLNR**<br>From a design perspective, the County was comfortable with the project. The proposed massing and density were not considered substantial changes.<br><br>**Environmental Impact Statement (EIS):**<br>This was described as "not an unsurmountable issue." A Supplemental EIS (S-EIS) or new EIS will be required to review both the previous and current projects. The new plan represents a less intensive use; however, the existing environmental document is outdated and must be refreshed. A list of updated technical studies was shared, including a CSH memo outlining an additional testing plan. Once all studies are complete, the next step will be to determine whether a supplemental EIS is appropriate.<br><br>**Zoning and Land Use Ordinance:**<br>The County identified that there was an 18-month window to achieve substantial completion from the date of certification appeal in ordinance. Some action on the appeal should have occurred during this period. If DLNR confirms that the appeal has been cleared as of a specific date, the County will be obligated to downzone the property. The county is reviewing the history of the appeal. |

| | | |
|---|---|---|
| | | An amendment to the ordinance will likely be required for the new plan—approved "yes, with further conditions." The process would involve the Zoning Amendment proceeding through the Planning Commission and then to the County Council. Planning Department is still awaiting DLNR documentation regarding the old shoreline determination; if the appeal is deemed resolved, the Planning Commission will be required to proceed with the downzoning. |
| **1/16/2025 In-Person at County of Kauai Offices** | • Kaaina Hull<br>• Romio Idica<br>• Jim Ratkovich<br>• Bill Witte<br>• Rene Matsumura<br>• Jeff Overton<br>• Mike Belles<br>• Max Graham | The applicant provided a draft of the proposed ordinance amendment to the County. |
| **2/6/2025 In-Person at County of Kauai Offices** | • Romio Idica<br>• Rene Matsumura<br>• Kira Ramos | Discuss in detail the proposed amendments to the Ordinance. Most of the meeting focused on reviewing and clarifying the existing ordinance's development standards relative to hales, floor area calculations and lot coverage, proposing amendments to align with the new plan, and gauging County support for the proposals. No major red flags were identified on the proposed language at this review.<br><br>The County advised that completing the Ka Pa'akai is a key step and expressed willingness to review a preliminary SMA draft. |
| **4/21/2025 In-Person at County of Kauai Offices** | • Kaaina Hull<br>• Romio Idica<br>• Laura Barzilai<br>• Jim Ratkovich<br>• Bill Witte<br>• Max Graham<br>• Laurel Loo<br>• Rene Matsumura | The County notified the applicant that they were moving forward with a change to the zoning for the Property. |

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a Hawaii corporation

DRAFT

BEFORE THE PLANNING COMMISSION

OF THE

COUNTY OF KAUAI

| | |
|---|---|
| In The Matter Of The Application<br><br>Of<br><br>KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII, INC., a Hawaii corporation, for an Amendment To Ordinance No. PM-2001-356 As Amended In Part By Ordinance No. PM-2006-385 for real property situated at Kapalawai, Makaweli, Kauai, Hawaii, identified by Kauai Tax Map Key No. (4) 1-7-005:001. | ZONING AMENDMENT ZA-_____<br><br>**PETITION FOR ZONING AMENDMENT; VERIFICATION; EXHIBITS "A" – "F"** |

# PETITION FOR ZONING AMENDMENT

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## PETITION FOR ZONING AMENDMENT

Comes now, KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII, INC., a Hawaii corporation, the Applicant in the above-captioned proceedings, by and through its undersigned attorney, and hereby submits the following Petition For Zoning Amendment ("Petition"):

SUMMARY

1. Subject Property. This Petition concerns property located in Kapalawai, Makaweli, Kauai, Hawaii, containing approximately 170.578 acres, identified by Kauai Tax Map Key No. (4) 1-7-005:001 ("Subject Property"). The Subject Property is composed of two lots designated as Lot 1 (containing 26.548 acres) and Lot 2 (containing 144.030 acres). Robinson Family Partners, a Hawaii general partnership ("RFP"): owns a 15.5636% undivided interest in the Subject Property; and is co-lessee under a 99 year lease (which expires 12/15/2097) ("99 Year Lease") to Lot 2. Bruce B. Robinson ("B. Robinson") owns an 84.4364% undivided interest in the Subject Property, subject to the 99 Year Lease over Lot 2. Gay & Robinson, Inc., a Hawaii corporation ("G&R") is a co-lessee under the 99 Year Lease to Lot 2. RFP, B. Robinson, and G&R, who will be collectively referred to as the "Owners", have authorized the Applicant to file this Petition.

2. History. In the year 2000, the Owners authorized Destination Village Kauai, LLC ("DVK"), whose principal was Lewis P. Geyser, to file applications to amend the various land use designations of the Subject Property to allow the development of the Kapalawai Resort Project containing 250 units and resort amenities ("Project"). Toward this end, the following was done:

a. DVK prepared an Environmental Impact Statement ("EIS") for the Project that was accepted by the Planning Department, County of Kauai, on March 31, 2000. *[Note: The Applicant hereby incorporates the entirety of the EIS into this Petition by reference. The Applicant will submit a complete copy of the EIS to the Planning Commission by separate submission.]*

b. The Kauai County Council approved a Kauai General Plan Amendment (Ordinance No. PM-2000-353) effective October 9, 2000, which amended the 1984 Kauai General Plan designation of most of the Subject Property from the Agricultural and Open designation to the Resort designation. Excepted from this amendment was a strip of land located along the shoreline which was, and still is, located in the State Land Use Commission Conservation District (the "Conservation Strip"). DVK was the applicant.

c. The Kauai County Council approved an island-wide update to the 1984 Kauai General Plan (Ordinance No. 753) effective November 30, 2000, which, among other changes, placed the Subject Property in the Resort Land Use Designation, with the exception of the Conservation Strip.

d. The State Land Use Commission ("SLUC") approved a District Boundary Amendment (Docket No. A00-31) effective April 6, 2001, which amended the SLUC Classification for the Subject Property from the Agricultural District to the Urban District. The Conservation Strip was not affected. DVK was the petitioner in this matter.

e. The Kauai County Council approved a Zoning Amendment (Ordinance No. PM-2001-356) effective December 24, 2001, which amended the County Comprehensive Zoning Ordinance ("CZO") Zoning Districts of the Subject Property from the CZO Agriculture District and Open District to the CZO: Resort District (RR-1); Resort District

(RR-1)/Special Treatment-Cultural/Historic District (ST-C); Open District (O)/Special Treatment-Cultural/Historic District (ST-C); Open District (O)/Special Treatment-Scenic/Ecologic Resources District (ST-R); and Open District (O)/Special Treatment-Public Facilities District (ST-P) (hereinafter referred to as the "2001 Zoning Ordinance"). Condition 3(t) of this Ordinance required substantial construction of the Project to be completed within 5 years of the effective date, resulting in a Completion Date Deadline of December 24, 2006. DVK was the applicant.

f. The Kauai Planning Commission approved Special Management Area Use Permit SMA(U)-2002-6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 for the Project effective May 29, 2002 ("SMA Permit"). The applicant was Kapalawai Resort, LLC, the successor to DVK. Lewis P. Geyser remained the Principal.

g. The Kauai Planning Commission approved Amendment No. 1 to the SMA Permit effective August 12, 2003.

h. On December 12, 2005, Dennis M. Esaki of Esaki Surveying and Mapping, Inc. ("Esaki"), authorized agent for RFP and B. Robinson, filed an application for a Shoreline Certification for the Subject Property with the Department of Land and Natural Resources of the State of Hawaii ("DLNR") ("Shoreline Application"). Acceptance of the Shoreline Application was published in the January 8, 2006, OEQC Environmental Bulletin. A shoreline inspection occurred on February 23, 2006, attended by Esaki, the State Land Surveyor, Bruce Pleas and other members of the public. A notice of Acceptance Of Proposed Shoreline Certification was published in the April 23, 2006 OEQC Environmental Bulletin. Bruce Pleas filed a timely Notice of Appeal dated May 10, 2006 of the proposed Shoreline Certification ("Shoreline Appeal"). Pursuant to Hawaii Administrative Rules ("HAR") Section 13-222-26(e),

the Chairperson of the State Board of Land and Natural Resources ("Land Board") was required by written order to schedule the filing of and requirements for briefs by the parties concerning the contested issues. Pursuant to HAR Section 13-222-26(g), upon receipt of all briefs the Chairperson was required to act on the appeal within 60 days of receipt of all briefs. To date, the Chairperson has failed to schedule the filing of briefs and has failed to act on the appeal after the receipt of all briefs. All of this has led to uncertainty as to the status of the Shoreline Application and the Shoreline Appeal.

i. The Kauai Planning Commission approved Amendment No. 2 to the SMA Permit effective July 12, 2006. Among other things, this amendment extended the Completion Date for the SMA Permit to the earlier of the Completion Date Deadline or May 28, 2008. The applicant was Kapalawai Resort, LLC, the successor to DVK. Lewis P. Geyser remained the principal.

j. The Kauai County Council approved Ordinance No. PM-2006-385, effective December 19, 2006, which amended Condition 3(t) of Zoning Ordinance No. PM-2001-356 ("Condition 3(t)"), to read as follows:

> "(t) Substantial construction of the hotel, defined as completion of at least fifty percent (50%) of building foundations, shall be completed within eighteen (18) months from the date that the appeal of the project's shoreline certification currently pending before the Chair of the Board of Land and Natural Resources has been resolved. If substantial construction is not completed within this time, the Planning Commission shall initiate proceedings to rezone the property to the designations existing prior to the date of this ordinance."

k. The Kauai County Council approved an island-wide update to the Kauai General Plan by adopting the Kaua'i Kā Kou – Kaua'i County General Plan (Ordinance

No. 1025) effective March 15, 2018, which among other things, placed the Subject Property (with the exception of the Conservation Strip) in the Resort Land Use Designation.

l. The Kauai County Council approved the West Kaua'i Community Plan Ordinance (Ordinance No. 1138) effective November 2, 2022, which among other things, placed the Subject Property (with the exception of the Conservation Strip) in the Resort area.

3. Development Status. The Project was initially envisioned by the original applicant, Lewis P. Geyser (doing business as DVK and Kapalawai Resort), as a low-key resort development in which the 250 units would each contain no more than 800 square feet of living area. The Project was to be supported by resort amenities, including snack bars, restaurants, swimming pools, recreational areas, luau grounds, bar/lounges, fitness center/beach clubs, sports courts and a museum. Employee housing was also included. Mr. Geyser obtained the necessary permits and approvals for the Project (with the exception of the Shoreline Certification), but passed away in 2007, before he could begin actual development. Thereafter, two separate developer groups approached the Owners concerning the Project (in 2007 and 2013), but neither group ended up developing the Project.

Finally, in 2022, the Applicant entered into an agreement with the Owners to develop the Project. In order to keep with trends in the hospitality industry, the Applicant is proposing to develop 134 resort units as shown on the Site Plan - Amenities attached hereto as ***Exhibit "E"***. Amenities will be similar in type to those originally proposed. The reduced density will allow the Applicant to develop 52 Workforce Housing units on site.

4. Zoning Amendment.

a. The Status of the Shoreline Application and the Shoreline Appeal has led to uncertainty as to the application of Condition 3(t) to the current situation. To resolve this uncertainty, the Applicant is requesting that Condition 3(t) to be amended as shown on the proposed Zoning Amendment attached hereto as ***Exhibit "F-4"***. This will allow the Applicant to proceed with the Project, subject to clearly defined timelines.

b. In addition to the change to Condition 3(t), and to address the revisions and refinements to the Project design, the Applicant is requesting that the 2001 Zoning Ordinance be further amended in the following respects (as shown on the proposed Zoning Amendment):

(i) The size and floor area limitations will be removed and replaced with limitations on number of units, height of units, and land coverage.

(ii) The total number of resort units will be reduced from 250 to 134 resort units.

(iii) The number of Workforce Housing units on site will be increased from 15 units to 52 units.

(iv) The Project shall be operated as an Apartment-Hotel which contains a mix of Hotel units (without Kitchens) and Dwelling units (with Kitchens). For density purposes, there shall be no difference between resort units with or without a Kitchen, and the maximum amount of resort units shall not exceed 134 units.

(v) The CZO Open (O)/Special Treatment-Resource (O/ST-R) strip of land adjacent to or near Kaumuali'i Highway will be used and maintained as a landscape buffer, and the land coverage limitation in this area will be increased to 25%.

(vi) The land coverage limitation within the CZO Open (O)/ Special Treatment-Public (O/ST-P) along the south-eastern boundary of the Subject Property will be increased to 50%.

(vii) Within the CZO Resort/Special Treatment-Cultural (RR-1/ST-C) and the Transition Area 3 areas around the Robinson family residence no resort units shall be allowed, but this shall not prohibit commercial uses, resort amenities, support facilities, and other such uses within these areas.

(viii) The Applicant will submit updated plans to the County Fire Department, County Department of Water, and State Highways Division, and comply with all requirements.

SECTION 1. APPLICANT/SUBJECT PROPERTY/OWNER.

1.1 Applicant. The Applicant is Kerzner International Management Services Hawaii, Inc., a Hawaii corporation. RFP and B. Robinson are the owners of the Subject Property, and RFP and G&R are the lessees of the Subject Property (collectively, the "Owners"), as described in the Title Report attached hereto as ***Exhibit "A"***. The Owners have authorized the Applicant and Michael J. Belles and Max W. J. Graham, Jr. of Belles Graham LLP and Laurel K. S. Loo of McCorriston Miller Mukai MacKinnon to file this Petition pursuant to the Authorizations attached hereto as ***Exhibits "B-1"*** through ***"B-3"***. The Applicant has further authorized Michael J. Belles and Max W. J. Graham, Jr. of Belles Graham LLP and Laurel K. S. Loo of McCorriston Miller Mukai MacKinnon to act on its behalf pursuant to the Applicant's Authorization attached as ***Exhibit "B-4"***.

1.2 Subject Property. The Subject Property is located in Kapalawai, Makaweli, Kauai, Hawaii, contains a total of 170.578 acres, and is identified by Kauai Tax Map Key No. (4) 1-7-005:001. As shown on the Map showing Kapalawai (Lot 1) and Lot 2 attached as ***Exhibit "C-1"***, the Subject Property is composed of two (2) lots designated as Lot 1 (26.548 acres) and Lot 2 (144.030 acres). Located on Lot 1 are the following structures: the Main House; Guest Quarters, Garage Building, Green House, Servant Quarters, and Employee House. There are no buildings located on Lot 2.

SECTION 2. LOCATION AND LAND USE DESIGNATIONS OF PROPERTY.

2.1 Location. The Subject Property is located in Kapalawai, Makaweli, Kauai, Hawaii, as shown on the Location Map attached hereto as ***Exhibit "C-2"*** and on the Tax Map attached hereto as ***Exhibit "C-3"***. The Subject Property is located in the ahupua'a of Makaweli, as shown on the Ahupua'a Boundary Map attached as ***Exhibit "C-4"***.

2.2 Land Use Designations. The respective State Land Use Commission ("SLUC"), Kaua'i General Plan, County of Kauai Comprehensive Zoning Ordinance ("CZO"), and other relevant land use designations for the Subject Property are as follows:

a. SLUC. As shown on the Land Use District Boundary map attached as ***Exhibit "C-5"***, the Subject Property is located in the SLUC Urban District and in the SLUC Conservation District.

b. Kaua'i General Plan. The Subject Property is subject to the provisions of the Kaua'i Kā Kou (Kaua'i County General Plan) ("Kaua'i General Plan"). As shown on the Waimea-Kekaha Land Use Map attached as ***Exhibit "C-6"*** (which is Figure 5-2 of the Kaua'i General Plan), the Subject Property is located in the Kaua'i General Plan Resort Land Use Designation and Natural Land Use Designation.

c. CZO. As shown on the Zoning Map attached as ***Exhibit "C-7"***, the Subject Property is located in the following CZO Districts: Resort District (RR-1)/Special Treatment-Cultural; Open District; Open District/Resource; Open District/Special Treatment-Cultural; and Open District/Special Treatment-Public.

d. Development Plan Area. The Subject Property is located within the West Kaua'i Community Plan ("WKCP") Area. The Subject Property has been designated Resort and Natural on the WKCP Regional Map (Figure 12 of the WKCP) attached hereto as ***Exhibit "C-8"*** and on the Makaweli Town Plan Map (Figure 15 of the WKCP) attached hereto as ***Exhibit "C-9"***.

e. CZMA/Special Management Area. As set forth in Hawaii Revised Statutes ("HRS") Chapter 205A (Part I), all lands in the State of Hawaii, including the Subject Property, are located in the Coastal Zone Management Area ("CZMA") and are subject to the objectives and policies of the Coastal Zone Management Program ("CZMP"), as described in HRS Section 205A-2. Approximately two-thirds of the makai side of the Subject Property is located within the Special Management Area ("SMA") of the County of Kauai, as shown on the SMA Boundary Map attached hereto as ***Exhibit "C-10"***.

f. Violations. There are no existing violations of any land use laws or regulations on the Subject Property.

g. Land Use Conditions. The Subject Property is not subject to any land use conditions.

h. Important Agricultural Lands. The Subject Property has not been designated as Important Agricultural Lands ("IAL") pursuant to HRS Chapter 205, Part III.

SECTION 3. PAST, EXISTING AND PROPOSED USES OF SUBJECT PROPERTY.

3.1 Past and Existing Uses. The Lot 1 portion of the Subject Property contains the only Building Improvements, including the now vacant, former residence of the Robinson Family (the "Robinson Family House"), which was constructed circa 1897 and is the primary building located on the Subject Property. Other buildings and structures accessory to the Robinson Family House, which are contemporary to the main house, include a dwelling (former guest house), a carriage house, and an employee's quarters (now used as an office building by RFP). In addition, there is a plantation-era house located in the northwest corner of Lot 1, between the entry drive and the Robinson Family House. This home was initially constructed for employees of the Robinson Family, but is now used for office purposes by the RFP. Outside the compound of the Robinson Family House and the accessory structures, the Subject Property has been used for the grazing of livestock.

3.2 Proposed Project. The 2001 Zoning Ordinance resulted in new resort zoning on the Subject Property which would have allowed 250 resort (hotel) units and a variety of amenities and support facilities. As amended, it also established an ambiguous Completion Date Deadline. The Applicant is requesting that the 2001 Zoning Ordinance be modified as shown on the Site Plan and as described in the Zoning Amendment: to modify the design of the Project to better utilize the Subject Property; and to resolve issues related to the Completion Date Deadline. The changes shown in the proposed Zoning Amendment will result in the following:

a. The Completion Date Deadline will be amended to provide that the Applicant will have seven (7) years after approval of the Zoning Amendment to complete the

building foundations for at least 60 resort (hotel) units or file for an extension with the Planning Commission.

b. The size and floor area limitations will be removed and replaced with limitations on number of units, height of units, and land coverage.

c. The total number of resort units will be reduced from 250 to 134 resort units.

d. The number of Workforce Housing units on site will be increased from 15 units to 52 units.

e. The Project shall be operated as an Apartment-Hotel which contains a mix of Hotel units (resort units without Kitchens) and Dwelling units (resort units with Kitchens). For density purposes, there shall be no difference between resort units with or without a Kitchen, and the maximum amount of resort units shall not exceed 134 units.

f. The CZO Open (O)/Special Treatment-Resource (O/ST-R) strip of land adjacent to or near Kaumuali'i Highway will be used and maintained as a landscape buffer, and the land coverage limitation in this area shall be increased to 25%.

g. The land coverage limitation within the CZO Open (O)/Special Treatment-Public (O/ST-P) along the south-eastern boundary of the Subject Property shall be increased to 50%.

h. Within the CZO Resort/Special Treatment-Cultural (RR-1/ST-C) and the Transition Area 3 areas around the Robinson Family House no resort units shall be allowed, but this shall not prohibit commercial uses, resort amenities, support facilities, and other such uses within these areas.

i. The Applicant shall submit updated plans to the County Fire Department, County Department of Water, and State Highways Division, and comply with all requirements.

SECTION 4. DESCRIPTION OF SUBJECT PROPERTY AND IDENTIFICATION OF SURROUNDING LANDS.

4.1 Adjacent Property. The Subject Property is located adjacent to, or within 300 feet of, the properties identified on the Adjacent Property Index attached as ***Exhibit "D-1"***.

4.2 Natural Environment.

a. General Description. The Subject Property is a shoreline property composed of gently sloping lands (3% - 8%) in an area generally lying east of Waimea Town, and south (makai) of Kaumuali'i Highway. The Subject Property is located approximately 5 to 44 feet above sea level. The Subject Property is gentle sloping in a mauka to makai direction. The Subject Property is currently used for agricultural and residential purposes. Most of the Subject Property consists of open areas.

b. Soils. The soils within the Subject Property are shown on the Soil Survey Map attached as ***Exhibit "C-11"***. 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 in the Subject Property consist of:

(i) Beaches (Bs).

(ii) Fill land (Fd).

(iii) Jaucas loamy fine sand (JfB).

(iv) Kekaha silty loam (KoA).

(v) Makaweli silty clay loam (MgC).

(vi) Makaweli stony silty clay loam (MhC).

(vii) Nonopahu stony clay (NoC).

(viii) Land Study Bureau. Lands in Hawaii have been classified in a five-class productivity rating system using the Letters A, B, C, D and E where A represents the class of highest productivity and E the lowest. As shown on the Detailed Land Classification Map (Island of Kauai) (Land Study Bureau, University of Hawaii) attached as ***Exhibit "C-12"***, the Over-all Productivity Rating for most of the lands within the Subject Property is Class D and Class E. There is a small area of Class B lands adjacent to Kaumuali'i Highway.

c. Rainfall. The Subject Property receives approximately 21 inches of annual rainfall.

d. Biological Resources. The biological resources within the Subject Property are as follows:

(i) Flora. A Botanical Survey ("Char Survey") of the Subject Property was prepared by Char & Associates and attached to the EIS as Appendix A. The Char Survey reported the vegetation types and plant species within the Subject Property as being dominated by introduced or alien plants, are not considered unique, and are typical of lands previously used for agriculture. The indigenous plant species growing within the Subject Property fall within three (3) vegetation types: scrub; wetland; and coastal. They are all common throughout the Hawaiian Islands. None of these plant species are considered rare, and none are federally listed or state-listed threatened or endangered species, species proposed for listing, or candidate species. Therefore, the proposed Project is not expected to have a significant, adverse effect on terrestrial vegetation.

(ii) Fauna. A Feral Mammal and Avifaunal Survey of the project site was conducted in March 1999 by Philip Bruner and attached to the EIS as Appendix B ("Bruner Survey"). The Bruner Survey described the mammal and avifaunal activity on the Subject Property as follows:

(1) No native landbirds were recorded during the survey. Given the location, elevation and type of habitats available at this site, the absence of native landbirds was not unexpected. The short-eared Owl or Pueo (Asio flammeus sandwicensis) forages in agricultural fields and pastures as well as in upland forested habitat, and is fairly common on Kauai. Although this species was not recorded during the present survey it could forage in the area.

(2) Migratory shorebirds winter in Hawaii between the months of August through May. Some Juveniles will stay over the summer months as well. Three species of migratory shorebirds were recorded during the survey. These were the Pacific Golden-Plover (Pluvialis fulva), the Ruddy Turnstone (Arenaria interpres) and the Wandering Tattler (Heteroscelus incanus). None of these species are listed as endangered or threatened.

(3) Six individuals of the endangered Common Moorhen (Gallinula chloropus) were observed near open streams and along the edges of the fish pond and the man-made marsh habitat. A pair of Hawaiian Duck or Koloa (Anas wyvilliana) were flushed from Aakukui Stream. Koloa are endangered but are still relatively common on Kauai. A total of four Black-crowned Night Herons (Nycticorax nycticorax) were observed. This species is the only native waterbird that is not endangered.

(4) A total of 17 species of exotic birds were recorded during the course of the field survey. The more common of these species include: the Red Junglefowl (Gallus gallus); the Spotted Dove (Stretopelia chinensis); the Zebra Dove (Geopelia striata); the Northern Cardinal (Cardinalis cardinalis); the Red-crested Cardinal (Paroaria coronata); and the House Finch (Carpodacus mexicanus).

(5) The endemic and endangered Hawaiian Hoary Bat (Lasiurus cinereus semotus) is frequently seen on Kauai. This species is known to roost solitarily in trees and forages for insects using echolocation. They use a variety of habitats, including native forest, ranchlands, ponds and bays, as well as urban areas. Three bats were observed foraging for flying insects offshore the project site and one bat was observed flying back and forth over the man-made marsh.

(6) Several feral cats were seen on the site, and feral dog and pig tracks were also observed. Rats and mice undoubtedly occur on the property, but were not seen.

e. Flood Hazard. According to the Federal Insurance Rate Maps (Map No. 1500020258G and Map No. 1500020259G) as shown on the Flood Map attached as ***Exhibit "C-13"***, the Subject Property is located in the following Flood Zones: Zone VE (EL11) and Zone AE (EL11) in areas adjacent to the shoreline; Zone AE (EL9); additional areas within the 100 year Flood Plain adjacent to the Aakukui Stream and the Waipao Stream; Zone XS; and Zone X, which is an area determined to be outside of the 500-year flood plain.

f. Water Resources. As described in the Potable Water and Irrigation Systems Report prepared by Tom Nance Water Resource Engineering and attached to the EIS as Appendix J, the Project will utilize a dual, private, potable and agricultural water system to be

located off-site for potable and agricultural water purposes. The new system will be located mauka of Kaumuali'i Highway. This use will have no significant impact on Groundwater Resources. In addition, the Project will not withdraw water from, and will have no impact on, any streams in the vicinity.

SECTION 5. APPROVALS REQUESTED AND OTHER PERMITS REQUIRED.

5.1 Zoning Amendment. The Applicant is requesting that the 2001 Zoning Ordinance be amended as described herein pursuant to the proposed Zoning Amendment attached as ***Exhibit "F-4"***, and in accordance with the provisions of Section 8-3.4 of the Comprehensive Zoning Ordinance ("CZO") of the County of Kauai.

5.2 Additional Subsequent Permits. In addition, and subsequent, to the approval of the Zoning Amendment, the Applicant will need to obtain the following permits in order to proceed with the Project:

a. Special Management Area Use Permit approved by the Planning Commission.

b. Project Development Use Permit approved by the Planning Commission.

c. Class IV Zoning Permit approved by the Planning Commission.

d. Shoreline Certification approved by the Chairperson, State Board of Land and Natural Resources.

e. Shoreline Setback Determination approved by the Planning Commission.

SECTION 6. IMPACTS OF DEVELOPMENT.

6.1 Botanical Resources and Wildlife. The existing state of botanical resources and wildlife have been heavily compromised by past and present residential and botanical uses on the Subject Property. As a result, there do not appear to be any mammalian or avian species or botanical resources that will be endangered by the Project. The habitat currently present on the Subject Property is comprised of improved and unimproved lands which have been used for various residential and agricultural purposes since the closure of pineapple operations in the area. As described in the Char Survey, the vegetation is dominated almost to the exclusion of native species by alien introduced grasses and weedy species. Terrestrial mammals present on the Subject Property and within the vicinity are likewise alien species. There is the possibility that the endemic endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*) overflies the Subject Property and possibly forages for insects on a seasonal basis above the Subject Property. Avian species present on the Subject Property are listed in Section 4.2d.(ii) of this Petition and in the Bruner Survey. The Applicant will implement the recommendations contained in the Char Survey and the Bruner Survey to minimize impacts to the flora and fauna on the Subject Property.

6.2 Historical Resources.

a. The Subject Property has been heavily disturbed by past and present residential and agricultural activities. As a result, with the exception of the Historic Properties identified in the Archaeological Inventory Survey Of 170 Acres Including A 6-Acre Inland Fish Pond For The Proposed Kapalawai Resort (Zulick, et.al./Cultural Surveys Hawaii, Inc./ February 2000) attached to the EIS as Appendix D, An Addendum to the Archaeological Inventory Survey Of The 170-Acre Robinson Estate, Kapalawai, Kauai (Cultural Surveys

Hawaii, Inc./February 2001), and the Literature Review to Support Historic Preservation Consultation with the SHPD Under HRS §6E for the Kapalawai Resort Project (Cultural Surveys Hawaii April 2024) (collectively, the "Archaeological Reports"), there do not appear to be any pre-contact archaeological, cultural or historical resources on the surface of the Subject Property in which the Project will take place which will be affected by the Project. In the event of inadvertent historic site or burial discovery in the future, the Applicant will immediately contact SHPD.

b. The Robinson Family House and adjacent structures, the Kekupua Fishpond, and the other features identified in the Archaeological Reports are all historically significant. The approval of the Project will help to provide an income source enabling the Applicant in its restoration, preservation, and maintenance of these Historical Properties.

6.3 Air Quality/Noise. The Project will have little or no impact on the air quality and ambient noise levels in the area. Air quality and ambient noise levels may be affected at a very minimal level during the Project construction activities. All vehicles or equipment used by the Applicant during construction will be properly muffled, housed and maintained to reduce any noise impacts or emission impacts. The Environmental Protection Agency ("EPA") and State of Hawaii air quality standards will not be exceeded.

6.4 Flooding and Drainage. The Subject Property is situated within the following Flood Zones: Flood Zone VE (EL11) as shown on Flood Insurance Rate Map 1500020258G; and Flood Zone AE (EL11), Flood Zone AE (EL9), additional areas within 100 year Flood Plain adjacent to the Aakukui Stream and the Waipao Stream, Flood Zone XS, and Flood Zone X (Areas outside of 500 year flood plain), as shown on Flood Insurance Rate Map 1500020259G. The Project will meet all of the requirements of the Flood Plain Management Ordinance of the County of Kauai, as contained in Chapter 15, Article 1, of the

Kauai County Code, 1987. The Project will have no impact on flooding on or around the Subject Property. All drainage resulting from the Project will be retained on site and subject to best management practices.

6.5 Utilities.

a. Water. The Project will obtain potable water and agricultural water from a dual, private water system to be located mauka of Kaumuali'i Highway as described in the Nance Report. Use of this system will have no significant impact on Groundwater Resources.

b. Electric/Communications. As described in the Utilities And Drainage Report prepared by Wagner Engineering Services, Inc. ("Wagner Report") attached to the EIS as Appendix I, the Subject Property will obtain electric service from Kauai Island Utility Cooperative and communication services from Hawaiian Telcom, Inc. and Charter Communications Operating, LLC (dba Spectrum). Existing electric and communications facilities are presently adequate to provide the demand for such services that will be generated by the proposed Project.

6.6 Wastewater Treatment and Disposal. As described in the Wagner Report, the Project will utilize a Wastewater Treatment Plan ("WWTP"). The WWTP will be approved by the State Department of Health for the wastewater from the Project. The WWTP will be located on site.

6.7 Solid Waste Disposal. Solid waste collection will be provided by private means. Solid waste will be taken to the County's Transfer Stations for disposal in the County Landfill.

6.8 Governmental Services. The Project will have the following impacts on governmental services:

a. Fire and Police Services. Fire and police services in the vicinity are located in Waimea, approximately one (1) mile from the Subject Property. The Project will not significantly increase the need for existing fire and police services.

b. Schools. The closest schools are Eleele Elementary School in Eleele and Waimea Canyon Middle School and Waimea High School in Waimea. The Project will not generate any additional enrollment.

6.9 Economics. The Project will have the beneficial economic impacts described in EIS Section 5.0 and the Fiscal/Economic Impact Analysis prepared by Mikiko Corporation ("Mikiko Report") and attached to the EIS as Appendix F.

a. Jobs. The Applicant estimates that 143 permanent jobs and 240 temporary construction jobs will be generated.

b. Housing. The Project will result in the need for between 40.2 to 67 Workforce Housing units. The Applicant is proposing to provide up to 52 Workforce Housing units on site.

c. Property Values. Since the fair market value of real property is based on the value of the land and physical improvements, the completion of the Project will increase the value of the Subject Property. This will result in increased real property taxes on the Subject Property, which will directly benefit the County of Kauai. However, it will not, in and of itself, have a material impact on the value of, or real property taxes assessed against, surrounding properties.

6.10 Population. The Project will not result in any significant increase in population on Kauai.

6.11 Traffic Circulation. The major road which services the Subject Property is Kaumuali'i Highway (a State highway) to the south, and private, improved road system ("Private Road") within the Subject Property. As discussed in the Traffic Impact Assessment report prepared by Wilbur Smith Associates and attached to the EIS as Appendix H ("TIAR"), the Project, in and of itself, will not significantly increase traffic on Kaumuali'i Highway. An access entry ("Access Entry") leading to the Project will be constructed on Kaumuali'i Highway.

6.12 Heritage Resources. As shown on the West Kaua'i Heritage Resource Map (Figure 5-9 of the Kaua'i General Plan) attached as ***Exhibit "C-14"***, there are wetlands and a fishpond on the Subject Property, but is not otherwise located within any Resource area. The Robinson Family House, the Historic Properties, and the scenic values associated with the Subject Property would have importance. The proposed Project will be located on a relatively level portion of the Subject Property. With current screening vegetation, the Project will not be visible from surrounding properties or public roads. If necessary, the Project Improvements will be landscaped so as to minimize visual impacts.

SECTION 7. SLUC CONSIDERATIONS/STATE PLAN.

7.1 SLUC Urban District. The Subject Property is located within the SLUC Conservation District and the Urban District. No improvements will be located in the SLUC Conservation District. Permitted uses in the SLUC Urban District are set forth in HRS Section 205-2(b), which provides as follows:

"(b) Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated."

7.2 Project's Compliance with SLUC Urban District Standards. The use of the Subject Property for resort purposes is recognized as a permissible use under HRS Section 205-2(b).

7.3 State Planning Act. The State Planning Act contains Objectives and Policies to assist the State in attaining its long-range planning Goals. Included in the Objectives and Policies are the following:

"a. **§226-6 Objectives and policies for the economy--in general.** *(a) Planning for the State's economy in general shall be directed toward achievement of the following objectives:*

(1) Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawaii's people, while at the same time stimulating the development and expansion of economic activities capitalizing on defense, dual-use, and science and technology assets, particularly on the neighbor islands where employment opportunities may be limited.

(2) A steadily growing and diversified economic base that is not overly dependent on a few industries, and includes the development and expansion of industries on the neighbor islands.

*(b) To achieve the general economic objectives, it shall be the policy of this State to:*

(1) Promote and encourage entrepreneurship within Hawaii by residents and nonresidents of the State.

(2) Expand Hawaii's national and international marketing, communication, and organizational ties, to increase the State's capacity to adjust to and capitalize upon economic changes and opportunities occurring outside the State.

(3) Promote Hawaii as an attractive market for environmentally and socially sound investment activities that benefit Hawaii's people.

(4) Transform and maintain Hawaii as a place that welcomes and facilitates innovative activity that may lead to commercial opportunities.

(5) Promote innovative activity that may pose initial risks, but ultimately contribute to the economy of Hawaii.

(6) Seek broader outlets for new or expanded Hawaii business investments.

(7) Expand existing markets and penetrate new markets for Hawaii's products and services.

(8) Assure that the basic economic needs of Hawaii's people are maintained in the event of disruptions in overseas transportation.

(9) Strive to achieve a level of construction activity responsive to, and consistent with, state growth objectives.

(10) Encourage the formation of cooperatives and other favorable marketing arrangements at the local or regional level to assist Hawaii's small scale producers, manufacturers, and distributors.

(11) Encourage labor-intensive activities that are economically satisfying and which offer opportunities for upward mobility.

(12) Encourage innovative activities that may not be labor-intensive, but may otherwise contribute to the economy of Hawaii.

(13) Foster greater cooperation and coordination between the government and private sectors in developing Hawaii's employment and economic growth opportunities.

(14) Stimulate the development and expansion of economic activities which will benefit areas with substantial or expected employment problems.

(15) Maintain acceptable working conditions and standards for Hawaii's workers.

(16) Provide equal employment opportunities for all segments of Hawaii's population through affirmative action and nondiscrimination measures.

(17) Stimulate the development and expansion of economic activities capitalizing on defense, dual-use, and science and technology assets, particularly on the neighbor island where employment opportunities may be limited.

(18) Encourage businesses that have favorable financial multiplier effects within Hawaii's economy, particularly with respect to emerging industries in science and technology.

(19) Promote and protect intangible resources in Hawaii, such as scenic beauty and the aloha spirit, which are vital to a healthy economy.

(20) Increase effective communication between the educational community and the private sector to develop relevant curricula and training programs to meet future employment needs in general, and requirements of new or innovative potential growth industries in particular.

(21) Foster a business climate in Hawaii--including attitudes, tax and regulatory policies, and financial and technical assistance programs--that is conducive to the expansion of existing enterprises and the creation and attraction of new business and industry.

b. **§226-8 Objective and policies for the economy--visitor industry.** *(a) Planning for the State's economy with regard to the visitor industry shall be directed towards the achievement of the objective of a visitor industry that constitutes a major component of steady growth for Hawaii's economy.*

*(b) To achieve the visitor industry objective, it shall be the policy of this State to:*

(1) Support and assist in the promotion of Hawaii's visitor attractions and facilities.

(2) Ensure that visitor industry activities are in keeping with the social, economic, and physical needs and aspirations of Hawaii's people.

(3) Improve the quality of existing visitor destination areas by utilizing Hawaii's strengths in science and technology.

(4) Encourage cooperation and coordination between the government and private sectors in developing and maintaining well-designed, adequately serviced visitor industry and related developments which are sensitive to neighboring communities and activities.

(5) Develop the industry in a manner that will continue to provide new job opportunities and steady employment for Hawaii's people.

(6) Provide opportunities for Hawaii's people to obtain job training and education that will allow for upward mobility within the visitor industry.

(7) Foster a recognition of the contribution of the visitor industry to Hawaii's economy and the need to perpetuate the aloha spirit.

(8) Foster an understanding by visitors of the aloha spirit and of the unique and sensitive character of Hawaii's cultures and values.

7.4 Compliance with State Plan. The proposed Project will comply with the State Planning Act as follows:

a. Economy in General. The Project will continue to: provide increased and diversified employment opportunities for Kaua'i residents; promote entrepreneurship by Kaua'i residents; expand markets for Kaua'i products; promote Hawaii as an attractive market for environmentally and socially sound investment activities; provide broader outlets for new or expanded Hawaii business investments; expand existing markets and penetrate new markets for Hawaii's products and services; strive to achieve a level of construction activity responsive to, and consistent with, state growth objectives; encourage labor-intensive activities that are economically satisfying and which offer opportunities for upward mobility; stimulate the development and expansion of economic activities which will benefit areas with substantial or expected employment problems; maintain acceptable working conditions and standards for Hawaii's workers; provide equal employment opportunities for all segments of Hawaii's population through affirmative action and nondiscrimination measures; encourage businesses that have favorable financial multiplier effects within Hawaii's economy; and promote and protect intangible resources in Hawaii, such as scenic beauty and the aloha spirit, which are vital to a healthy economy.

b. Visitor Industry. The Project will continue to enhance the mix of resort activities that can be used by Kaua'i residents as well as visitors. As such, it will: support visitor attractions in the West Kaua'i Planning District and contribute to job opportunities and employment for the Kaua'i community; support and assist in the promotion of Hawaii's visitor attractions and facilities; ensure that visitor industry activities are in keeping with the social, economic, and physical needs and aspirations of Hawaii's people; encourage cooperation and coordination between the government and private sectors in developing and maintaining well-

designed, adequately serviced visitor industry and related developments which are sensitive to neighboring communities and activities; develop the industry in a manner that will continue to provide new job opportunities and steady employment for Hawaii's people; provide opportunities for Hawaii's people to obtain job training and education that will allow for upward mobility within the visitor industry; foster a recognition of the contribution of the visitor industry to Hawaii's economy and the need to perpetuate the aloha spirit; and foster an understanding by visitors of the aloha spirit and of the unique and sensitive character of Hawaii's cultures and values.

SECTION 8. GENERAL PLAN CONSIDERATIONS.

8.1 Kaua'i General Plan Land Use Designation. As shown on the Waimea-Kekaha Land Use Map (which is contained in the Kaua'i General Plan as Figure 5-1), the Subject Property is located in the Resort Land Use Designation and in the Natural Land Use Designation.

a. Resort Designation. Land uses in the Resort Designation are described in Section 2.2.8 of the General Plan as follows:

> "8. Resort
>
> Entitled or partially entitled resort development could add more than 3,000 resort units to the existing visitor unit inventory. Most of these entitlements have no expiration date. Given concerns regarding stressed infrastructure including roads, wasterwater systems, and parks, the policy is to prohibit expansion of Visitor Destination Area (VDA), and where possible, to reduce VDA boundaries and remove Resort areas where entitlements do not exist. Many in the community desired a shift toward a "use it or lose it" approach toward resort development. Use it or lose it refuses lack of action toward entitling over the past few decades, indicates the market's ability to start and absorb this type of product in that spatial location, or a developer's willingness to make forward progress

toward utilizing the General Plan designation. Given this community desire, the General Plan Update reduces the island's total resort acreage.

Actions for the Resort designation are found in the Chapter 3 sector: Economy.

***Changes from the Previous General Plan Land Use Map***

Consistent with the policy to not expand the Visitor Destination Area (VDA), Resort designation was removed in unentitled areas (without County Resort Zoning or VDA) where there was little community support for resort expansion, such as Nukoli'i and Princeville (Table 2-1). Further restrictions are required on remaining areas without entitlements, by policy, in the tourism subsection, to ensure furtherance of the "use it or lose it" policy, and provide a short window for areas like Kikiaola to commit investment toward the resort use of the area. Otherwise, the designation of the area will revert to Agriculture."

b. Natural Designation. Land uses in the Natural Designation are described in Section 2.2.1 of the General Plan as follows:

"1. Natural

Areas designated as Natural have either limited development capacity or are not suitable for development due to topography, hazards vulnerability, sensitive resources, and other constraints. They include all State Land Use Conservation District lands and some County Open Zoning District land. These areas include the many ridges, waterfalls, river valleys, and rugged coastlines of the island that comprise its open spaces and scenic views. Very few residential uses are found in the Natural designation and are generally not encouraged.

. . .

***Changes from the Previous General Plan Land Use Map***
Natural replaces the Open Designation in the previous General Plan. The Open Designation included undeveloped natural areas as well as some areas that are vegetated but developed and actively managed, such as golf courses."

8.2 Goals. The overall Goals contained in Section 1.3 of the Kaua'i General Plan, and the Project's compliance therewith, are as follows:

a. Goal 1 – A Sustainable Island. The Project is an example of responsible growth in an area designated for resort and open space uses by the general public. The Applicant will implement a number of green (environmentally enhancing) initiatives.

b. Goal 2 – A Unique and Beautiful Place. The Project will compliment the natural, cultural, social and built environmental assets of the Waimea Town area and West Kaua'i Community. It will provide resort opportunities and uses that are compatible with similar uses in the area. The Applicant will renovate the exterior of the hotel with earth tone colors, vegetation screens, and landscaping which will enhance the appearance of the hotel.

c. Goal 3 – A Healthy and Resilient People. The Project will have minimal visual impacts and will have no significant negative impacts on the Historic Sites or Hawaiian cultural practices.

d. Goal 4 – An Equitable Place, with Opportunity for All. The Project will support and enhance economic and business opportunities and jobs on Kaua'i.

8.3 Policies. The Project will comply with the Policies contained in Section 1.4 of the Kaua'i General Plan as follows:

a. Manage Growth to Preserve Rural Character. The Project will not detract from the rural characteristics of Kaua'i. It will provide appropriate opportunities for resort activities within the designated growth boundaries of the West Kaua'i Planning District.

b. Provide Local Housing. The Project will enhance the availability of affordable housing opportunities for Kaua'i residents.

c. Recognize the Identity of Kaua'i's Individual Towns and Districts. The Project will provide resort opportunities that are consistent with the planning goals for the West Kaua'i Planning District.

d. Design Healthy and Complete Neighborhoods. The Project will be a compliment to healthy and complete neighborhoods by providing close, walkable access to resort activities on the Subject Property.

e. Make Strategic Infrastructure Investments. The Project will provide the necessary infrastructure (including public access to the Shoreline, public parking, the payment of environmental impact fees, the provision of Workforce Housing, and the preservation of the Kekupua Fish Pond) to offset any negative impacts it may have on public facilities.

f. Reduce the Cost of Living. The Project will have no negative impact on the cost of living for the Kaua'i community.

g. Build a Balanced Transportation System. The Project will not substantially increase traffic or congestion problems. It will to provide new public parking spaces.

h. Protect Kaua'i's Scenic Beauty. The Project will have no substantial negative impacts on the visual resources in the Waimea Town and the West Kaua'i Planning District. The color scheme and landscaping for the Project will lessen the visual impact of the current improvements.

i. Uphold Kaua'i as a Unique Visitor Destination. The Project will provide unique resort opportunities for visitors.

j. Help Business Thrive. The Project will provide resort opportunities which in turn will generate increased revenues for business and commercial activities in the West Kaua'i Planning District.

k. Help Agricultural Lands Be Productive. The Project will have no negative impact on surrounding agricultural uses. It will help to preserve agricultural lands by locating resort uses in appropriately designated areas.

l. Protect Our Watersheds. As discussed in Section 4.2f. above and Section 6.1 above, the Project will have no negative impacts on any watershed area, and will enhance and preserve the Kekupua Fish Pond.

m. Complete Kaua'i's Shift to Clean Energy. The Project will have no negative impact on Kaua'i's shift to clean sources of energy. The Applicant will utilize environmentally sustainable materials and designs throughout the Project.

n. Prepare for Climate Change. The Project is located along the Shoreline. The south-eastern portion of the Subject Property is subject to sea level rise. Improvements in this area will be limited. Efforts will be made to mitigate future sea level rise by limiting future development in this area, reducing hardscape where possible, and adding landscaping.

o. Respect Native Hawaiian Rights and Wahi Pana. As discussed in Sections 6.2 and 14 herein, the Project will have no substantial impacts on any of the Historic Sites, Hawaiian traditional and cultural practices, or access to streams, shorelines, or areas associated with Hawaiian religious, traditional or cultural practices. The Kekupua Fish Pond and other historic sites will continue to be preserved.

p. Protect Access to Kaua'i's Treasured Places. As discussed in Section 14.1 below, the Project will have no negative impacts on the public's access to streams, the shoreline, trails, recreational areas, or places associated with Hawaiian religious, cultural, or traditional practices. The Applicant will continue to provide public access to the Shoreline across the Subject Property.

q. Nurture Our Keiki. The Project will help provide job opportunities that will allow Kaua'i's young people to grow and flourish.

r. Honor Our Kūpuna. The Project will provide walkable resort opportunities for Kūpuna.

s. Communicate with Aloha. The scheduling of this Petition before the Planning Commission and County Council will allow the public to participate in the planning and decision-making process for the Project.

8.4 Objectives & Actions by Sectors. The ten (10) Sectors contained in Section 3.0 of the Kaua'i General Plan (which represent the areas that must be considered in policy implementation), and the Project's compliance therewith, are as follows:

a. The Watershed. The Project is located in the Waipao Stream watershed and in the Aakukui Stream watershed areas. As discussed in Section 6.1 above, the Project will have no significant negative impact on the flow of water through the Subject Property to the ocean. As such, it will have no significant negative impacts on the natural, historic, cultural, or environmental qualities of, or resources within, the Watershed areas, or access thereto.

b. Housing. The Project will provide Workforce Housing and with resort opportunities compatible with residential uses and needs in the West Kaua'i Planning District. It is appropriately located in an "in-fill" area designated for resort uses.

c. Transportation. The Project will not result in a substantial increase in traffic and will have no significant negative impact on Kaua'i's transportation infrastructure. The Project Resort (hotel) units will be within walking distance of visitor amenities, commercial activities, recreation resources, and public facilities.

d. Infrastructure & Services. The Project will be served by an existing utility for electric and cable and by private utilities for water and wastewater disposal.

e. Shared Spaces. The Project will not overburden the use and enjoyment of public resources and Shared Spaces in the West Kaua'i Planning District.

f. Economy. The Project will enhance and promote resident and visitor related uses and expenditures in the West Kaua'i Planning District in support of Kaua'i's economy.

g. Heritage Resources. The Project will have no substantial visual impacts on surrounding lands, and no substantial impacts on the Historic Sites, on Hawaiian cultural or traditional practices, or on access to streams, shorelines, areas associated with Hawaiian cultural or traditional practices, recreational areas or other special places. The Project will not negatively impact any special features or resources that are shown on the Waimea-Kekaha Heritage Resource Map (Kaua'i General Plan Figure 5-9).

h. Energy Sustainability. The Project will have no negative impacts on Kaua'i's energy sustainability goals. It will incorporate energy efficient features in its development.

i. Public Safety & Hazards Resiliency. Most of the Project is located at higher elevations along the Shoreline that will protect it from sea level rise. Any new improvements in the south-eastern portion of the Subject Property will be constructed so as to minimize impacts from future seal level rise. All of the new Project improvements will comply with all requirements of the Shoreline Setback Ordinance.

j. Opportunity & Health For All. The Project will promote knowledge of and access to Historic Sites (the Kekupua Fish Pond), Hawaiian cultural and traditional practices, and public resources (including the Shoreline).

SECTION 9. CZO DISTRICT CONSIDERATIONS.

9.1 CZO Resorts District. Portions of the Subject Property are located in the CZO Resort District (RR-1) and (RR-1/ST-C). The purposes of the CZO Resort District are set forth in CZO Article 5, which provides in relevant part as follows:

> **"Sec. 8-5.1 Purpose.**
>
> (a) To create and protect attractive areas in pleasing and harmonious surroundings to accommodate the needs and desires primarily of visitors, tourists and transient guests.
>
> (b) To control density and to assure that undue congestion of streets and facilities will not occur.
>
> (c) To control the organization and design of use and structures to assure that the development will not detract from the natural features and attributes of the surrounding area.
>
> (d) To insure that physical and visual public access to recreational, historic and scenic areas is maintained and improved.
>
> **Sec. 8-5.2 Types Of Resort Districts.**
>
> . . .
>
> (b) The number portion of each resort density district establishes the maximum number of dwelling units including hotel and motel rooms that may be permitted per acre of land in each district..."

9.2 Permitted Uses And Structures In CZO Resort District. CZO Section 2.4(g) contains the Uses And Structures which are permitted in the CZO Resort District, which include the following:

"(1) Accessory structures and uses
(2) Apartment hotels

. . .

(4) Barber shop and beauty shop
(5) Commercial recreation
(6) Gift shops

. . .

(9) Hotels

. . .

(13) Museums

. . .

(15) Public parks and monuments
(16) Restaurants and food service

. . .

(19) Retail food and drug shops

. . .

(21) Single family detached dwellings"

9.3 Uses And Structures Permitted In CZO Resort District With A Use Permit. CZO Section 2.4(h) contains the Uses and Structures which are permitted with a Use Permit within the CZO Resort District, which include the following:

"

. . .

(8) Professional offices
(9) Project Development in accordance with Article 10 of this Chapter
(10) Public utilities and facilities

. . .

(13) Theaters and auditoriums
(14) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District"

9.4 Compliance With CZO Resort District Standards. The Project, which involves the development of an Apartment hotel and amenities on the Subject Property, is consistent with CZO Sections 2.4(g) and (h).

9.5 CZO Open District. Portions of the Subject Property are located within the CZO Open District. The purposes of the CZO Open District are set forth in CZO Article 9, which provides in relevant part as follows:

> **"Sec. 8-9.1 Purpose.**
>
> The Open District is established and regulated to create and maintain an adequate and functional amount of predominantly open land to provide for the recreational and aesthetic needs of the community or to provide for the effective functioning of land, air, water, plant and animal systems or communities.
>
> (a) To preserve, maintain or improve the essential characteristics of land and water areas that are:
>
> (1) of significant value to the public as scenic or recreational sources;
>
> (2) important to the overall structure and organization of urban areas and which provide accessible and usable open areas for recreational and aesthetic purposes;
>
> (3) necessary to insulate or buffer the public and places of residence from undesirable environmental factors caused by, or related to, particular uses such as noise, dust, and visually offensive elements.
>
> (b) To preserve, maintain or improve the essential functions of physical and ecological systems, forms or forces which significantly affect the general health, safety and welfare.
>
> (c) To define and regulate use and development within areas which may be potentially hazardous.
>
> (d) To include areas indicated on the County General Plan as open or as parks."

9.6 Permitted Uses And Structures In CZO Open District. CZO Section 2.4(s) contains the Uses and Structures permitted in the CZO Open District, which include the following:

"(1) Access uses and structures
(2) Day-use areas

. . .

(5) Outdoor recreation
(6) Parks and monuments
(7) Private recreation areas
(8) Resource management"

9.7 Uses And Structures Permitted In CZO Open District With A Use Permit. CZO Section 8-2.4(t) contains the Uses And Structures Permitted With A Use Permit within the CZO Open District, which includes the following:

"(8) Outdoor recreation concessions

. . .

(14) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District"

9.8 Standards For Construction And Use Within An Open District. CZO Sections 8-9.2 and 8-9.3 regulate land coverage and densities in the CZO Open District and provide as follows:

**"Sec. 8-9.2 Open District Development Standards.**

(a) Land Coverage:

(1) The amount of land coverage created, including buildings and pavement, shall not exceed ten percent (10%) of the lot or parcel area.

**Sec. 8-9.3 Calculation Of Densities And Land Coverage.**

. . .

(b) When an area is included in the Open District because it is within the Constraint District, the precise boundary of the Open District shall be established to reflect the physical or ecological considerations upon which the

particular Constraint District is based, regardless of lot or parcel boundaries. In those cases, that portion of the lot or parcel included in Open District may be included in any calculation of permitted densities and land coverage to be carried out on that portion of the parcel that is not within the Open District, provided that the total amount of density and land coverage shall be no more than one and one-half (1-1/2) that which would be permissible if the Open District portion of the lot or parcel was excluded from the calculation."

9.9 Compliance With CZO Open District Standards. The Project is a use and structure permitted with or without a Use Permit within the CZO Open District pursuant to CZO Sections 8-2.4(s) and (t). As discussed in Section 12, the Project will comply with the CZO Use Permit Standards. Except where permitted by the Amended Ordinance, the Land Coverage will not exceed ten percent (10%) of the CZO Open District portion of the Subject Property. The Project itself will have no significant impact on the surrounding environment. As such, the Project complies with CZO Section 8-9.1 in that it: will help to preserve, maintain and improve the natural characteristics of the area; will allow the area to remain predominantly free of development; and will be incidental to the use and open character of the surrounding lands.

9.10 CZO Special Treatment Districts. Portions of the Subject Property are located within the CZO Special Treatment Public Facilities (ST-P) District, Special Treatment Cultural/ Historic (ST-C) District, and Special Treatment Scenic/Ecologic Resources (ST-R) District. The purposes of the CZO Special Treatment Districts are set forth in CZO Article 11, which provides in relevant part as follows:

"Sec. 8-11.1. Purpose.

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

(a) To designate and guide development of County areas which because of unique or critical cultural, physical or locational characteristics have particular significance or value to the general public.

(b) To ensure that development within those areas recognize, preserve, maintain and contribute to the enhancement of those characteristics which are of particular significance or value to the general public.

(c) To ensure that development within those applicable areas is constructed in a manner that safely mitigates impacts from coastal hazards, including but not limited to sea level rise, coastal erosion, high wave runup, passive flooding, and an increased frequency and intensity of storms.

(d) Any of these districts may overlap any Use Districts, creating accumulated regulations that more nearly relate to the conditions of the specific location where the development or use may occur.

Sec. 8-11.2 Types of Special Treatment Districts.

. . .

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

(b) Cultural/Historic (ST-C). Communities and land or water areas which have a particular and unique value to the general public because of significant historic background, structures, or land forms.

(c) Scenic/Ecologic Resources (ST-R). Land and water areas which have unique natural forms, biologic systems, or aesthetic characteristics which are of particular significance and value to the general public.

. . .

Sec. 8-11.3. Generally Permitted Uses, Structures and Development.

All uses, structures, or development shall require a Use Permit, except repairs or modifications of land and existing structures that do not substantially change the exterior form or appearance of three dimensional structures or land; provided that no uses, structures, or development shall be allowed in Special Treatment-Open Space Districts without express provision to the contrary. In addition, such repairs or modifications do not require a Zoning Permit.

Sec. 8-11.4. Uses, Structures and Development Requiring a Use Permit.

(a) Any use, structure or development permitted with or without a Use Permit in the underlying Use District in which the parcel or lot is located that is consistent with an approved plan for development in accordance with Sec. 8-11.5.

(b) Repairs or modifications of land and existing structures that substantially change the exterior form or appearance of the structures or land in a manner inconsistent with the surrounding area within the Special Treatment District.

. . ."

9.11 Compliance With CZO Special Treatment Districts Standards. The Project will comply with standards for the three Special Treatment Districts as follows:

a. The Special Treatment Public Facilities (ST-P) District will be used as part of the access, parking and beach facilities which will provide public access to the Pakala beach and surf area.

b. The Special Treatment Cultural/Historic (ST-C) District will be the site of: the restored Robinson Family House and appurtenant buildings; and the restored Kekupua Fish Pond.

c. The Special Treatment Scenic/Ecologic Resources (ST-R) Districts will be areas that are free of development and improvements, whose unique natural forms, biologic systems, and aesthetic characteristics are protected and preserved.

SECTION 10. DEVELOPMENT PLAN CONSIDERATIONS.

10.1 Community Plan Area. The Subject Property is located in the West Kaua'i geographic area and is subject to the provisions of the West Kaua'i Community Plan ("WKCP") as set forth in Title IV, Chapter 10, Article 3 of the Kauai County Code, 1987 ("KCC").

10.2 Land Use. The desired long-range land use pattern for the Subject Property is shown on the West Kaua'i Regional Map attached as Figure 12 of the WKCP and on the Makaweli Town Plan Map attached as Figure 15 of the WKCP. In both cases, the maps provide for a Resort Land Use designation for the Subject Property, with a Natural designation for the Conservation Strip.

10.3 Regional Policies. The Regional Policies set forth in the WKCP, and the Project's compliance with such policies, are as follows:

a. Town Design.

(i) Town Design Policy #1. Focus development in existing towns to protect West Kaua'i's rural qualities and agricultural resources.

Why: Focusing development in compact and defined areas (as in the case of the Project) will not only maintain the area's rural character and open space, it also enhances a sense of community, increases the efficiency of infrastructure, and improves

conditions for multimodal transportation. Agricultural resources in the built environment include the mill sites, many of which are vacant or underutilized. Through thoughtful redevelopment and reuse, these former nodes of industry can be resurrected as all-purpose activity centers. Furthermore, compact design reduces energy consumption and associated greenhouse gas (GHG) emissions, and it helps reduce the region's dependence on imported energy resources.

How: The GP acknowledges that spreading outwards is neither environmentally nor economically feasible. The regional land use map minimizes sprawl by implementing an efficient land use pattern in new communities (such as the Project) and encouraging housing within and near existing town centers. The town plans define clear growth boundaries and separation between the existing communities of Kekaha, Waimea, Hanapēpē, and Port Allen-'Ele'ele. Zoning changes will encourage infill in order to protect agriculture and open spaces. Any greenfield development should be located adjacent to existing communities and designed compactly to support the efficient delivery of infrastructure and services.

(ii) Town Design Policy #2. Strengthen and activate town centers through development that supports the unique character of each town.

Why: West Kaua'i's town centers (including the Project) tell the story of the area's history and are cherished places where people gather to celebrate community and 'ohana. However, many of the historic buildings are non-conforming under the existing zoning ordinance, which can make redevelopment and improvement difficult. It is important to protect the existing character of the built environment, and also enhance it with housing, jobs, safer street intersections and traffic calming, restroom facilities, and improved parking areas and signage. The small scale of these historic town centers is embodied in their historic buildings and walkable design. This scale, along with small to medium building types, should be promoted in zoning and

design standards. Walkability should be a priority in all town centers especially Kekaha, Waimea, and Hanapēpē. In order to be sustainable, new neighborhoods (of which the Project is an example) should be walkable places—meaning they are well-connected with convenient access to parks, schools, services, and commercial uses. In addition to reducing GHG emissions through mode shift, these places can better facilitate positive health outcomes and local economic activity.

How: Update the CZO to ensure West Kaua'i's historic town cores are vibrant, mixed-use, and resilient places. Enhance the character of existing commercial areas (like the Subject Property) to accommodate more housing and a compatible mix of locally serving uses. Preserve historic town cores by updating zoning standards to recognize the historic shopfronts and their importance to the rural fabric. Complement building types with design guidelines for site frontages, parking, pedestrian facilities, and building intensity.

(iii) Town Design Policy #3. The Project will help meet the housing needs of West Kaua'i's residents by expanding mixed-use communities that are walkable, bikeable, and resilient.

Why: The ability to afford a home close to work, services, and recreation fosters independence and allows income to be spent in other ways besides transportation costs. However, access to affordable housing is a challenge across Kaua'i. Although the GP prioritizes the infill of existing communities, some greenfield development is necessary to meet West Kaua'i's projected housing demand.

How: The 20-year housing needs of the region should be accommodated in communities designated as "walkable neighborhoods." These communities should be designated as town center and walkable neighborhoods. Given infrastructure availability

and SLR considerations, the two areas with the greatest potential for new "walkable neighborhoods" are ʻEleʻele and Waimea.

In addition to infill development, future development should be located close to existing communities and job centers to mitigate commute times and traffic congestion. The area east of ʻEleʻele includes the County's Lima Ola affordable housing project which will add nearly 500 housing units to the region's inventory. The area south of Lima Ola (adjacent to Halewili and Waialo Roads) is suitable for residential and mixed-use expansion. As Hanapēpē-ʻEleʻele grows, it's important to ensure Hanapēpē Town, Hanapēpē Heights, future Department of Hawaiian Home Lands (DHHL) projects, ʻEleʻele, Port Allen, and the new Lima Ola development are connected through safe and accessible facilities.

The area designated as "Provisional Agriculture" in the 2018 GP should remain in agriculture.

(iv) Town Design Policy #4. The Project will protect and support the unique Pakala Plantation Camp.

Why: During the Sugar Plantation era, companies provided housing to the migrant workers who labored in the fields and mills. The housing was established in communities known as "camps" and were organized around the workers' national origin. The region of Makaweli contains active plantation camp communities, such as Kaumakani, Pākalā Village, and Kāʻawanui. These communities are cherished vestiges of plantation life and Kauaʻi's history. Although the plantation camps are privately owned and maintained, many structures are dilapidated and in need of repairs. These communities should be improved and supported, especially since they provide important workforce housing for the immediate agricultural lands.

How: A new Plantation Camp Zoning District should be established that will ensure the historic use of these sites can continue in perpetuity. Respecting the scale and historic character of the plantation camp, this District should also consider accommodating additional uses that can serve the existing camp community.

b. Land Transportation.

(i) Land Transportation Policy #1. Work with the Hawai'i Department of Transportation (HDOT) to identify congestion relief measures along Kaumuali'i Highway.

Why: Congestion along the Kaumuali'i Highway between the Westside, South Shore, and Līhu'e affects West Kaua'i residents on a daily basis.

How: Identify potential short-term and long-term modifications to the Kaumuali'i Highway/Pāpālina Road intersection. Short term modifications may include signal timing improvements. Long-term modifications include intersection reconfigurations that may require property acquisition, such as a roundabout or intersection realignment. The Project will help alleviate parking and congestion on Kaumuali'i Highway caused by persons accessing Pakala beach by providing access and parking on the Subject Property.

Identify striping and signage improvements to improve merging at key intersections between Kalāheo and Līhu'e, such as the Kaumuali'i Highway/ Maluhia Road intersection, and the Kaumuali'i Highway intersection at Kaua'i Nursery and Landscaping. Identify intersection improvements at several intersections to increase safety and reduce congestion. These improvements may include signalization, improved signal timing at intersections with existing signals, or roundabouts.

(ii) Land Transportation Policy #2. Improve bus service by implementing the West Kaua'i components of the Kaua'i Short-Range Transit Plan.

Why: Improving bus service provides better access to jobs, education, and services for those who cannot drive, and makes transit a more viable choice for those who do drive, thereby reducing single-occupancy vehicle trips that contribute to congestion.

How: Implement the Kaua'i Short Range Transit Plan in order to provide hourly weekend service, extend weekend and weekday service to later in the day and improve frequency of peak-hour mainline service. Implement a new Westside Shuttle providing service to underserved areas in Hanapēpē and 'Ele'ele and connect these areas to the mainline service in Kalāheo. Other amenity improvements include improving route maps and schedules to be more user-friendly.

(iii) Land Transportation Policy #3. In each community, establish "safe routes"—primarily street networks that safely accommodate pedestrians and bicyclists to get from homes to schools, parks, shops, jobs, and services.

Why: Short trips, such as trips to schools, neighborhood parks, and local shopping and services, can be accommodated by walking and bicycling, if people feel safe doing so. Increasing walking and biking for short trips can also reduce local, and even regional, congestion. As an example, one of the largest contributors to congestion on Kaua'i is school pickup and drop-off. Currently, the biggest impediment to walking and biking are the lack of safe walking and biking facilities on many of our roadways.

How:

• Use "context-sensitive design" in planning safe routes. Different streets, and even different segments of the same street, may require different design solutions based on several factors, including vehicle volume, vehicle speed, crash history, surrounding land uses, and community character.

• Establish priorities for safe routes implementation and incorporate priorities into the County's Capital Improvement Program. Priorities should be determined based on the "performance-based evaluation process" described in the GP (Kaua'i County General Plan, page 129).

• Identify multiple funding sources for safe routes implementation, including County General Excise Tax surcharge for transportation, State Transportation Improvement Program, grants, and other funding sources.

• Where feasible, integrate safe routes improvements into resurfacing projects.

• Work with HDOT to include safe routes improvements on state highways when appropriate.

• Evaluate illumination levels on Kaumuali'i Highway, especially at pedestrian crossings, to enhance safety.

(iv) Land Transportation Policy #4. Establish shared-use paths for bicyclists and pedestrians that connect Westside towns.

Why: Shared-use paths are desired to create connections between towns where the only current option may be to walk or bike on the existing highway shoulder. Shared-use paths, separated from vehicular traffic, are also often preferred by beginning cyclists of all ages who are not comfortable sharing the road with vehicles. Separated facilities can also reduce crashes between vehicles and bicyclists or pedestrians. Bicycling trips of short and medium length is an affordable transportation mode that can reduce personal transportation costs.

How:

- With community input, finalize alignments for Westside shared-use paths.
- Work with HDOT to fund construction of shared-use paths within HDOT rights-of-way where appropriate.
- When considering potential alignments, where shared-use paths may cross agricultural lands, consider the potential impact of a path on agricultural operations.
- Consider shared-use paths as part of an overall resilience strategy, where certain paths may serve as evacuation routes in an emergency. If appropriate, design the path for this purpose.
- Consider emergency vehicle access in the design of shared-use paths.
- If Kaumuali'i Highway through Kekaha is relocated, consider maintaining the existing right-of-way as a shared-use path.

c. Heritage Resources.

(i) Heritage Resources Policy #1. Preserve and protect the integrity of sacred heritage resources for current and future generations.

Why: From mauka to makai, West Kaua'i's physical landscape embodies the history of the region. Both natural and cultural resources tell the story of our ancestors—of diversity and survival, of economy and family, of religion and migration. Sacred places, or wahi pana, are sensitive heritage resources that are threatened by overuse access conflicts, natural hazards, and invasive species, such as kiawe and wild pigs. Wahi pana include storied places and features (such as pōhaku and ki'i pōhaku) from myths and historical events. Wahi pana also consist of burials, heiau, religious sites, springs, caves, streams, and ridges. They include traditional areas still used for subsistence cultivation and gatherings as well as spiritual and religious practices. Many wahi pana are privately held in the State Land Use Conservation and Agriculture Districts. While limited access to these areas help to protect sensitive historic sites and features, it also limits access by those who traditionally gather or who are traditionally connected to these areas.

How: Protection of sacred sites through improved management is critical and must involve all stakeholders. Wahi pana must be protected from abuse, destruction, and development while still allowing safe, appropriate access to those who are familiar with and connected to these places. Sacred and sensitive wahi pana should be prioritized for preservation efforts. The Project will help preserve the Robinson Family House, the Historic Properties on site, and the Kekupua Fish Pond.

(ii) Heritage Resources Policy #2. Celebrate the cultural and historic features that represent West Kaua'i's diverse cultural influences.

Why: The preservation and management of historic resources has an important role to play in protecting the environment, creating vibrant communities, and sustaining local economies. In addition, heritage resources contribute to the quality of life and cultural identity of our communities. Many important places, parks, beaches, community centers, and even cemeteries, are the focal point for community and family gatherings. Reuse and revitalization of historic properties and buildings can also assist economic development.

How: Engage in and facilitate preservation efforts within West Kaua'i communities. Heritage resources should be integrally linked to discussions of managing and promoting shared spaces (parks, public, and civic spaces), economic development, and opportunities for all (relating to health and education) as well as land use. Celebrate West Kaua'i's unique heritage from its beginnings through the present, recognizing and acknowledging the traditional mo'olelo (stories) and the significant events through time. An example of this is celebrating and promoting the significance of Hawaiian place names. Heritage resources should also be catalogued by the County and added to the Hawai'i and/or National Register of Historic Places.

(iii) Heritage Resources Policy #3. Uphold traditional and customary rights.

Why: Traditional and customary rights of Native Hawaiians were established at the time of the Hawaiian Kingdom and reaffirmed during the

Constitutional Convention of 1978 as well as through several Hawai'i Supreme Court cases over the years.

Many West Kaua'i families are still actively engaged in traditional customary practices. Some of these practices include cultivating pa'akai at Pū'olo in Hanapēpē, hunting and gathering in Kōke'e and Mānā, visiting and maintaining burial sites along ridges and sand dunes, fishing for 'ōpae in rivers and streams, and cultivating kalo. Ensuring that traditional and customary practices continue also ensures that sacred heritage resources are maintained and protected for future generations.

How: Require identification and mitigation of potential impacts to subsistence activities and resources when reviewing development permits. Work with agencies, non-governmental entities, and community experts to develop protocol for consultation, mitigation, and remediation of exposed, potentially exposed, or damaged sites containing iwi kūpuna. Establish a comprehensive consultation protocol and cultural resource management plan with Native Hawaiians and knowledgeable community members. Consult with Native Hawaiian Practitioners and knowledgeable community members of West Kaua'i to establish interpretive signage at sensitive sites that are easily accessed by the public, such as Kukui-o-Lono and the sand dunes of Kekaha, Mānā, Nohili, Po'oahonu, and Polihale.

(iv) Heritage Resources Policy #4. Preserve West Kaua'i's historic structures and perpetuate its unique architecture.

Why: West Kaua'i's historic structures and architecture tell a story of its history, identity, and people. The different architectural styles—from western-style plantation to art deco—contribute to each town's unique character. The upkeep of historic buildings, such as traditional storefronts and plantation-era bungalows, enhances rural character,

economic development, and the housing inventory. Some buildings and structures are dilapidated and need repair and maintenance. West Kaua'i has several historic buildings and sites that are listed on the National and/or State Register of Historic Places, and other buildings are eligible for nomination.

How: Government, landowners, businesses, and residents should coordinate efforts to preserve historic buildings and perpetuate local architecture. As a National Park Service Certified Local Government, the County supports preservation through the Kaua'i Historic Preservation Review Committee. The Committee should update its inventory of eligible places to be nominated to the State of Hawai'i and/or National Register of Historic Places.

d. Resiliency.

(i) Resiliency Policy #1. Adapt West Kaua'i's low-lying neighborhoods for climate change impacts and lay the groundwork for managed retreat.

Why: SLR will rapidly accelerate the coastal erosion already impacting certain neighborhoods. The Hawai'i Sea Level Rise Vulnerability and Adaptation Report's maps of exposure areas illustrate that the combined impacts of coastal erosion, passive flooding, and wave overwash will infiltrate many neighborhoods. While SLR projections have a degree of uncertainty, one foot of SLR is expected within the planning horizon of this plan and 3.2 feet is projected in the mid to late century. While the planning horizon of this plan is only 20 years, the structures and built environment created in the next 20 years will have a building lifespan of 70-100 years. Given the long life of buildings and infrastructure, it is important to anticipate these impacts today.

How: To increase neighborhood resiliency, improved development standards and managed retreat strategies should be employed. Identify areas that are highly vulnerable to coastal hazards, including but not limited to SLR, coastal erosion, high wave run-up, passive flooding, and an increased frequency and intensity of storms. Ensure that if development occurs within these areas, the development is constructed in a manner that safely mitigates those impacts.

(ii) Resiliency Policy #2. Increase the resiliency of flood-prone neighborhoods through flood mitigation, drainage improvements, green infrastructure, and updated building standards.

(iii) Resiliency Policy #3. Strengthen the resiliency of the region's critical infrastructure and public facilities.

Why: In addition to the road network and flood protection infrastructure, critical infrastructure includes water, wastewater, and energy systems. According to the GP, there is adequate capacity in the County's wastewater and water systems to meet projected demand in existing service areas to the year 2035.

How: Infrastructure improvements should increase capacity as needed, especially for new service areas identified in the town plans, and they should also support community resiliency with respect to the growing threats of SLR and climate change hazards.

(iv) Resiliency Policy #4. Build on West Kaua'i's close-knit community networks to promote regional resiliency and grassroots disaster planning and preparedness.

Why: Economically independent communities are resilient because they can sustain themselves in the aftermath of a disaster when isolated from outside aid or supplies. Resilient communities should have their own local food source, services, alternate access routes, and plan for disaster recovery.

How: The County and State should continue coordinating with West Kaua'i residents and community organizations to provide opportunities for disaster preparation and recovery assistance.

(v) Resiliency Policy #5. Ensure the long-term resiliency of the land transportation network.

Why: Due to its limited road network, West Kaua'i neighborhoods could become cut off and isolated in the event of a natural disaster or SLR. Several roadway choke points along West Kaua'i are particularly vulnerable and deserve specific study with regard to SLR impacts and identifying alternative options. These include Kaumuali'i Highway between Kekaha and MacArthur Park, Kekaha Road, Kaumuali'i Highway in Waimea Town, local County roads makai of the highway, Waimea and Hanapēpē Bridges, and Waimea Valley roads.

How: Long-term options for roadways include relocation, raising, and armoring, each with its own set of impacts and feasibility issues. Detailed feasibility studies of these options are needed. Other projects include addressing nuisance flooding on roads and highways and the development of alternative access or evacuation routes.

(vi) Resiliency Policy #6. Improve West Kaua'i's long-term food security and sustain vital self-reliant community food systems.

Why: The well-being of our 'āina, water sources, oceans, skies, and biodiversity are integral to the wellbeing of our West Kaua'i community and it is vital that we recognize the long-held understanding that the ʻāina is our ali'i and we are its servants.

How: Organize and support collaborations in which producers, retailers, community members, and government entities partner to create vibrant local food economies, including subsistence systems, that enhance and sustain environmental and community well-being and reduce dependence on imported food.

e. Shared Spaces.

(i) Shared Spaces Policy #1. Support community-led design, programming, and stewardship of shared spaces.

Why: Shared spaces, where people gather and socialize, cultivate a sense of community. Activating shared spaces considers not only physical improvements, but the uses, activities, and events that attract people and bring them together.

West Kaua'i has a rich tradition of community stewardship, including main streets, parks, and cemeteries. Residents are passionate about their shared spaces. They desire to revitalize and bring to life historical landmarks and other important places that have fallen into disrepair. These places should be operable for community use and support economic development. The more a community participates in the design and programming of shared spaces, the more there is a sense of community ownership and responsibility.

How: The Department of Parks and Recreation manages 17 parks and facilities on the Westside. The County should continue to maintain and improve its parks and also emphasize community-led design and programming.

The County can also support activation of parks and streets with County-permitted special events and uses to promote economic vitality, community pride, and social cohesion. New funding sources for programming and maintenance may include Business Improvement Districts.

(ii) Shared Spaces Policy #2. Protect the community's natural and recreational resources in perpetuity.

Why: West Kaua'i's defining recreational resources, such as its beaches and mountains, are heavily used by locals and visitors alike. Recreational uses include fishing, swimming, hiking, hunting, and paddling. The access to and recreational use of these areas should be protected. The State is responsible for many of these resources, such as hunting units and trails in Kōke'e and Waimea State Parks. Maintenance and needed improvements to the state parks are greatly underfunded.

Acquisition and expansion of coastal shared spaces may also be necessary, due to SLR impacts and new development.

How: Public access must be considered when development occurs on or adjacent to shared spaces. For example, coastal development should protect and improve access to fishing spots and surf breaks. Coastal buffers, public access easements, dedicated trails, and land trusts are all tools to help accomplish this.

The State can improve the condition and quality of its recreational facilities by funding planned improvements identified in the Kōke'e and Waimea Canyon State Parks Master Plan. Operation and maintenance could be better funded through user fees for visitors.

Acquisition of private land adjacent to existing County and State parks should be considered where shared spaces are threatened by SLR hazards. One potential candidate for expansion is Salt Pond Beach Park which experiences erosion and high wave overwash. County funding, such as the Open Space Fund, may be leveraged by state and federal grants to support acquisition and needed capital improvements.

f. Economic Development.

(i) Economic Development Policy #1. Uphold Agriculture as an anchor industry.

Why: Agriculture is the foundation of West Kaua'i's economy and identity—from ancient times to today. Fields that are still in operation exist in the same locations as former sugar plantation fields, and those sugar plantation fields were established on the fields and water systems that were built and used by Ka Po'e Kahiko (The People of Old).

Abundant agricultural land (comprising one-third of Kaua'i's State Land Use Agricultural District) and agricultural infrastructure are the region's greatest competitive advantages. Agriculture remains the region's leading industry with over 1,000 full-time and seasonal workers. In recent decades seed companies, coffee farming, cattle production, and aquaculture have comprised the bulk of West Kaua'i's agricultural jobs. The public process revealed interest in community-based farming and the piloting of new crops like hemp.

How: There is ample opportunity to grow the industry and build on existing agriculture operations. This includes maintaining and upgrading agricultural infrastructure; expanding cooperatives and technical support for farmers; and the development of agriculture career pathways for youth.

(ii) Economic Development Policy #2. Provide supportive environments for business success.

Why: West Kaua'i has a wealth of small businesses engaged in diverse sectors such as retail, accommodation, food service, arts, and entertainment. While most businesses are in Waimea and Hanapēpē Towns, Port Allen in 'Ele'ele has steadily grown as a center for services, retail, and visitor attractions.

West Kaua'i's historic small-town character appeals to many small businesses. Both residents and visitors are attracted to the nostalgic plantation character of West Kaua'i's towns, all of which are within minutes of public beaches and parks. Friday Art Nights in Hanapēpē Town and annual events like the Waimea Town Celebration, Kekaha Fourth of July Celebration, and summer Bon Dance festivals grow in attendance each year.

How: Town revitalization can support small businesses by cultivating attractive environments for shops, workers, and patrons. As their popularity increases, West Kaua'i will require coordinated planning. The Town Plans for Kekaha, Waimea, Hanapēpē, and 'Ele'ele-Port Allen should provide ample space for commercial activity and workforce housing to exist side-by-side. Zoning must provide for new development and uses that support and strengthen the existing town's character. This will also mean addressing parking, circulation, signage, public bathrooms, streetscape, and park improvements. By providing the necessary infrastructure, West Kaua'i's towns will continue to maintain small business and attract private development.

Business start-up services and workforce readiness programs are also essential tools for a successful regional economy. Business and workforce support programs should serve both entrepreneurial and established business owners. Services

should include assistance in business and financial literacy, obtaining loans, developing online businesses, and student internships. Workforce readiness to further support West Kaua'i's impressive food service, arts, entertainment, and cultural activities requires incorporating all elements of STREAM learning in school curricula.

(iii) Economic Development Policy #3. Grow science literacy and invest in a STREAM-ready workforce.

Why: A workforce skilled in science and technology fosters home-grown innovation and support for regional economic development. This strengthens existing industries and provides the innovation and technological skills needed to open new sectors and start-ups. West Kaua'i is home to valuable STREAM partners, such as KVMH, PMRF, and multiple agricultural companies. Cultivating partnerships between these entities and schools will prepare youth for promising career opportunities.

SECTION 11. SMA CONSIDERATIONS.

11.1 Recreational Resources. The Subject Property is currently used as public access to the Pakala beach and surfing area. There are no other public recreational opportunities taking place on the Subject Property. The Project will include an area of improved access, parking, and beach facilities for the Pakala beach. The proposed Project will not have any negative impact on any other public recreational opportunities located on the Subject Property. The construction of the Project will not overburden the use of, nor restrict access to, the shoreline in the vicinity of the Subject Property. The Project will have no direct impact on any County Beach Parks in Waimea Town or the West Kaua'i area and will not overburden their facilities.

11.2 Historic Resources. As discussed in Section 6.2, above, the Project will result in the preservation, repair and restoration of the Robinson Family House, the Historic Properties, and the Kekupua Fish Pond. The proposed Project will not have any significant impact on any other historic, cultural or archaeological resources located on or near the Subject Property. The Applicant will protect and preserve any historic resources that may be found as a result of the development of the proposed Project.

11.3 Scenic and Open Space Resources. The proposed Project will not have any significant impacts on the scenic and open space resources on and around the Subject Property, and it will enhance the appearance of the Subject Property from views off-site. The Project will be compatible with and blend into the surrounding area. The Project will not interfere with any views to or along the shoreline. The public views of the Project will be primarily from locations on Kaumuali'i Highway. The Applicant will use landscaping and earth tone exterior colors to provide reasonable mitigation to the visual impacts the Project may have on the scenic quality of the Subject Property, the adjacent shoreline area, and on views from surrounding properties.

11.4 Coastal Ecosystems. The Subject Property, being located along the Shoreline, is part of the coastal ecosystem of that area. As discussed in the Marine Environmental Assessment prepared by Marine Research Consultants attached to the EIS as Appendix C ("Marine Study"), the proposed Project will have no significant impact on this ecosystem. All improvements will be located at least 100 feet from the Shoreline. The Project will be constructed and maintained so that any erosion or increased runoff will be maintained on site. No aspect of the Project will endanger the coastal ecosystem or have any negative impacts on it.

11.5 Economic Impacts. As discussed previously, the Subject Property will be developed for resort purposes. The proposed Project will create short term economic benefits associated with the construction of the improvements and long-term economic benefits associated with the operation of the resort facilities. The proposed Project will not have any negative impacts on the economy.

11.6 Coastal Hazards. Most of the Subject Property is situated within Flood Zone VE (EL11), Flood Zone AE (EL11), Flood Zone AE (EL9), additional areas next to the streams, Flood Zone XS, and Flood Zone X, as shown on the Flood Map (incorporating Federal Insurance Rate Map 150002058G and Federal Insurance Rate Map 1500020259G). The Project will meet all of the requirements of the Flood Plain Management Ordinance of the County of Kauai, as contained in Chapter 15, Article 1, of the Kauai County Code, 1987. The Project will have no negative impact on flooding on or around the Subject Property. All drainage resulting from construction activities, from road use, and from the increase in land coverage will be retained on site and subject to best management practices. No additional drainage will be allowed to significantly or negatively impact surrounding properties, including the ocean.

11.7 Managing Development/Public Participation. The commercial activities on the Subject Property are complimentary to, and consistent with, present and future coastal zone development in this area of Kaua'i.

11.8 Beach Protection/Marine Resources. The Subject Property is located along the Shoreline. All improvements within the Project are subject to a minimum setback of one hundred (100) feet from the Shoreline and will comply with the Shoreline Setback Ordinance. As a result (and as discussed in the Marine Study), the Project will have no impact on any shoreline or beach areas, or on any open space areas along the shoreline. The Project will not involve any

development within the beach or coastal area which would have any negative impact on marine or coastal resources. The Subject Property contains the Kekupua Fish Pond, which will be restored as part of the development of the Project.

11.9 Value of Development. The Project involves activities with a value greater than $500,000.00.

11.10 Compatibility With Surrounding Uses. The Subject Property is surrounded by properties located within the SLUC Conservation District, the SLUC Urban District, the SLUC Agricultural District, the CZO Residential District, the CZO Agriculture District, and the CZO Open District. Uses on the surrounding lands include agricultural uses, commercial uses, and residential uses. The Subject Property is similar in topography, character and nature with adjacent and surrounding properties, and the Project activities are consistent with such surrounding uses.

11.11 Impacts Within SMA. As discussed herein, the Project activities on the Subject Property will have no significant negative impact on the SMA. The Project is and will be compatible with existing uses in areas on or around the Subject Property. The Project will have no significant negative impact on scenic or open space resources within the SMA. The Project will not increase runoff or otherwise endanger the coastal ecosystem. Portions of the Project will be located in a coastal hazard area, but will comply with all applicable flood zone requirements. The Project will have no significant detrimental impact on recreational, historic, or economic resources. The Project will not have any detrimental impacts on beach or marine resources. Approval of the Project will not result in the foreclosure of future management options for development in the West Kaua'i area or the Waimea Town area. The design, siting, exterior colors, and landscaping of the Project as proposed will ensure that the proposed Project will recognize,

preserve, maintain and contribute to the characteristics of the surrounding lands (which lands are recognized to be of particular significance or value to the general public). In particular, the Project will be compatible with, and will protect, the unique natural forms of, biologic systems contained within, and aesthetic characteristic of, the SMA.

11.12 Compliance with SMA Standards. The Project activities on the Subject Property will fulfill the provisions of the Special Management Area Rules And Regulations of the County of Kauai ("SMA Rules") in that:

a. The Project will have no effect on public access to publicly owned or used beaches and recreational areas.

b. The Project will not detrimentally effect any wildlife or endangered plant or animal species which may be located at this site.

c. Provisions for solid and liquid waste treatment, disposition and management will be developed in order to minimize adverse effects on the Special Management Area.

d. Alteration to existing land forms or vegetation and the construction of structures will cause minimum adverse effects to water resources and scenic and recreational amenities, and will minimize danger of floods, wind damage, storm surge, landslides, erosion, siltation, or failure in the event of earthquake.

e. The Project will not require dredging, filling, or altering any bay, estuary, salt marsh, river mouth, slough or lagoon.

f. The Project will not reduce the size of any beach or other area useable for public recreation.

g. The Project will not reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions or rivers or streams within the Special Management Area and the mean high tide line where there is no beach.

h. The Project will not substantially interfere with or detract from the line of sight toward the sea from the State highway nearest the coast;

i. The Project will not adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, or potential or existing agriculture uses of land.

j. The Project will not have any substantial environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interests.

k. The Project is consistent with the objectives, policies, and guidelines set forth in HRS Chapter 205A and Sections 3.0 and 4.0 of the SMA Rules.

l. The Project is consistent with permitted uses in the SLUC Urban District, the Kaua'i General Plan, the WKCP, and the CZO.

SECTION 12. USE PERMIT AND ZONING PERMIT CONSIDERATIONS.

12.1 Use Permit. The Applicant intends to apply for a Project Development Use Permit, a Class IV Zoning Permit, and a SMA Use Permit subsequent to this Application.

12.2 Compatibility With Surrounding Uses. The Subject Property is surrounded by parcels that are located within the SLUC Conservation District, the SLUC Agricultural District, the SLUC Urban District, the CZO Resort District, the CZO Residential District, the CZO Agriculture District, and the CZO Open District. Uses on adjacent parcels include transient vacation rental uses, resort uses, commercial uses, resort-residential uses, and residential uses. The

Applicant's operation of the Project on the Subject Property, if allowed, is not expected to cause problems for its neighbors and, to that extent, is compatible.

12.3 Compliance with Use Permit Standards. The proposed Project activities on the Subject Property are in compliance with the standards for Use Permits as contained in CZO Section 8-3.2, in that the Project will be:

a. A compatible use. The Project and its accessory uses are allowed in the CZO Resort and Open Districts as long as impacts to the area are mitigated. These uses are, and will continue to be, compatible and similar to other uses in the area.

b. Not detrimental to health of persons residing or working in the neighborhood. The Project will not be detrimental to the health of persons residing and working in the neighborhood given the types of surrounding commercial, residential, resort-residential, and resort activities ("Surrounding Activities") in the area.

c. Not detrimental to safety of persons residing or working in the neighborhood. The Project will not have any substantial impacts on the environment, including noise generation, pollution, the discharge of odors, the discharge of fluid or gaseous materials, or visual impacts ("Environmental Impacts") that will be detrimental to the safety of persons residing and working in the neighborhood. The Project will be similar to and compatible with the types of Surrounding Activities in the area.

d. Not detrimental to peace of persons residing or working in the neighborhood. The Project will not create any Environmental Impacts that will be detrimental to the safety of persons residing and working in the neighborhood.

e. Not detrimental to morals of persons residing or working in the neighborhood. The Project will not involve activities that will be detrimental to the morals of persons residing and working in the neighborhood.

f. Not detrimental to comfort and general welfare of persons residing or working in the neighborhood. The Project will not create any Environmental Impacts that will be detrimental to the general welfare of persons residing and working in the neighborhood. It will be similar to Surrounding Activities and only operate during reasonable hours.

g. Not detrimental or injurious to property or improvements in the neighborhood. The Project will not create any Environmental Impacts that will be detrimental to the health of persons residing and working in the neighborhood.

h. Not detrimental to the general welfare of the community. The Project will not create any Environmental Impacts that will be detrimental to the general welfare of the community.

i. Not a cause of substantial harmful environmental consequences to the Subject Property, or to other lands or waters. The Project will not generate Environmental Impacts or negative by-products which would affect the surrounding area.

j. Not inconsistent with the intent of the CZO. As discussed herein, the Project activities are compatible with uses and structures within the CZO Resort District and CZO Open District.

k. Not inconsistent with the General Plan. As discussed herein, the Project activities will be consistent with the Goals, Policies, and Objectives & Actions (Sectors) of the Kauai General Plan.

SECTION 13. HRS CHAPTER 343 (ENVIRONMENTAL IMPACT STATEMENTS) CONSIDERATIONS.

13.1 HRS Chapter 343. The Project is subject to the provisions of Hawaii Revised Statutes Chapter 343. HRS Section 343-5 requires the preparation of an Environmental Assessment and/or an Environmental Impact Statement for any actions that: propose the use of state lands; or propose the construction of a wastewater treatment unit. In this case, the Project may need to use portions of Kaumuali'i Highway, a State highway, to construct acceleration/deceleration lanes and storage lanes. In addition, the Project will require an easement across Kaumuali'i Highway for the construction of waterlines from the mauka water facility to the Project. Finally, the Project includes the construction of a wastewater treatment plant ("WWTP") on site.

13.2 EIS. As previously discussed, an EIS has been prepared and accepted for the Project. It is the Applicant's position, consistent with Hawaii Administrative Rules Section 11-200.1-30, that the EIS is valid and does not need to be supplemented, because the proposed action has not changed substantially in size, scope, intensity, use, location or timing.

SECTION 14. NATIVE HAWAIIAN ISSUES.

14.1 Impacts on Traditional or Cultural Practices. As discussed in the Traditional Customs And Practices Report prepared by Cultural Surveys Hawaii, Inc. ("Traditional Practices Report") attached to the EIS as Appendix G, the Project will have no impact on any known traditional or customary practices of native Hawaiians.

a. The only known traditional and customary practice associated with the Subject Property was permitted access to the Kekupua Fish Pond by the owner, and access along the Aakukui Stream to the shoreline. The Project will have no impact on the continued use

of the Subject Property for these purposes. There are no other known traditional or customary practices of native Hawaiians that are presently occurring within the Subject Property.

b. There are no special gathering practices taking place within any portion of the Subject Property.

c. The Project will not detrimentally affect: access to the Kekupua Fish Pond or any streams; access to the shoreline or other adjacent shoreline areas; or gathering along or in any streams, the shoreline or the ocean.

d. There are no known religious practices taking place within the Subject Property.

e. Other than the Kekupua Fish Pond, the Robinson Family House and adjacent structures, Historic Properties identified in the Archaeological Reports, there are no known cultural or historic sites or resources located within the Subject Property.

f. There is one known burial within the Subject Property and it will be preserved and protected.

SECTION 15. COMMUNITY CONTACTS.

15.1 Contact with Community Groups. The Applicant has met with the community groups and representatives listed in the List of Consulted Parties attached hereto as ***Exhibit "D-2"***.

15.2 Consultation. The Applicant has met and consulted with the governmental agencies and representatives listed in the List of Consulted Parties attached hereto as ***Exhibit "D-2"***.

SECTION 16. CONCLUSION.

The Applicant respectfully requests that the Planning Commission:

1. Hold a public hearing on the proposed Zoning Amendment pursuant to CZO Section 8-3.4(c).

2. Approve the Zoning Amendment and file a report with the County Council and Applicant of its findings and action taken pursuant to CZO Section 8-3.4(e).

DATED: Lihue, Kauai, Hawaii, _____.

DRAFT

MICHAEL J. BELLES
MAX W. J. GRAHAM, JR.
LAUREL K. S. LOO
Attorneys for Applicant,
KERZNER INTERNATIONAL
MANAGEMENT SERVICES HAWAII,
INC., a Hawaii corporation

# VERIFICATION

COMES NOW, _____, the _____ of ROBINSON FAMILY PARTNERS, a Hawaii general partnership, and verifies that the contents of this Petition For Zoning Amendment are true and correct to the best of his knowledge and belief.

ROBINSON FAMILY PARTNERS,
a Hawaii general partnership

By_____

Its

STATE OF HAWAII )
) SS:
COUNTY OF KAUAI )

On this _____ day of _____, 20___, before me appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that he executed the foregoing PETITION FOR ZONING AMENDMENT; VERIFICATION; EXHIBITS "A"–"F" dated _____, 20___, which document consists of _____ pages, as his free act and deed, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Name of Notary:
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires:_____

## VERIFICATION

COMES NOW, BRUCE B. ROBINSON, and verifies that the contents of this Petition For Zoning Amendment are true and correct to the best of his knowledge and belief.

_____
BRUCE B. ROBINSON

STATE OF HAWAII )
) SS:
COUNTY OF KAUAI )

On this _____ day of _____, 20___, before me appeared BRUCE B. ROBINSON, to me personally known, who, being by me duly sworn or affirmed, did say that he executed the foregoing PETITION FOR ZONING AMENDMENT; VERIFICATION; EXHIBITS "A"–"F" dated _____, 20___, which document consists of _____ pages, as his free act and deed, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Name of Notary:
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires:_____

**EXHIBIT LIST**
(Kerzner International Management Services Hawaii, Inc.
Petition For Zoning Amendment)


| | | EXHIBIT |
|---|---|---|
| A. | TITLE REPORT | A |
| B. | AUTHORIZATIONS | |
| | Authorization of Owner | B-1 |
| | Authorization of Owner/Lessee | B-2 |
| | Authorization of Lessee | B-3 |
| | Authorization of Applicant | B-4 |
| C. | MAPS | |
| | Map Showing Kapalawai (Lot 1) and Lot 2 | C-1 |
| | Location Map | C-2 |
| | Tax Map (2-7-003) | C-3 |
| | Ahupua'a Boundary Map | C-4 |
| | State Land Use District Map | C-5 |
| | County General Plan Map | C-6 |
| | County Zoning Map | C-7 |
| | West Kaua'i Community Plan Map | C-8 |
| | Makaweli Town Plan Map | C-9 |
| | SMA Boundary Map | C-10 |
| | NRCS Soil Survey Map | C-11 |
| | LSB Land Classification Map | C-12 |
| | Flood Map | C-13 |
| | Heritage Resource Map | C-14 |
| D. | DOCUMENTS | |
| | Adjacent Property Index | D-1 |
| | List of Consulted Parties | D-2 |
| E. | PLANS/STUDIES | |
| | Site Plan | E |
| F. | ORDINANCES | |
| | General Plan Amendment (Ord. No. PM-2000-353) | F-1 |
| | CZO Amendment (Ord. No. PM-2001-356) | F-2 |
| | Amendment to Ord. No. PM-2001-356 (Ord. No. PM-2006-385) | F-3 |
| | Proposed Zoning Amendment | F-4 |

# EXHIBIT "A"

# EXHIBIT "B-1"

# AUTHORIZATION OF OWNER

I. OWNER.

Name: BRUCE B. ROBINSON

Address: 1 Kaumakani Avenue
Kaumakani, Hawaii 96747

Telephone: (808) _____

II. AUTHORIZED AGENT.

a. Name: KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII, INC., a Hawaii corporation

Address: c/o Kerzner International Management FZE
Attn.: Ms. Jan Hazelton
31 Hudson Yards, 11th Floor
New York, New York 10001

Email: Jan.Hazelton@kerzner.com

b. Name: Max W. J. Graham, Jr., Esq.
Michael J. Belles, Esq.

Address: Belles Graham LLP
3135 Akahi Street, Suite A
Lihue, Kauai, Hawaii 96766

Telephone: (808) 246-6962
(808) 246-6961

Email: mwg@kauai-law.com
mjb@kauai-law.com

c. Name: Laurel K. S. Loo, Esq.

Address: McCorriston Miller Mukai MacKinnon
4463 Pahe'e Street, Suite 208
Lihue, Kauai, Hawaii 96766

Telephone: (808) 977-8015
Email: LL@m4law.com

III. PROPERTY.

Lot 1/Lot 2
Kapalawai, Makaweli, Kauai, Hawaii
Kauai Tax Map Key No. (4) 1-7-005:001

IV. AUTHORIZATION.

The Owner hereby authorizes the Authorized Agent to act on the Owner's behalf and to file and process on the Owner's behalf any and all applications necessary to obtain governmental permits relating to the proposed Zoning Amendment on the Subject Property, including, but not limited to, the following:

1. Building permits, grading permits, use permits, variance permits, zoning permits, and Special Management Area permits issued by any department, agency, board or commission of the County of Kauai.

2. Permits issued by the Department of Health of the State of Hawaii.

3. Permits issued by the Board of Land and Natural Resources of the State of Hawaii and/or the Department of Land and Natural Resources of the State of Hawaii.

4. Permits issued by the Land Use Commission of the State of Hawaii.

5. Zoning Amendments approved by the Kauai County Council.

DATED: _____.

**OWNER:**

_____
BRUCE B. ROBINSON

# EXHIBIT "B-2"

# AUTHORIZATION OF OWNER/LESSEE

I. OWNER/LESSEE.

Name: ROBINSON FAMILY PARTNERS,
a Hawaii general partnership

Address: P. O. Box 690088
Makaweli, Kauai, Hawaii 96769

Telephone: (808) _____

II. AUTHORIZED AGENT.

a. Name: KERZNER INTERNATIONAL
MANAGEMENT SERVICES HAWAII,
INC., a Hawaii corporation

Address: c/o Kerzner International Management FZE
Attn.: Ms. Jan Hazelton
31 Hudson Yards, 11th Floor
New York, New York 10001

Email: Jan.Hazelton@kerzner.com

b. Name: Max W. J. Graham, Jr., Esq.
Michael J. Belles, Esq.

Address: Belles Graham LLP
3135 Akahi Street, Suite A
Lihue, Kauai, Hawaii 96766

Telephone: (808) 246-6962
(808) 246-6961

Email: mwg@kauai-law.com
mjb@kauai-law.com



**EXHIBIT "B-2"**

c. Name: Laurel K. S. Loo, Esq.

Address: McCorriston Miller Mukai MacKinnon
4463 Pahe'e Street, Suite 208
Lihue, Kauai, Hawaii 96766

Telephone: (808) 977-8015
Email: LL@m4law.com

III. PROPERTY.

Lot 1/Lot 2
Kapalawai, Makaweli, Kauai, Hawaii
Kauai Tax Map Key No. (4) 1-7-005:001

IV. AUTHORIZATION.

The Owner/Lessee hereby authorizes the Authorized Agent to act on the Owner's/ Lessee's behalf and to file and process on the Owner's/Lessee's behalf any and all applications necessary to obtain governmental permits relating to the proposed Zoning Amendment on the Subject Property, including, but not limited to, the following:

1. Building permits, grading permits, use permits, variance permits, zoning permits, and Special Management Area permits issued by any department, agency, board or commission of the County of Kauai.

2. Permits issued by the Department of Health of the State of Hawaii.

3. Permits issued by the Board of Land and Natural Resources of the State of Hawaii and/or the Department of Land and Natural Resources of the State of Hawaii.

4. Permits issued by the Land Use Commission of the State of Hawaii.

5. Zoning Amendments approved by the Kauai County Council.

DATED: _____.

**OWNER/LESSEE:**

ROBINSON FAMILY PARTNERS,
a Hawaii general partnership

By_____

Its

# EXHIBIT "B-3"

# AUTHORIZATION OF LESSEE

I. LESSEE.

Name: GAY & ROBINSON, INC.,
a Hawaii corporation

Address: P. O. Box 156
Kaumakani, Kauai, Hawaii 96747

Telephone: (808) _____

II. AUTHORIZED AGENT.

a. Name: KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII, INC., a Hawaii corporation

Address: c/o Kerzner International Management FZE
Attn.: Ms. Jan Hazelton
31 Hudson Yards, 11th Floor
New York, New York 10001

Email: Jan.Hazelton@kerzner.com

b. Name: Max W. J. Graham, Jr., Esq.
Michael J. Belles, Esq.

Address: Belles Graham LLP
3135 Akahi Street, Suite A
Lihue, Kauai, Hawaii 96766

Telephone: (808) 246-6962
(808) 246-6961

Email: mwg@kauai-law.com
mjb@kauai-law.com



**EXHIBIT "B-3"**

c. Name: Laurel K. S. Loo, Esq.

Address: McCorriston Miller Mukai MacKinnon
4463 Pahe'e Street, Suite 208
Lihue, Kauai, Hawaii 96766

Telephone: (808) 977-8015
Email: LL@m4law.com

III. PROPERTY.

Lot 1/Lot 2
Kapalawai, Makaweli, Kauai, Hawaii
Kauai Tax Map Key No. (4) 1-7-005:001

IV. AUTHORIZATION.

The Lessee hereby authorizes the Authorized Agent to act on the Lessee's behalf and to file and process on the Lessee's behalf any and all applications necessary to obtain governmental permits relating to the proposed Zoning Amendment on the Subject Property, including, but not limited to, the following:

1. Building permits, grading permits, use permits, variance permits, zoning permits, and Special Management Area permits issued by any department, agency, board or commission of the County of Kauai.

2. Permits issued by the Department of Health of the State of Hawaii.

3. Permits issued by the Board of Land and Natural Resources of the State of Hawaii and/or the Department of Land and Natural Resources of the State of Hawaii.

4. Permits issued by the Land Use Commission of the State of Hawaii.

5. Zoning Amendments approved by the Kauai County Council.

DATED: _____.

**LESSEE:**

GAY & ROBINSON, INC.,
a Hawaii corporation

By_____

Its

# EXHIBIT "B-4"

# AUTHORIZATION OF APPLICANT

I. APPLICANT.

Name: KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII, INC., a Hawaii corporation

Address: c/o Kerzner International Management FZE
Attn.: Ms. Jan Hazelton
31 Hudson Yards, 11th Floor
New York, New York 10001

Email: Jan.Hazelton@kerzner.com

II. AUTHORIZED AGENT.

a. Name: Max W. J. Graham, Jr., Esq.
Michael J. Belles, Esq.

Address: Belles Graham LLP
3135 Akahi Street, Suite A
Lihue, Kauai, Hawaii 96766

Telephone: (808) 246-6962
(808) 246-6961

Email: mwg@kauai-law.com
mjb@kauai-law.com

b. Name: Laurel K. S. Loo, Esq.

Address: McCorriston Miller Mukai MacKinnon
4463 Pahe'e Street, Suite 208
Lihue, Kauai, Hawaii 96766

Telephone: (808) 977-8015
Email: LL@m4law.com



**EXHIBIT "B-4"**

III. PROPERTY.

Lot 1/Lot 2
Kapalawai, Makaweli, Kauai, Hawaii
Kauai Tax Map Key No. (4) 1-7-005:001

IV. AUTHORIZATION.

The Applicant hereby authorizes the Authorized Agent to act on the Applicant's behalf and to file and process on the Applicant's behalf any and all applications necessary to obtain governmental permits relating to the proposed Zoning Amendment on the Subject Property, including, but not limited to, the following:

1. Building permits, grading permits, use permits, variance permits, zoning permits, and Special Management Area permits issued by any department, agency, board or commission of the County of Kauai.

2. Permits issued by the Department of Health of the State of Hawaii.

3. Permits issued by the Board of Land and Natural Resources of the State of Hawaii and/or the Department of Land and Natural Resources of the State of Hawaii.

4. Permits issued by the Land Use Commission of the State of Hawaii.

5. Zoning Amendments approved by the Kauai County Council.

DATED: _____.

**APPLICANT:**

KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII, INC.,
a Hawaii corporation

By_____

Its

# EXHIBIT "C-1"

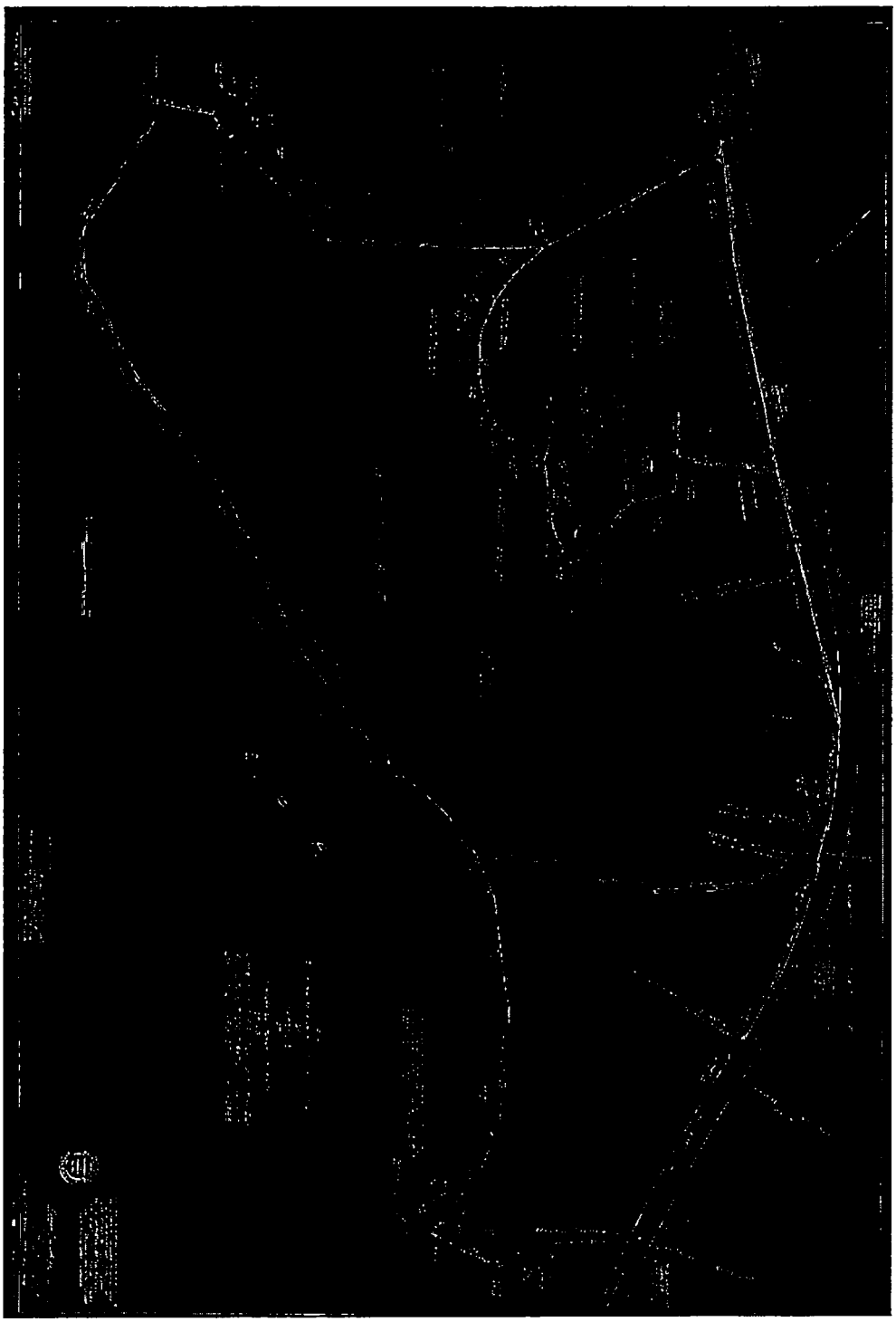
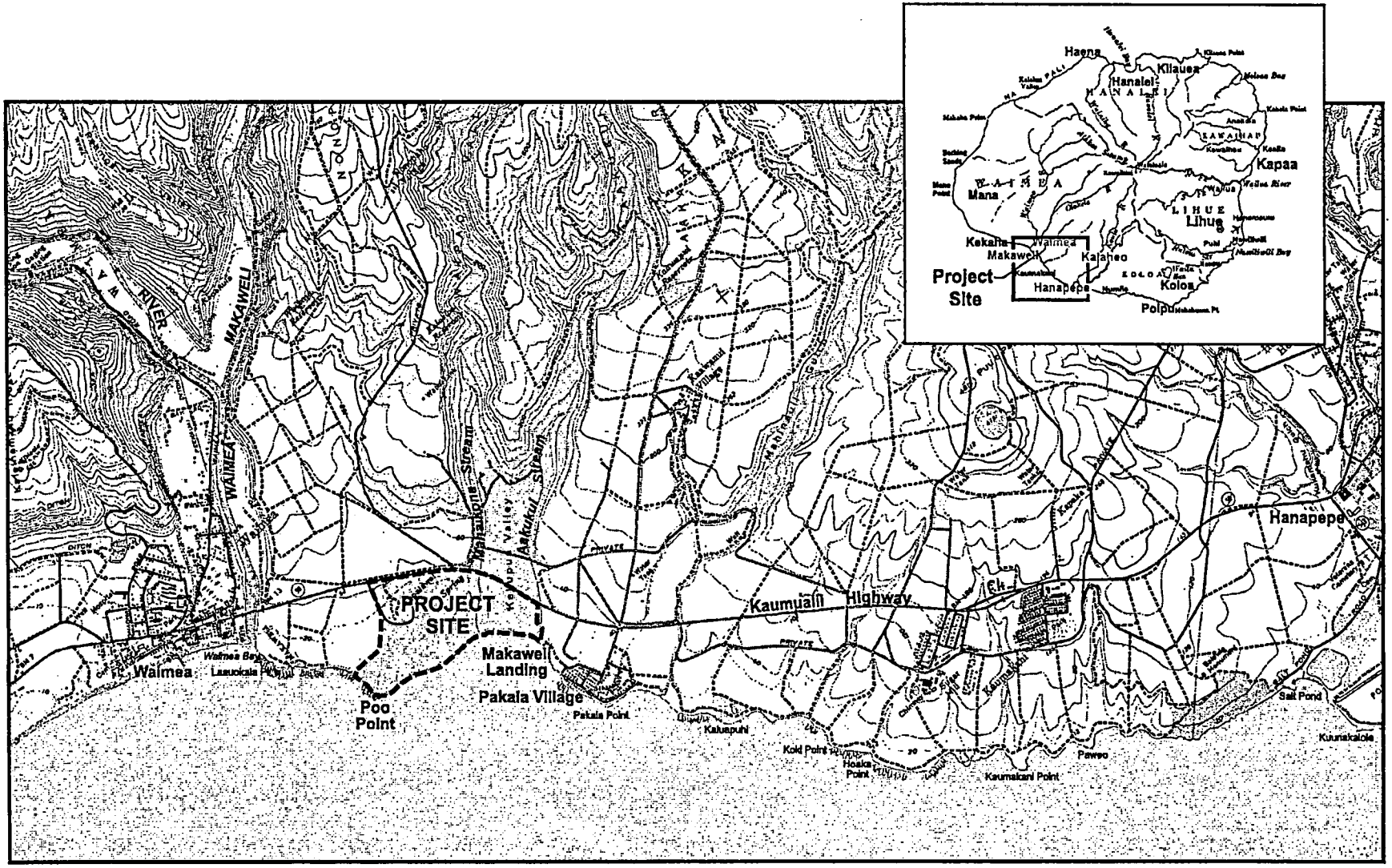


**EXHIBIT "C-1"**

# EXHIBIT "C-2"

EXHIBIT "C-2"




Regional Location Map

# KAPALAWAI RESORT

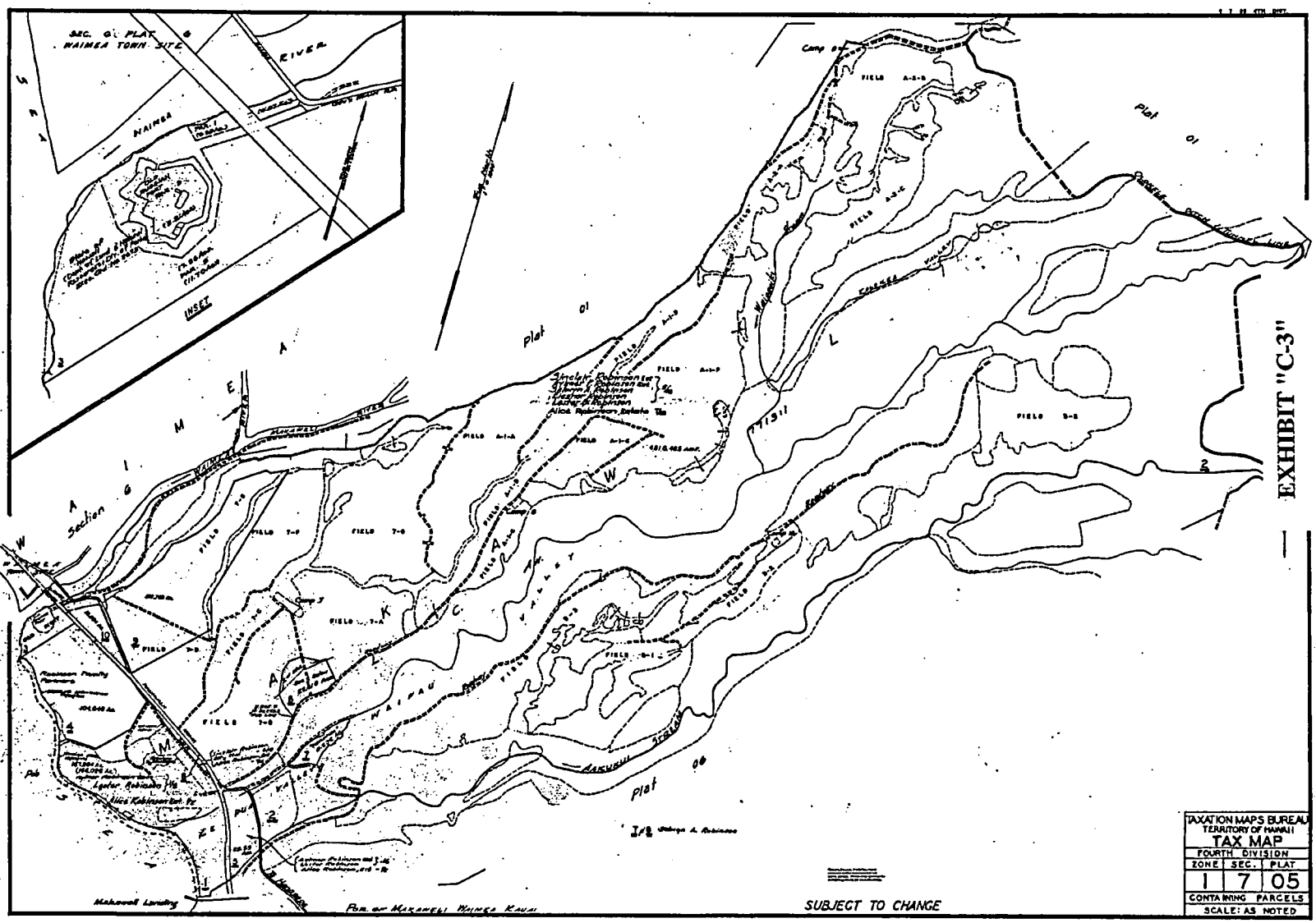
Kapalawai, Kauai, Hawaii

Figure 1

Feet
0 1000 2000 4000

Prepared by Helber Hastert & Fee, Planners

# EXHIBIT "C-3"


SEC. 6, PLAT 6
HAIMEA TOWN SITE
HAIMEA RIVER
INSET
Plat 01
Plat 00
Section 6
Section 7
Section 8
Section 9
Section 10
Section 11
Section 12
Section 13
Section 14
Section 15
Section 16
Section 17
Section 18
Section 19
Section 20
Section 21
Section 22
Section 23
Section 24
Section 25
Section

# EXHIBIT "C-4"

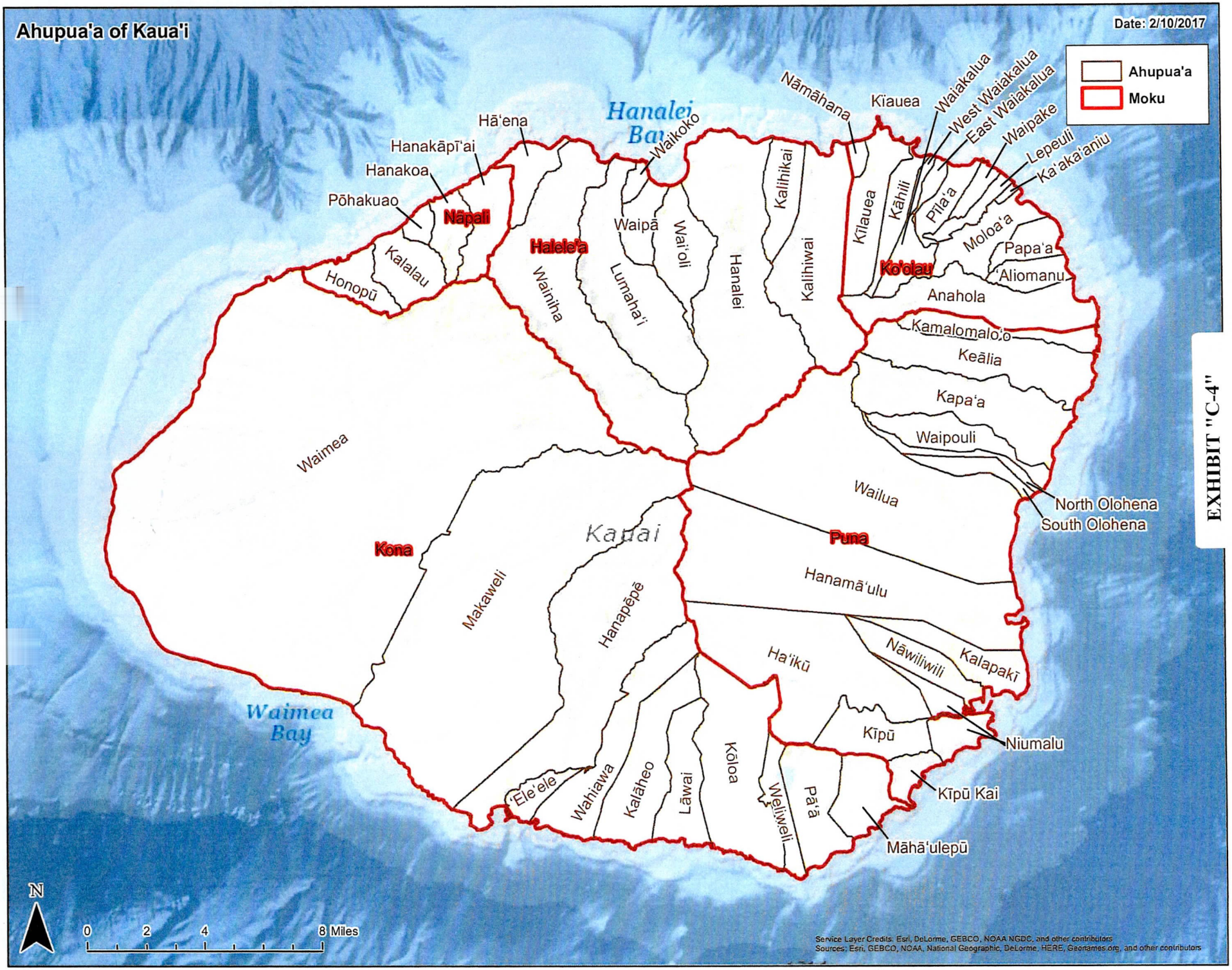
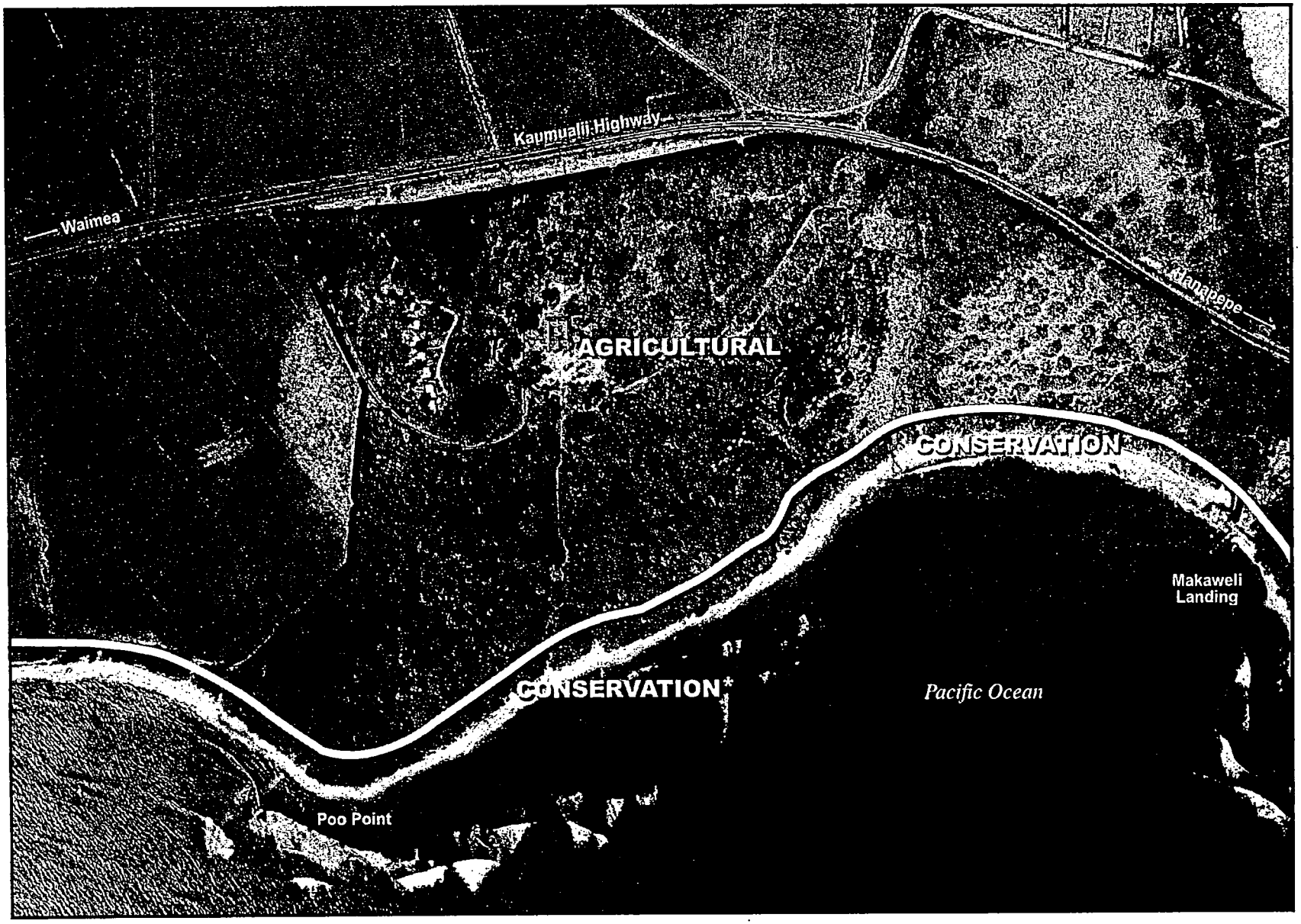

Ahupua'a of Kaua'i
Date: 2/10/2017
Ahupua'a
Moku
Hanalei Bay
Waimea Bay
Kaua'i
Hā'ena
Hanakāpī'ai
Hanakoa
Pōhakuao
Nāpali
Waikoko
Nāmāhana
Kīauea
Waiakalua
West Waiakalua
East Waiakalua
Waipake
Lepeuli
Ka'aka'aniu
Kalihikai
Kāhili
Pīla'a
Moloa'a
Papa'a
'Aliomanu
Anahola
Kamalomalo'o
Keālia
Kapa'a
Waipouli
North Olohena
South Olohena
Kīlauea
Ko'olau
Kalihiwai
Hanalei
Waipā
Wai'oli
Lumaha'i
Wainiha
Halele'a
Kalalau
Honopū
Waimea
Kona
Makaweli
Hanapēpē
Wailua
Puna
Hanamā'ulu
Ha'ikū
Nāwiliwili
Kalapakī
Kīpū
Niumalu
Kīpū Kai
Māhā'ulepū
Kōloa
Weliweli
Pā'ā
Lāwai
Kalāheo
Wahiawa
'Ele'ele
N
0
2
4
8 Miles
Service Layer Credits: Esri, DeLorme, GEBCO, NOAA NGDC, and other contributors
Sources: Esri, GEBCO, NOAA, National Geographic, DeLorme, HERE, Geonames.org, and other contributors

EXHIBIT "C-4"

# EXHIBIT "C-5"

EXHIBIT "C-5"




State Land Use Designations

KAPALAWAI RESORT
Kapalawai, Kauai, Hawaii

* Boundary between conservation and Agricultural Districts is set at an average of 100 feet mauka of certified shoreline, per boundary interpretation of 3-22-2000.

Figure 6

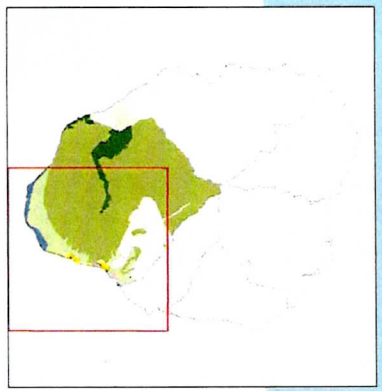
Feet
0 300 600 1200

Prepared by Helber Hastert & Fee, Planners

# EXHIBIT "C-6"

**Figure 5-2 Waimea-Kekaha Land Use Map**

- Planning District Boundary
- Major Roads
- Roads
- Streams
- Reservoirs
- Natural
- Agriculture
- Agriculture (IAL)
- Parks and Recreation
- Golf Course
- Homestead
- Residential Community
- Neighborhood Center
- Neighborhood General
- Resort
- Provisional Resort (Pending Community Plan)
- Plantation Camp (descriptive only)
- Transportation
- Military



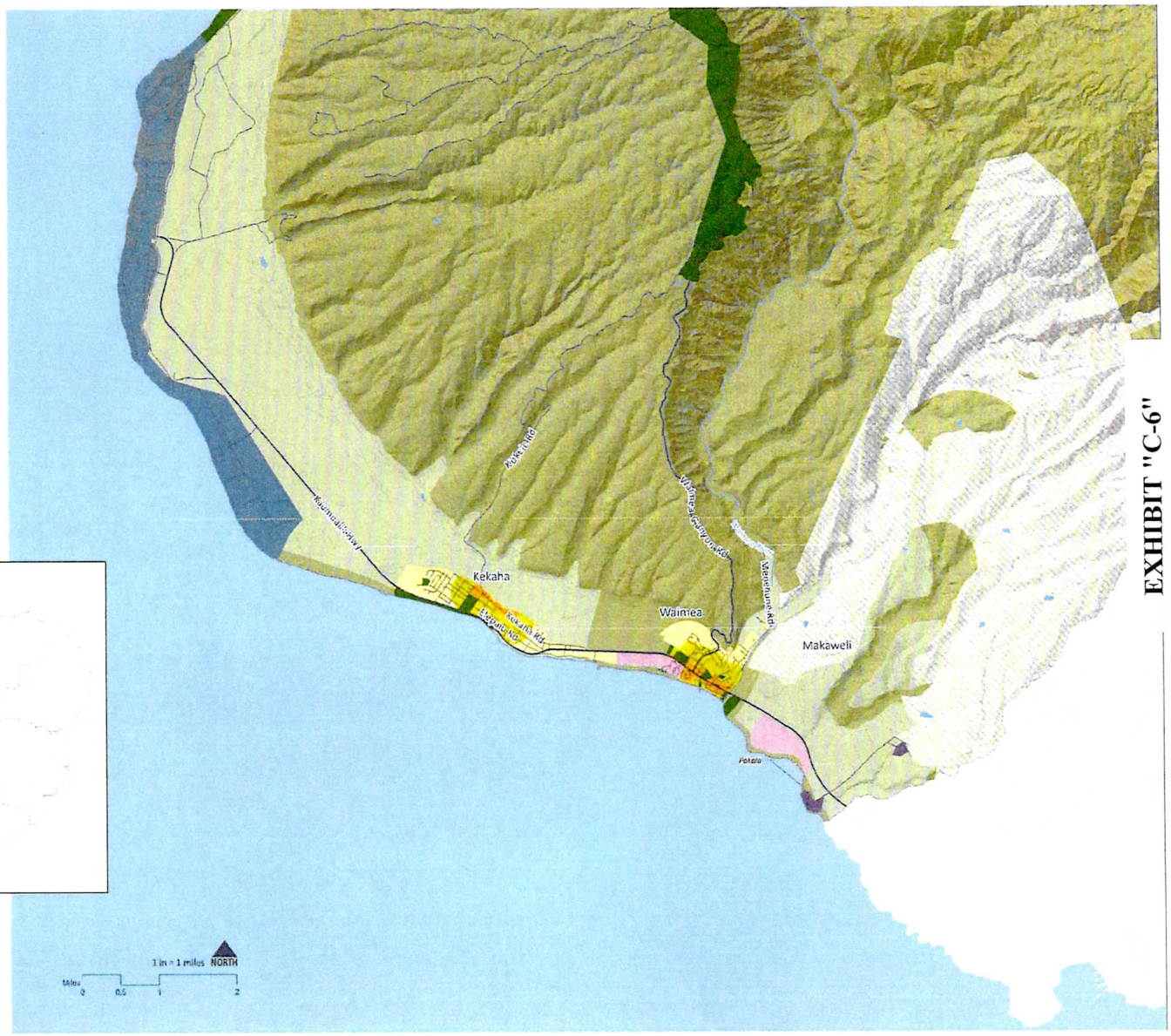
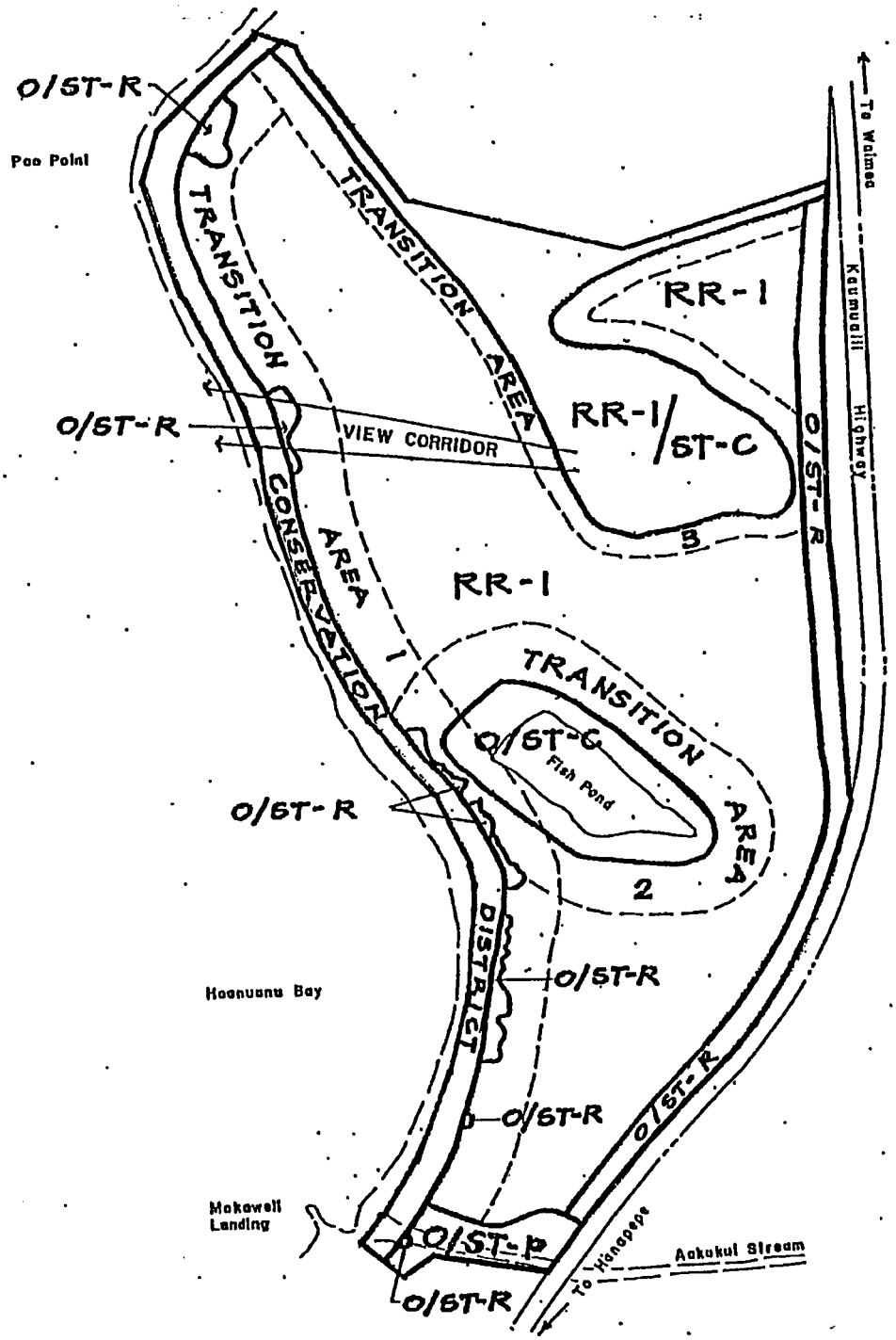



EXHIBIT "C-6"

# EXHIBIT "C-7"

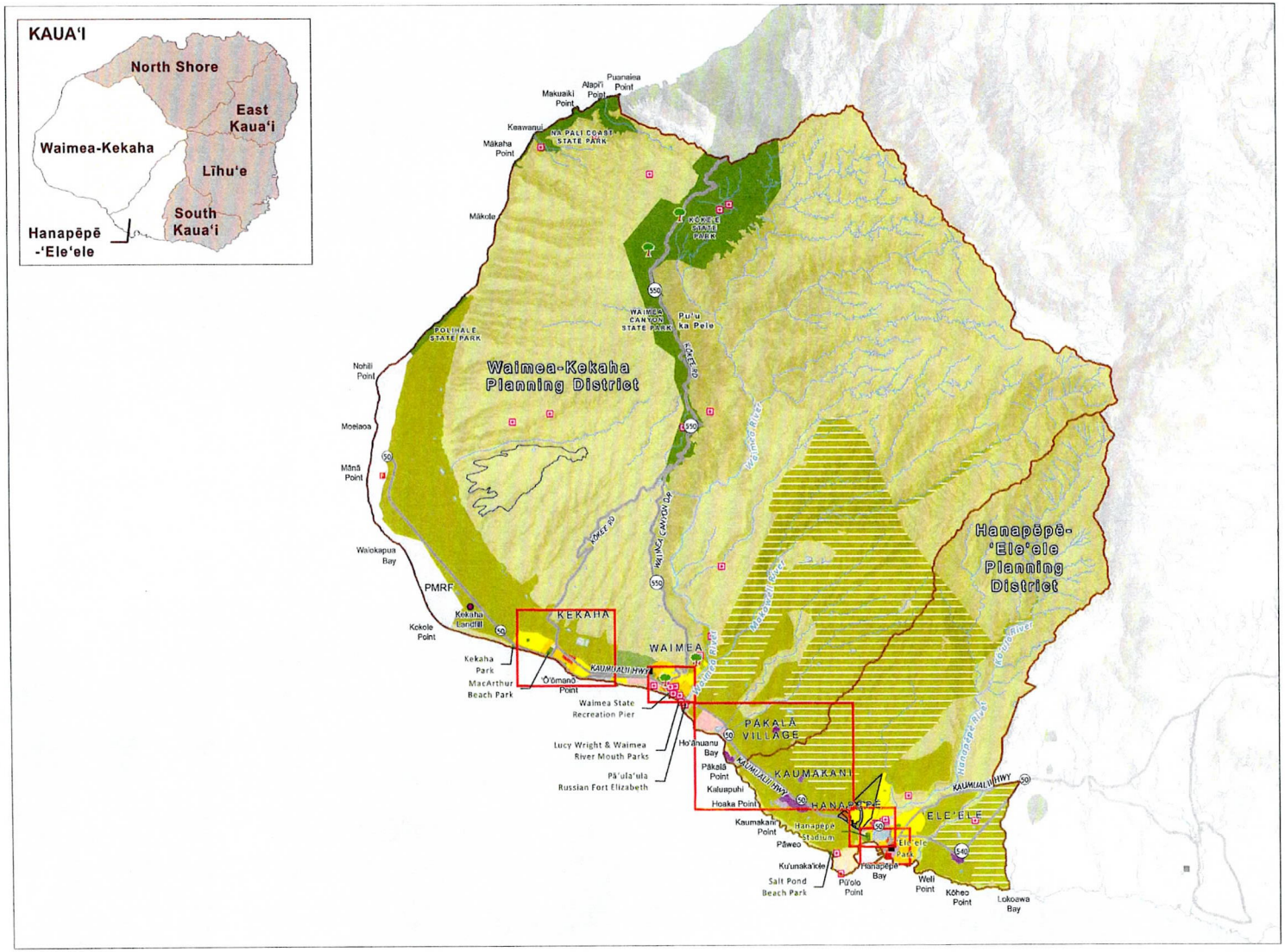



**LOCATION MAP SHOWING**
**PROPOSED AMENDMENT TO ZONING MAP ZM-200**
**FROM AGRICULTURE DISTRICT (A) AND OPEN DISTRICT (O)**
**TO RESORT DISTRICT (RR-1); RESORT DISTRICT/SPECIAL TREATMENT-CULTURAL DISTRICT (RR-1/ST-C); OPEN DISTRICT/SPECIAL TREATMENT-RESOURCE DISTRICT (O/ST-R); OPEN DISTRICT/SPECIAL TREATMENT-PUBLIC DISTRICT (O/ST-P); OPEN DISTRICT/SPECIAL TREATMENT-CULTURAL DISTRICT (O/ST-C); AND ESTABLISHMENT OF VIEW CORRIDOR AND TRANSITION AREAS 1,2, AND 3**
**MAKAWELI, WAIMEA, KAUAI, HAWAII**
**TAX MAP KEY 1-7-05:1**

**ZA-2000-2**

**EXHIBIT "C-7"**

# EXHIBIT "C-8"




## WEST KAUA'I REGIONAL MAP SHOWING TOWN PLAN AREAS

### Legend

- Town Center
- Walkable Neighborhood
- Residential Neighborhood
- Public Facilities
- Coastal Edge
- Plantation Camp
- Agriculture
- Agriculture (IAL)
- Park
- Natural
- Resort
- Industrial
- Transportation
- Military
- Planning District Boundary
- DHHL Homestead Project Areas
- Registered Historic Properties
- Exceptional Trees
- Fire Station
- Landfill
- Refuse Transfer Station
- Electric Power Plant
- Wastewater Treatment Plant
- Streams and Rivers
- Reservoirs and Ponds
- Highways

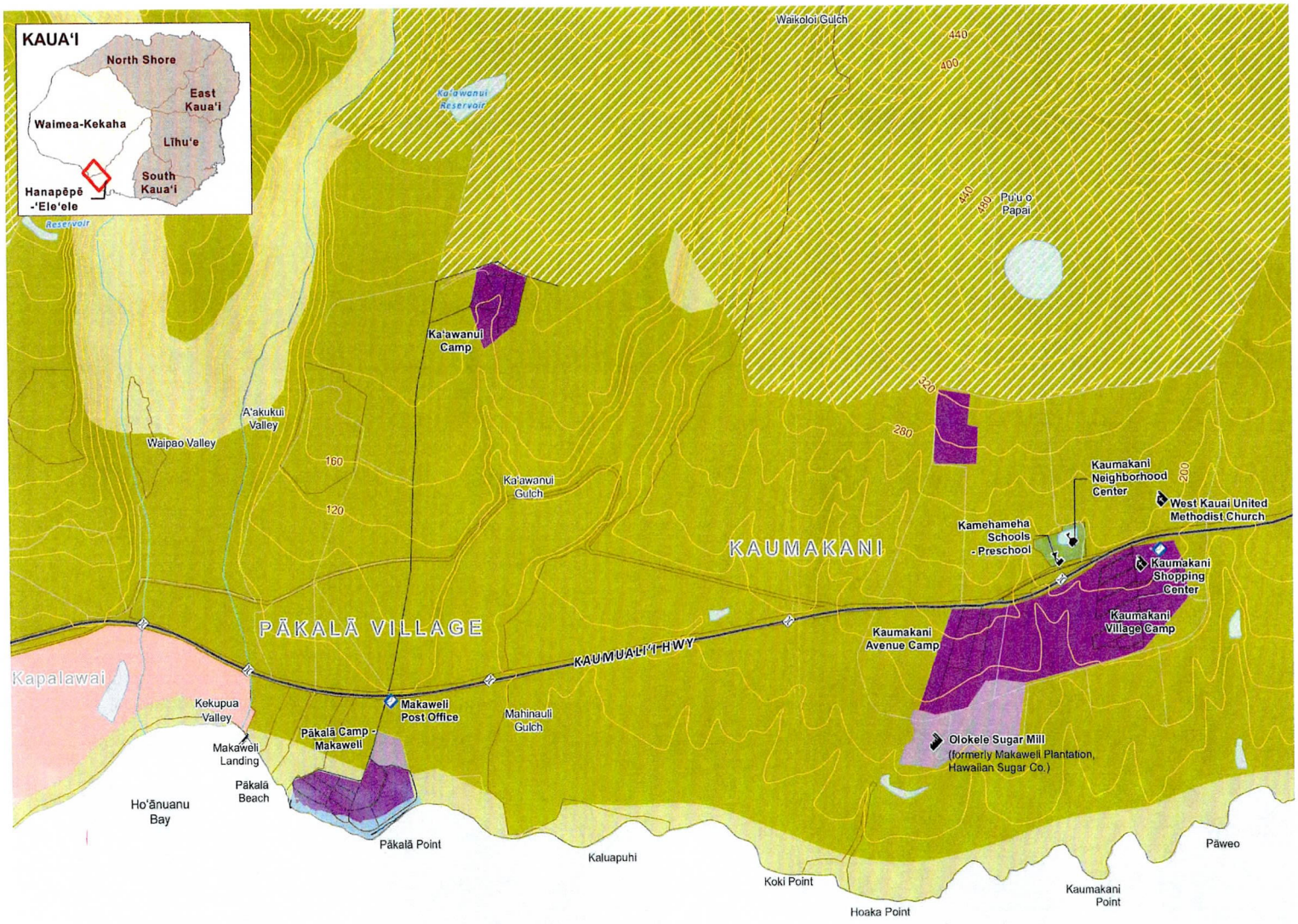
0 1.25 2.5 Miles

Data Sources: County of Kaua'i, Hawai'i State GIS Program, USGS National Map, and ESRI Basemaps

EXHIBIT "C-8"

**FIGURE 12** | Regional Town Plan Map

# EXHIBIT "C-9"




## MAKAWELI TOWN PLAN MAP

### Legend

- Coastal Edge
- Plantation Camp
- Agriculture
- Agriculture (IAL)
- Park
- Natural
- Resort
- Industrial
- TMK Parcels
- Bridge
- Church
- Mill
- Neighborhood Center
- Post Office
- School
- Contour 40ft
- Shoreline Armoring Structures
- Streams and Rivers
- Reservoirs and Ponds
- Local Roads
- Other Roads
- Highways

0 750 1,500 FT

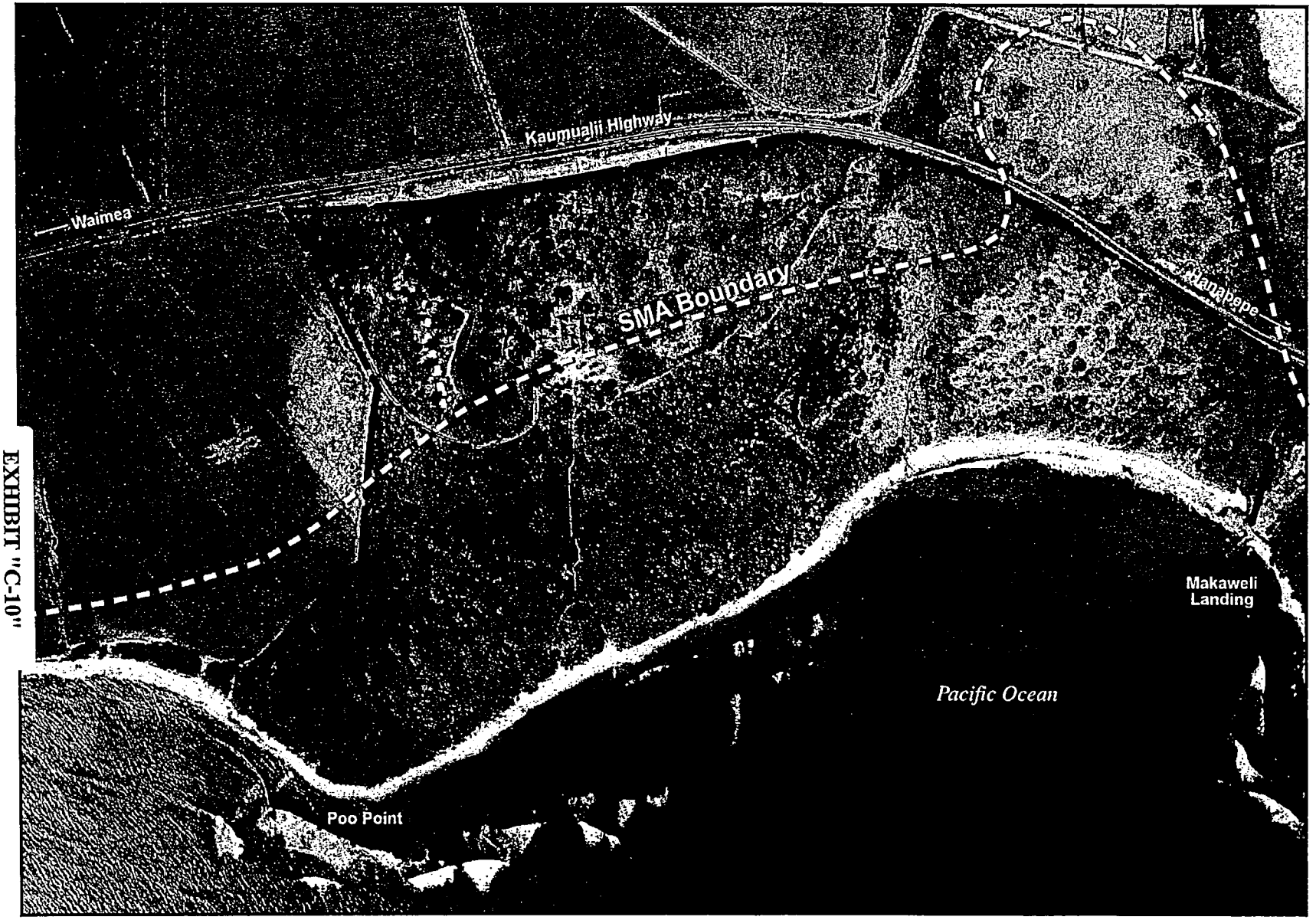
Data Sources: County of Kaua'i, Hawai'i State GIS Program, USGS National Map, and ESRI Basemaps

EXHIBIT "C-9"

**FIGURE 15** | Makaweli Town Plan Map

# EXHIBIT "C-10"

EXHIBIT "C-10"




Special Management Area Use Boundary

Figure 7

KAPALAWAI RESORT

Kapalawai, Kauai, Hawaii

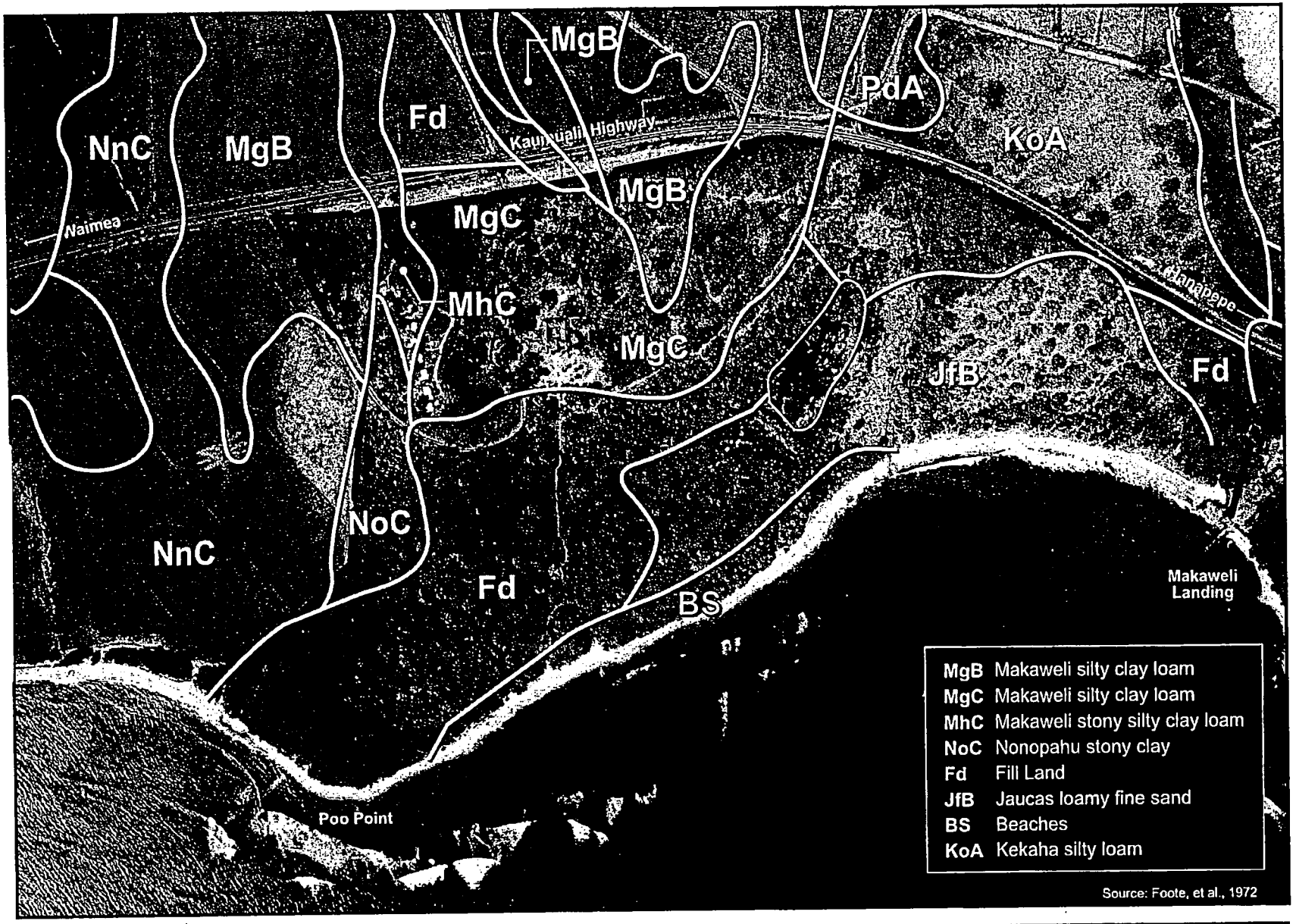
Feet

0 300 600 1200

Prepared by Helber Hastert & Fee, Planners

# EXHIBIT "C-11"

EXHIBIT "C-11"




Soils Map

KAPALAWAI RESORT
Kapalawai, Kauai, Hawaii

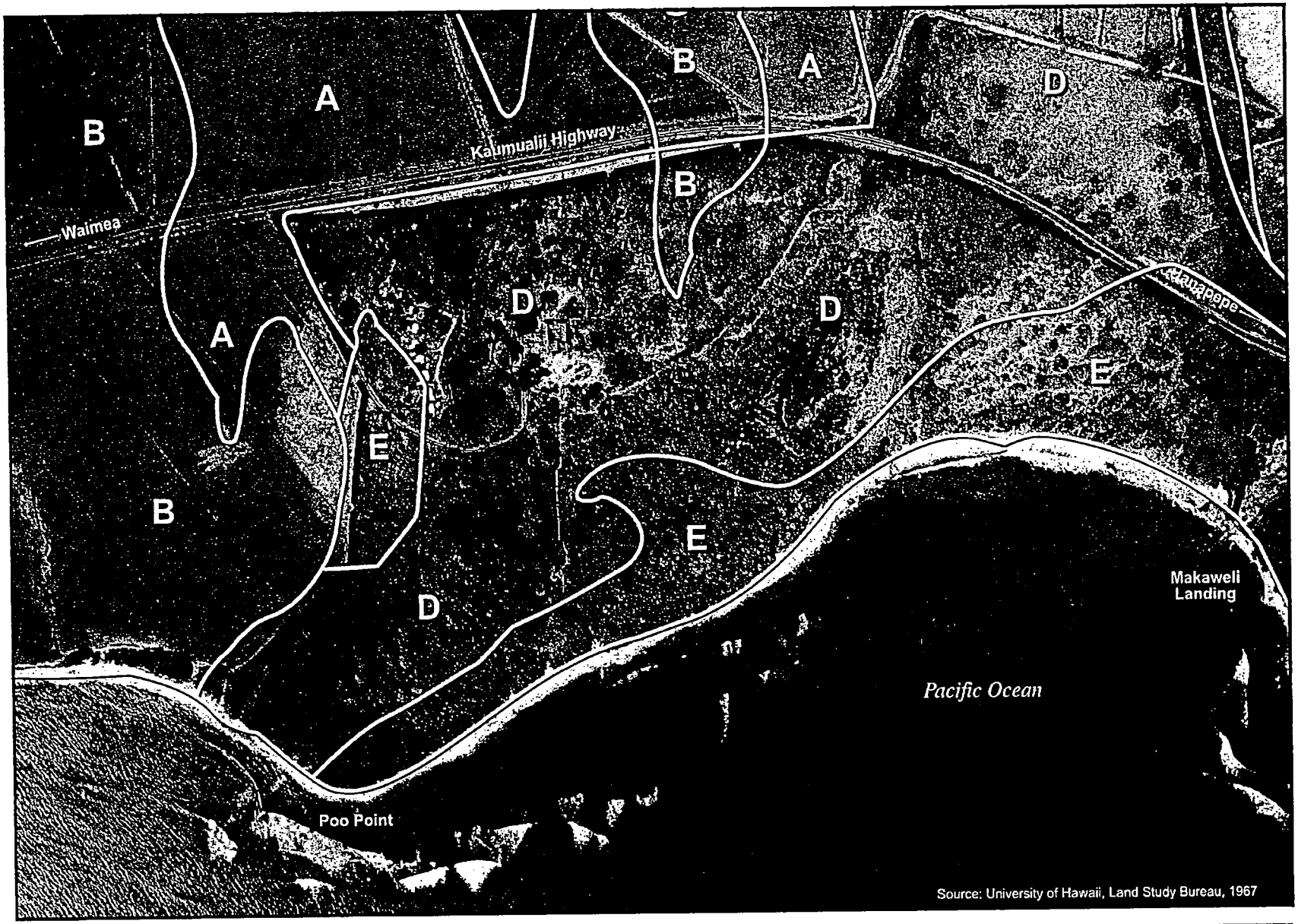
Figure 11

Feet
0 300 600 1200

Prepared by Helber Hastert & Fee, Planners

# EXHIBIT "C-12"

EXHIBIT "C-12"




Detailed Land Classification

# KAPALAWAI RESORT

Kapalawai, Kauai, Hawaii

Figure 13

Feet
0 300 600 1200

Prepared by Helber Hastert & Fee, Planners

# EXHIBIT "C-13"

# EXHIBIT "C-14"

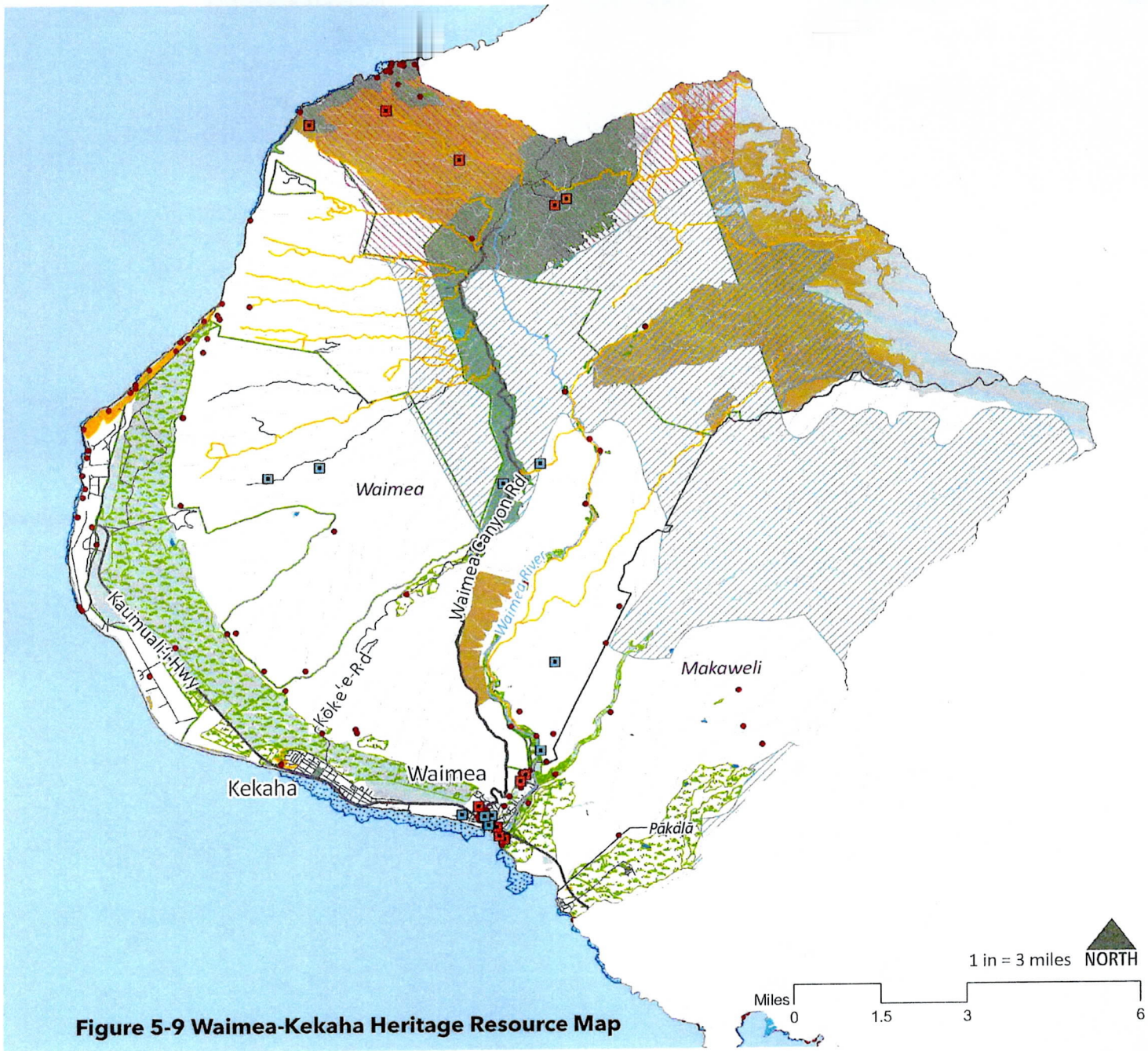



**Figure 5-9 Waimea-Kekaha Heritage Resource Map**

Registered Historic Sites
- State
- National
- State & National

Cultural Features

Priority Public Access Points

Fish Ponds

Streams & Waterbodies

Major Roads

Roads

Trails

Planning District Boundary

Ahupua'a Boundaries

Wetlands

Coral Reefs

Regulated Fishing Areas

State & County Parks

Preserves

Reservoirs

Traditional Cultivation Areas

Sand Dunes

Open Space Acquisition Priorities

Critical Habitat

Threatened & Endangered Species
- High Density
- Very High Density

**EXHIBIT "C-14"**

# EXHIBIT "D-1"

## ADJACENT PROPERTY INDEX

| TMK | OWNER/ADDRESS |
|---|---|
| (4) 1-7-005:001<br>(4) 1-7-005:005 | ALICE ROBINSON ESTATE<br>AYLMER ROBINSON<br>LESTER ROBINSON DEC'D<br>P O BOX 690088<br>MAKAWELI KAUAI HI 96769 |
| (4) 1-7-005:002, 004 & 006<br>(4) 1-7-006:010 | GAY & ROBINSON INC<br>P O BOX 156<br>KAUMAKANI KAUAI HI 96747 |
| (4) 1-7-005:002, 004 & 006<br>(4) 1-7-006:010 | ROBINSON FAMILY PARTNERS<br>P O BOX 690088<br>MAKAWELI KAUAI HI 96769 |
| (4) 1-7-006:012<br>(CPR No. 0001) | RANDALL S WEIR REVOCABLE TRUST<br>6332 MAKANA ROAD<br>KAPAA KAUAI HI 96746 |
| (4) 1-7-006:012<br>(CPR No. 0002) | KENNETH & JUDITH COOK 1996 TRUST<br>1600 TROUSDALE DRIVE<br>BURLINGAME CA 94010 |
| (4) 1-7-006:012<br>(CPR No. 0003) | KATHERINE A WEIR REVOCABLE LIVING TRUST<br>C/O MELISSA JEAN WEIR-KELEKOMA TRUSTEE<br>P O BOX 690116<br>MAKAWELI KAUAI HI 96769 |
| (4) 1-7-006:012<br>(CPR No. 0003) | MARSHALL J SMITH II<br>P O BOX 690116<br>MAKAWELI KAUAI HI 96769 |

# EXHIBIT "D-2"

## LIST OF CONSULTED PARTIES

| ORGANIZATION | PERSON | TITLE |
|---|---|---|
| | | |
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**EXHIBIT "D-2"**

# EXHIBIT "E"




EXHIBIT "E"

*One&Only* - KAUAI KAPALAWAI

# EXHIBIT "F-1"

ORDINANCE NO. PM- 2000-353 BILL NO. 1953

**A BILL FOR AN ORDINANCE**
**AMENDING CHAPTER 7, KAUAI COUNTY CODE 1987,**
**RELATING TO GENERAL PLAN DESIGNATION IN MAKAWELI, KAUAI**
**(Destination Villages Kauai, LLC, Applicant)**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. The General Plan designation for that certain area in Makaweli, Kauai, identified as TMK: 1-7-05:1, and as shown on the map attached hereto and incorporated herein as Exhibit GP-2000-1, is hereby amended from "Agricultural" and "Open" to "Resort," subject to the following conditions:

1. The applicant shall resolve the following during the Zoning Amendment process:

   a. The provision of beach access, parking, and facilities as being represented to accommodate beach users.

   b. The establishment of building setback lines to ensure proper siting of the proposed buildings and structures to mitigate any adverse visual and/or environmental impacts.

   c. In order to ensure that this project integrates into the community, the applicant shall address the future use of TMK: 1-7-05:4 (65 acres). In the event the future use of this 65 acre piece cannot be addressed, an understanding shall be established between the landowner and the County regarding the future of the property prior to Zoning Amendment action.

   d. Restoration of, public access to, and establishment of buffer area(s) around the existing fishpond.

   e. Preservation and restoration of the archaeological and historic sites on the property.

2. In order to ensure that the representations made by the applicant are adhered to, the density shall not exceed the amount being represented and the uses shall be limited only to those uses being proposed in the application.

SECTION 2. The Planning Commission is directed to note this amendment on the official General Plan map on file with the Commission. All General Plan provisions applicable to the "Resort" designation shall apply to the area re-designated herein.

SECTION 3. This ordinance shall take effect upon its approval.

INTRODUCED BY:

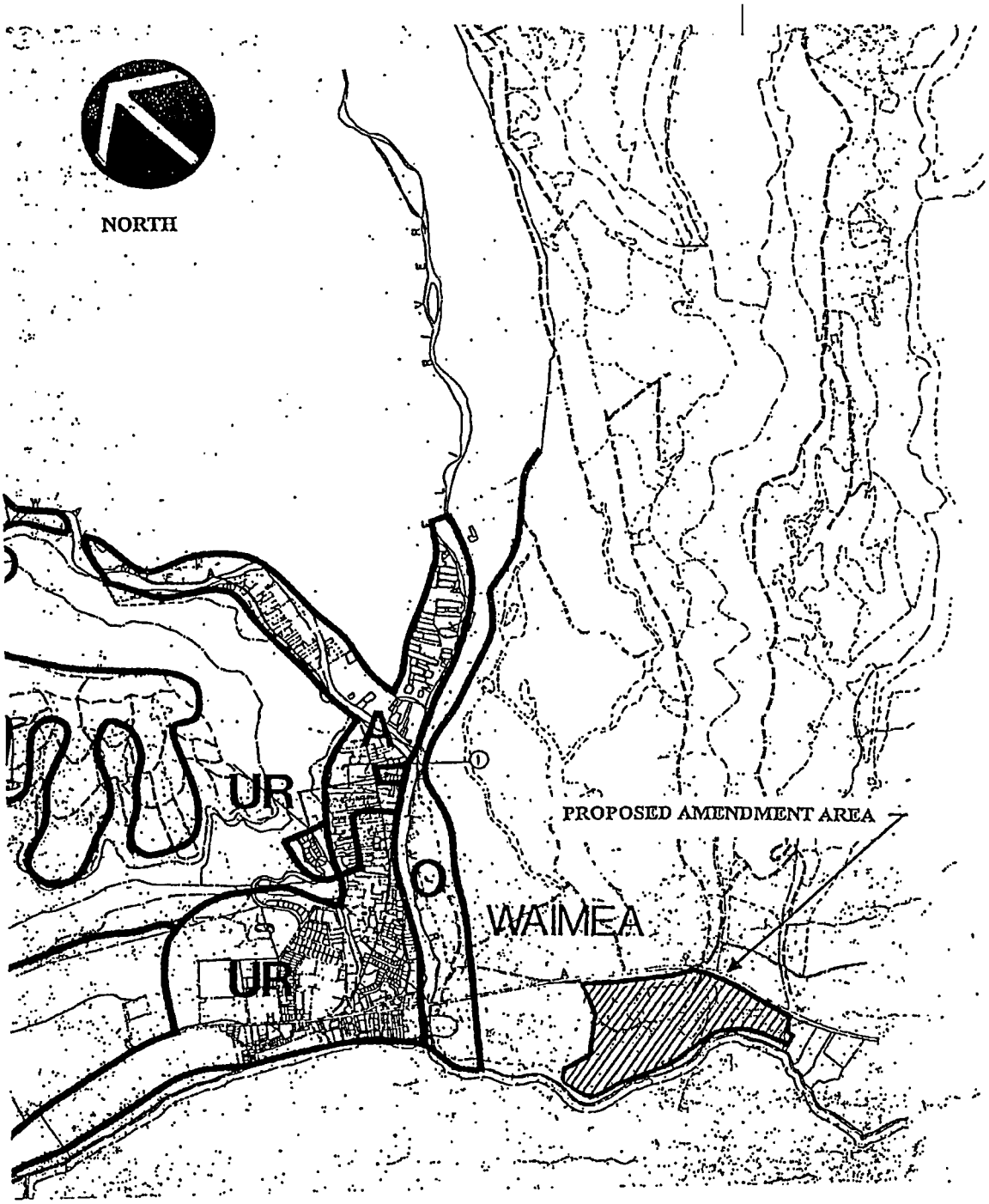
DARYL W. KANESHIRO
(By Request)

DATE OF INTRODUCTION:

August 9, 2000
Lihue, Kauai, Hawaii

(bills:kapalawaigp/ki:ao)

**EXHIBIT "F-1"**




LOCATION MAP SHOWING
PROPOSED AMENDMENT TO GENERAL PLAN
MAP WAIMEA-KEKAHA
FROM
OPEN AND AGRICULTURAL TO RESORT
*TAX MAP KEY: 1-7-05:1*
MAKAWELI, KAUAI, HAWAII

GP-2000-1

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 1953, which was passed on second and final reading by the Council of the County of Kauai at its meeting held on October 4, 2000, by the following vote:

| | |
|---|---|
| FOR ADOPTION: Baptiste, Hooser, Kaneshiro, Swain, Tokioka, Valenciano, Kouchi | TOTAL - 7, |
| AGAINST ADOPTION: None | TOTAL - 0, |
| EXCUSED & NOT VOTING: None | TOTAL - 0. |

Lihue, Hawaii
October 5, 2000

Peter A. Nakamura
County Clerk, County of Kauai

ATTEST:

Ron Kouchi
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

October 5, 2000

Approved this 9TH day of

October.

Maryanne W. Kusaka
Mayor
County of Kauai

# EXHIBIT "F-2"

ORDINANCE NO. PM-2001-356 BILL NO. 2004, Draft 2

A BILL FOR AN ORDINANCE AMENDING CHAPTER 8,
KAUAI COUNTY CODE 1987,
RELATING TO ZONING DESIGNATION IN MAKAWELI, KAUAI
**(Kapalawai Resort, LLC, Applicant)**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. The zoning designation for that certain area in Makaweli, Kauai, identified as TMK: 1-7-05:1, and as shown on Zoning Map ZM-200 and on the map attached hereto and incorporated herein as Exhibit ZA-2000-2 (Exhibit A), is hereby amended from "Agriculture District (A)" and "Open District (O)" to "Resort District (RR-1)," "Resort District/Special Treatment-Cultural District (RR-1/ST-C)," "Open District/Special Treatment-Resource District (O/ST-R)," "Open District/ Special Treatment-Public District (O/ST-P)," "Open District/Special Treatment-Cultural District (O/ST-C)," and establishment of view corridor and Transition Areas 1, 2, and 3, subject to the following conditions:

1. **ZONING DESIGNATIONS:**

As shown on the attached Exhibit "A," the following are zoning designations and acreage the project:

(a) Resort District (RR-1) – 127.93 acres.

(b) Resort/Special Treatment-Cultural District (RR-1/ST-C) – 18.02 acres.

(c) Open/Special Treatment-Cultural District (O/ST-C) – 11.43 acres.

(d) Open/Special Treatment-Resource District (O/ST-R) – 11.46 acres.

(e) Open/Special Treatment-Public District (O/ST-P) – 2.88 acres.

2. **SPECIAL RESTRICTIONS:**

As shown on the attached Exhibit "A," the following are design and project development controls to supplement the zoning designations:

(a) **Transition Area 1** - Shall be along the shoreline and be 200 feet deep, measured from the edge of the Conservation District and/or the O/ST-R zone, and be subject to the following restrictions:

(i) Single-story buildings only.

(ii) A maximum allowable land coverage of 20%.

(iii) A maximum building height of twenty (20) feet for the resort units measured from all points of the building.

(b) **Transition Area 2** - Shall be a 200 feet deep area around the fishpond. This zone shall be subject to the following restrictions:

(i) Single-story buildings only.

(ii) Limit of 800 square feet per resort unit (including each unit in a duplex). Lanais and decks will not count, but should not exceed one-third of the floor area or 200 square feet whichever is less.

(iii) Only one tier of buildings.

(iv) An average distance of forty (40) feet between buildings.

(v) A maximum allowable land coverage of 20%.

(vi) A maximum building height of twenty (20) feet for the resort units measured from all points of the building.

(c) **Transition Area 3** - Shall be a 100 feet deep area around the RR-1/ST-C zone which includes the Robinson family residence and the resource area on the western boundary of the project. This zone shall be subject to the following restrictions:

(i) No resort units.

(ii) Single-story buildings only (single-family detached residences for employee and/or affordable housing are permitted).

(iii) No commercial buildings.

(iv) The density of this zone is transferred to the RR-1 zone.

(v) A maximum building height of thirty (30) feet for all buildings measured from all points of the building.

(d) **Overlap of Transition Areas.** Transition Areas 1 and 2 have some overlap around the fishpond. In this case the stricter restrictions apply.

(e) **View Corridor** – A view corridor from the Robinson family residence (as specified in the application and EIS) to the shoreline shall be established and maintained to preserve the views to the ocean. The requirements stated in Section 8-9.7 of the CZO shall apply to the view corridor.

3. **ZONING AMENDMENT CONDITIONS:**

Approve the zoning designations specified in Section 1, subject to the following conditions:

(a) The applicant shall comply with conditions of the State Land Use Commission Decision and Order dated April 6, 2001.

(b) In keeping with prior commitments and representations made by the applicant, the applicant shall, in the forthcoming SMA and Zoning Permit process, provide appropriate documentation pertaining to historic preservation philosophy and methodology of the proposed development including the preservation of the carriage houses and green house.

The applicant shall also provide appropriate historic preservation documentation and information as recommended by the Kauai Historic Preservation Review (KHPRC) Commission in its July 3, 2000 memorandum (on file) in conjunction with the forthcoming permit process. Also, the Department of Land and Natural Resources – State Historic Preservation Division (DLNR – SHPD) and the KHPRC shall be given the opportunity to

provide further comments as more detailed historic preservation information and plans become available.

(c) As recommended by the State Historic Preservation Division of the Department of Land and Natural Resources (DLNR):

(i) Five historic sites are to be preserved, as documented in the inventory survey report. A detailed preservation plan for these sites must be submitted to the State Historic Preservation Division (SHPD) for approval. This plan must include buffer zones, interim protection measures (if needed), and long-range preservation measures. Before land alteration can occur, minimal buffer zones and interim protection measures need to be approved and the SHPD must verify in writing that this plan has been successfully executed.

(ii) One historic site may undergo some data recovery (site 764, the Robinson plantation house complex) as not all buildings may be preserved. A data recovery plan must be submitted to the SHPD for approval for any building to be demolished.

(iii) The proposal to preserve the burial within site 792 must be submitted to the Kauai Island Burial Council for approval. A burial treatment plan (covering preservation concerns) must be reviewed and approved by the Burial Council.

(iv) Archaeological monitoring shall occur for all altering construction in the shoreline sand areas outside of site 792, to cover the possibility of inadvertent burial finds or finds of small remnants of subsurface habitation deposits. An archaeological monitoring plan (Scope of Work) must be submitted to the SHPD for approval. The SHPD must verify in writing when the plan has been successfully executed.

(d) The applicant shall comply with the requirements of the Fire Department as specified in their December 2, 1999 letter to the Planning Department (see attached).

(e) The applicant shall meet all applicable requirements of the County Department of Water and the County Department of Public Works at the time of permitting.

(f) The applicant shall comply with the comments of the State Highways Division dated March 8, 2000 to the Planning Department (see attached).

(g) The applicant shall comply with all applicable requirements of the State Department of Health at the time of permitting.

(h) The Resort District (RR-1) zoning shall:

(i) Have a maximum density of two hundred-fifty (250) resort units. This zone has the capacity to also allow for three (3) additional single-family residential units. This additional density shall apply towards covering three (3) of the eight (8) existing plantation homes.

(ii) Allow those uses that are permitted within the resort zoning section of the Comprehensive Zoning Ordinance, including administration functions, maintenance functions, and small conference facilities. The support facilities such as the sewage treatment plant,

pump stations and other accessory uses that are necessary to operate the infrastructure shall also be permitted. The amount of amenities allowed as permitted uses shall however be limited to those uses specified in the zoning amendment application (two restaurants, a snackbar, luau grounds, public/passive recreation area, museum, bar/lounge, three swimming pools, fitness center/beach club, sports courts, amphitheater, and public parking/access.

(iii) Be required to provide one paved parking stall per hotel unit.

(iv) Be restricted to a maximum building height of thirty-five (35) feet for non-resort unit buildings.

(v) Be restricted to only duplexes for attached units; i.e. no more than two units shall be attached under one roof. The floor area for each unit in a duplex shall not exceed 800 square feet. Decks and lanais shall not count, however shall not exceed one-third the floor area or 200 square feet, whichever is less.

(vi) All units shall not exceed 800 square feet of floor area. Decks and lanais shall not count, however shall not exceed one-third the floor area or 200 square feet, whichever is less.

(vii) Not allow the resort units to be higher than thirty (30) feet which shall be measured from all points of the building.

(i) The Planning Department shall be granted authority to determine the course of action needed to address any changes to the project; i.e. whether legislative action involving an amendment to the ordinance or an administrative process involving the Planning Department and/or Commission. Increases in density, changes in uses, or other major changes that could alter the complexion of the project shall require County Council action. Slight variations and minor modifications to the project would qualify for administrative action.

(j) In addition to the State Land Use Commission's Decision and Order conditions pertaining to public access and amenities, the following improvements shall be constructed and/or provided prior to occupancy of the resort units:

(i) A comfort station for public use.

(ii) An outdoor shower facility for public use.

(iii) A passive public recreation area to allow for picnicking and passive day uses not less than two and one half (2.5) acres in size.

(iv) A public parking lot consisting of thirty (30) paved parking stalls with an overflow parking area of twenty (20) stalls.

(v) In the event that the applicant's proposed driveway connection to the beach parking lot cannot be implemented due to DOT concerns, an access onto Kaumualii Highway for use on an emergency only basis to be resolved with the Fire Department.

(vi) A fifty (50) foot wide lateral beach access easement be provided along the shoreline portion of the project site. This fifty (50) foot easement shall run along the entire shoreline frontage of the property and be granted in favor of the County of Kauai. This lateral

beach access shall be open 24 hours a day for unrestricted pedestrian use to enable the public to traverse (non-motorized) along the beach area. The long-term goal of such lateral access easements is to keep connecting the easements to enable the public to eventually traverse to and through beaches for recreational purposes throughout the island.

The exact amount of land area along with its alignment and configuration for public use (parking, comfort station, showers, passive recreation area, and walking trail) shall be resolved with the Planning Department during the permitting process. This public use area shall be designated as a public easement in favor of the State of Hawaii (to be consistent with the Land Use Commission's decision and order).

Further, provision of these improvements will enable the project to qualify for a 50% Park Dedication fee credit.

(k) There shall be no encroachment of commercial buildings or any resort units within any of the Open/Special Treatment districts.

(l) The existing foliage along the highway frontage within the Open/Special Treatment – Resource District (O/ST-R) shall not be removed. Maintenance trimming and planting of additional landscaping are allowed. The intent of this condition is to ensure that the buildings within the project are not seen from the highway and to ensure that the existing vegetation along the highway remains in its current state.

(m) Signage along the highway shall be reviewed and approved by the Planning Department and shall follow the County's sign ordinance. Direct lighting shall not be permitted. Indirect lighting is allowable.

(n) The applicant shall be made aware of condition 12 of the Land Use Commission Decision and Order that requires the applicant to participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed development in designs and schedules accepted and determined by the State Department of Transportation (DOT). Agreement between the applicant and the DOT as to the level of funding and participation shall be obtained prior to the applicant acquiring County zoning or prior to building permits if County zoning is not required.

(o) A landscape plan which includes an inventory of all major landscape elements covering major plants (within the Special Treatment and Transition Areas) that are existing, proposed to be removed, remain, and new landscaping shall be approved by the Planning Commission as part of or prior to issuance of the applicable land use permits (SMA, Zoning, and/or Use Permits) for the project.

(p) The Open District (O) zoning with the Special Treatment overlays qualify for one single-family residential unit per acre. This Open zone density shall be transferred to the RR-1 portion and be used only to cover part of the density for the eight (8) existing plantation homes (the additional RR-1 density will be used to cover part of the 8 homes) and for affordable and/or employee housing. The additional remaining density shall only be allowed if used for affordable and/or employee housing. If not used for these purposes, the remaining Open zoning should not yield any residential densities.

(q) The Applicant shall provide fifteen (15) employee housing units, on site, that shall be single family detached dwellings, including both two-bedroom and three-bedroom models, with all units being affordable to and

benefiting Kauai households earning no more than eighty percent (80%) of the Kauai Median Household Income, pursuant to housing income standards maintained by the Kauai County Housing Agency. The affordable units shall remain affordable to and benefit households earning no more than eighty percent (80%) of the Kauai Median Household Income for a period of at least twenty (20) years and compliance to the income restriction shall be monitored by the Kauai County Housing Agency.

(r) The Planning Department shall be allowed to refine the alignment of the zoning for this project based on the evaluation of more detailed information. Such administrative refinements shall not include changes to density and major changes to the alignment of the zoning district lines.

(s) Sufficient employee parking above and beyond the requirement for the hotel units shall be required during the permitting stage.

(t) Substantial construction of the hotel shall be completed within five years from the effective date of this ordinance. If substantial construction is not completed within this time, the Planning Commission shall initiate proceedings to rezone the property to the designations existing prior to the date of this ordinance.

(u) The applicant is advised that prior to and/or during construction and use, additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).

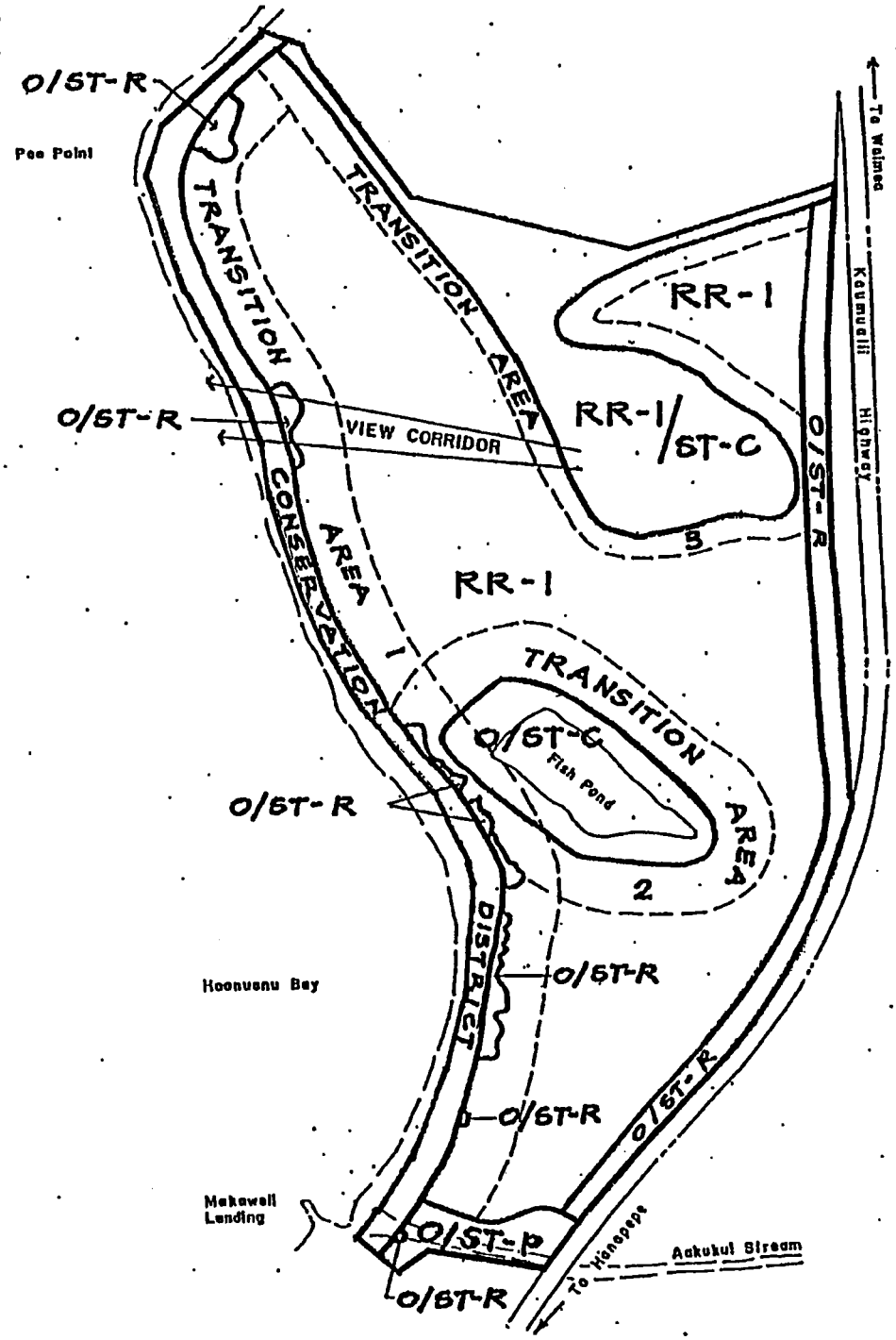
SECTION 2. The Planning Commission is directed to note the change on the official Zoning Map on file with the Commission. All applicable provisions of the Comprehensive Zoning Ordinance shall apply to the area rezoned herein.

SECTION 3. This ordinance shall take effect upon its approval.

INTRODUCED BY: /s/ RANDAL VALENCIANO
(By Request)

DATE OF INTRODUCTION:
**October 18, 2001**
Lihue, Kauai, Hawaii

(a:bills:2004D2 kapalawaiZON/ki:ao)




LOCATION MAP SHOWING
PROPOSED AMENDMENT TO ZONING MAP ZM-200
FROM AGRICULTURE DISTRICT (A) AND OPEN DISTRICT (O)
TO RESORT DISTRICT (RR-1); RESORT DISTRICT/SPECIAL TREATMENT-CULTURAL DISTRICT (RR-1/ST-C); OPEN DISTRICT/SPECIAL TREATMENT-RESOURCE DISTRICT (O/ST-R); OPEN DISTRICT/SPECIAL TREATMENT-PUBLIC DISTRICT (O/ST-P); OPEN DISTRICT/SPECIAL TREATMENT-CULTURAL DISTRICT (O/ST-C); AND ESTABLISHMENT OF VIEW CORRIDOR AND TRANSITION AREAS 1,2, AND 3
MAKAWELI, WAIMEA, KAUAI, HAWAII
TAX MAP KEY 1-7-05:1

ZA-2000-2

EXHIBIT "A"

MARYANNE W. KUSAKA
MAYOR

DAVID K. SPROAT
FIRE CHIEF

COUNTY OF KAUA'I

FIRE DEPARTMENT
MO'IKEHA BUILDING
4444 RICE STREET, SUITE 295
LIHU'E, KAUA'I, HAWAI'I

December 2, 1999

Keith Nitta
Planning Department
County of Kauai
4444 Rice St., Suite 473
Lihue, Hawaii 96766

COPY

RE: Fire Department Comments
Kapalawai Resort - DEIS
Waimea, Kauai, Hawaii

Appendix J – Pages 9 & 10 - Elements of the Potable Water System:

The Applicant proposes to construct a nominal 200,000 gallon (0.2 million gallon) storage tank for the private water system which would be used to supply the maximum daily use consumption as well as the required fire protection for the RR-10 zoning per Department of Water requirements (minimum of 1500 GPM for 2-hours duration). The tank was so sized following two criteria: (1) The volume must be equivalent to the maximum daily use without credit for inflow from the well pump; and, (2) The volume must provide the maximum day rate plus fire flow for the duration of the fire with the reservoir ¾ full at the start and credit for well inflow. The maximum daily use is estimated to be 0.177 MG.

The Applicant's storage requirement of 172,550 gallons is substantially less than our calculations assumed by their data. The formula for calculating Storage Volume is:

$$V = 4/3\ T_f (Q_m + Q_f - Q_p)$$

| | | |
|---|---|---|
| $V$ | = required storage volume, mil. gal. | |
| $T_f$ | = fire duration, day | (2-hours/day = 0.083) |
| $Q_m$ | = maximum day demand, mgd | (.177 mg) |
| $Q_f$ | = fire flow, mgd | (1500 gpm = 2.16 mgd) |
| $Q_p$ | = pump input, mgd | (200 gpm @ 16-hours = .192 mdg) |
| | | (200 gpm @ 24 hours = .288 mgd) |

The Applicant sized the storage tank at 200,000 gallons, which is approximately 16% larger than their calculated value of 172,550 gallons. Our calculations on the other hand resulted in the following:

**Assuming 24-hours pump operations: V = 226,700 gals. + 16% = 263,000 gallons**
**Assuming 16-hours pump operations: V = 237,300 gals. + 16% = 275,268 gallons**

**Therefore, storage tank capacity should be a minimum of 0.275 MG or may be rounded to 0.3 MG rather than the 0.2 MG as reported. The private water system shall comply with the installation/testing/maintenance standards of NFPA 22, Water Tanks for Fire Protection; NFPA 24, Private Fire Service Mains; NFPA 25, Water-Based Fire Protection Systems; and the appropriate installation/testing/maintenance standards of the County Department of Water; State Department of Health; etc.**

Other than the above, we have found no other representation in the DEIS that addresses or resolves the other areas of concern as described in our comments reply dated 08/18/99. We await review of the Applicant's proposal to incorporate these features into detailed plans.

In addition, the fire alarm system for the cottages shall be incorporated into the Museum Building and other major structures. We also recommend that the Museum be fire sprinklered to further protect and preserve the historical structure.

**Sincerely,**

**David K. Sprout**
**Fire Chief**

**Mike Kano, Captain**
**Fire Prevention Bureau**

State of Hawaii
Highways Division
3060 Eiwa Street, Room 205
Lihue, Kauai, Hawaii 95766
Phone: (808) 274-3111 Fax: (808) 274-3116

COUNTY OF KAUAI
'00 MAR 13 P1:12
PLANNING DEPT.

# MEMORANDUM

HWY-KB 4.000193

Date: March 8, 2000

To: Mr. Dee Crowell, Director
Planning Department
County of Kauai

From: Steven M. Kyono, P.E.
District Engineer

Subject: Zoning Amendment Petition for
Zoning Amendment ZA-2000-2
Destination Villages Kauai, LLC
TMK: (4)1-7-05: Por. 1

Review of zoning amendment petition for the subject project has been completed and we have the following comments:

A. . Page 10 , Item (3)-Transportation Facilities of the Zoning Amendment Petition:
(Re: Bullet points 1, 2 & 3)

1. A 6-feet wide, striped, median strip shall be installed separating the new left turn storage lane from the opposite direction through traffic.

2. In addition to separate left and right turn lanes at the exist driveway, an acceleration lane shall be construction for right turning vehicles. Refuge lane for left turning vehicles exiting the project shall be installed.

3. Revise Bullet Point #3 statement to read: "A right-turn deceleration lane is recommended on **eastbound** Kaumualii Highway at the entrance driveway for the Project for safety purposes and to minimize delays to through traffic".

B. Other General comments:

1. Street lights are recommended at the entrance and exit driveway connections to Kaumualii Highway.

2. The entrance and exit driveways shall be separated such that all turn storage lanes, acceleration and deceleration lanes, median and pavement transitions, refuge lanes, etc., are safely, and adequately, provided for. Project map shows an approximate separation between the entrance and exit driveways of about 500 feet. This separation distance appears inadequate to accommodate the proposed highway improvements.

3. All project signs shall be located outside of the State Highway Right of Way.

4. One way entrance driveway and one way exit driveway shall be designed to provide safe control of all vehicle movements from/to Kaumualii Highway. "ONE WAY-DO NOT ENTER" signs, other traffic signs, pavement striping, concrete curbing, and/or, raised pavement markers shall be used to control all vehicle movements to, and from, the project site.

5. In order to accommodate the highway improvements, widening of Kaumualii Highway in the vicinity of the entrance and exit driveways will be required. The improvements shall also include 6-feet wide paved shoulders on both sides of the highway.

4. Design of all highway facilities shall conform to State Highway Division Standards and shall also be in accordance with the AASHTO standards for highway design. Construction plans for the Kaumualii Highway improvements shall be submitted to the State Highways Division for review/approval.

   No construction shall commence within the State Highway Right of Way unless, and until a "Permit to Perform Work Upon State Highways" has been obtained by the owner/developer, and/or, the contractor.

5. Existing highway drainage shall not be impeded in any way. Where necessary to accommodate the highway improvements, existing drainage facilities, including culverts, headwalls, drain inlets, etc., shall be extended as required.

6. Where required, existing guardrails, traffic signs, pavement striping, etc, along Kaumualii Highway shall be relocated, and/or, adjusted as necessary.

7. Utility relocation work along Kaumualii Highway shall be the responsibility of the applicant. Utility relocation work may include, but is not limited to: a) relocation of electrical/telephone poles, cables, pullboxes, etc.; b) relocation of cable TV facilities; c) relocation of water lines, etc.

8. In our review of General Plan Amendment GPA-2000-1, for the project, we had recommended that only one entrance/exit driveway be permitted to serve the project (HWY-KE 4.991330). The applicant has expressed a desire to retain separate entrance and exit driveways to the project site.

   Subject to our review and approval of the applicant's plans for the driveway and highway improvements, we will reconsider our initial recommendation and may permit separate entrance and exit driveways to serve the project.

9. In order to mitigate, and/or, avoid, impacts to State Highway facilities, this office reserves the right to impose, and/or, add, additional conditions as necessary.

If you have any questions, please call Steve Morikawa at 274-3118

SM:es

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2004, Draft 2, which was passed on second and final reading by the Council of the County of Kauai at its meeting held on December 20, 2001, by the following vote:

| | |
|---|---|
| FOR ADOPTION: Asing, Baptiste, Hooser, Kaneshiro, Tokioka, Valenciano, Kouchi | TOTAL - 7, |
| AGAINST ADOPTION: None | TOTAL - 0, |
| EXCUSED & NOT VOTING: None | TOTAL - 0. |

Lihue, Hawaii
December 21, 2001

Peter A. Nakamura
County Clerk, County of Kauai

ATTEST:

Ron Kouchi
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

December 21, 2001

Approved this 24th day of December 2001.

Maryanne W. Kusaka
Mayor
County of Kauai

RECEIVED

'01 DEC 24 P2:17

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

# EXHIBIT "F-3"

ORDINANCE NO. PM-2006-385

BILL NO. 2201, Draft 1

A BILL FOR AN ORDINANCE
AMENDING ZONING CONDITION IN ORDINANCE NO. PM-2001-356,
RELATING TO ZONING DESIGNATION IN MAKAWELI, KAUA'I
(Kaua'i County Council, Applicant)

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I:

SECTION 1. Section 1, Condition No. 3(t) of Ordinance No. PM-2001-356, is hereby amended as follows:

"[(t) Substantial construction of the hotel shall be completed within five years from the effective date of this ordinance. If substantial construction is not completed within this time, the Planning Commission shall initiate proceedings to rezone the property of the designations existing prior to the date of this ordinance.]

(t) Substantial construction of the hotel, defined as completion of at least fifty percent (50%) of building foundations, shall be completed within eighteen (18) months from the date that the appeal of the project's shoreline certification currently pending before the Chair of the Board of Land and Natural Resources, has been resolved. If substantial construction is not completed within this time, the Planning Commission shall initiate proceedings to rezone the property to the designations existing prior to the date of this ordinance."

SECTION 2. Ordinance material to be repealed is bracketed. New ordinance material is underscored.

SECTION 3. If any provision of this ordinance or application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 4. This ordinance shall take effect upon its approval.

Introduced by: /s/ Daryl W. Kaneshiro
(By Request)

DATE OF INTRODUCTION:
October 25, 2006
Lihu'e, Kaua'i, Hawai'i

EXHIBIT "F-3"

# CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2201, Draft 1, which was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on December 13, 2006, by the following vote:

| | |
|---|---|
| FOR ADOPTION: Bynum, Furfaro, Iseri-Carvalho, Kouchi, Rapoza, Yukimura, Asing | TOTAL - 7, |
| AGAINST ADOPTION: None | TOTAL - 0, |
| EXCUSED & NOT VOTING: None | TOTAL - 0. |

Līhu'e, Hawai'i
December 14, 2006

Peter A. Nakamura
County Clerk, County of Kaua'i

ATTEST:

Bill "Kaipo" Asing
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

December 18, 2006

Approved this 17th day of

December, 2006.

Bryan J. Baptiste
Mayor
County of Kaua'i

# EXHIBIT "F-4"

ORDINANCE NO. PM-2024-____ BILL NO. _____

A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. PM-2001-356
AS AMENDED IN PART BY ORDINANCE NO. PM-2006-385
RELATING TO ZONING DESIGNATION IN MAKAWELI, KAUA'I
(Kerzner International Limited, Applicant)

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I:

SECTION 1. Ordinance No. PM-2001-356, as amended by Ordinance No. PM-2006-385, is further amended to read as follows:

The zoning designation for that certain area in Makaweli, Kauai, identified as TMK: 1-7-05:1, and as shown on Zoning Map ZM-200 and on the map attached hereto and incorporated herein as Exhibit ZA-2000-2 (Exhibit A), is hereby amended from "Agriculture District (A)" and "Open District (O)" to "Resort District (RR-1)," "Resort District/Special Treatment-Cultural District (RR-1/ST-C)," "Open District/Special Treatment-Resource District (O/ST-R)," "Open District/Special Treatment-Public District (O/ST-P)," "Open District/ Special Treatment-Cultural District (O/ST-C)," and establishment of view corridor and Transition Areas 1, 2, and 3, subject to the following conditions:

**1. ZONING DESIGNATIONS:**

As shown on the attached Exhibit "A," the following are zoning designations and acreage the project:

(a) Resort District (RR-1) - 127.93 acres.

(b) Resort/Special Treatment-Cultural District (RR-1/ST-C) - 18.02 acres.

(c) Open/Special Treatment-Cultural District (O/ST-C) - 11.43 acres.

(d) Open/Special Treatment-Resource District (O/ST-R) - 11.46 acres.

(e) Open/Special Treatment-Public District (O/ST-P) - 2.88 acres.



**EXHIBIT "F-4"**

2. **SPECIAL RESTRICTIONS:**

As shown on the attached Exhibit "A," the following are design and project development controls to supplement the zoning designations:

(a) **Transition Area 1** - Shall be along the shoreline and be 200 feet deep, measured from the edge of the Conservation District and/or the O/ST-R zone, and be subject to the following restrictions:

(i) Single-story buildings only.

(ii) A maximum allowable land coverage of 20%.

(iii) A maximum building height of twenty (20) feet for the resort units measured from all points of the building.

(b) **Transition Area 2** - Shall be a 200 feet deep area around the fishpond. This zone shall be subject to the following restrictions:

(i) Single-story buildings only.

[(ii) Limit of 800 square feet per resort unit (including each unit in a duplex). Lanais and decks will not count, but should not exceed one-third of the floor area or 200 square feet whichever is less.]

(ii) No more than fourteen (14) resort units.

(iii) Only one tier of buildings.

(iv) An average distance of forty (40) feet between buildings.

(v) A maximum allowable land coverage of 20%.

(vi) A maximum building height of twenty (20) feet for the resort units measured from all points of the building.

(vii) A Spa building and other buildings and facilities used in conjunction with educational and cultural programs, or for maintenance activities, associated with the Kekupua Fish Pond.

(c) **Transition Area 3** - Shall be a 100 feet deep area around the RR-1/ST-C zone which includes the Robinson family residence and the resource area on the western boundary of the project. This zone shall be subject to the following restrictions:

(i) No resort units.

(ii) Single-story buildings only (single-family detached residences for employee and/or [affordable] Workforce housing are permitted).

[(iii) No commercial buildings.]

(iii)[(iv)] The density of this zone is transferred to the RR-1 zone.

(iv)[(v)] A maximum building height of thirty (30) feet for all buildings measured from all points of the building.

(d) **Overlap of Transition Areas.** Transition Areas 1 and 2 have some overlap around the fishpond. In this case the stricter restrictions apply.

(e) **View Corridor** - A view corridor from the Robinson family residence (as specified in the application and EIS) to the shoreline shall be established and maintained to preserve the views to the ocean. The requirements stated in Section 8-9.7 of the CZO shall apply to the view corridor.

3. **ZONING AMENDMENT CONDITIONS:**

Approve the zoning designations specified in Section 1, subject to the following conditions:

(a) The applicant shall comply with conditions of the State Land Use Commission Decision and Order dated April 6, 2001.

(b) In keeping with prior commitments and representations made by the applicant, the applicant shall, in the forthcoming SMA and Zoning Permit process, provide appropriate documentation pertaining to historic preservation philosophy and methodology of the proposed development including the preservation of the carriage houses and green house.

The applicant shall also provide appropriate historic preservation documentation and information as recommended by the Kauai Historic Preservation Review (KHPRC) Commission in its July 3, 2000 memorandum (on file) in conjunction with the forthcoming permit process. Also, the Department of Land and Natural Resources - State Historic Preservation Division (DLNR -SHPD) and the KHPRC shall be given the opportunity to provide further comments as more detailed historic preservation information and plans become available.

(c) As recommended by the State Historic Preservation Division of the Department of Land and Natural Resources (DLNR):

(i) Five historic sites are to be preserved, as documented in the inventory survey report. A detailed preservation plan for these sites must be submitted to the State Historic Preservation Division (SHPD) for approval. This plan must include buffer zones, interim protection measures (if needed), and long-range preservation measures. Before land alteration can occur, minimal buffer zones and interim protection measures need to be approved and the SHPD must verify in writing that this plan has been successfully executed.

(ii) One historic site may undergo some data recovery (site 764, the Robinson plantation house complex) as not all buildings may be preserved. A data recovery plan must be submitted to the SHPD for approval for any building to be demolished.

(iii) The proposal to preserve the burial within site 792 must be submitted to the Kauai Island Burial Council for approval. A burial treatment plan (covering preservation concerns) must be reviewed and approved by the Burial Council.

(iv) Archaeological monitoring shall occur for all altering construction in the shoreline sand areas outside of site 792, to cover the possibility of inadvertent burial finds or finds of small remnants of subsurface habitation deposits. An archaeological monitoring plan (Scope of Work) must be submitted to the SHPD for approval. The SHPD must verify in writing when the plan has been successfully executed.

(d) The applicant shall resubmit plans to, and shall comply with, the requirements of the Fire Department [as specified in their December 2, 1999 letter to the Planning Department (see attached)].

(e) The applicant shall resubmit plans to, and shall meet all applicable requirements of, the County Department of Water and the County Department of Public Works at the time of permitting.

(f) The applicant shall resubmit plans to, and shall comply with the comments of, the State Highways Division [dated March 8, 2000 to the Planning Department (see attached)].

(g) The applicant shall comply with all applicable requirements of the State Department of Health at the time of permitting.

(h) The Resort District (RR-1) zoning shall:

(i) Have a maximum density of [two hundred-fifty (250)] one hundred thirty-four (134) resort units. This zone has the capacity to also allow for three (3) additional single-family residential units. This additional density shall apply towards covering three (3) of the eight (8) existing planation homes.

(ii) Allow those uses that are permitted within the resort zoning section of the Comprehensive Zoning Ordinance (CZO), including administration functions, maintenance functions, and small conference facilities. The support facilities such as the sewage treatment plant, pump stations and other accessory uses that are necessary to operate the infrastructure shall also be permitted. The [amount] types of amenities allowed as permitted uses shall however be limited to those types of uses specified in the zoning amendment application ([two] including restaurants, [a] snackbars, retail services, luau grounds, [public/passive] recreation areas, museum, bar/lounges, [three] swimming pools, fitness center/beach clubs, sports courts, amphitheater, and public parking/access.

(iii) Be required to provide one paved parking stall per hotel unit.

(iv) Be restricted to a maximum building height of thirty-five (35) feet for non-resort unit buildings.

[(v) Be restricted to only duplexes for attached units; i.e. no more than two units shall be attached under one roof. The floor area for each unit in a duplex shall not exceed 800 square feet. Decks and lanais shall not count, however shall not exceed one-third the floor area or 200 square feet, whichever is less.

(vi) All units shall not exceed 800 square feet of floor area. Decks and lanais shall not count, however shall not exceed one-third the floor area or 200 square feet, whichever is less.

(vii)][v] Not allow the resort units to be higher than thirty (30) feet which shall be measured from all points of the building.

(i) The Planning Department shall be granted authority to determine the course of action needed to address any changes to the project; i.e. whether legislative action involving an amendment to the ordinance or an administrative process involving the Planning Department and/or Commission. Increases in density, changes in uses, or other major changes that could alter the complexion of the project shall require County Council action. Slight variations and minor modifications to the project could qualify for administrative action.

(j) In addition to the State Land Use Commission's Decision and Order conditions pertaining to public access and amenities, the following improvements shall be constructed and/or provided prior to occupancy of the resort units:

(i) A comfort station for public use.

(ii) An outdoor shower facility for public use.

(iii) A passive public recreation area to allow for picnicking and passive day uses not less than two and one half (2.5) acres in size.

(iv) A public parking lot consisting of thirty (30) paved parking stalls with an overflow parking area of twenty (20) stalls.

(v) In the event that the applicant's proposed driveway connection to the beach parking lot cannot be implemented due to DOT concerns, an access onto Kaumualii Highway for use on an emergency only basis to be resolved with the Fire Department.

(vi) A fifty (50) foot wide lateral beach access easement be provided along the shoreline portion of the project site. This fifty (50) foot easement shall run along the entire shoreline frontage of the property and be granted in favor of the County of Kauai. This lateral beach access shall be open 24 hours a day for unrestricted pedestrian use to enable the public to traverse (non-motorized) along the beach area. The long-term goal of such lateral access easements

is to keep connecting the easements to enable the public to eventually traverse to and through beaches for recreational purposes throughout the island.

The exact amount of land area along with its alignment and configuration for public use (parking, comfort station, showers, passive recreation area, and walking trail) shall be resolved with the Planning Department during the permitting process. This public use area shall be designated as a public easement in favor of the State of Hawaii (to be consistent with the Land Use Commission's decision and order). Notwithstanding any provision contained in the CZO, the land coverage allowed in this CZO Open/ST-P area shall be 50%.

Further, provision of these improvements will enable the project to qualify for a 50% Park Dedication fee credit.

(k) There shall be no encroachment of commercial buildings or any resort units within any of the Open/Special Treatment districts.

(l) The [existing foliage] landscape buffer along the highway frontage within the Open/Special Treatment - Resource District (O/ST-R) shall [not] be [removed] maintained. Maintenance trimming, removal of invasive species, and planting of additional landscaping are allowed. The intent of this condition is to ensure that the buildings within the project are not seen from the highway and to ensure that the existing vegetation along the highway [remains in its current state] provides a landscape buffer. Notwithstanding any provision of the CZO, the land coverage allowed in this Open/ST-R area shall be 25%.

(m) Signage along the highway shall be reviewed and approved by the Planning Department and shall follow the County's sign ordinance. Direct lighting shall not be permitted. Indirect lighting is allowable.

(n) The applicant shall be made aware of condition 12 of the Land Use Commission Decision and Order that requires the applicant to participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed development in designs and schedules accepted and determined by the State Department of Transportation (DOT). Agreement between the applicant and the DOT as to the level of funding and participation shall be obtained prior to the applicant acquiring County zoning or prior to building permits if County zoning is not required.

(o) A landscape plan which includes an inventory of all major landscape elements covering major plants (within the Special Treatment and Transition Areas) that are existing, proposed to be removed, remain, and new landscaping shall be approved by the Planning Commission as part of or prior to issuance of the applicable land use permits (SMA, Zoning, and/or Use Permits) for the project.

(p) The Open District (O) zoning with Special Treatment overlays qualify for one single-family residential unit per acre. This Open zone density shall be transferred to the RR-1 portion and be used only to cover part of the density for the eight (8) existing plantation homes (the additional RR-1 density will be used to cover part of the 8 homes) and for affordable and/or employee housing. The additional remaining density shall only be allowed if used for affordable and/or employee housing. If not used for these purposes, the remaining Open zoning should not yield any residential densities.

(q) The Applicant shall provide [fifteen (15) employee] Workforce housing units, as required by the County. Up to 52 Workforce housing units shall be located on site, [that] and such Workforce housing shall be either single family detached dwelling[s,] units, single family attached dwelling units, or multiple family dwelling units, including [both] studios, one-bedroom, two-bedroom and three-bedroom models, with all units being affordable to and benefiting Kauai households earning no more than eighty percent (80%) of the Kauai Median Household Income, pursuant to housing income standards maintained by the Kauai County Housing Agency. The [affordable] Workforce housing units shall remain affordable to and benefit households earning no more than eight percent (80%) of the Kauai Median Household Income for a period of at least [twenty (20)] forty (40) years and compliance to the income restriction shall be monitored by the Kauai County Housing Agency.

(r) The Planning Department shall be allowed to refine the alignment of the zoning for this project based on the evaluation of more detailed information. Such administrative refinements shall not include changes to density and major changes to the alignment of the zoning district lines.

(s) Sufficient employee parking above and beyond the requirement for the hotel units shall be required during the permitting stage.

[(t) Substantial construction of the hotel, defined as completion of at least fifty percent (50%), shall be completed within eighteen (18) months from the date that the [appeal of the project's shoreline certification currently pending before the Chair of the Board of Land and Natural

Resources has been resolved. If substantial construction is not completed within this time, the Planning Commission shall initiate proceedings to rezone the property to the designations existing prior to the date of this ordinance.]

(t) The Applicant shall have seven (7) years from the effective date of this Zoning Amendment ordinance to complete the building foundations for at least sixty (60) resort units or to file for an extension with the Planning Commission. If building foundations are not completed as required herein and if no extension is approved, the Planning Commission shall have the right to initiate an Order To Show Cause as provided in Chapter 12 of the Rules of Practice And Procedure Of The Planning Commission and file a report of its findings and recommendations to this Council pursuant to P.C. Rule 1-12-8(a)(1).

(u) The applicant is advised that prior to and/or during construction and use, additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).

(v) As used herein, the term "resort unit" shall mean: either a room or rooms in a "Hotel" as defined in the CZO (a "Hotel Unit"); or a "Dwelling unit" as defined in the CZO. For the purpose of computing density herein, there shall be no distinction between a "resort unit" that is configured as a "Hotel Unit" or a "resort unit" that is configured as a "Dwelling unit".

(w) The project on the property described herein shall be considered to be a single "Apartment hotel" as defined in the CZO which is composed of all of the resort units.

(x) Notwithstanding any provisions contained in the CZO, transient vacation rental uses shall be allowed in all of the resort units.

SECTION 2. Ordinance material to be repealed is bracketed. New ordinance material is underscored.

SECTION 3. If any provision of this ordinance or application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 4. This ordinance shall take effect upon its approval.

Introduced by: _____
(By Request)

DATE OF INTRODUCTION:

Līhu'e, Kaua'i, Hawai'i

| Kapalawai Resort | | |
|---|---|---|
| **Technical Study** | **Consultant** | **Status Update** |
| Flora & Fauna Assessment | AECOS | Study Complete |
| Wetlands Assessment | AECOS | Study Complete |
| Marine Environmental Study | Marine Research Consultants | Study Complete |
| Preliminary Engineering Report | G70 | Study Complete |
| Flood Study | G70/Blue Ocean | Study Complete |
| Water & Wastewater Master Plan | G70/Laulea | Active: Updated Study Underway |
| Potable Water & Irrigation System | Tom Nance | Active: Updated Study Underway |
| Groundwater & Surface Water Analysis | Tom Nance | Active: Updated Study Underway |
| Archaeological Survey & Supporting Studies | Cultural Surveys Hawai'i | Active: Test Trenching Plan Submitted to SHPD for Review and Approval |
| Cultural Impact Assessment | Cultural Surveys Hawai'i | Active: Background Research Underway |
| Ka Pa'akai Analysis | Cultural Surveys Hawai'i/Keala Pono | Study Complete |
| Fishpond Restoration Planning | G70/Peleke Flores | Active: Updated Study Underway |
| Landscape Plan | PBR | Active: Updated Study Underway |
| Economic & Fiscal Impact Analysis | PBR | Active: Updated Study Underway |
| Traffic Impact Assessment | Fehr & Peers | Active: Updated Study Underway |
| Topographic Survey | DUDEK | Study Complete |
| Geotechnical Investigations | GEOLabs | Study Complete |
| Tree Survey | Tree Solutions | Study Complete |
| Hazardous Materials Assessment | ENPRO | Study Complete |
| 3D Scan | Armstrong | Study Complete |
| Certified Shoreline Survey | TBD | Hold: Align Timing with Filing of SMA |
| Historic Architecture Survey | Armstrong/Mason Architects | Active: Coordinate Survey with Archaeological Field Work |

# FINAL—Ka Pa'akai Analysis for the Proposed Kapalawai Resort, Makaweli Ahupua'a, Waimea (Kona) District, Island of Kaua'i

**TMK: (4) 1-7-005:001, (4) 1-7-005:006, and (4) 1-7-005:999 (por.)**



**Prepared For:**

Kerzner International Management Services Hawaii Inc.
31 Hudson Yards – 11th Floor
New York, NY 10001

July 2025

Keala Pono Archaeological Consulting, LLC • 98-030 Hekaha St. Suite 31, Aiea, HI 96701 • Phone 808.381.2361

# FINAL— Ka Pa'akai Analysis for the Proposed Kapalawai Resort, Makaweli Ahupua'a, Waimea (Kona) District, Island of Kaua'i

**TMK: (4) 1-7-005:001, (4) 1-7-005:006, and (4) 1-7-005:999 (por.)**

**Prepared For:**

Kerzner International Management Services Hawaii Inc.
31 Hudson Yards – 11th Floor
New York, NY 10001

**Prepared By:**

Gina Pualani McGuire, PhD
Kālenalani McElroy, MA
and
Windy Keala McElroy, PhD

July 2025

Keala Pono Archaeological Consulting, LLC • 98-030 Hekaha St. Suite 31, Aiea, HI 96701 • Phone 808.381.2361

## MANAGEMENT SUMMARY

Keala Pono Archaeological Consulting has prepared a Ka Pa'akai Analysis for the proposed Kapalawai Resort Project in Kapalawai, Makaweli Ahupua'a, Waimea (Kona) District, on the island of Kaua'i. The main part of the project area is located on TMK: (4) 1-7-05:001, which is owned by Robinson Family Partners and Bruce Robinson. Also included are TMK: (4) 1-7-005:006 and a portion of TMK: (4) 1-7-005:999, which are owned by Robinson Family Partners. All three parcels are leased by Gay & Robinson Inc., and Kerzner International Management Services will be developing the properties into a resort. This Ka Pa'akai Analysis was designed to identify any valued historical, natural, and cultural resources or practices that may occur in the area, determine if the proposed project will affect the resources or practices, and offer mitigation recommendations for the project.

The background research synthesizes traditional and historic accounts and land use history for the project area and the greater Makaweli Ahupua'a. The background study illustrated that this region is remembered in 'ōlelo no'eau, mo'olelo, and place names. It was a region that contained abundant freshwater resources, marshland, expansive lo'i terraces, and kula. Archaeological studies have documented a range of pre- and post-contact historic properties including Pā'ula'ula, walls, grinding stones, enclosures, platforms, a stone wharf, a stone pier, remnants of a pillbox, a cultural deposit, alignments, the Waimea River Bridge, and human burials. Within the project area, a ranching and agricultural infrastructure complex, platform, the Robinson residential complex, Kekupua Fishpond, a Portuguese oven, and a pre-contact cultural layer with a human burial were identified.

Community consultations were performed to obtain information about the cultural significance of the subject property and the surrounding area, as well as to address possible concerns of community members regarding the effects of the proposed project on places of traditional importance and cultural practices. Interviews with five individuals knowledgeable about the project lands produced information on its rich cultural history.

The rich natural environment of Kapalawai supported and in some ways continues to support a suite of cultural practices. These practices were/are primarily undertaken by those granted access and gathering privileges by the Robinson family. Cultural practices include netting and fishing, limu and kiawe wood gathering, hunting, and subsequent imu making. The ocean side of the project area has been long accessed for surfing despite the murky and sharky nature of the waters and limited beach access. Public access and subsequent cultural practices have been limited by invitation-only since it was purchased in 1865. The property is home to Kekupua Fishpond that has not been managed in more than 100 years. The diversity of place names within the surrounding area suggest that this region is one of mana and hints at a mysterious and powerful nature. Names of mana include that of Makaweli: the name of a mo'o of the area, Kekupua: referring to a demigod, a mermaid named Poliolehua, and Kawai'ila'iliahi linked to the ma'i of a Rainbow Maiden of Waimea.The name Kapalawai was given to the family house by the Robinson family, with origins linked to the Scottish Lowlands.

Archaeological and historic sites discussed during the interviews include the loko i'a and associated kū'ula or heiau and kauhale for caretaker(s) of the loko i'a, as well as human burials. The loko i'a is storied to have only allowed men within it and as caretakers. The pond is fed by natural springs. Other sites include a Portuguese bread oven near the fishpond in an overgrown area, a pump that was used to irrigate water out from the fishpond, and a whale blubber rendering pot from the whaling era. The Robinson family home was discussed as an important historic building that should be preserved.

Recommendations and mitigations for this project shared by the interviewees include the following:

- Prioritize access for Native Hawaiian cultural practitioners.
- Restore the loko i'a under guidance of a kahu (specialist, cultural caretaker) of loko i'a and conduct research to provide for sensitive, culturally grounded interpretation.
- The proposed development should financially support the restoration of the loko i'a.
- Include historical learning opportunities within the development.
- Minimize light pollution as much as possible so as not to affect people on the ocean at night.
- Ensure that resort units are not near the edge of the loko i'a out of respect for the fishpond.
- Work with a kahu to guide the restoration of the loko i'a in a way that respects its cultural significance and avoids turning it into a tourist attraction that diminishes its cultural use.
- Improve access to "Infinities" surf spot.
- Hire locally from Kekaha.
- Keep the Robinson family house.
- Avoid the historic footprint of the storied heiau near the border of Kapalawai where it turns into Pā'ula'ula. This heiau's rocks were used to build up Pā'ula'ula.
- Closely monitor for archaeological remnants of kū'ula, heiau, and ancestral artifacts near the loko i'a and elsewhere.
- Consider styling the resort bungalows inspired by the Waimea Plantation Cottages.
- Source any produce or materials that will be a part of the resort function from local farmers and vendors.
- Position the resort development or buffer it with landscaping so that it minimizes the view impact of the houses in Pākalā on the ocean side.
- Construct the development in a pono way.
- Have open and transparent conversations with community members and follow recommendations that are shared.

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## INTRODUCTION

At the request of G70 on behalf of Kerzner International Management Services Hawaii Inc., Keala Pono Archaeological Consulting prepared a Ka Pa'akai Analysis for the proposed Kapalawai Resort Project at TMK: (4) 1-7-005:001, (4) 1-7-005:006, and (4) 1-7-005:999 (por.) in Kapalawai, Makaweli Ahupua'a, Waimea (Kona) District, on the island of Kaua'i. This Ka Pa'akai Analysis was designed to identify any valued historical, natural, and cultural resources or practices that may occur in the area, determine if the proposed project will affect the resources or practices, and offer mitigation recommendations for the project.

The report begins with a description of the study area and a historical overview of land use and archaeology in the area. The next section presents methods and results of the ethnographic survey. Results of the Ka Pa'akai Analysis are summarized and recommendations are made in the final section. Hawaiian words, flora and fauna, and technical terms are defined in a glossary. Also included are appendices with documents relevant to the ethnographic survey, including full transcripts of the interviews.

### The Project Location and Environment

The project area is located in the 'ili of Kapalawai within Makaweli Ahupua'a in the Waimea (Kona) District on the island of Kaua'i (Figure 1). TMK: (4) 1-7-05:001 is a 67.697 hectare (ha) [167.284 acre (ac.)] parcel owned by Robinson Family Partners and Bruce Robinson, TMK: (4) 1-7-005:006, is a 1.267 ha (3.13 ac.) parcel owned by Robinson Family Partners, and TMK: (4) 1-7-005:999 (por.) is 2.159 ha (5.334 ac.) also owned by Robinson Family Partners (Figure 2). All three parcels are leased by Gay & Robinson Inc., and Kerzner International Management Services will be developing the properties into a resort. This block of land is situated between Kaumuali'i Highway and the ocean. It is bounded by Kaumuali'i Highway and an undeveloped parcel to the northeast, undeveloped land called 'Akia to the northwest, the Pacific Ocean on the southwest, and a residential property to the southeast. The Robinson-Gay Family has used the property as a family residence and cattle ranch for over a century. The total project area includes 175.774 ac. (71.133 ha).

The project area is mostly undeveloped and consists of a natural forest with medium-sized trees, shrubs, and grasses in addition to a marshy area near the fishpond. There are many unpaved trails and roads that cross through the property. Existing buildings and infrastructure are consolidated to the northwest portion of the lot and consist of eight historic buildings from the Robinson Estate constructed from 1890–1920, unpaved roads, accessory structures such as sheds, worker houses, a horse corral, gardens, a modern lo'i, and landscaped lawns. All of the existing buildings on the property are over 50 years old, thus they are considered historic properties. The eastern end of the parcel within the Kekupua Valley coastal plain is utilized as a pasture for cattle and is not developed. The area surrounding Kekupua Fishpond in the central portion of the parcel is a marsh-like environment that is undeveloped.

The island of Kaua'i was formed by a single shield volcano, Wai'ale'ale, which once had the largest caldera in the islands, measuring roughly 15–20 kilometers (km) in diameter, and rising 5,100 meters (m) [16,732.28 feet (ft.)] above the ocean floor (MacDonald et al. 1983). Based on predictive models of weathering and erosion, it is estimated that the Kaua'i shield volcano became dormant roughly 1–2 million years ago or more, however an alternative model predicts that the Kaua'i Volcano stopped building during the Pliocene epoch, approximately 4 million years ago (MacDonald et al. 1983). After the shield-building phase, the following geological phase resulted in a massive collapse of the Waimea Canyon fault scarp on the south side of the shield, which created the 6.5 km-wide Makaweli Graben (Makaweli Depression) (MacDonald et al. 1983). The graben was then filled by

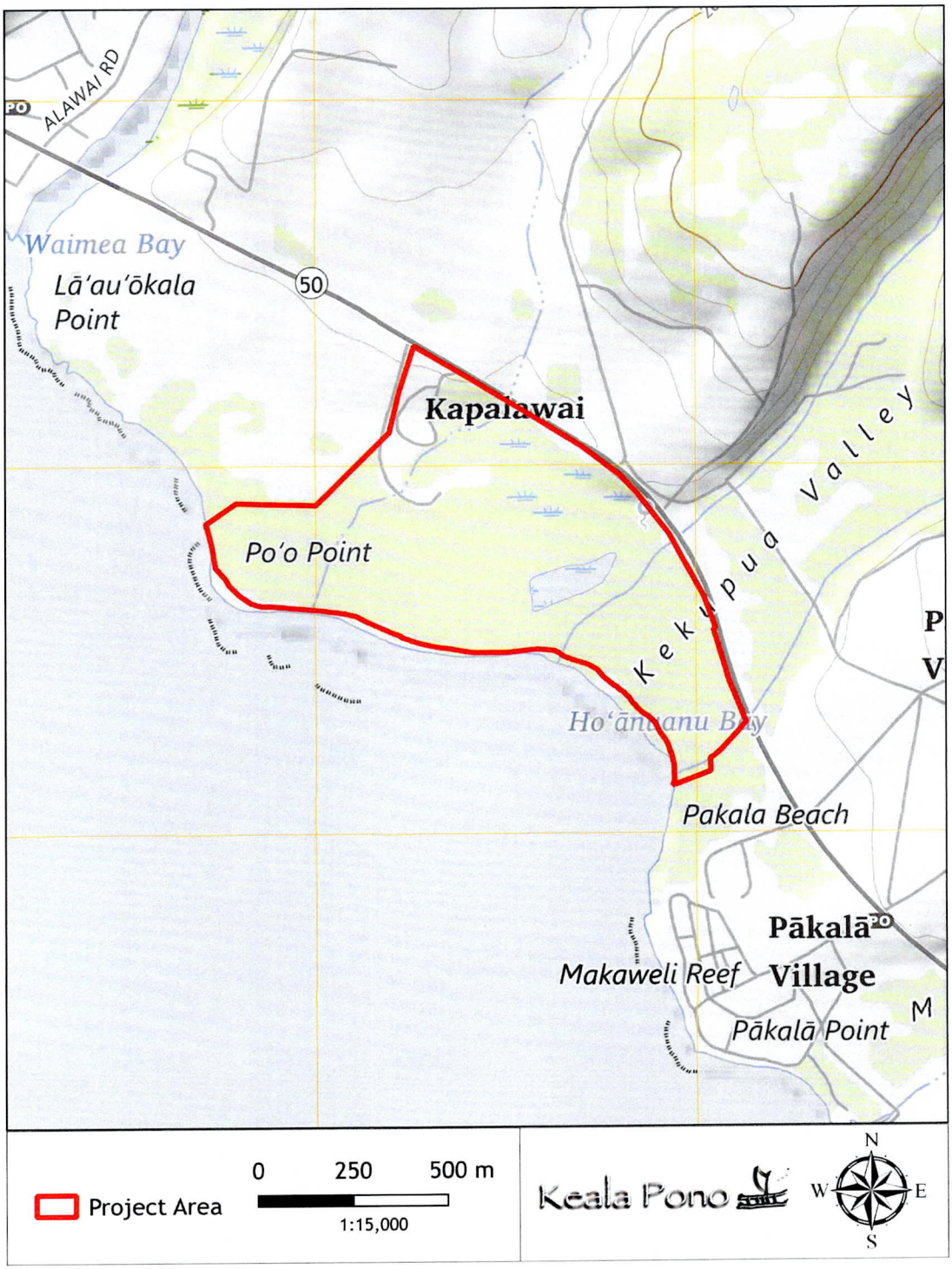



**Figure 1. Location of the project area on a USGS topographic map (USGS 2024).**

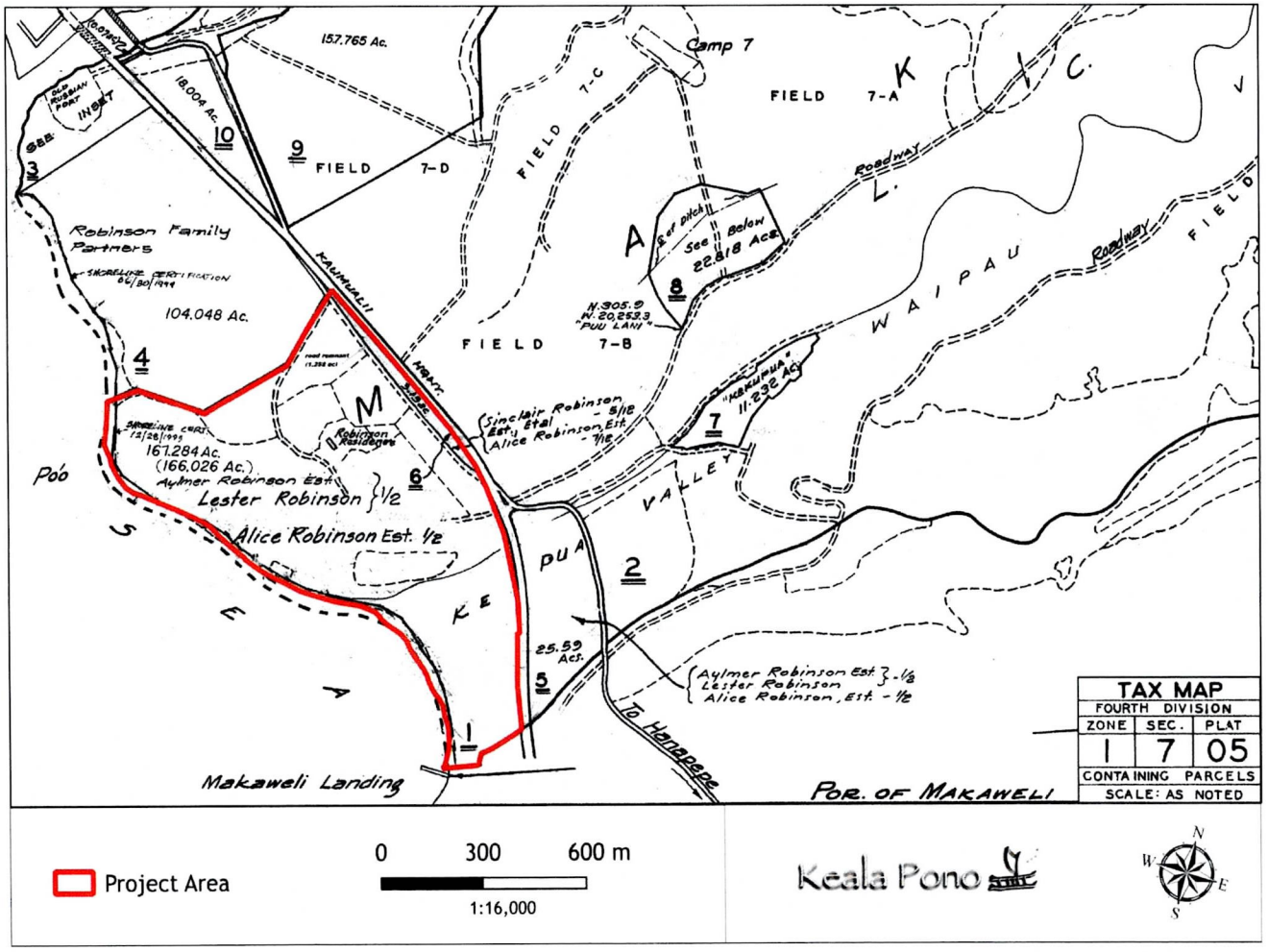



**Figure 2. The project area on a TMK plat for Zone 1, Section 7, Plat 05 (State of Hawai'i 1974).**

Makaweli Member lava flows on the southwest side of the canyon (Blay and Siemers 2004). This collapse is believed to have caused a significant landslide, leaving behind debris on the collapse is believed to have caused a significant landslide, leaving behind debris on the ocean floor. The Koloa Volcanic Series is a much later eruption that occurred across roughly two-thirds of eastern Kaua'i including the study lands. The project is located on the drier, leeward side of Kaua'i, makai of the Makaweli Member flow within the Koloa volcanic flows and vent deposits (Blay and Siemers 2004).

Rainfall averages roughly 50.8 centimeters (cm) [20 inches (in.)] per year (Giambelluca et al. 2013). The nearest major water source is Waimea Stream located roughly 794 m (2,604 ft.) to the northwest that empties into Waimea Bay. A'akukui Stream runs along the property's eastern boundary and Waipao Stream (also referred to as Mahaikona, Mahakona, or Mahikona Stream) passes through the central portion of the parcel, running along either side of Kekupua Valley. These two perennial streams empty into Ho'ānuanu Bay at the study area's southern extent. Kekupua Fishpond abuts the western bank of Waipao Stream and is fed by at least three natural springs. The study area is adjacent to the ocean at Ho'ānuanu Bay at an elevation of 5.2–13.4 meters (m) above mean sea level (amsl) [17–44 feet (ft.) amsl].

Soils of the project area consist predominantly of the Jaucas, Kekaha, Makaweli, and Nonopahu series (Foote et al. 1972). The specific soils within these series are Jaucas loamy fine sand, 0–8% slopes (JfB) located in the south and southeastern portion of the study lands; Kekaha silty clay, 0–2% slopes (KoA) located along the eastern boundary; a small concentration of Makaweli silty clay loam, 0–6% slopes (MgB) near the northern and northeastern boundaries; Makaweli silty clay loam, 6–2% slopes (MgC) at the north and northeastern boundary and extending to the central northern portion of the study lands; Makaweli stony silty clay loam, 6–12% slopes (MhC) at the northern extent; Nonopahu clay, 2–10% slopes (NnC) located along the northeast and west boundary; and Nonopahu stony clay, 2–12% slopes (NoC) along the western boundary. Fill land (Fd) makes up the central portion with a small area also at the southeast edge of the project area. Beaches (BS) are along the coastline and Water (W) is located near the center of the study area where there is a fishpond (Figure 3). Soil series of the project area are described as follows:

**Jaucas Series**

> This series consists of excessively drained, calcareous soils that occur as narrow strips on coastal plains, adjacent to the ocean... They developed in wind- and water-deposited sand from coral and seashells. They are nearly level to strongly sloping... These soils are used for pasture, sugarcane, truck crops, alfalfa, recreational areas, wildlife habitat, and urban development. The natural vegetation consists of kiawe, koa haole, bristly foxtail, bermudagrass, fingergrass, and Australian saltbush. (Foote et al. 1972:48)

**Kekaha Series**

> This series consists of well-drained soils on alluvial fans and flood plains on the island of Kauai. These soils developed in alluvium washed from upland soils. They are nearly level to steep... These soils are used for irrigated sugarcane, pasture, and wildlife habitat. The natural vegetation consists of koa haole, kiawe, klu, and fingergrass. (Foote et al. 1972:68)

**Makaweli Series**

> This series consists of well-drained soils on uplands... These soils developed in material weathered from basic igneous rock. They are gently sloping to steep... These soils are used for irrigated sugarcane, pasture, and homesites. The natural vegetation consists of kiawe, lantana, fingergrass, klu, koa haole, and pili grass. (Foote et al. 1972:90)

**Nonopahu Series**

> This series consists of 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. Elevations range from nearly sea level to 800 feet... Nonopahu soils are geographically associated with Makaweli and Waikomo soils. 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)

Other soils in the vicinity include Makaweli stony silty clay loam, 0–6% slopes (MhB); Pakala clay loam, 0–2% slopes (PdA); Makaweli silty clay loam, 12–20% slopes (MgD); Makaweli stony silty clay loam, 12–20% slopes (MhD); and Makaweli stony silty clay loam, 20–35% slopes (MhE) (Foote et al. 1972). Rough broken land (rRR) is present to the northeast and southeast, and Dune land (DL) is located to the southeast of the study parcel. Several of the previously mentioned soils located within the project area are also present in the greater vicinity outside the parcel boundaries.

**Project Description and History**

The Kapalawai Resort was first planned in 2000 when the project area was leased to a developer who obtained the applicable land use entitlements and permits from the State and County for the construction of a resort, however the resort was never completed and plans were put on hold before any construction was initiated. At the time, several archaeological studies were prepared in advance of the proposed construction, some of which were accepted by the State Historic Preservation Division (SHPD). Prior archaeological and architectural work for the original project at the current study parcel include (see Previous Archaeology Section for more detail):

- Architectural historic structures report (Mason Architects 1999)
- Hawaiian traditional customs and practices study (McGuire et al. 2000)
- Archaeological inventory survey (Zulick et al. 2000)
- Addendum archaeological inventory survey (McDermott and Hammatt 2001)
- Archaeological monitoring plan (Hammatt and Shideler 2005)
- Burial treatment plan (Hammatt and Shideler 2006a)
- Draft preservation plan for State Inventory of Historic Places (SIHP) 50-30-09-00762G, 50-30-09-00763, 50-30-09-00765, 50-30-09-00766, and 50-30-09-00792A (Hammatt and Shideler 2006b)
- Archaeological literature review and field inspection (Folk and Hammatt 2023)
- Literature review (Shideler and Hammatt 2024)

The Kapalawai Resort project recently resumed with Kerzner International Management Services Hawaii Inc. as the developer. During the interim, changes have been made to the original resort plan, which calls for 134 units scattered throughout the parcel (Figure 4). The resort is envisioned as a low-density, low-impact resort, that will seamlessly blend in with existing character of the area. The resort will feature supporting amenity facilities, including restaurants, entertainment and meeting spaces, bars, a spa, and fitness and recreational facilities for guests. In keeping with the original resort plan, the historic main house and offices will be adaptively reused to support resort operations. These structures date back to the occupancy of the area by the Robinson family and will showcase the rich history of the property. Existing structures proposed for demolition include the Guest House, Tack Room, Greenhouse, and Employee Cottages. A public comfort station with outdoor shower facilities and picnic tables will be constructed on the easternmost portion of the property. Site preparation including clearing and limited grading will be completed for the project.

Archaeological and cultural resources on the parcel will be preserved. Access to the study lands has been restricted for years and construction of the resort will restore public access to a recreational and historic resource in the West Kaua'i region. As part of the construction plans, a knowledgeable individual in fishpond restoration and cultural resource management will lead efforts to restore and maintain the traditional Hawaiian fishpond located within the central portion of the parcel.

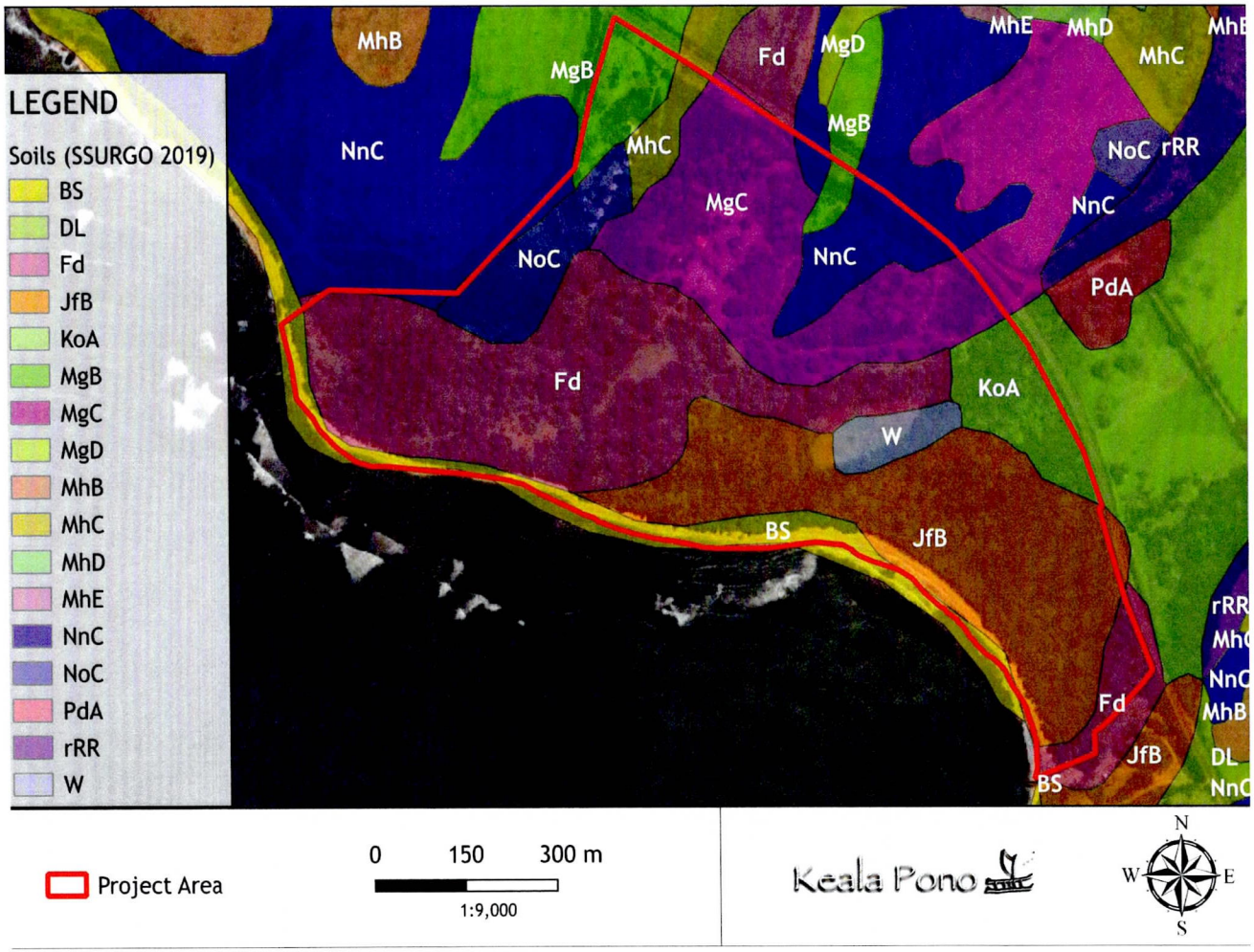



**Figure 3. Soils in the vicinity of the project area (data from (Foote et al. 1972).**




**Figure 4. Proposed layout for the Kapalawai Resort (courtesy of Kerzner International Management Services Hawaii Inc.).**

## TRADITIONAL CULTURAL AND HISTORICAL BACKGROUND

A historic review of Kapalawai and Makaweli Ahupua'a is provided below, to offer a better holistic understanding of the use and occupation of the project area. In the attempt to record and preserve both the tangible (e.g., traditional and historic archaeological sites) and intangible (e.g., mo'olelo, 'ōlelo no'eau) culture, this research assists in the discussion of anticipated finds. Research was conducted at the Hawai'i State Library, the University of Hawai'i at Mānoa libraries, the SHPD library, and online on the Waihona 'Aina database and the State of Hawai'i Department of Accounting and General Services (DAGS) website. Historical maps, archaeological reports, Māhele data, and historical reference books were among the materials examined.

### Kapalawai and Makaweli Ahupua'a in the Pre-Contact Era

The island of Kaua'i is split into five traditional districts: Halele'a, Ko'olau, Puna, Kona, and Nā Pali. Makaweli is one of 22 ahupua'a within the Kona (Waimea) District on Kaua'i's south shore. The Kona District is located between the Puna District on the island's east shore, and the small Nā Pali District on the north shore. Makaweli Ahupua'a is one of the larger land areas in the Kona District and is situated between Waimea Ahupua'a to the west and Hanapēpē to the east.

The pre-contact era refers to the time before western contact in 1778. Information compiled for this era includes data on place names, subsistence and land use, as well as mo'olelo, names for winds and rains, and 'ōlelo no'eau. Together, they give us an idea of what life may have been like in the past.

#### Inoa 'Āina: Place Names

One often overlooked source of history is the information embedded in the Hawaiian landscape. Hawaiian place names "usually have understandable meanings, and the stories illustrating many of the place names are well known and appreciated... The place names provide a living and largely intelligible history" (Pukui et al. 1974). The ahupua'a of the project area, Makaweli translates to "fearful features" (Pukui et al. 1974:142). Makaweli was formerly called Ho'ānuanu, which means "to cause cold" (Pukui et al. 1974) and is now the name of the bay fronting the study parcel. The literal translation of Kekupua is a "Demigod or culture hero, especially a supernatural being possessing several forms (as Kama-pua'a and Laenihi); one possessing mana; to possess kupua (magic) powers" (Pukui and Elbert 1986:186)

The name Kapalawai is not included in the Pukui et al. (1974) publication, but one meaning given by the Robinson Family is that pala means "little shallow dish," which refers to a small clay depression in the back garden of the property that would collection water. Another translation of Kapalawai according to community interviews is "the water moss" (McGuire et al. 2000:31).

> A variant meaning for *pala* is "seaweeds or scum". Located within the study region is a *loko pu'uone* (inland pond). In an interview with Hawila Kaleohano, he states that there used to be a particular kind of *limu* (seaweed) that grew in the pond, which he has never seen anywhere else. This was further substantiated by Warren Robinson. None of the people interviewed knew the name of this *limu* nor had they seen it growing anywhere else other than in this fish pond. (McGuire et al. 2000:31)

Another meaning for the name Kapalawai was shared in an ethnographic interview for the current study:

> I always wondered how it got its name because I can't find it printed anywhere. So asking family members I learned that their original family gave the name to the house and that area. They honored the lowlands of Scotland where they came from. Palawai means lowlands in Hawaiian. So Ka-pala-wai [w pronounced as a v], I believe would be the true pronunciation if it were a Hawaiian word but if the family named it that, then Kapalawai [w pronounced as a w] I guess, was, would be correct, because it was their name. I always felt that was interesting. I keep searching, paying attention when people talk, especially to kūpuna who have lived here for a long time, but I don't hear anyone refer to it as anything else than that. I am still curious what the original name of that area was called. (Puni Wai'ale'ale, see Appendix H)

The location of many place names in the region of the project are shown Figure 7, below. Several place names associated with the project area are listed in the book *Place Names of Hawaii* (Pukui et al. 1974), along with the meanings of the names and/or comments about the specific locales:

> A'akukui. Gulch and old *heiau* for human sacrifices, Waimea district, Kaua'i. *Lit.*, candlenut root. (Pukui et al. 1974:5)
>
> Ho'ānuanu. Old name for Makaweli, Kaua'i. *Lit.*, to cause cold. (Pukui et al. 1974:47)
>
> Kekupua. Valley near Makaweli, Waimea district, Kaua'i. Three *heiau* for human sacrifice were here: Kūanalili, A'akukui, and Kaunuloa (the long pebble). (Pukui et al. 1974:107)
>
> Lā'au'ōkala. Point near Makaweli, Kaua'i. *Lit.*, bristly tree. (Pukui et al. 1974:126)
>
> Makaweli. Landing, land division, and river. Waimea district, south coast of Kaua'i; formerly called Ho'ānuanu. *Lit.*, fearful features. (Pukui et al. 1974:142)
>
> Pākalā. Village and point, Waimea district; points east of Kīlauea, northeast Kaua'i; at one of these places was a *heiau* of the same name. *Lit.*, the sun shines. (Pukui et al. 1974:142)
>
> Pāpū. *Lit.*, fort. (Pukui et al. 1974:180)
>
> Po'o. Ancient surfing areas, Kapa'a and Waimea districts; coastal area, Hanapēpē, Kaua'i. *Lit.*, head. (Pukui et al. 1974:189)
>
> Waimea. Town, bay, canyon, district, school, ditch, plantation, landing, river, road, and land division, southwest Kaua'i, where Captain Cook first landed (1778). *Lit.*, reddish water (as from erosion of red soil). (Pukui et al. 1974:225–226)
>
> Waipao. Gulch, Waimea districts, Kaua'i. *Lit.*, scooped water. (Pukui et al. 1974:227)

**Subsistence and Traditional Land Use**

Makaweli Ahupua'a would have had a similar landscape to Waimea with an arid coastal plain and fields of pili grass. An early historic account of controlled agricultural burning of these fields in the Makaweli area was recorded by naturalist and surgeon, Archibald Menzies, who was aboard the *H.M.S. Discovery* that anchored at Waimea in 1792. Pili grass was a valuable resource for the construction of shelter, and we can surmise that it was prevalent and utilized in the Makaweli region during traditional times as well.

> ... [I]n returning back in the dusk of the evening, we observed a large fire kindled a few miles to the eastward of Waimea [in the direction of Makaweli], and spreading over the face of that plain country, which was mostly covered with dry, rank grass that burnt with great rapidity... the fire had been kindled to burn down the old shrivelled (sic) grass and low vegetables... I mentioned this to Captain Vancouver, and that the natives then gave the same reason for doing it, adding that by this means the next crop of grass grew up clear and free of stumps, and was therefore better adapted for thatching their houses, which was the principal use they make of it. (Menzies 1920:32)

Typically, leeward areas across the island chain were subject to occasional drought that would lead to occasional famine, however Makaweli has large streams with abundant fish such as ʻoʻopu, ʻōpae (shrimp), hīhīwai (stream snail), and other fresh water resources (Handy et al. 1991:393). Because of this, the deep valleys on Kauaʻi such as Makaweli, Waimea, Hanapēpē, and Olokele had a sizable inland population, something not seen in other areas across the island chain where villages were normally situated near the ocean (Handy et al. 1991:552). These villages had very limited access to the ocean via trails and could be fully sustained by irrigated cultivation and resources from the streams and forests. There were two named fishing grounds directly offshore from Kekupua named Hiki and Hinaia (McGuire et al. 2000:68).

Large terraces have been documented in the flatlands of Makaweli Valley (Bennett 1931:112) and two specific varieties of kalo, haʻo kea and nā kalo a ʻola, were suited for higher elevations and canyons with shallow soil (Handy et al. 1991:397). Other possible cultivated plants could have included ʻuala and uhi grown on higher ground, ʻawa, wauke, olona, and pia. It is also possible that a variety of forest and wetland birds could be found in the uplands and in the ponds, springs, and marshy areas near the streams.

The ʻili of Kapalawai contains the 6-acre Kekupua Fishpond (SIHP 50-30-09-00765), sometimes called Kahe Pond or Kapalawai Pond. It is a loko puʻuone (inland fishpond) disjointed from the ocean by a sand berm, located within the central portion of the study lands that is fed by three freshwater springs named Kahe, Kekupua, and Maʻo (Zulick et al. 2000:43–44). The pond was stocked with exceptionally large mullet in the historic era, No information could be found regarding the fish raised there in traditional times, though it was likely also mullet. Large fishponds such as Kekupua were typically reserved for aliʻi use with a kapu placed on the fish and the pond would have been highly valued.

The area also had several religious and ceremonial sites recorded in *Archaeology of Kauaʻi* (Bennett 1931) that further suggest the religious significance of the region. Many sites such as heiau, burial caves, taro terraces, ʻauwai, and house sites were located along Waimea River in Waimea Ahupuaʻa and near the Waimea River and Makaweli River junction, not near the study parcel. Seven heiau are known for Makaweli Ahupuaʻa, one of which was destroyed and three that were unable to be located in 1928–1929, thus probably also destroyed by that time (Bennett 1931:111–112). These heiau are Māhaʻihaʻi Heiau (Site 43), reported as destroyed; Aʻakukui Heiau (Site 44); Kaunumelemele Heiau (Site 45); and Kuwiliwili Heiau (Site 48). The three Makaweli heiau that could not be located are Peʻeamoa (Site 8), Kapakaniau (Site 9), and Nauliuli (Site 10). None of these heiau are located near or within the project area. Of note is that Kekupua Valley is the location listed for Aʻakukui Heiau (Site 44), however Bennett's map and individuals today place Kekupua mauka of Kaumualiʻi Highway (Bennett 1931:98, 111).

Trail systems were an important lifeline that provided access to resources and movement of people between ahupuaʻa and other districts. Kukui Trail, Koaiʻe Trail, and a third unnamed trail extended through the Makaweli mauka region above the Poʻomau Stream junction (McGuire et al. 2000:63). There is no record of traditional coastal trails that run through the study lands, however trail documentation such as maps, journals, and other research occurred after Eliza Sinclair purchased Makaweli and Kapalawai, potentially cutting off any possible trails that provided coastal access.

**Moʻolelo**

Moʻolelo and accounts of Makaweli serve as testament to the cultural significance of the region. The ahupuaʻa is noted in moʻolelo and played a role in the spiritual and religious realm of Hawaiian culture shown through the stories of goddesses and water spirits.

One tale speaks of a girl, who was raised by a mo'o (water spirit) in the mountains high above Makaweli. The parents of the child were fed up with her constant crying and put her outside the house, saying, "Go live with the mo'o!" The little girl found a mo'o who would take her in and lived in the Makaweli uplands in a cave below a waterfall. Not believing she would actually do it, her parents felt terrible and were filled with regret as the years passed. They finally went searching for her and came up with a plan to trap her using a net, eventually capturing her and bringing her back to Waimea to "tame" her. Ultimately she married the ruling chief (Handy et al. 1991:573).

Another legend is about a mo'o wahine (female water spirit) that lived at Kekupua Fishpond within Kapalawai (Hawila Kaleohano in McGuire et al. 2000:34). This mo'o was often seen near the pond in her human form as a beautiful woman. She would sit under a coconut tree on a flat rock combing her hair very early in the morning before sunrise. Most people said she was kind, although some said she had taken and killed a man. While it has not been documented, it is likely that this flat stone remains.

*The Story of Laieikawai* mentions Makaweli briefly as the name of a person (Kalakaua 1888). The story speaks of twin princesses who were hidden from their father at birth because he would kill all of his daughters in the hopes of having a son. One of the twins, La'ieikawai, was raised in a cave and had supernatural abilities. One day, a rainbow appeared above her hiding place, alerting everyone that royalty was nearby. In order to protect La'ieikawai, her grandmother took her to live in Paliuli in Puna on Hawai'i Island; however her beauty drew attention and rumors began to circulate across the islands. Aiwohikupua, a chief from Kaua'i, set sail with a feather cape as a gift to find the beautiful princess. After searching the jungle of Paliuli, Aiwohikupua entered a clearing and saw the home of La'ieikawai covered with yellow feathers from the 'ō'ō. Embarrassed about his gift, Aiwohikupua quickly left, intent on returning, but ran into Poliahu, the goddess of snow from Mauna Kea. Aiwohikupua immediately fell in love and told Poliahu he would return and marry her. A few months later, he fulfilled his promise and married Poliahu, bringing her back with him to Kaua'i. The chiefs of the area gathered at Mānā to celebrate the couples of Hauailiki and Makaweli who recently married.

A final mo'olelo was recited by 'Ohu Ho'okano, a Native Hawaiian who was born at Kekupua in 1926 and worked on the Robinson Estate (McGuire et al. 2000:35, 73). When he was a child growing up in Kapalawai, he would sometimes hear the chanting and drumming of huaka'i pō (night marchers). Night marchers are the spirits of those who have died and are said to appear on specific nights of the gods. "They used to march and play games practically on the same ground as in life. Hence each island and each district had its own parade and playground along which the dead would march and at which they would assemble" (Beckwith 1978:200 in McGuire et al. 2000:73). Ho'okano explained that the procession would march from A'akukui Heiau makai to Kekupua Fishpond and return back mauka before dawn.

### Ka Makani a me Ka Ua: The Wind and the Rain

With their lives closely connected to the natural environment and physical surroundings, Hawaiian winds and rains were individually named and associated with a specific place, region, or island. In *Hānau Ka Ua*, Akana and Gonzales (2015:xv) explain that kūpuna "knew when a particular rain would fall, its color, duration, intensity, the path it would take, the sound it made on the trees, the scent it carried, and the effect it had on people." The following wind and rain names associated with the project region offer further insight on kūpuna perspectives of the study parcel. The rain of Makaweli is Kiu, which is also a wind name. Kiu is noted in a mele inoa (name chant) for Wahinealoha:

'A'ala ka 'iliahi o Makaweli
'A'ala ke Kiele me ke kupukupu
E a'oa'o ana ke 'ala
Me ka lehua maka noe i ke anu
Anu mā'e'ele i ka noe a ke Kiu
'A'ala ka hala o Māpuana i ke kai

*The 'iliahi tree of Makaweli is fragrant*
*The Kiele plant and ferns are fragrant*
*The fragrance confers*
*With the lehua maka noe shrub in the cold*
*Numb with cold in the mist of the Kiu*
*The hala trees of Māpuana by the sea are fragrant*

From a mele inoa, or name chant, for Wahinealoha. Hawaiian Source: Savia. English trans. by author. (Akana and Gonzalez 2015:105–106)

Other rains associated with Makaweli are Kapa'ahoa or Kapakapa'ahoa, Maka'ūpili, Pa'ūpili, and 'Ūkiukiu (Akana and Gonzalez 2015:319). Kapa'ahoa, also called Kapakapa'ahoa, is a general rain of Waimea that is mentioned in The Legend of Lu'anu'u and a kanikau (lament) for Kamehameha IV written by Emalani Kaleleonālani, his wife (Akana and Gonzalez 2015:66).

**'Ōlelo No'eau**

Traditional proverbs and wise sayings, known as 'ōlelo no'eau, are another means by which the history of Hawaiian places has been recorded. In 1983, Mary Kawena Pukui published a volume of close to 3,000 'ōlelo no'eau that she collected throughout the islands. The introductory chapter of that book reminds us that if we could understand these proverbs and wise sayings well, then we would understand Hawai'i well (Pukui 1983). Three 'ōlelo no'eau are listed that mention Makaweli, one saying is a play on Maka-weli (terrifying eyes), another speaks of the waters of Waimea and Makaweli Stream, and the final saying states that the people of Makaweli would hear when 'ōpelu and kawakawa were running in Mānā. They are listed below as recorded in Pukui's book:

Ho'olele ka uila o Makaweli.

*Sending the lightning of Makaweli flying.*

A play on maka-weli (terrifying eyes), this saying refers to the sending of a god on an errand of destruction. (Pukui 1983)

Ka wai 'ula 'iliahi o Waimea.

*The red sandalwood water of Waimea.*

This expression is sometimes used in old chants of Waimea, Kaua'i. After a storm Waimea Stream is said to run red. Where it meets Makaweli Stream to form Waimea River, the water is sometimes red on one side and clear on the other. The red side is called wai 'ula 'iliahi. (Pukui 1983)

Waikāhi o Mānā.

*The single water of Mānā.*

When schools of 'ōpelu and kawakawa appeared at Mānā, Kaua'i, news soon reached other places like Makaweli, Waimea, Kekaha, and Poki'i. The uplanders hurried to the canoe landing at Keanapuka with loads of poi and other upland products to exchange for fish.

> After the trading was finished, the fishermen placed their unmixed poi in a large container and poured in enough water to mix a whole batch at once. It didn't matter if the mass was somewhat lumpy, for the delicious taste of fresh fish and the hunger of the men made the poi vanish. This single pouring of water for the mixing of poi led to the expression, "Waikāhi o Mānā." (Pukui 1983)

## Historic Kapalawai and Makaweli

It is generally accepted that on January 20, 1778 James Cook became the first westerner to see the Hawaiian Islands, which at that time were not yet united under one sovereign. Cook anchored off of Waimea Bay, not far from the study lands, and made landfall at Waimea to investigate the area, its people, and the availability of supplies. Following Cook, a wave of other western explorers landed on Hawai'i's shores. Around the same time as the arrival of the first westerners to Hawai'i, many of the other islands were experiencing major political changes. It was during this time that O'ahu's sovereignty ended with the invasion of the Maui chiefs, and the Maui rule was subsequently overcome by the invasion of forces from Hawai'i Island. Kaua'i and Ni'ihau were ruled by Kaumuali'i who relinquished control in 1810 during peaceful negotiations with Kamehameha I, who then became the ruler of all the Hawaiian Islands.

### Early Historic Accounts

The earliest historical accounts of this region of Kaua'i comes from the journals of sea captains and those who accompanied them. Prior to contact from foreigners, Waimea Village was the largest population center within southwest Kaua'i. An early 1778 observation from James King, lieutenant of the *Resolution* aside Captain Cook, was that there were roughly 60 grass-thatched homes grouped along the shore to the west of the Waimea River mouth and interspersed houses along both banks of the river until the Waimea and Makaweli River delta (Handy et al. 1991:568).

After Cook's arrival, Waimea became the political seat of power with Kaumuali'i governing from there until he died in 1824. During Cook's initial landing at Waimea, he writes about a pond (possibly Kekupua Fishpond) in the region that was used to resupply the ships with fresh water (Beaglehole 1967).

> We no sooner landed, that a trade was set on foot for hogs and potatoes, which the people gave us in exchange for nails and pieces of iron formed into something like chisels. We met with no obstruction in watering on the contrary the Natives assisted our people to roll the Casks to and from the pond. (Beaglehole 1967)

A local of Waimea took Cook on a short walking tour of the area inland from the coast. Cook notes lo'i kalo, sugar and banana plantations, paper mulberry trees, coconut trees, multiple villages, and two heiau, one on either side of Waimea River (Beaglehole 1967). It is possible that Keali'i Heiau is the one he saw on the west side of the river and Māha'iha'i Heiau was the one on the east side (Beaglehole 1967). Menzies also described the plantations when he visited in 1792 and was impressed by the engineering of the aqueduct:

> We walked to the confluence of these two streams [Waimea and Makaweli] and found that the aqueduct which waters the whole plantation is brought with much art and labor along the bottom of the rocks from the north-west branch...Indeed the whole plantation is laid out with great neatness and is intersected by small elevated banks conveying streams from the above aqueduct to flood the distant fields on each side at pleasure, by which their esculent roots are brought to such perfection, that they are the best of every kind I ever saw. (Menzies 1920:28–29 in Handy et al. 1991:566)

The landscape on the Makaweli side of Waimea River was also described:

> The Land to the Eastward of the river, & opposite the watery place is of a moderate height, gradually declining to the Seaside, whereas on the West side, there is a tolerable border of low land before it rises to the hills, the hills on both sides are not wooded for two miles inland, although the side slopes of the high mountains are tolerably wooded. (King 1778 in Handy et al. 1991:568)

Horses, followed by cattle were introduced to Kaua'i in the early 1800s. The cattle were allowed to roam freely, altering the natural landscape and affecting traditional farming practices and other agricultural activities. By the late 1800s, cattle and goats became a major problem on the island, with a hunter having shot 180 goats and 11 cattle over the course of a two-day hunting trip (Judd 1899).

**Fort Elizabeth (SIHP 50-30-05-01000)**

Cook died in 1779 in Kealakekua and Charles Clerke became captain and sailed for England. He arrived in Petropavlovsk, Russia, but was dying of tuberculosis. On his deathbed, he gave Cook's maps and diaries to Major Behm, the Russian governor, who was tasked with returning the documents to the British ambassador in St. Petersburg. Behm and the Russians were the first people aside from Cook's crew to learn that the British had visited Hawai'i (Joesting 1984:41).

The Russians saw Hawai'i as an important stop along the fur trade route where ships could be restocked. A Russian fur ship ran aground off the coast of Waimea Bay, leaving the sailors in Waimea for two and a half months (Mills 1996:30–37). Kaumuali'i took the furs from the sunken ship and kept them. When the Russians found out what happened, they sent Dr. Georg Schaffer to Kaua'i to diplomatically retreive the furs. He instead raised the Russian flag. Whether this act was done on his own accord or if it was an order has been debated. Upon meeting with Kaumuali'i, a settlement was reached. The Russians would provide protection as well as ships, ammunition, and weapons to conquer the other Hawaiian Islands in exchange for exclusvity of the sandalwood trade and 500 warriors. Schaffer would also be allowed to construct forts and trading posts (Mills 1996:30–37). Schaffer had the Russian-American Company construct the fort in Makaweli in 1816 and flew the Russian flag (Mills 1996:30–37).

> A fort had been built by Russian fur traders (with the permission of the King of Kauai) on a point of land at the mouth of the river, and it was still standing, although the Russians had been ordered home by Kamehameha. (Handy et al. 1991:567)

Upon hearing of the newly constructed fort and a possible Russian threat, Kamehameha I asked Kaumuali'i to expel Schaffer. The following year, Schaffer was forced to leave and Hawaiian soldiers occupied the fort. Fort Elizabeth was unmaintained and fell to ruin and abandoned in 1853 (Mills 1996:198–199). The fort was further dismantled by Valdemar Knudsen and others from 1862–1864.

Fort Elizabeth or Pā'ula'ula (SIHP 50-30-05-01000) was named after the Empress of Russia and designed by Schaffer. It was named a National Historic Landmark (#66000299) and is listed on the Hawai'i and National Registers of Historic Places (HRHP and NRHP) (Levy 1978). Fort Elizabeth was designed in a star-shape with a cross diameter of 300–450 ft. and was constructed of stone in the Hawaiian style (Figure 5). The stone walls were 25–45 ft. long and up to 20 ft. in height. The fort had a magazine and armory, barracks, a flag staff, a guard room, and officers' quarters. Outside the fort walls, the property on the east side of the Waimea River mouth also contained a factory or trading house, Protestant mission settlement, staff housing for roughly 30 families, and gardens.

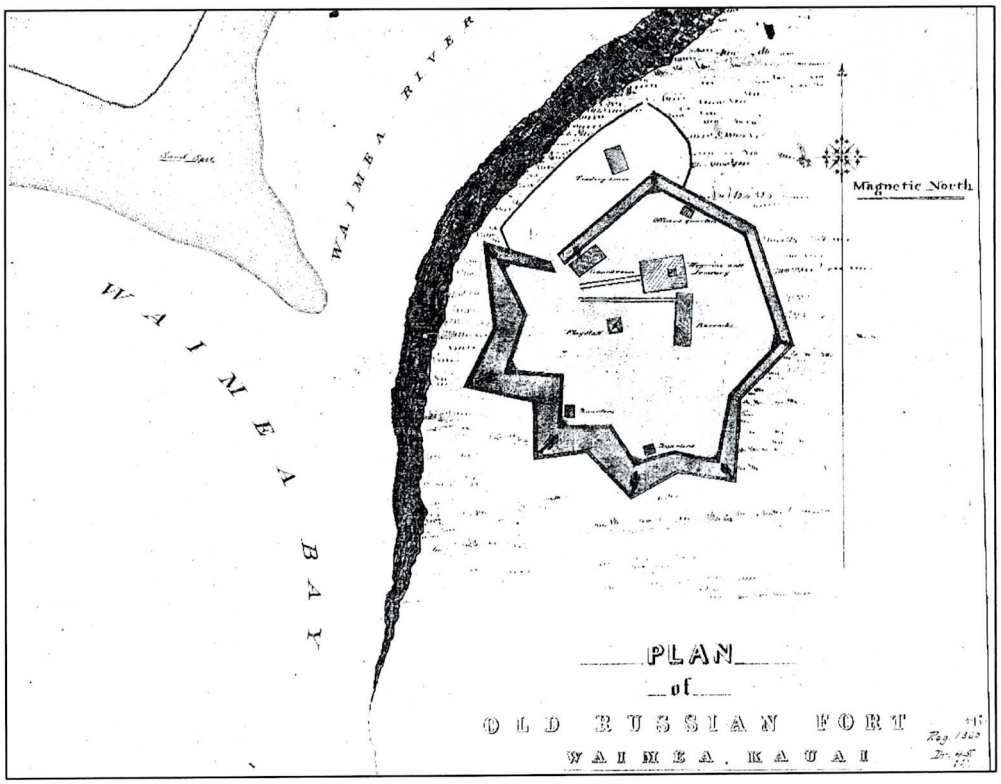



**Figure 5. Map of Fort Elizabeth in 1885 (Jackson 1885).**

A print of a steel engraving illustrates the view from the top of the Fort Elizabeth looking towards Waimea Town (Figure 6). The Waimea Bay shoreline and river mouth are shown with several western style houses, a church, a large structure with an enclosure, and many coconut trees. The rooftop of a structure, which is probably the trading house, can be seen between the fort and east river bank next to a large tree.

Today, visitors can access the 17-acre Russian Fort Elizabeth State Historical Park and learn more about this period of Kaua'i's history. The area of the fort is labeled as "Papa" on an 1891 map of the island (Figure 7). The map identifies many place names but does not show anything within the project area.

### Changes in Land Tenure

The change in the traditional land tenure system in Hawai'i began with the appointment of the Board of Commissioners to Quiet Land Titles by Kamehameha III in 1845. The Great Māhele took place during the first few months of 1848 when Kamehameha III and more than 240 of his chiefs worked out their interests in the lands of the Kingdom. This division of land was recorded in the Māhele Book. The King retained roughly a million acres as his own as Crown Lands, while approximately a million and a half acres were designated as Government Lands. The Konohiki Awards amounted to about a million and a half acres, however title was not awarded until the konohiki presented the claim before the Land Commission.

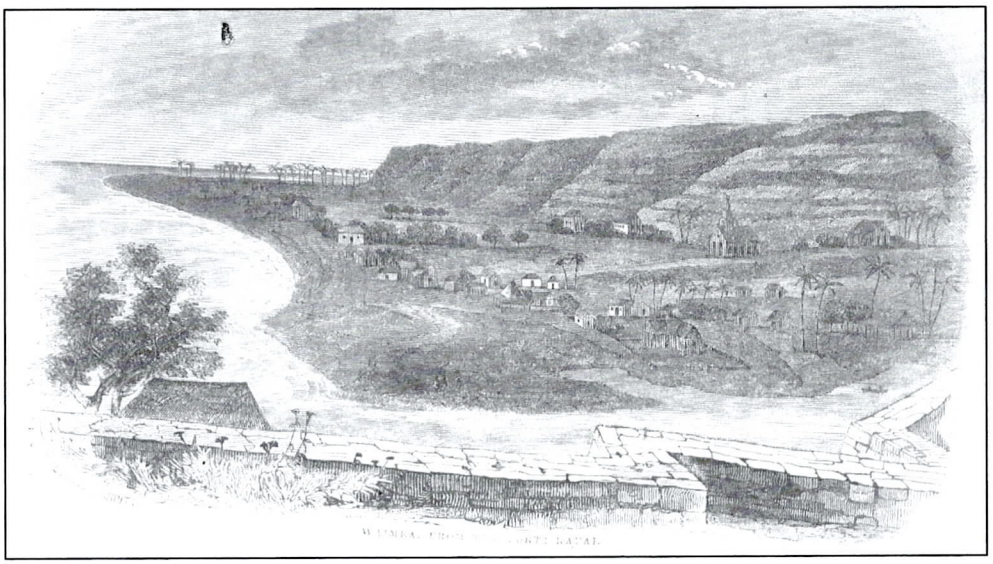


**Figure 6. Steel engraving print showing the view from the fort looking towards Waimea Town (Hawaii State Archives n.d.).**

In the fall of 1850 legislation was passed allowing citizens to present claims before the Land Commission for lands that they were cultivating within the Crown, Government, or Konohiki lands. By 1855 the Land Commission had made visits to all of the islands and had received testimony for about 12,000 land claims. Ultimately between 9,000 and 11,000 kuleana land claims were awarded to kama'āina totaling only about 30,000 acres and recorded in ten large volumes. Land Commission Awards (LCA) generated during the Māhele offer valuable information regarding land use, traditional and historic boundaries and landmarks, as well as the natural resources of the area.

Just prior to the Māhele in 1847, it was estimated that there were roughly 400 inhabitants along the coast, upper delta, and lower Waimea Valley region (Handy et al. 1991:567). During the Māhele, Ahukai wahine, Emelia Keaweamahi, and Victoria Kamāmalu made claims for Makaweli Ahupua'a, however the entirety of Makaweli was awarded to Victoria Kamāmalu under LCA 7713K. LCA 7713 is a very large award that includes land on many islands and seven areas across Kaua'i. Makaweli and many other places on Kaua'i belonged to her mother, Kina'u, who died suddenly without naming who would inherit the lands. The ali'i nui decided it should be passed down to Kamāmalu, however she was only seven years old at the time of the Māhele, thus the land was managed by her father Mataio Kekūanaō'a and her guardian John 'Ī'ī (Kame'eleihiwa 1992:120–124). In 1857, Kekūanaō'a and 'Ī'ī decided to lease her Makaweli kula lands to a hui (group) of 120 individuals from the Makaweli and Waimea area. The lease states that Kekupua Fishpond within the study area was kapu:

> Eia nā me ai koe ma kēia ho'olimalima 'ana o ka loko nu ii Kekupua a me nā loko li'ili'i, 'o ka i'a ho'omalu, 'o ka lā'au kapu o nā kumu 'alani i Waikea, 'o nā lo'i Pōalima a me nā kumu nui o Māha'iha'i a me Kekupua, 'o nā kuleana o nā kānaka a me ka Pāpū kapu, ka wahie in ā he mea kūai koe no ia ma kēia ho'olimalima 'ana.
>
> Here are the things exempt from this lease. The large pond in Kekupua and the small ponds, the protected (by kapu) fish, the sanctioned wood of the orange trees at Waikea, the Pō'alima taro fields and the large trees of Māha'i'ha'i and Kekupua, the kuleana (lands) of

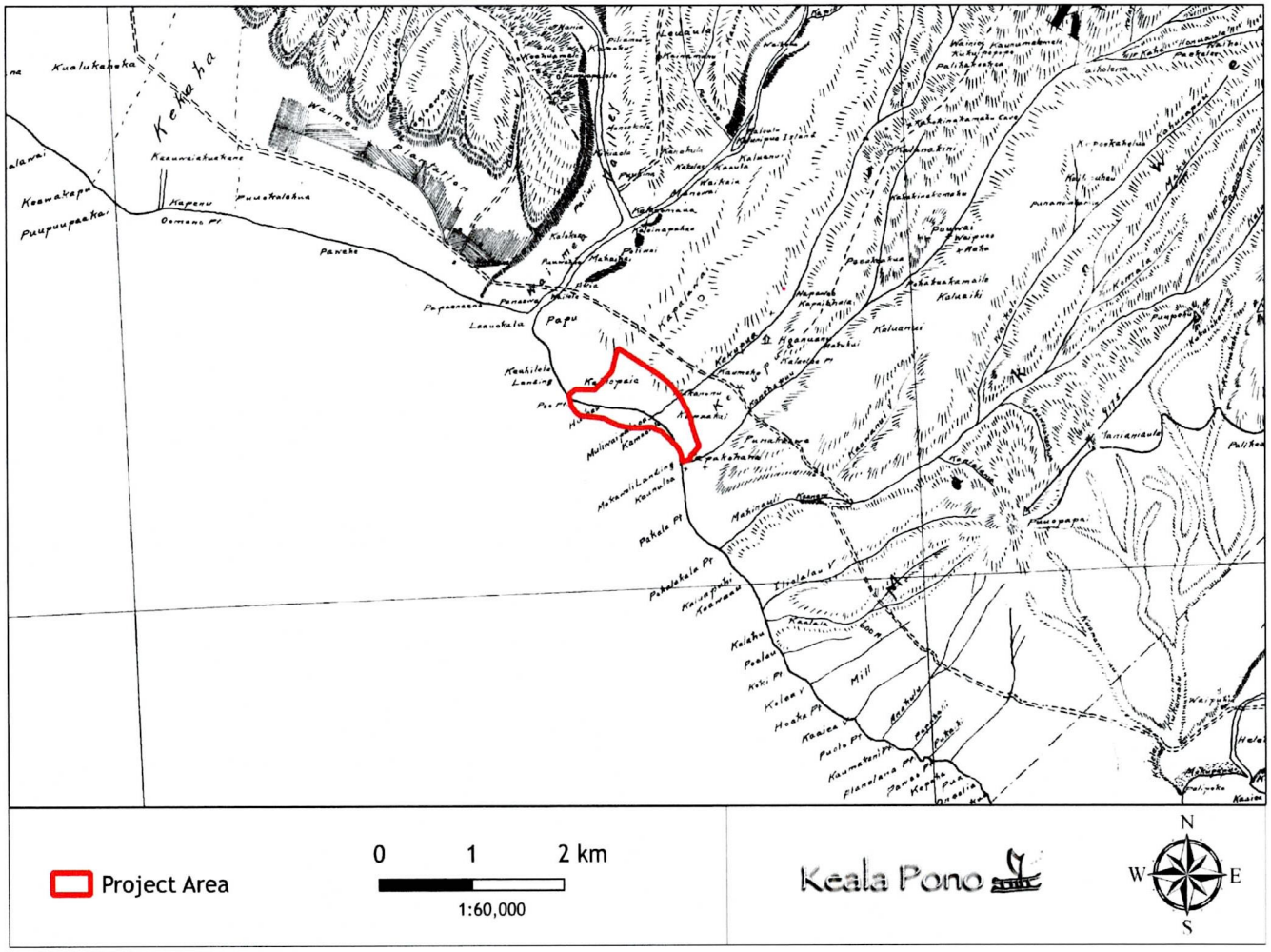



**Figure 7. Portion of a map of the island of Kaua'i (Imlay 1891).**

> the people and the reserved fort, the firewood, if it is for sale, is exempted by this lease. (McGuire et al. 2000:24)

In 1865, Elizabeth Sinclair purchased Makaweli Ahupua'a from Kamāmalu for $15,000 and thus aquired Kapalawai and the study lands (McGuire et al. 2000:31). A map titled "Plan of Makaweli The Property of Mrs. Sinclair" shows the boundaries of her land as well as specific locational markers suuch as "two flat stones," a date tree, the old fort, "Homestead 1870," "Nahule Koo," a "Range of Hills," and "Ahuaeliku" Peak (Figure 8). No landmarks are depicted within the project area. The Warranty Deed of sale did not mention kuleana rights. Sinclair took the role of konohiki and continued the kapu that was in place from the earlier lease. Catching mullet in Kekupua Fishpond was prohibited, however other fish was allowed. Over the years, Sinclair purchased as many kuleana within Makaweli as possible so her heirs would own all or most of Makaweli Ahupua'a. Upon her death in 1892, the Robinson family inherited Makaweli and continued the kapu on mullet in the pond until the pond was no longer actively maintained.

A total of 117 claims were made in Makaweli by 85 native tenants, none of which were made within the 'ili of Kapalawai and 83 of which were awarded (Waihona 'Aina n.d.). Interestingly, nine claimants from the adjacent ahupua'a of Waimea and four from Hanapēpē made claims for Makaweli. Two of these land claims mentioned Kekupua Fishpond. No LCAs were recorded within the project area, aside from Kamāmalu's ahupua'a award (LCA 7713K).

Prior to the Māhele, soldiers living at Fort Elizabeth were given farm lands near the fort to cultivate food crops and fort soldiers would go on to claim 22 individual lo'i during the Māhele. At this time, Waimea was the population center of Kaua'i and Māhele records suggest that land use of Waimea and Makaweli were closely linked with claimants having house lots and farm lots across both ahupua'a. LCA awards are predominantly grouped in the Waimea-Makaweli River basin with nearly all LCAs on the west side (Waimea side) of the river. These claims illustrate that the area was extensively cultivated as they mention 233 lo'i, house lots, kula lands, kīhāpai (gardens), 'auwai, a pig pen, and a gobey fish enclosure.

### Late 19th Century and Beyond

Sugarcane cultivation drastically changed the landscape and livelihood of Makaweli residents. The Hawaiian Sugar Company (Makaweli Plantation) was established in 1876 by the Scottish Watson & Yaryan Company with investment by the Gay-Robinson Family and in 1899, the plantation was taken over by Samuel T. Alexander and Henry P. Baldwin (Condé and Best 1973:134). The Hawaiian Sugar Company was called "the dirtiest, dustiest, red dirt plantation in Hawaii" due to the area's incessant dust (Condé and Best 1973:134). The new venture leased approximately 7,000 acres of Makaweli land from the Gay-Robinson Family that spanned from the coast to roughly seven miles inland (Gentry 2023:227). A mill was built in Kaumakani Town (Figure 9), southeast of the project area and a system of irrigation ditches were constructed to water the fields from the Hanapēpē, Makaweli, and Kō'ula Rivers (Gentry 2023:227). 'Olokele Ditch was the main source of water to the plantation, spanning 13 miles (Gentry 2023:227). To keep up with increased demand, Chinese, Japanese, and Portuguese laborers arrived in Hawai'i and plantation camps were established to house the influx of residents. Approximately 12 camps were built across Makaweli for workers at the Hawaiian Sugar Company. These camps gave rise to Kaumakani Town, Ka'awanui Village, and Pākalā Village, which all centered around plantation life.

A plantation railroad was constructed in 1891 and the following year it had "5 and 3/10 miles of permanent track and 5 miles of portable track. We also have 250 cane cars and two locomotive engines" (Condé and Best 1973:134). By 1905, an additional 11 ¼ miles of permanent track was

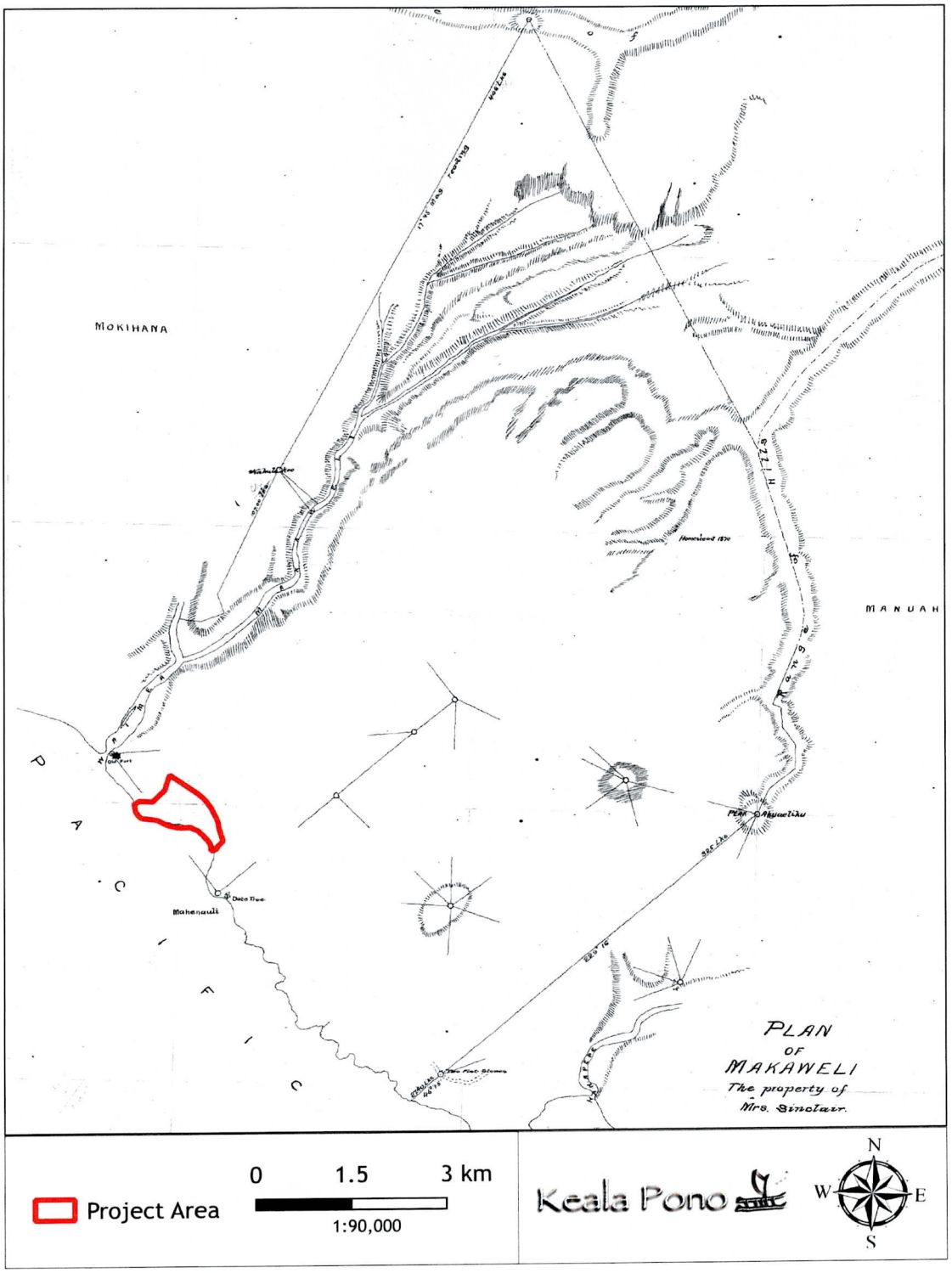



**Figure 8. Map showing Sinclair's property and the project area (Gay n.d.).**

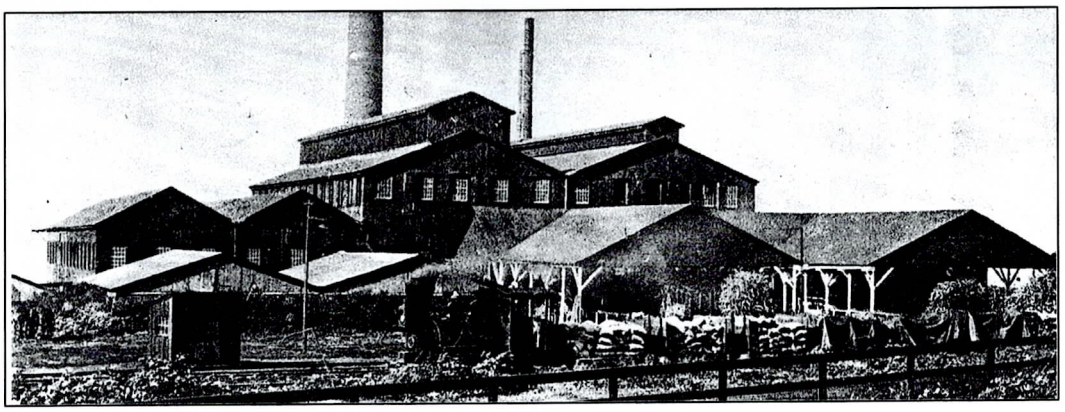


**Figure 9. Hawaiian Sugar Company mill and yard ca. 1895 (Condé and Best 1973:137).**

placed with cane transported and shipped out at Ele'ele Landing (Port Allen). A map of the Hawaiian Sugar Company's fields in 1927 shows several fields on Robinson Family lands and two railroad lines running through the project area (Figure 10). Just outside the study parcel's southeast boundary was Pakala Plantation Camp and further southeast the mill and two camps are shown. The fields and railroad lines are extensive, with a major junction just northeast of the project area on the mauka side of the Government Road, which would become Kaumuali'i Highway.

In 1941, the Hawaiian Sugar Company was the first Kaua'i plantation to switch from rail transportation to trucking, however the business sold all of its equipment and shut down in July that year due to disagreements related to the new lease. C. Brewer & Company took over where the Hawaiian Sugar Company left under the name Olokele Sugar Company (Wilcox 1997:89). In 1994, the Gay-Robinson Family purchased Olokele Sugar Company and kept it running until the 2010s.

***Sinclair-Robinson-Gay Family***

The Sinclair family came to Hawai'i in 1863 with the intention of establishing a home and ranch, but was unable to find suitable land to purchase and ultimately decided to leave for California. King Kamehameha IV did not want the Sinclairs to leave and offered for them to purchase the island of Ni'ihau for $10,000 worth of gold (Folk and Hammatt 2023:19). The Sinclair family began a ranch on Ni'ihau to raise Merino sheep and Shorthorn cattle. As previously mentioned, Eliza Sinclair purchased the entirety of Makaweli in 1865 and constructed a residence in the uplands that the Sinclair Family moved to in the early 1870s (Dorrance and Morgan 2000:32–33).

The Kapalawai residence (SIHP 50-30-09-00764) was constructed for Alice Gay Robinson by her husband Aubrey Robinson in the mid-1890s and is at least 103 years old (Folk and Hammatt 2023:19). The Kapalawai estate is described in a letter written in 1911 by the Robinson's governess, Hettie Belle Matthew:

> Now I must tell you about Kapalawai, the lowland home. It is built around a square court, a great porch all around the inside & around the outside… Surrounding the home are great stretches of lawn – acres & acres – and hundreds of palms & trees – you really cannot believe it without seeing it. And a tennis court and a fruit garden – and a lake, surrounded by cocoanut (sic.) palms. There are about 40 rooms in this home – and many surrounding houses for servants etc. From the porches you have a wonder view of the sea, and you can continually hear the roar & breakers… (Burtner 2019:55–56)

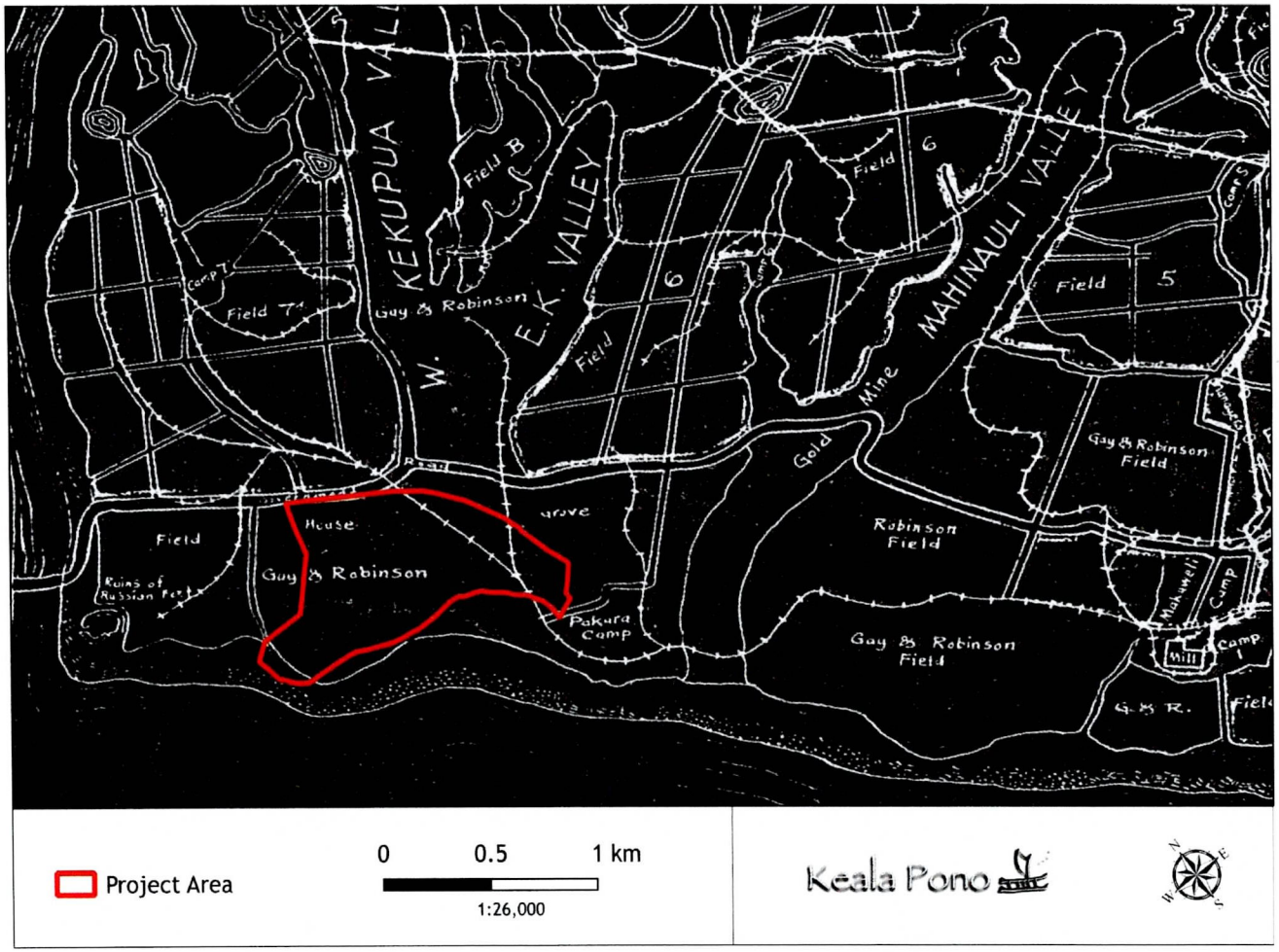



**Figure 10. Portion of a map showing the Hawaiian Sugar Company fields (Condé and Best 1973:136).**

The lake that Matthew refers to that is Kekupua Fishpond (Figure 11). Noted in another letter is a rose garden within a glass greenhouse tended by Alice Robinson (Burtner 2019:105). A map from 1901 depicts the location of the home within the center north portion of the project area and the mauka home labeled as "Residence of Francis Gay Esq." (Figure 12). The Makaweli Landing pier and warehouses are in place at this time at the study parcel's southern extent.

Francis Gay and Aubrey Robinson created the Gay & Robinson (G&R) partnership in 1889 under which they managed family businesses such as Makaweli Ranch and the leasing of property to the Hawaiian Sugar Company (Wilcox 1997:86). On their own Makaweli property they cultivated various agricultural crops and tried their hand at bee farming.

Makaweli Ahupua'a remained relatively devoid of development aside from plantation infrastructure and plantation camps. After the Kapalawai residence was constructed, there was very little development within and surrounding the study lands for more than a century (Figure 13). Employee cottages were built in the northern corner of the project parcel in the early 1900s and were utilized into the 21st century (Figure 14). As of 2023, one tenant remains in the employee cottages and the main house is unoccupied, but continues to be maintained (Folk and Hammatt 2023:23).

Despite these dramatic changes to the ahupua'a in the historic era, inland Makaweli continued to be widely cultivated in lo'i kalo beyond 1935:

> At the end of the road up the east side of Makaweli River about 2 miles from the highway, there are terraces completely cultivated extending for about a quarter of a mile along the east bank. Crossing the stream and ascending on the west side, a terrace area, still intensively cultivated in taro, extends for about a third of a mile along the stream bank. Above this point and as far as the junction of the Olokele and Mokuone Streams, all the flatlands on both the east and west sides of the river are covered with abandoned terraces. (Handy et al. 1991:599)

A map showing the region in 1954 illustrates the major roadways, rivers, lighthouse, and the newly established airport at Port Allen (Figure 15). Kaumuali'i Highway is marked as a paved road with four lanes, while other roads are either graded all weather roads or dirt. No railroads are illustrated, however one main trail is shown heading from the vicinity of Makaweli Landing, around the mauka boundary of the project area and into the uplands. Waiawa, Kekaha, Waimea, Pākalā, and Makaweli are marked as population centers. Several plantation camps are depicted in the lower valleys and coastal plain. The words "dismantled" are written near Makaweli Landing.

By 1963, Waimea is a growing city, bounded by the river and further expanding inland (Figure 16). Pākalā Village has developed into a small neighborhood with several streets and quite a few residences at Pākalā Point near the coast. Aside from the Robinson Estate within the project area and Pākalā Village, very few, scattered structures are illustrated within Makaweli. The road to reach the Robinson Estate is in place and seven structures are depicted at the location of the employee cottages in the northern corner of the project area. Three structures are shown at the Robinson residence location. Kekupua Fishpond is also illustrated and a spring is depicted within the study parcel near the northern boundary.

Today, Makaweli land remains predominantly with the Robinson Family and continues to be mostly undeveloped, particularly in the upland region. Generally, the coastal plain mauka of Kaumuali'i Highway is utilized for agriculture and ranching, while residences are mostly located makai of the highway. Residents and visitors pass through Makaweli on their way to other points of interest such as Waimea Town, Waimea Canyon, Kekaha, or Polihale State Park. Though the sugar industry in Hawai'i has closed down completely, evidence of Makaweli's plantation past is still apparent.

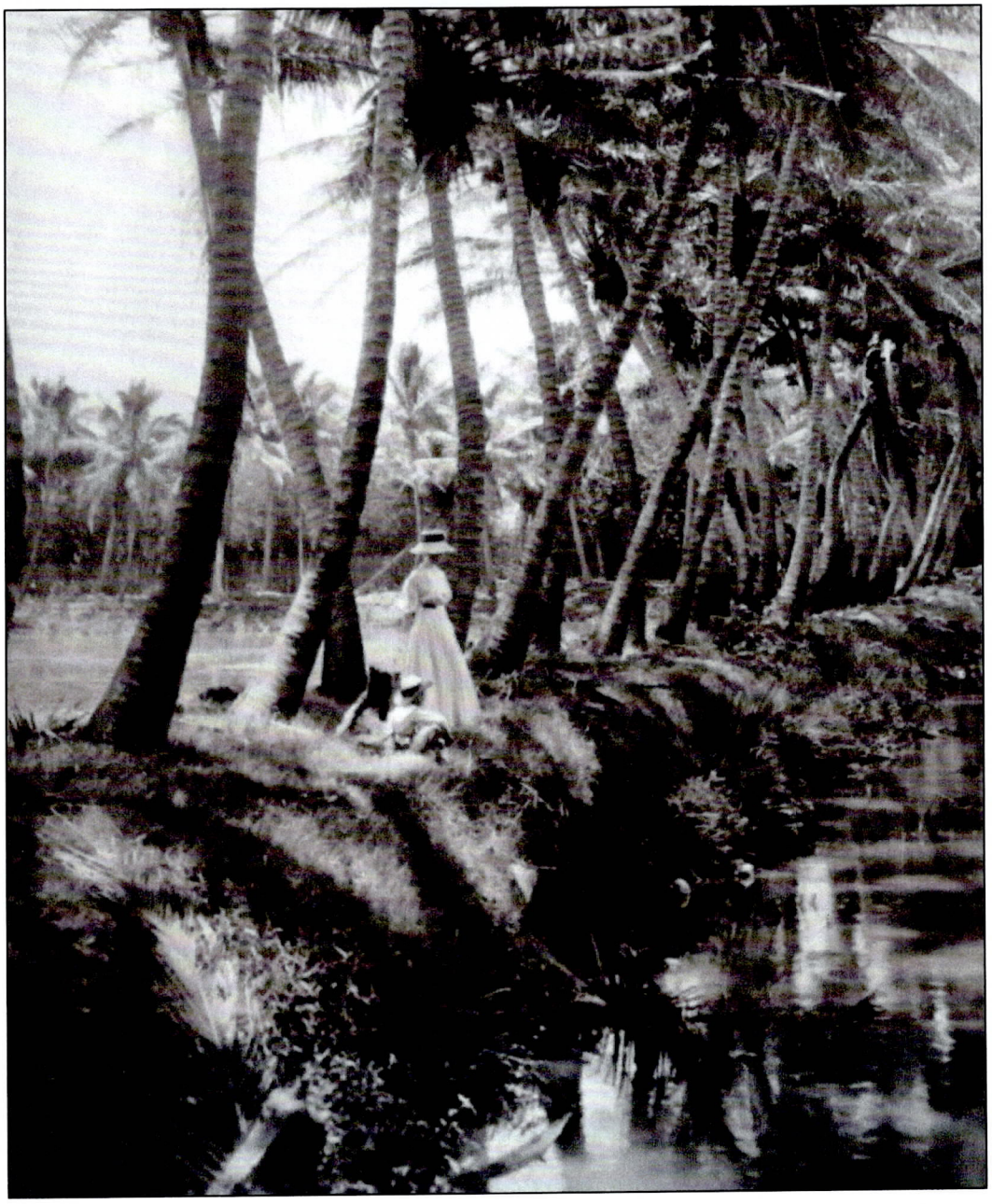


**Figure 11. Historic photograph of Kekupua Fishpond and the surrounding coconut grove ca. 1909 (Burtner 2019:103).**

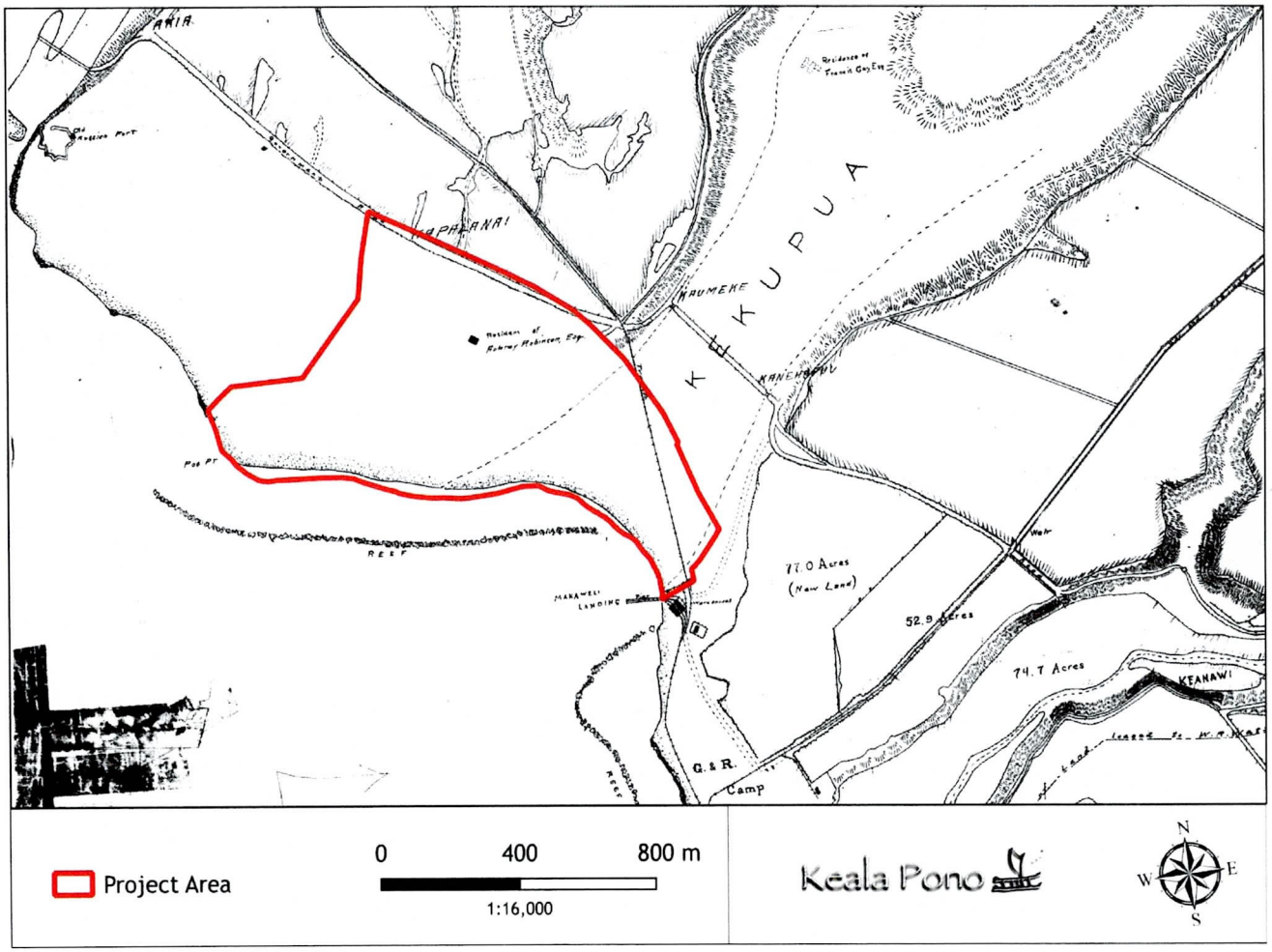



**Figure 12. Portion of a map of the Makaweli Plantation showing the project area (Alexander 1901).**

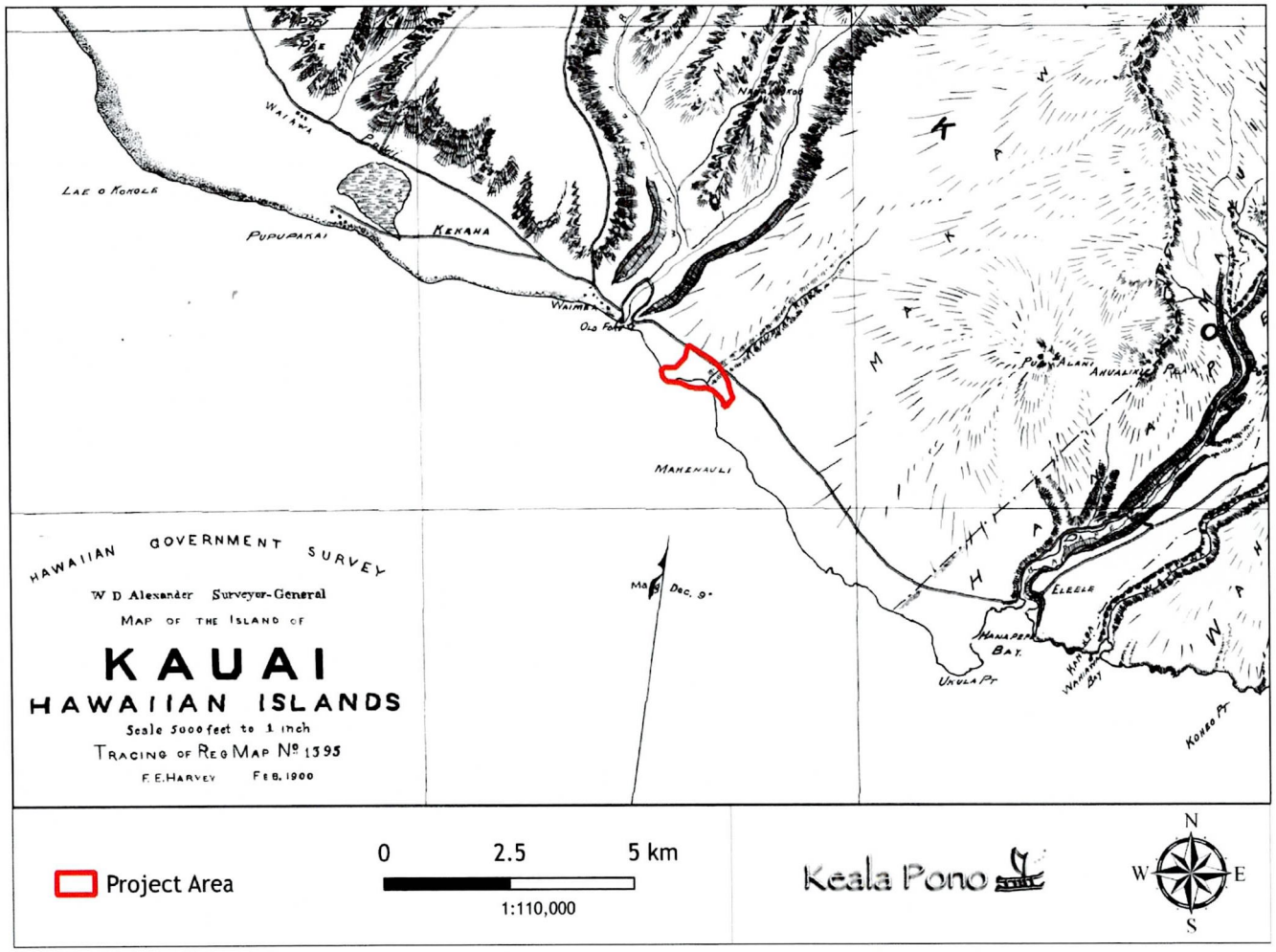



**Figure 13. Portion of a Kaua'i map showing the project area (Alexander 1900).**

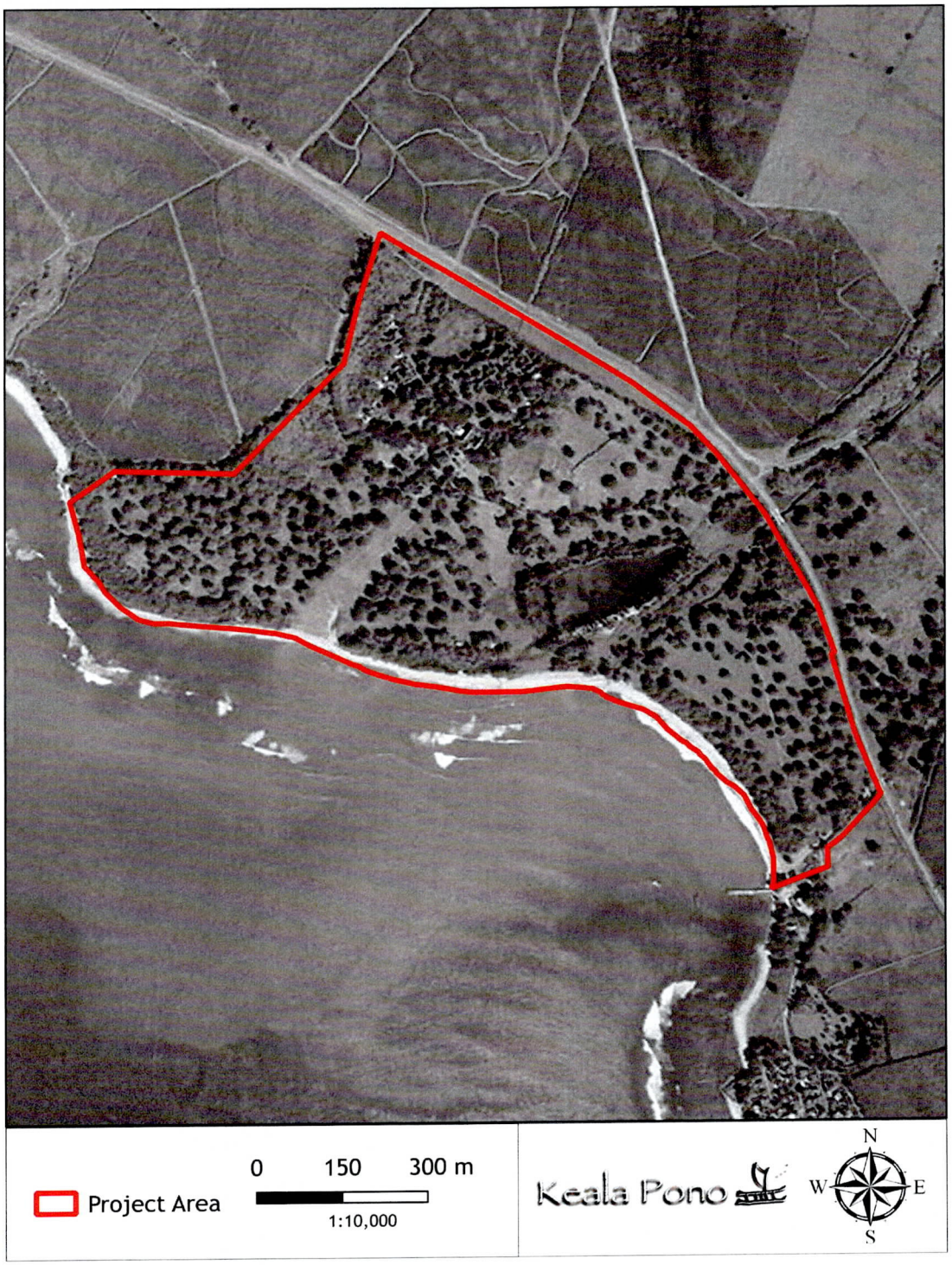



**Figure 14. Aerial photograph of the project parcel (USGS 1950).**

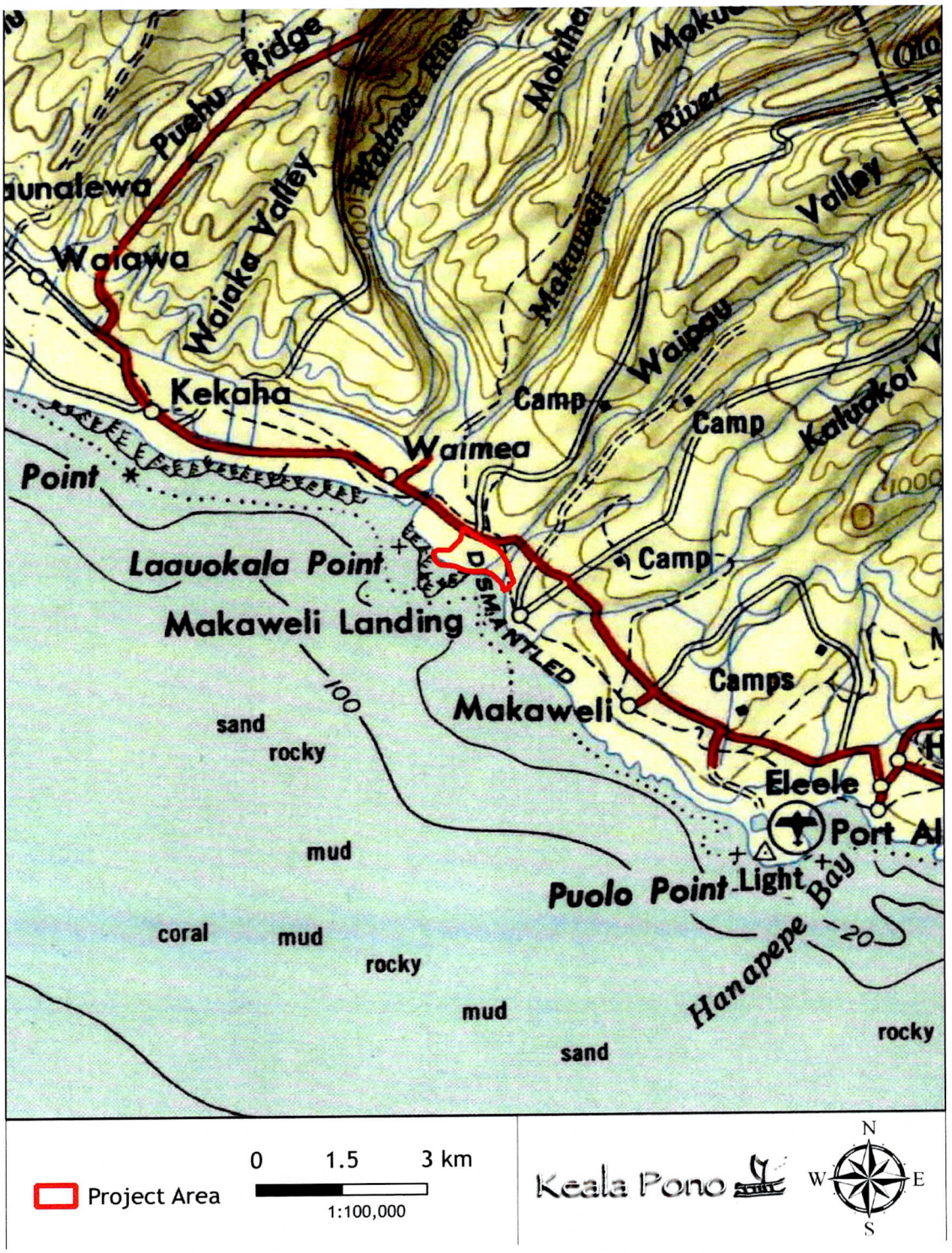



**Figure 15. USGS topographic map showing the project area (USGS 1954).**

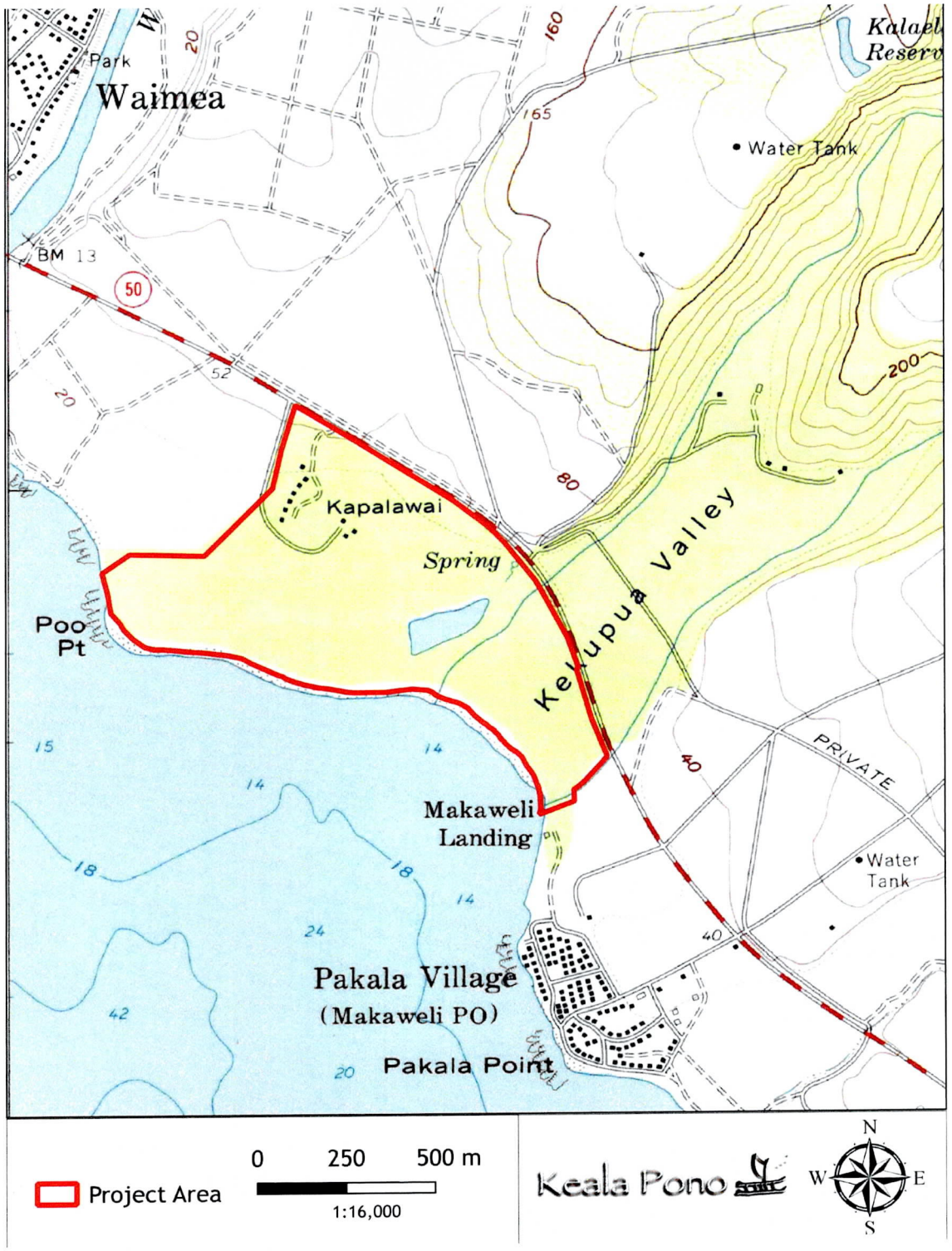



**Figure 16. USGS topographic map showing the project area (USGS 1963).**

**Previous Archaeology**

Previous archaeological surveys offer significant information regarding traditional and historic land use. Very few archaeological projects have been conducted in Makaweli, however the current study parcel is an exception with several projects carried out there over the years (Figure 17, Table 1). Archaeological sites in the vicinity with known locations are shown in Figures 18 and 19 and listed in Table 2. SIHP numbers are prefixed with 50-30-09 unless otherwise specified. The following discussion summarizes the findings of cultural resources identified within approximately 0.75 km of the project area, based on reports found at the SHPD library in Kapolei, Hawai'i and online on the HICRIS database.

The earliest archaeological survey on Kaua'i was an island-wide study that documented seven heiau in the region, none of which are near the current project area and several of which were recorded as destroyed or were unable to be located and probably destroyed (Bennett 1931:111–112). The heiau that could be documented and were not destroyed at the time of Bennett's (1931) study are A'akukui Heiau (Site 44), Kaunumelemele Heiau (Site 45), and Kuwiliwili Heiau (Site 48).

Several studies were carried out at Fort Elizabeth to the northwest of the current study parcel. An initial archaeological inventory survey was conducted at the fort over the course of three weeks, which included small test excavations in and around the fort (McCoy 1972). This was the first time the fort had been mapped in detail and four sites were recorded. The fort itself was designated as SIHP 50-30-05-01000. Subsurface excavations near the shore uncovered a pre-contact cultural deposit (SIHP 50-30-05-01001) interpreted as a habitation area and an alignment (SIHP 50-30-05-01002) believed to be a burial marker. The remnants of a concrete pillbox were designated as SIHP 50-30-09-02473.

In 1975, an additional archaeological inventory survey was conducted at Fort Elizabeth comprised of 20 test trenches east of the fort (Hommon et al. 1975). A possible imu and two pre-contact human burials were recorded. No SIHP site numbers were given.

Hurricane Iniki hit Kaua'i on September 11, 1992, severely damaging the shorelines, infrastructure, and thousands of homes. Following the natural disaster, a damage assessment was completed for historic sites within Kaua'i's State Parks, including Fort Elizabeth (Yent 1992). Recorded damage included fallen trees and destroyed vegetation across the park, collapse of a rock wall, and damage to the roof of the park restroom facility. Several large kiawe trees within the fort toppled, creating ground disturbance and damage to the interior face of the SIHP 01000 lower rock wall. The uplifted soil and roots were examined and no historic properties were observed. Major restoration to the fort wall was recommended to restore pre- and post-hurricane damage to the site.

Peter R. Mills wrote a dissertation on the historical ethnography and archaeology of Fort Elizabeth, which details the pre-contact landscape, the Russian arrival to Hawai'i and construction of the fort, as well as a summary of completed archaeological investigations (Mills 1996).

Several additional historic properties have been documented within Fort Elizabeth State Historical Park. A 10.5 m-long curved rock wall with bulldozer push at one end (SIHP 50-30-09-02464) and a 3.5 m by 2.3 m walled enclosure (SIHP 50-30-09-02466) were recorded outside the fort wall. Along the river bank, eight groups of grinding stones (SIHP 50-30-09-02465) were identified with circular depressions and linear grooves associated with sharpening and polishing of stone adzes. SIHP 50-30-09-02467 is a complex comprised of walls, a small walled enclosure, and a platform. A rock platform interpreted as a stone wharf (SIHP 50-30-09-02469) was documented at the river's edge, just mauka of a 3.5 m by 2.0 m concrete platform (SIHP 50-30-09-02468). Near Kaumuali'i

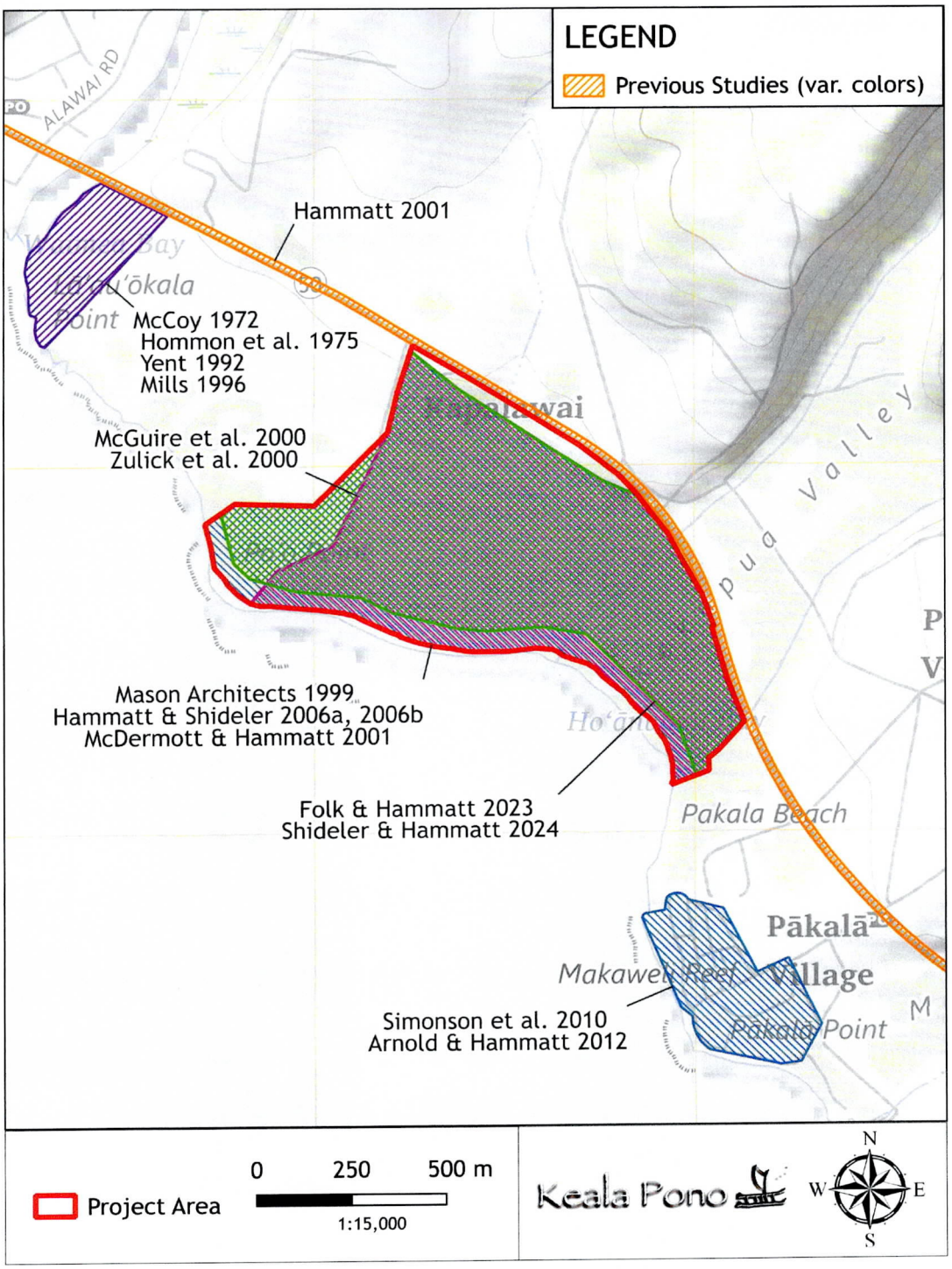



**Figure 17. Locations of previous archaeological studies within approximately 0.75 km of the project area.**

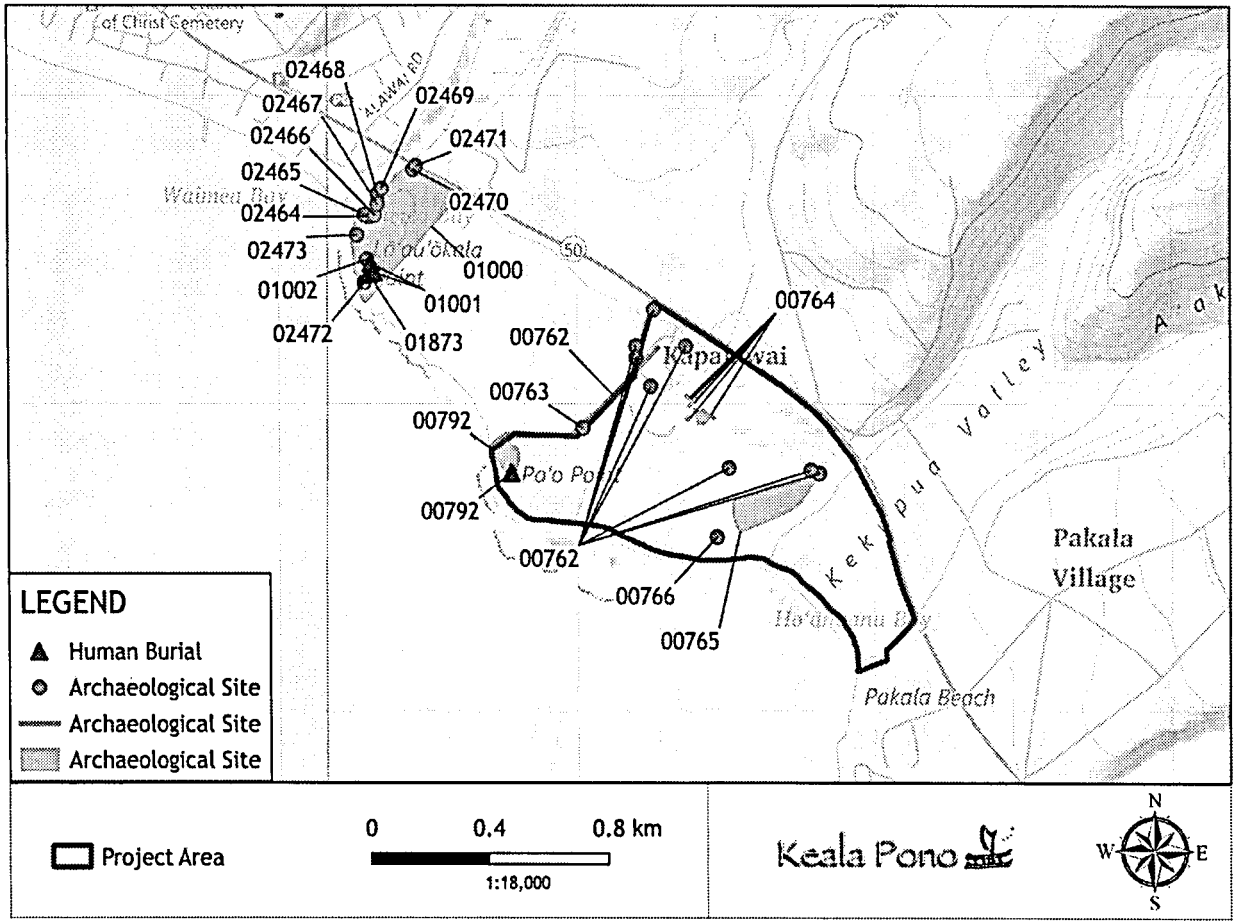



**Figure 18. Previously recorded archaeological sites within approximately 0.75 km of the project area with known locations. SIHP numbers are prefixed with 50-30-09 unless otherwise specified.**

**Table 1. Previous Archaeology Within Approximately 0.75 km of the Project Area**

| Author/Year | Location | Work Completed | Findings |
|---|---|---|---|
| Bennett 1931 | Island-wide | Survey | Documented seven heiau in Makaweli; one was destroyed and three could not be located. |
| McCoy 1972 | Pā'ula'ula (Fort Elizabeth) | Archaeological Inventory Survey | Recorded Fort Elizabeth (SIHP 01000), a pre-contact cultural deposit (SIHP 01001), an alignment (SIHP 01002) believed to be a burial marker, and pillbox remnants (SIHP 02473). |
| Hommon et al. 1975 | Pā'ula'ula (Fort Elizabeth) | Archaeological Inventory Survey | Documented Fort Elizabeth (SIHP 01000), a pre-contact cultural deposit (SIHP 01001), and an alignment (SIHP 01002) believed to be a burial marker. |
| Yent 1992 | Kaua'i State Parks | Historic Sites Assessment | Documented damage from Hurricane Iniki consisting of fallen trees that toppled a rock wall of SIHP 01000 and roof damage to the park restroom. |
| Mills 1996 | Pā'ula'ula (Fort Elizabeth) | Dissertation | Summarized the Russian arrival to Hawai'i, construction of the fort, and data from archaeological studies. |
| Mason Architects 1999 | Current Project Area | Architectural Analysis | Recorded the Robinson Family house complex (SIHP 00764) comprised of six features including the main house, guest cottage, office, garage, tack/saddle shed, and greenhouse. |
| McGuire et al. 2000 | Current Project Area | Hawaiian Traditional Customs and Practices Study | No evidence of traditional customs and practices were found for the current project area. |
| Zulick et al. 2000 | Current Project Area | Archaeological Inventory Survey | Documented six sites: a ranching/agricultural complex (SIHP 00762), a platform (SIHP 00763), the Robinson Homestead (SIHP 00764), Kekupua Fishpond (SIHP 00765), a Portuguese oven (SIHP 00766), and a pre-contact cultural layer with a human burial (SIHP 00792). |
| McDermott & Hammatt 2001 | Current Project Area | Addendum Archaeological Inventory Survey | Identified two additional features of SIHP 00762, a subsurface culvert and a pump house. |
| Hammatt 2001 | Kaumuali'i Hwy. | Archaeological Assessment | Determined that the section near the current study area had a low potential of encountering subsurface historic properties. |
| Hammatt & Shideler 2006a | Current Project Area | Burial Treatment Plan | Outlined burial treatment measures for the SIHP 00792 (Feature B) burial that was preserved in place. |
| Hammatt & Shideler 2006b | Current Project Area | Preservation Plan | Discussed preservation for the try-pot (SIHP 00762, Feature G), platform (SIHP 00763), Kekupua Fishpond (SIHP 00765), Portuguese oven (SIHP 00766), and cultural layer (SIHP 00792, Feature A). |

**Table 1. (continued)**

| Author/Year | Location | Work Completed | Findings |
|---|---|---|---|
| Simonson et al. 2010 | Pakala Village | Archaeological Assessment | No historic properties identified. |
| Arnold & Hammatt 2012 | Pakala Village | Archaeological Monitoring | No historic properties identified. |
| MKE Associates & Fung Associates 2013 | State-wide | Historic Bridge Inventory and Evaluation | Documented the Waimea River Bridge (SIHP 02351). |
| Folk & Hammatt 2023 | Current Project Area | Archaeological Literature Review and Field Inspection | Found all sites to be in a similar condition and no significant ground disturbance since the Zulick et al. (2000) study. |
| Shideler & Hammatt 2024 | Current Project Area | Literature Review | Recommended a Ka Pa'akai Analysis, consultation with the KHPRC and SHPD, and an update on the status of the previously documented sites. |

Highway, a complex was recorded near the location of a historic trail. The complex (SIHP 50-30-09-02468) consists of an enclosure, pit, alignment, and a footpath ramp with a stacked rock retaining wall. SIHP 50-30-09-02472 is a roughly stacked stone pier, probably created in the historic era with machinery during clearing for sugarcane cultivation. Just inland from SIHP 02472, a burial preserve (SIHP 50-30-05-01873) comprised of a mound of boulders was identified. No formal report or letter could be found to document these sites.

A fiber optic cable project along roughly 82 km (51 mi.) of Kaumuali'i Highway from Kekaha to Moloa'a required an archaeological inventory survey (Hammatt 2001). The project corridor was broken up into sections, each evaluated for potential of encountering subsurface historic properties and given a rating of low, moderate, high, or very high. The section which passes near the current study area spanned from Waimea River Bridge to approximately Makaweli Landing. It was determined that this section had low potential of yielding subsurface archaeological resources (Hammatt 2001:16–17).

In 2013, the Hawai'i Department of Transportation Highways Division requested a historic bridge inventory and evaluation for all historic bridges across the Hawaiian Islands (MKE Associates and Fung Associates 2013). Waimea River Bridge (SIHP 50-30-09-02351) was recorded. It is a concrete tee beam bridge designed by Engineer William R. Bartels and constructed in 1940. A set of concrete stairs (SIHP 50-30-09-02471) leading from the Waimea River Bridge provides access to the fort area from Kaumuali'i Highway. No formal report or letter could be found to document the stairs.

To the southeast of the current project area, two studies were carried out in Pākalā Village for a wastewater treatment upgrade project. A 2010 archaeological inventory survey consisted of a pedestrian surface survey and nine test trenches (Simonson et al. 2010). No historic properties were recorded and the study was finalized as an archaeological assessment. Archaeological monitoring was recommended for the area near the shoreline due to the potential for encountering human remains. No historic properties or cultural materials were observed during subsequent archaeological monitoring for the project (Arnold and Hammatt 2012).

**Table 2. Documented Historic Properties with Known Locations in the Vicinity of the Project**

| SIHP 50-30-09- | Description | Author/Year |
|---|---|---|
| 02351 | Waimea River Bridge | MKE Associates & Fung Associates 2013 |
| 02464 | Wall | |
| 02465 | Eight groups of grinding stones | |
| 02466 | Walled enclosure | |
| 02467 | Complex of walls, a platform, and an enclosure | |
| 02468 | Concrete platform | |
| 02469 | Stone wharf | |
| 02470 | Complex of a wall, an enclosure, a pit, an alignment, and a ramp | |
| 02471 | Concrete stairs | |
| 02472 | Stone pier | |
| 02473 | Pillbox | McCoy 1972 |
| 00762 | Complex comprised of walls, a terrace, a subsurface culvert, a pump house, and a try-pot | Zulick et al. 2000 |
| 00763 | Platform | Zulick et al. 2000 |
| 00764 | House complex associated with the Robinson residence comprised of the main house, guest house, office building, garage, tack room, greenhouse, and eight employee cottages | Zulick et al. 2000; Mason Architects 1999 |
| 00765 | Kekupua Fishpond | Zulick et al. 2000 |
| 00766 | Portuguese oven | Zulick et al. 2000 |
| 00792 | Pre-contact cultural layer and human burial | Zulick et al. 2000 |
| 50-30-05-01000 | Fort Elizabeth (Pā'ula'ula) | McCoy 1972; Hommon et al. 1975; Mills 1996 |
| 50-30-05-01001 | Cultural deposit and two human burials | McCoy 1972; Hommon et al. 1975; Mills 1996 |
| 50-30-05-01002 | Alignment | McCoy 1972; Hommon et al. 1975; Mills 1996 |
| 50-30-05-01873 | Fort Elizabeth burials | |

### Studies Completed Within The Project Area

An architectural analysis of the existing structures within the current project area documented the Robinson Family Residence, employee cottages, and ancillary buildings on the estate (Mason Architects 1999). The main house (SIHP 50-30-09-00764, Feature A) was designed by C.B. Ripley and Arthur Reynolds in Queen Anne style and was built ca. 1897 for Aubrey Robinson. The residence includes a main house with an attached bedroom wing and kitchen building. Other features of SIHP 00764 are the caretaker's/guest cottage (Feature B) built sometime before 1920, an office building (Feature C) constructed in the 1920s to mid-1930s, a garage (Feature D), tack/saddle shed that has since been destroyed (Feature E), and a greenhouse (Feature F). SIHP 00764 Features A–C were considered significant under Criteria B and C for their association with the Robinson Family

and in the case of the main residence, association with prominent architects. Also documented were the remains of a water tower, three sheds, and a wash house of unknown age, none of which were given SIHP site numbers.

In 2000, a Hawaiian traditional customs and practices study was completed for Kapalawai that included archival research and interviews with seven community members tied to the Robinson Family lands (McGuire et al. 2000). Respondents were mainly former Robinson Estate employees, however, Bruce Robinson, son of Lester and Helen Robinson, was also interviewed. Employees that once lived on the property stated that employees and guests had access to the land's resources if they asked permission. No evidence of traditional customs and practices was found during the study. Since a single family owned and managed Kapalawai for nearly 160 years, it was determined that ongoing traditional Hawaiian customs and practices on the property were unlikely and any cultural impact would be minimal.

In anticipation of the proposed Kapalawai Resort Project, an archaeological inventory survey was carried out at the current project area and six sites were identified (Figure 19). The study consisted of a pedestrian survey, hand excavations, coring at Kekupua Fishpond, and 23 backhoe test trenches (Zulick et al. 2000). SIHP 50-30-09-00762 has seven features (A–G) comprised of several walls and wall segments, a terrace, and a try-pot all believed to be historic in age. A try-pot is a large iron pot used to render whale blubber. SIHP 50-30-09-00763 is a 48.5 m (155 ft.) by 23 m (73.5 ft.) oval-shaped paved platform. The age and function of the site is inconclusive. SIHP 50-30-09-00765 is Kekupua Fishpond, which measures 309 m (989 ft.) by 120 m (384 ft.) and is enclosed by stacked cobbles and boulders 2–8 courses high that has been damaged in several places. The pond has several historic modifications such as a concrete gate, a pump house with a concrete slab, and portable engine pumps with PVC pipes. Radiocarbon dating of a hala fruit from 170 cmbs resulted in a date range of 895–1225 A.D. A Portuguese oven (SIHP 50-30-09-00766) constructed of mortared stone and bricks was documented makai of the fishpond. SIHP 50-30-09-00792 is a subsurface cultural layer with two imu features and a possibly complete human burial within a burial pit feature. The site is interpreted as a pre-contact A-horizon and habitation area. SIHP 00792 also contained marine shell, mammal and fish bone, basalt flakes, volcanic glass, and charcoal. The burial was encountered at approximately 140 centimeters below the surface (cmbs) under a large waterworn boulder and was left in place in accordance with the burial treatment plan (Hammatt and Shideler 2006a). The previously documented SIHP 00764 Robinson house complex was also recorded and the eight employee cottages were added as Features G–N. The cottages, which were in use at the time of the study, were made in the plantation camp style and have associated gardens, lo'i and animal pens that the residents maintained for personal use.

A draft preservation plan was produced for the try-pot (SIHP 00762, Feature G), platform (SIHP 00763), Kekupua Fishpond (SIHP 00765), Portuguese oven (SIHP 00766), and cultural layer (SIHP 00792, Feature A) (Hammatt and Shideler 2006b). SHPD requested several revisions including a 100 ft. buffer for SIHP 00763, violation penalty signage at Kekupua Fishpond, signage in the resort lobby about the archaeology and architect of the Robinson residence, a presentation of the preservation plan to the Kaua'i Historic Preservation Review Commission (KHPRC), and a meeting with the SHPD after the presentation to further discuss the plan. The preservation plan has been reviewed but not yet accepted by the SHPD and at this time, a revised report has not been resubmitted for review.

An addendum archaeological inventory survey (McDermott and Hammatt 2001) was prepared to supplement the Zulick et al. (2000) study. The addendum provided additional information on two features that were noted in the former study, but ultimately determined to be less than 50 years old and not considered historic properties. These are a subsurface culvert (Feature I) and a pump house

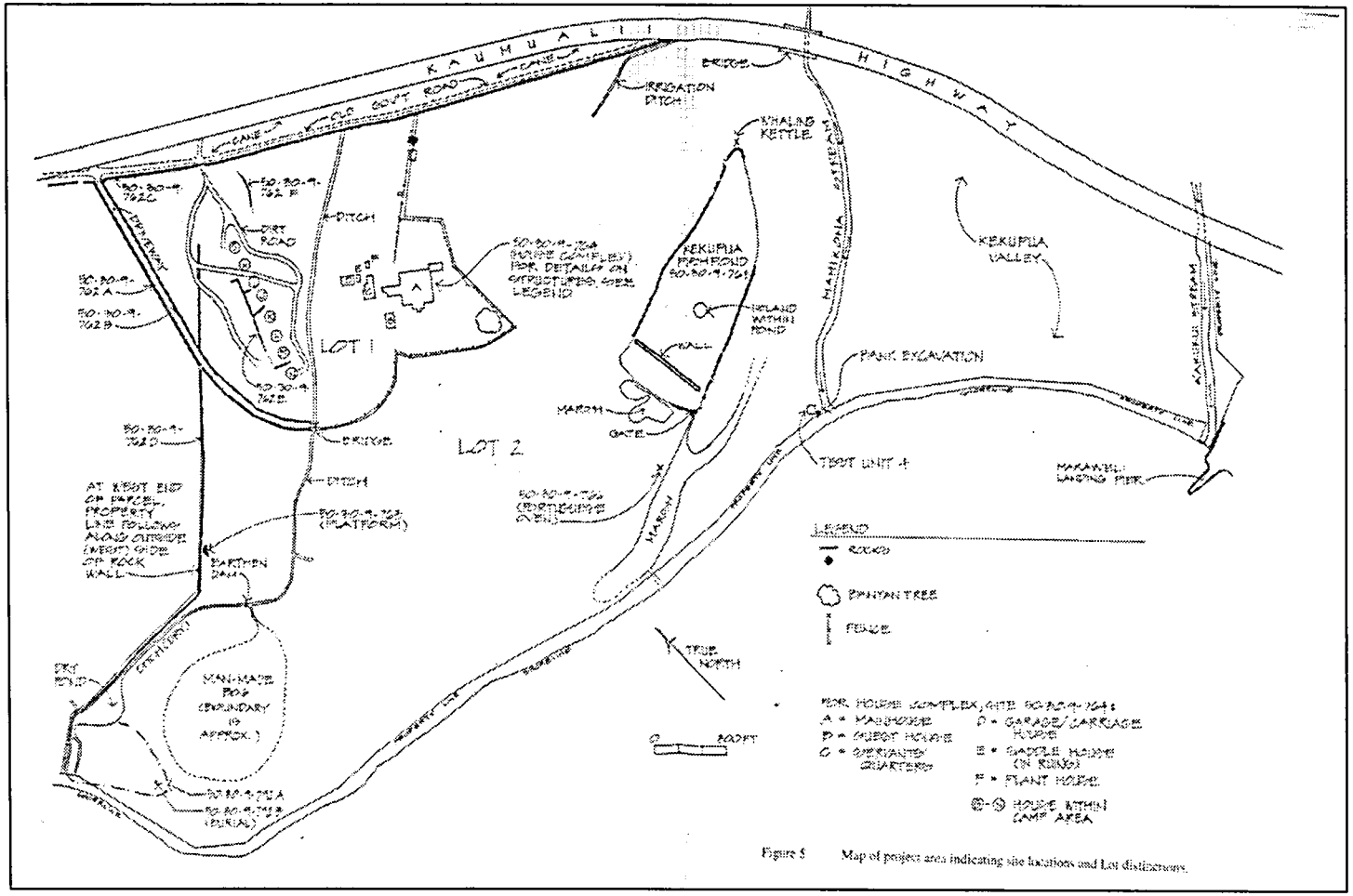



Figure 5 Map of project area indicating site locations and Lot distinctions.

**Figure 19. Archaeological sites documented within the project area (Zulick et al. 2000:5).**

with an associated pipeline and out-flow basin (Feature H). Both features were confirmed to be historic in age and were added as components of SIHP 00762. After a two decade hiatus, the Kapalawai Resort project was resumed with a new developer and a similar, but upgraded plan for the development. Since so much time had passed since the previous studies at the property, an archaeological literature review and field inspection was completed (Folk and Hammatt 2023). No significant ground disturbance was observed on the parcel and all the previously documented historic properties were found to be in a similar condition as reported in the Zulick et al. (2000) study. It was recommended to resubmit a revised preservation plan to the SHPD as well as acknowledge the prior archaeological work completed as acceptable to move forward with the Kapalawai Resort project.

The most recent work for the current project area is a literature review completed in 2024 to support historic preservation consultation with the SHPD (Shideler and Hammatt 2024). The study consisted of archival research and summaries of the previously completed work for the project. No fieldwork was conducted and no new information was provided regarding archaeological resources. Recommended next steps consisted of a Ka Pa'akai Analysis (the curent study), consultation with the KHPRC and SHPD, as well as an updated status report on the previously documented sites.

**Summary of Background Research**

Pre-contact use of Makaweli centered around cultivation along the river floodplain and unlike most areas in Hawai'i, there was a sizable inland population that had limited access to the coast. Makaweli had no shortage of fresh water with large streams and natural springs, which contained fish, shellfish, and attracted various water birds. People traveled between the neighboring districts and accessed resources using the inland trails that passed through the area. Heiau were prevalent in the region and Kekupua Fishpond (SIHP 00765), located within the project area, was reserved for use by ali'i.

The historic era saw widespread changes with the arrival of foreigners to Hawai'i, first making landfall in nearby Waimea. This was followed by the Russians constructing a fort at the mouth of Waimea River. During the Māhele, Victoria Kamāmalu was awarded the entirety of Makaweli Ahupua'a (LCA 7713K) and in 1865, Elizabeth Sinclair purchased the lands of Makaweli. The Robinson's residence (SIHP 00764) in Kapalawai was constructed in the mid-1890s. As ranching and sugar plantations were established in Makaweli, the landscape, lifestyle, and population of the region shifted. The Hawaiian Sugar Company was established, leasing large portions of Makaweli for cultivation. To support their operations, the plantation built camps for housing laborers, railroad lines, access roads, and mills to process the cane. Pākalā was developed as a plantation village to serve the growing number of workers coming to the region from around the world.

Previous archaeological studies have recorded many sites in the area and several within the study parcel. At Fort Elizabeth, walls, grinding stones, enclosures, platforms, a stone wharf, a stone pier, remnants of a pillbox, a cultural deposit, alignments, and human burials have been found. The historic Waimea River Bridge was also recorded nearby. Within the project area, a ranching and agricultural complex, platform, the Robinson residential complex, Kekupua Fishpond, a Portuguese oven, and pre-contact cultural layer with a human burial were identified. Several heiau were recorded in the region, mainly along the river, not near the current project area, and several have been reported as destroyed. As noted above, a variety of archaeological resources have been found in Makaweli and its environs. All of the previously documented historic properties within the project area almost certainly remain and it is possible that additional surface and/or subsurface historic properties will be encountered during ground disturbance related to the resort project.

## ETHNOGRAPHIC SURVEY

Not all information is found in the archives, in textbooks, or at the library. Rather, it is in the stories, knowledge and experiences of our kama'āina and kūpuna, that important information is kept. Through ethnographic research we are able to better understand the past and plan for our future. With the goal to identify and understand the importance of, and potential impacts to, traditional Hawaiian and/or historic cultural resources and traditional cultural practices of the project area in Kapalawai, Makaweli, ethnographic interviews were conducted with community members who are knowledgeable about the area.

### History of Ka Pa'akai Analyses

The Hawai'i State Constitution (Art. XII §7) maintains that:

> The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

Several fundamental court cases inform on the history of the Ka Pa'akai Analysis. The first of these occurred in 1982 with *Kalipi v. Hawaiian Trust Company, Ltd.* in which a Native Hawaiian landowner on Moloka'i (Kalipi) required access to undeveloped land for gathering rights. Kalipi claimed that because he owned land in the ahupua'a, he should be allowed access for gathering in that ahupua'a, as was customary in pre-contact Hawai'i. The Court determined that "lawful occupants of an ahupua'a may, for the purposes of practicing native Hawaiian customs and traditions, enter undeveloped lands within the ahupua'a to gather those items." The Court recognized that allowing access to private property for gathering purposes might conflict with the modern concept of fee simple land ownership and recommended that this issue should be determined on a case-by-case basis (Jarman and Verchick 2003:208).

A key term in *Kalipi v. Hawaiian Trust Company, Ltd.* is "undeveloped," as this prevents occupants from accessing developed property for gathering purposes. In a discussion of this and other relevant legal proceedings, Jarman and Verchick 2003:209 state that:

> In the case of "fully developed" land, the court suggested that the burden of providing cultural access might prove unreasonable. But where a project was still in the planning stage, that is, "less than fully developed," a planning commission might be required to forge a compromise in which both native Hawaiians and resort guests could happily share the land.

A decade after *Kalipi v. Hawaiian Trust Company, Ltd.*, in 1992 *Pele Defense Fund v. Paty* was initiated for entry into the Wao Kele 'O Puna Forest Reserve by tenants of the neighboring ahupua'a to "exercise traditional and customary rights" in the reserve. This tested the statement in *Kalipi v. Hawaiian Trust Company, Ltd.* that specifically limited access to "lawful occupants" of the ahupua'a. In *Pele Defense Fund v. Paty*, the Court rejected the idea that traditional gathering rights are limited to the ahupua'a by the lawful occupants of that ahupua'a and affirmed that these rights derive not solely from land ownership but also from the established customs observed by Native Hawaiians.

In 2000, *Ka Pa'akai O Ka 'Aina v. Land Use Commission* laid the framework for the Ka Pa'akai Analysis by determining "what analysis state and county agencies [must] undertake to ensure they adequately balance private property rights with native Hawaiian gathering rights" (Jarman and

Verchick 2003:210). This case originated over the dispute of a Land Use Commission (LUC) determination to reclassify 1,000 acres on Hawai'i Island from a Conservation District to an Urban District, in response to expansion of a resort. This expansion was in direct conflict with Native Hawaiian practices that were taking place on the land, and the LUC made a general statement that the developer should "preserve and protect any gathering and access rights of native Hawaiians." It was argued that these minimal initiatives were insufficient, resulting in the *Ka Pa'akai O Ka 'Aina v. Land Use Commission* case. The Court did find that the statement made by the LUC was insufficient, and they established a standard for the LUC to adhere to when cultural land-use rights were in question. The Court delineated three points that the LUC is required to consider when formulating their findings and conclusions:

> (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; and (3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist.

In other words, the Ka Pa'akai Analysis was designed to identify any cultural resources or practices that may occur in the project area, determine if the proposed project will affect the resources or practices, and offer mitigation recommendations to protect Native Hawaiian rights if the project moves forward.

**Methods for the Ethnographic Survey**

This Ka Pa'akai Analysis was conducted through a multi-phase process from May to June 2025. Guiding documents for this work include The Hawai'i Environmental Council's Guidelines for Assessing Cultural Impacts, A Bill for Environmental Impact Statements, and Act 50 (State of Hawai'i). Personnel involved with this study include Windy McElroy, PhD, Principal Investigator of Keala Pono Archaeological Consulting, and Gina McGuire, PhD, Ethnographer.

Interviewees were selected because they met one or more of the following criteria: 1) was referred by Keala Pono Archaeological Consulting, Kerzner International Management Services Hawaii; 2) had/has ties to the project area or vicinity; 3) is a known Hawaiian cultural resource person; 4) is a known Hawaiian traditional practitioner; or 5) was referred by other cultural resource professionals. Five individuals participated in the current study. Mana'o and 'ike shared during these interviews are included in this report.

Interviews were conducted via telephone or videoconference and taped using a digital MP3 recorder. Prior to the interviews, each person was provided with a map or aerial photograph of the subject property, the Agreement to Participate (Appendix A) and Consent Form (Appendix B), and briefed on the purpose of the Ka Pa'akai Analysis. Oral consent was obtained at the onset of each interview. Research categories were addressed in the form of open questions which allowed the interviewee to answer in the manner that he/she was most comfortable. Follow-up questions were asked based on the interviewee's responses or to clarify what was said.

Transcription was completed by listening to recordings and typing what was said. A copy of the edited transcript was sent to each interviewee for review, along with the Transcript Release Form. The Transcript Release Form provided space for clarifications, corrections, additions, or deletions to the transcript, as well as an opportunity to address any objections to the release of the document (Appendix C). When the forms were returned, transcripts were corrected to reflect any changes made by the interviewee.

A total of 25 individuals were contacted, resulting in five interviews (Table 3). The ethnographic analysis process consisted of examining each transcript and organizing information into research themes, or categories. Research topics include connections to the project lands, history of the area, the natural environment and cultural practices, change through time, archaeological sites, and concerns and recommendations for the project. Edited transcripts are presented in Appendices D through H.

**Table 3. List of Individuals Contacted**

| Name | Connection | Method of Contact | Result of Contact |
|---|---|---|---|
| Kunane Aipoalani | Kūpuna, former Kaua'i Island Burial Council Chair | Phone | No response |
| Liberta Albao | President, Queen Deborah Kapule Hawaiian Civic Club | Email | No response |
| Chucky Boy Chuck | Executive Director, Kaua'i Museum | Email | No response |
| Leimana DaMate | Executive Director, Aha Moku Advisory Committee | Email | No response |
| Dennis Eguchi | West side lawai'a | Email | No response |
| Phoebe Eng | Chair, Kaua'i Environmental Health Network | Email, Phone | Recommended other knowledge holders |
| Mike Faye | Family ties & plantation history in Waimea | Email, Phone | Videoconference interview completed |
| Maureen Fodale | Board, Friends of King Kaumuali'i | Email, Phone | Recommended other knowledge holders |
| Kamakana Ferreira | Office of Hawaiian Affairs Lead Compliance Specailist | Email | No response |
| Leinā'ala Jardin | Kumu hula, Hālau Ka Lei Mokihana o Leinā'ala | Phone | No response |
| Missy Kamai | Kaua'i Archaeologist, Cultural Surveys Hawai'i | Email | No response |
| Billy Kaohelauli'i | Kona Representative, Aha Moku, Kaua'i | Email | No response |
| Peter Mills | Anthropologist, completed research in Makaweli | Email | Recommended other knowledge holders |
| Keao Nesmith | Hawaiian Linguist, Lifetime Kekaha Resident | Email | Videoconference interview completed |
| Thomas Nizo | Grew up in Kapalawai, kua'āina of Pākāla, Ni'ihau descendant | Phone | Phone interview completed |
| Pua Rossi | Hawaiian Studies, Kaua'i Community College | Email | No response |
| Kaliko Santos | Office of Hawaiian Affairs Beneficiary Services Agent, Kaua'i | Email | Recommended knowledge holders |
| Susan Somers | Family ties to Kapalawai | Phone | Phone interview completed |
| Aubrey Summers | Kaua'i Historic Preservation Commission | Email | No response |

Table 3. (continued)

| Name | Connection | Method of Contact | Result of Contact |
|---|---|---|---|
| Ka'āhiki Solis | SHPD Cultural Historian (O'ahu, Kaua'i, Ni'ihau) | Email | Recommended other knowledge holders |
| Kane Turalde | Aha Moku o Kaua'i | Email, phone | No response |
| Randy Uyehara | Waimea kalo farmer, kūpuna | Phone | Declined |
| Puni Wai'ale'ale | Kumu hula | Email | Phone interview completed |
| Randy Wichman | President, Kaua'i Historical Society | Phone | No response |
| Naomi Yokotake | President, Moku o Manokalanipō | Email | No response |

## Interviewee Background

The following section includes background information for each interviewee, in their own words. This includes information on the interviewee's 'ohana and where the interviewee was born and raised. The interviewees are Mike Faye, Keao Nesmith, Thomas Nizo, Susan Somers, and Puni Wai'ale'ale.

### Mike Faye

My name is Mike, Michael Faye. Born in Waimea, Kauai. Um, came through St. Theresa School in Kekaha. Ended up going to Hawai'i Prep Academy on the Big Island and then study a year of architecture at Carnegie Mellon University in Pittsburgh, Pennsylvania. Ended up coming back to Kauai and bummed around here for a year or so and then wound up at University of Hawai'i at Mānoa with a degree in business finance.

My father was, uh, Alan Faye Senior. He was the manager at Waimea Sugar Mill Company. A little family owned, uh, around a thousand-acre sugar plantation. Uh, his father was uh, HP Faye, my grandfather and HP was one of the founding members of Kekaha Sugar, of, Kekaha Sugar Company. And the reason he was here in Hawai'i, he immigrated from Norway. He came from the request of his uncle, Vladamir Konustan, who was konohiki of the Waimea district from, I don't know, someplace in the 1850s, because that, I think, the late 1890s. I'm not sure about those dates.

### Keao Nesmith

I was born Waimea, raised in Kekaha, Hawaiian Homestead land. My mom is Hawaiian. She's originally from Hilo. My dad is haole from Texas and uh, seven of us in my family. Seven of us kids and uh, I am number six in the family.

### Thomas Nizo

Thomas Nizo, well, Thomas Milimilinakalawelioihelua Nizo. 53 years old. Grew up in Pākalā, Makaweli, and Kekaha, Kaua'i.

Okay, so, both grandparents... moved out from Ni'ihau to Kaua'i to work on, you know, Makaweli Sugar Company, Olokele Sugar Company, but both sets of grandparents, both from Ni'ihau, both grandfathers worked as security for the Robinson family, was my mom's dad, and my dad's dad was the priest or minister for the Robinson family on Ni'ihau and served as the, I think, like the, general labor, but they migrated, migrated back to Kaua'i, ah, probably, I was in the '70s, so probably, like in the '50s, yeah, the '50s or '40s, came back to Kaua'i. And then, you know, they had my, both sets, both my mom and my

dad were born here on Kaua'i, so, yeah, so like, I think about the '40s or '50s they came back here to, to uh, Kaua'i, so, one set of my grandparents, uh, just, not too long ago, maybe 20 years ago, they used to live in Kekupua, which is the upper side of Makaweli and Kapalawai, but my parents, my dad, and my mom, um, we used to live in Kapalawai.

**Susan Somers**

Okay, my name is Susan Somers. I was born in Albuquerque, New Mexico. I went to the University of New Mexico where I majored in fine arts. I met my husband David Somers when he was also studying at the University of New Mexico. David is a direct descendant of Aubrey Robinson. We were married in, 19, 1974 and moved to Hawai'i so I've been in Hawai'i for 50 plus years.

**Puni Wai'ale'ale**

Okay, my legal name is Sherri Kawaiho'onani Wai'ale'ale. And I was born and raised on O'ahu, went to Kamehameha where I grew my love for the language and the culture, went to UH Hilo and majored in Hawaiian Studies and then, got hāpai and moved to California. I lived there until my son graduated from high school and then moved back to Kaua'i in 2009. That's basically how I got to Kaua'i. I immediately continued my kumu hula training on the west side with my kumu hula Doric Kaleonui Yaris, until he passed away in 2014.

## Topical Breakouts

The following sections are extended quotations from the interviews, organized by topic. Interviewees provided information on connections to the project lands; the historical background of the project area; the natural environment and cultural practices; the archaeological sites; and changes to the area over time. They also shared their concerns and recommendations for the proposed project.

### Connections to Kapalawai and the Surrounding Area

There's a little, a little town... Probably like six houses in that Kapalawai area, uh when I was growing up, so I probably grew up in that little town, or that little housing village, maybe until fourth grade I think. In Kapalawai... Lived there, played there, I was kolohe there, catching chickens, learned how to ride a bike, uh, yeah, went down surfing on the, on the coast, because Kapalawai, like, borders the bay, and, you know? We used to get on our boogie boards and just ride the stream, the little river down to the beach, you know? Learned how to lay net there with my grandparents, both sides. [Thomas Nizo]

My husband is David Somers, his mother is Lois Robinson Somers. Her father was Selwyn Robinson and Selwyn's father was Aubrey Robinson whose house was at Kapalawai, he built at Kapalawai.... I worked for Dan Robinson starting in 1988 and um, when someone wanted to tour the, Aunty Eleanor, excuse me, I started in '80, yeah, '88. And when Aunty Eleanor died, um, she was the last person to live in Kapalawai, and if somebody needed to go through, they would ask me to take 'em through. So I would ask questions of family members and learned a lot about the house and the people that were there. Um, uh, I've been part of the family, I guess, for 50 years and you know, when you, when, we've been here for at least that long. [Susan Somers]

I still continue to teach them (the kūpuna students of kumu hula Doric Kaleonui Yaris) until this day in Waimea. And I am also the kumu for the Kaua'i Museum's hālau in Līhu'e named Na Wāhine o Waimakua. I started working for Gay & Robinson in 2012 part time and full time in 2015 where I am now taking care of their plantation housing. That's basically my background and where I have received the information I would share with you regarding Makaweli and Kapalawai... Through my employment at Gay & Robinson I live in Makaweli and I have been able to go to Kapalawai to check on the big house or to

take contractors and visitors. That's been special because it isn't accessible by many people. [Puni Wai'ale'ale]

When I was a kid there were a few times where we, I went with my parents to go visit, uh, family friends who were living in the houses on the mauka side of the highway. So I've been up and down to those houses, area on the mauka side. [Keao Nesmith]

Well, first of all, that's across the river. And that's Robinson property and Robinson property was always off limits. Um, so as far as you know, deep history there, I don't know if I have a deep history although we have numerous pictures of Faye family kids, you know, from the 1890s to the early 1900s visiting and playing and socializing with the various Robinson and Sinclair families. Um, in, yeah, their property on Ni'ihau. But you know, nothing, I don't have anything from, actually, um, Kapalawai itself. I did, one of my, hānai father, was Eddie Duarte, who worked for the Robinsons for a long time and his home was in Pokala Village. And I would visit with him a lot and that's probably where I learned the most about the Kalalau, Kamakuahine, or you know, that whole area. [Mike Faye]

Also, when I was a kid, I had an interest in historical things and Hawaiian culture, artifacts, and such, and I recall doing, eighth grade, I think it was eighth grade, science project, for some reason I decided to map the Russian Fort. [Laughter] So I kind of mapped it. I don't know where the heck that thing is anymore, but I did. You know, I always had an interest in the Russian Fort, and they call it Pā'ula'ula now. For good reason. And, um, was very interested in Peter Mill's book, Hawai'i's Russian Adventure. And the conclusions that he came to, uh, as far as the background, on Pā'ula'ula area and how it, how, I think, I believe, that it extended, the royal compound, basically extended in Kapalawai and into that. That's why the fishpond is there. Yeah, that's kind of my connection. [Mike Faye]

The times that I did go, it was more to spend time and I was with friends. Plus, throughout my life I've had lots of friends in the village just next and uh, so I have spent lots of time growing up with my friends at their homes over in the village just next. So from there I've been able to look over, you know, and such. [Keao Nesmith]

### History of Kapalawai and the Surrounding Area

I am aware that, for example, Queen Lili'uokalani did her tour around Kaua'i, well she did a couple tours, each time, she went, so I think that's two times. I could be wrong but I think it's two times. Um, while she was queen. I know one was while she was queen, another might be when she was princess. Um, stayed there, so that would have been Sinclair family property at the time. And she actually stayed there, uh, on her island tour and then from there they went to Ni'ihau and then to Nihoa on the tour. But before and I think on the way back they stopped there and stayed there as well, her entourage. [Keao Nesmith]

The story of Queen Lili'uokalani should be expanded upon. If you want I can help provide that because they were reported on in the Hawaiian language newspapers and that's where I read about it. [Keao Nesmith]

... I got to spend time with Aunty Aletha Kaohi. She would take me to blessings that she would do, like at PMRF, mostly, and she had so much love for our ali'i. Learning from her was definitely a blessing, and she told me that that place was bought from Princess Victoria Kamāmalu, Kamehameha's granddaughter. But also Ka'ahumanu's daughter. And that, to me, just blew my mind. How did that happen? [Laughter] But being owned by Kamāmalu, surely that place must have been frequented by ali'i, especially since they didn't find any burials. When Gay & Robinson first planned for the resort they were required to do studies to make sure there weren't any unknown burials. Susie Somers said contractors dug holes to look for iwi kūpuna, but they couldn't find any. So, wouldn't that possibly mean, that ali'i used that area to at least vacation or rest there in that area. Otherwise, people would

have been buried there and there would have been communities there I would think. And I felt that that was interesting. [Puni Wai'ale'ale]

Um, you know, if you read the logs of the early people, or the Westerners coming here, there is no way in hell that they convince commoners to paddle his canoe across the river. And, you know, got Pā'ula'ula. So you know, we got to understand that that was a pretty significant place. And by expansion, you know, the compound, and what kept them fed and everything, the fish in the fishpond. I don't know of specific sites or stories but, I would be, extremely careful on, or I'd be extremely diligent in uh, doing the historical inventorying and, you know, study of that area. Just because the significance, again, of those kings, up to Kaumuali'i, yeah? [Mike Faye]

So I learned that Kamehameha IV heard the family wanted to leave so he offered to sell them land but then he passed away before the deal was complete, so the family finalized the deal with his older brother, Kamehameha V. Kapalawai is so close to Pā'ula'ula too, that I wonder, did Kaumuali'i spend time there? You gotta wonder. But it must have been so dry there before sugarcane, before the Robinsons started doing their Hawai'i Sugar Company and Olokele, and all of that water got brought down from the valleys above. [Puni Wai'ale'ale]

Yeah, so Captain Cook lands there and they note the, I'll read Peter Mill's book, *Hawai'i's Russian Adventure*, but basically you know, the sailors, came in, there's a large community on the Waimea side of the river and they hike up and they see the Menehune Ditch and they talk about that, but they see the structure on the other side of the river, and this is the Pā'ula'ula Heiau. And you know, royal complex, and uh, they try to get the Natives to take them across. [Laughter] No amount of nails or knives or anything like that could convince any of the maka'āinana to cross the river. You know, to go there. My other connection, I guess I have to the Pā'ula'ula site, is that, the Faye family owned, well still owns, a member of the Faye family owns, the um, Gulick-Rowell house, an early missionary home on the Waimea side of the river but, you know, by the time the missionaries got there in 1820, what is that 40 years or so after, Kaumuali'i is way more relaxed, and invites them to construct their homes there next to his re-modeled heiau, now called the Russian Fort. Um, so you know, there's, there's that huge chunk of history there at, at that Russian Fort slash Pā'ula'ula site that I believe extends down all the way over to the Kapalawai area. [Mike Faye]

Just thinking that maybe Kaumuali'i used to spend time there, because of its location being so close to Pā'ula'ula, would be really cool if you could find that out. But maybe Aunty Aletha's family would know, like her daughters and granddaughters? [Puni Wai'ale'ale]

... [Y]ou can look at it from both ways, right? It's, are they just being sugar, sugar tycoons and keeping, keeping people out, right, and then you can look at it as man, they did it. They've been doing a great job on preserving an area like that. And especially Ni'ihau, right? That's one of the concentrated points of Hawai'i that has their own dialect of Hawaiian and probably Hilo, Hawai'i Island has their own dialect too, but you know, they have a whole island, that they always speak that and that's a cool thing. [Thomas Nizo]

### The Natural Environment and Cultural Practices

Fish, gather, at that bay, and then, uh, yeah, so, those, those were good times. Simple, good times... Oh, 'āholehole, nenue, uh, you know, the, 'ō'io, 'ōpio, yeah, all the regulars. [Thomas Nizo]

So it's uh, you know, access to the fishpond, potential fishpond, because it's privately owned, um, we can't just go there so it's just stuff you hear about. And... there's a lot of mystery involved in that area. For me, the only access been to walk the trail to get to the surf spot. And growing up, we used to be, it used to make us nervous, made me nervous to

walk that trail because there used to be bulls over there and sometimes they would chase. So that's always the warning is if you're gonna walk, Pakala's, the surf spot and walk the trail, watch out for the bulls. Uh, but that's the character of the place, you know? It kind of represents the wild character of the place, the natural character of the place. So there is a certain sort of romantic association about the place because it's so rural. [Keao Nesmith]

I don't know about at Kapalawai, because that's pretty far if you don't have access to it. But in the villages where people live, and the beaches at the bottom of Kaumakani people are always going fishing there either walking in or going in with a four wheel drive. When there are fishing tournaments we get calls from organizers and competitors asking for the gates to be left open overnight. So I would say yes, the fishing is still good. [Puni Wai'ale'ale]

I know we used to, we, like I said, my grandfather was one of the security guards at Ni'ihau, so when he came here, he was kind of afforded the same liberties, so he had kind of like a master key. So, we used to camp inside, like I said, go, you know, lay net, 'upena moi, and then we used to and get kiawe for imu and just pūlehu and stuff like that. We used to just gather, when we went in there we used to just gather kiawe. That wasn't super plentiful in that area at that time. Outside of that, just, just fishing and, uh, yeah, just fishing and limu and stuff like that. [Thomas Nizo]

The surfing is the best on the west side. Yeah, even the surfers renamed the surf break there, they call it Infinities, because the ride is so long. [Puni Wai'ale'ale]

So you can only assume that it was a very rich area. Even today, it's like it can be dry, um, on the kula, you know the plains, left and right, east and west of the gulch. But the gulch is always green. So, it, it's a very favorable place for living, uh, especially back in the, back in the days, I would say. What I mean by that is 1950s and earlier. [Keao Nesmith]

Limu kohu, and then the big squishy one, what they call pokpoklo, but I think this is a green spongy one, I don't think it's called... I forget what it's called, everybody called it pokpoklo. It's super squishy ad very thick and green, dark green. [Thomas Nizo]

There aren't any current cultural practices in the area. There has not been since 1864 when the family purchased the property. So, um, you're talking, what is it, one hundred and twenty five years, something like that? There's only been cultural practices of the family [laughter] if you will. Not the community at large, it would have been the family. And, and, that had, that lived there. [Susan Somers]

So them holding down that space, yeah it's their rules and their time, but if you can live within those rules, which I've lived between those means for the last 53 years of my life and I don't intend to leave, even though, even though I own three houses on the outside. I still pay rent over there, because that place is special. I have two smokers and one imu and a 25 by 50 commercial kitchen to kill cows, pigs, chickens, sheep, goats, you name it, we kill it and we eat it, smoke it, in the imu, whatever. [Thomas Nizo]

People fish along the shoreline, you know, that's pretty much it. But you know, the Robinson family had been very private about that kind of stuff, so permission to get on that land is um, you know, always by an invitation, or by special request only. [Mike Faye]

I did work on the boats for the boat companies before, that would take tourists to Nāpali side. So every day we would go to work on the water, we would pass this area... you know, it's not, uh, it's not a nice beach, it's not a nice beach. It's always murky, always muddy. So for whoever stays on the beach, you're not staying in a beautiful white sand beach with ideal conditions and clear water, and you know, not at all. It's actually brown, murky water. Lots of, what do you call, river mouth sediment, in that area. Shark attacks happen maybe, if not every year, every other year, somebody gets a nibble or worse in the area. So yeah, it has all of those things going. [Keao Nesmith]

They occasionally, people will walk along the coastline and the, the above, they're allowed, as you know, from the high-water mark to the ocean, to walk along and there will be, locals will be fishing off there. But it's not a very good fishing area. Occasionally you'll see people walking along but it's mostly just for exercise, it's not really a fishing area anymore. And the fishpond is, I doubt if it has any fish in there at all. [Susan Somers]

They call that (the surf spot), they call that Lefts I believe. Because it's yeah, and they might call it PK's, some guys might call it PK's, some guys call it Lefts. But yeah, so even like right now, I live in Pakala. I mean in Makaweli, Pakala. My house is the break. Right, but, so you, when used to come down with our boogie boards on the stream to where the ocean, we just boogie board in that bay but the break is a little outside of that, behind my current house now. So Kapalawai kinda sits on that bay, you know and the bay wraps around if you go back north, wraps through Pā'ula'ula and then if you go south it wraps through Makaweli or Pakala. [Thomas Nizo]

Current cultural practices. The only current cultural practices we've been allowed because it's been private property is surfing. I don't know what other kind of things. I believe there was an effort some years ago by community members to go and restore the fishpond area but I guess that is, the fishpond itself, I think, I don't know, is property of the Robinsons too. Yeah, I just don't know. [Keao Nesmith]

Okay, gathering rights, as far as I know there was, because the, the pre- the family I wouldn't know. Once the family was there, it, they pretty much probably would have had cattle or sheep in the front pasture, um, that wouldn't have been, horses also, there was a horse and buggy there, in, at the house that they used to go into Waimea for church, uh, there, it was not used. It was their private property and so therefore there wasn't anything that would have been used for ancient, cult—, ancient gathering rights or any kind of Hawaiian um, rights of any kind. [Susan Somers]

I know that he [Peleke Flores] was asked about this one and about maybe bringing it back because he has for others and I know that he visited the area. He went to that fishpond at Kapalawai to take a look, I think to see if he wanted to take on that endeavor. And so I bet he could probably just look and know. Yeah, 'cause he's well known for restoring loko i'a and not only loko i'a, but just building, walls, with rocks. He also redid ka Lua Kupapa'u o Nohili, the crypt at Mānā. He redid that and yeah he's just a master with rocks. [Puni Wai'ale'ale]

Yeah, so back in, when we used to go camping over there, like I said, my grandfather, my grandfather had some of those liberties because he was the security on Ni'ihau, he um ,we used to go over there and camp in Alehua, not Alehua, is it Alehua? No. Ahhh, I forget the name, it's not Alehua. But anyway... we's camping over there and we just walk, we're walking down the ways through the bushes and set your hook up, catch a pig, bring it to the beach, you know, tie it up, burn it, take all the hair off of it, and just imu that thing right down on the beach. So lot of feral pigs, even 'til today. Yeah. [Thomas Nizo]

I'm not aware of any cultural practices other than that the king lived nearby. [Susan Somers]

### Archaeological Sites

Going onto the property and seeing where the fishpond is, is another interesting thing to me. Fresh water so close to the beach and wondering how long did the family keep it going? 'Cause it was a working fishpond when they first got the land and they had maintained that for a while and then eventually used the water for irrigation because it was so dry. And when you think about that now, you're like, "What?!" [Laughter] I don't know, did they not like fish? Maybe they were more meat eaters with the cattle and the sheep that they were bringing in. [Puni Wai'ale'ale]

And I was a kid at the time, but I remember how nice and green it was, how lush it was compared to the surrounding areas. So I'm sure there must be a lot of material in the historical record of house sites and things there. [Keao Nesmith]

Back when it was first going to be a resort, we had an archaeological survey done. Um, I believe at the time, and you'll have to look up the dates because I've left since then. They, they were required to do six holes along the ocean and the, the ocean front of the property is a little over a mile, I believe, mile and a half, maybe, and they dug six holes and found no bones of any kind and they, I believe, they ended up doing 27 holes because they couldn't believe that there were no, um, burials, and they finally found burials on the far western side of the property where they noted them and they were re-buried. [Susan Somers]

Towards the beach in the sand in the corner towards the ocean side in the corner there. They're marked on the maps that they made at the time and are notated as an important archaeological site but that was the only iwi that they found. [Susan Somers]

Yeah, so, not so much burials. I, I wasn't told about burials in that area, but definitely there's the loko i'a right in front of the main Robinson house there now. Right in the, that house, where it's situated, if you had a map, if you're looking at it from, standing on the makai side looking mauka, that house, it's on the south end of that house, more towards Makaweli. Pakala side, still have a fishpond over there. I know about the fishpond because we used to, you know, when it kind of overflowed, when it came to a crest we used to dig the, dig the sand, and open the mākahā and all the rubbish and some of the fish came out, so yeah, we used to get scoldings or whatever... I mean, other than that loko i'a, and the fact that those houses are very old in nature, so I don't know if that would be a historic, you know, like historic structure, I, I would think so. That's the only really two things that in my head that I can recollect. Mostly about the loko i'a though. Well, other than the heiau on the opposite side, that was Pā'ula'ula. [Thomas Nizo]

No, [the fishpond is] overgrown. There's quite an extensive report in the original, when they originally went to the County for resort designation for the property, 20 years ago or more. And, um, so there's a very extensive report done by Dr. Bill, William Kikuchi, who was an expert on fishponds for the State of Hawai'i and just happened to also live on Kauai. Dr. Kikuchi's report that he did, is to the, um, County Council or to the Planning Department is quite extensive. I've read it once and it's probably better that you guys can get that than, than have me and my ancient memory report it. But, uh, anyway, he, the only things that I read that stick out from my memory from that, that you'll have to read that is, number one, he said that, the Planning Department was recommending that it be, the fishpond right now is kind of overgrown with lilies and all sorts of, coconut trees, or float, coconuts floating on it, you can barely even tell that it is there. It's fed by three to five natural springs, that keep it fresh water. Uh, they used it, the family used it for tilapia and probably the, uh, the Hawaiians, the fishpond is built, maybe 900 years old, something like that. I can't remember. Again, you really need to look at Dr. Kikuchi's report. But the, the king probably had fresh fish, um, in there, for his use, because that was all part of the king's property. They said that the only man could, and if you were going to do it traditionally, only men were allowed to go into the fishpond and take care of it and, and, they had to be naked. And the County department decided that they were not going to impose that restriction on the resort because that really wouldn't be [laughter] a good draw for the hotel to have only men naked. [Susan Somers]

There is a pile of rocks on the west side of the property that is, when the field just to the west, which we call it Field 1, had been plowed, they would pick up rocks and dump them just over the property line at Kapalawai, they are a pile of rocks, they are not an ancient Hawaiian wall, they are a pile of rocks. It's a ramp, actually, it's the shape of a ramp that they would drive up and dump the rocks. There's a, um, old, um, I'm not sure if it's a Portuguese or Spanish bread oven... So it's a Portuguese bread oven which is, toward the

ocean side near the uh, fishpond. Kind of halfway between the house and the fishpond. It's in a very overgrown area and it's still there. Any other sites other than the house itself, there's, at the fishpond there's an old pump that they used to use the water from the fishpond to do irrigation. And, it's just sitting there, I don't know if it's considered a, something important. There's also an old whale blubber rendering pot, if you will, that is also in that area. Um, left over from, you know, whaling, whaling days... Now there's all sorts of fences and stuff, but nothing really archaeologically important. [Susan Somers]

I wouldn't know of actual burial sites so I can only assume. [Keao Nesmith]

[The fishpond was] not operational. It wasn't, it was just there. And that's another reason why we kinda dug around it or dug through it, because it wasn't really holding the fish like it was supposed to but it had some fish because it was, the fish was just trapped inside because it was low tide, right? And they couldn't get out, so. But it was built by a stream. It stay by a freshwater stream in that area. [Thomas Nizo]

Well, obviously there's a fishpond there, there's going to be a village associated with it. If there's going to be a fishpond there'll be a village nearby because it is conducive to living spaces, you know, kauhale, in the area. It's a great situation, actually, if you're thinking back in time, it's a great area to live because of the access to resources, natural resources, in the area. And your access to mauka and makai is actually pretty good even back then, on horseback or on foot. [Keao Nesmith]

And then, you know this part right here, there's no way that you got a fishpond there and not have a heiau or a kū'ula. It's just impossible. There's no way. So you cannot have a fishpond like that from centuries ago and not have a kū'ula, not have a heiau, not have a kia'i or kahu whose living quarters were in that area. Super conducive and habitable to permanent living. [Keao Nesmith]

The area was of, probably controlled by the ali'i of their time, the king at the time, their housing, the ali'i lived, pre-contact, either by the, either on the hill above where the Russian Fort is, or sorry, Pā'ula'ula is now, um, they lived in that area so they probably controlled that entire property and so that's one reason why number one, the, there were no burials because it would have been controlled by the king and you wouldn't bury in the king's property. So that's probably why there are no large-scale burials of any kind. I think they found, I think it was one set of remains, two sets of remains. Something like that, one. And uh, they don't know at what point that burial was made but it was not anywhere near the main part of the property, any other kind of gatherings or anything, it, it was pre-contact, I doubt if there would have been any. They would have been, probably been in the Russian Fort area, not necessarily where the house is. [Susan Somers]

[The Robinson family home] needs to be sensitively... I've worked on a lot, a lot of historical homes. I would have loved to have work on Kapalawai, I always wanted to, but I mean to restore it... Plus the artifacts and the personal effects that, the last time I was in the building, you know, I think Aubrey Robinson, looked like he just closed the door and left for the evening. [Mike Faye]

Okay, yeah because [the Robinson's] house, I'm sure, must be a historical place already. [Keao Nesmith]

### Mo'olelo, Mele, Oli, and Place Names

As far as I know the house was named Kapalawai, which was named by, the, the family, when they built the house back in 1898. And Kapalawai is Hawaiian, means the lowlands. And the family being from Scottish ancestry, the Scottish had referred the, they had the highlands and the lowlands. And the Highlanders were Scottish and the Lowlanders were Scottish and so they named it because it was the lowlands. And lowlands in Hawaiian is

kapalawai... So it's Scottish, it's uh, there's Scottish meaning to it. I do not know any, or any names of the area. [Susan Somers]

So even just the name, "Kapalawai." I always wondered how it got its name because I can't find it printed anywhere. So asking family members I learned that their original family gave the name to the house and that area. They honored the lowlands of Scotland where they came from. Palawai means lowlands in Hawaiian. So Ka-pala-wai [w pronounced as a v], I believe would be the true pronunciation if it were a Hawaiian word but if the family named it that, then Kapalawai [w pronounced as a w] I guess, was, would be correct, because it was their name. I always felt that was interesting. I keep searching, paying attention when people talk, especially to kūpuna who have lived here for a long time, but I don't hear anyone refer to it as anything else than that. I am still curious what the original name of that area was called. [Puni Wai'ale'ale]

I don't know any, any oli that was sang to me or taught to me by my kūpuna about particularly Kapalawai. [Thomas Nizo]

Also, there are mele, there are mo'olelo. Makaweli is the name of a mo'o of the area. Uh, and the name of that particular gulch is Kekupua. And, uh, Kekupua means the kupua, the demigod, or the demigod or the, could be a mo'o, could be a term that you use to talk about a mo'o. The, exactly what the name of that kupua is would have to be researched. So Kekupua, Makaweli, are all references to what sounds to me just by the name alone, epic stories. And exactly what those stories are need to be researched. [Keao Nesmith]

The family's always called, the family, the fishpond, they didn't have a name for it that I'm aware of. I've seen it on maps as Kekupua Fishpond. But Kekupua is more, is on, is more mauka of the highway, the Kekupua area, so I, I don't know who's, I've never heard the family members call it anything other than 'the fishpond.' [Susan Somers]

I don't know the names of the shark kupua who are in the area... It could be that Makaweli could be the name of a shark too. I mean, it sounds very sharky. [Keao Nesmith]

Like the area mauka of the highway, Kekupua. That place was named for the kupua that lived off of that old government road, and so, really?! Like who knows more about that? Because that, that would be super cool to learn about. Did the man change into a mo'o? Was he cool to people or did he chase people away? [Puni Wai'ale'ale]

Aunty Aletha used to talk about the mermaid named Poliolehua, which would come up across from where Pā'ula'ula is. Was she a good mermaid? Are there bad mermaids? [Laughter] I don't know. The kūpuna mention these little gems, but then, I don't hear much more about it anywhere else. And why was that? Is it that people kept it private because it was so special to them? Or did new people move into the area and no longer care about those old stories and stop telling them? [Puni Wai'ale'ale]

But the potential for esoteric knowledge is huge. Just given the names alone. Pākalā, pākala is a type of fish. And there's a Pākalā over on Ni'ihau too so there's a correspondence with Pākalā here, Kaua'i, Pākalā over on Ni'ihau. Uh, Makaweli. Yeah. Uh, right, so there, there's kind of a, in the past, you know, even now there's kind of a essence, uh, of, it's kind of spooky. It's kind of a spooky area. I guess because it is uh, it's a gulch, so it's kind of a shady... and it's, there's a lot of big trees and shade and stuff, so it kind of lends to the feeling. Even when you walk the trail to get to the surf spot, there's kind of, for me anyway, and I'm not the only one I know who gets that kind of heebie-jeebies feel, out in the area. I don't think that's a bad thing necessarily. It's just, it adds to the character, it lends to the mana of this area. And to me, that's a positive, not a negative. [Keao Nesmith]

Just like Kawai'ula'iliahi where the Makaweli River runs into the Waimea River and the water turns red. I heard a story from a kupuna that said that was when you knew that the Rainbow Maiden had her ma'i. I'm like, who is this Rainbow Maiden? Where is she?

What's her real name? The kupuna never referred to her by a Hawaiian name, just the Rainbow Maiden, and the Rainbow Maiden would entice men to follow her. She would play music and sing and men would hear her and follow her voice and then would get lost in the forest and it's like, did the men come back? Were they lost forever? [Puni Wai'ale'ale]

I didn't hear of one [a mo'o] in that fishpond but could it have been the same one from Kekupua which is across the highway? I have no idea. [Puni Wai'ale'ale]

Yeah, so, even the name like Pu'u 'Ōpae, there's a lot of other names on this side that include "'ōpae" in it. I would think all of those rivers that run through the valleys must have been full of 'ōpae, and there was that legend about the menehune, when they were asked to build the Menehune Ditch, that the payment they asked for was 'ōpae and so the people had to make sure that every menehune had 'ōpae. So that must have been something the place was known for, right, to have a legend like that? For the menehune to agree to do such back breaking work, to have one 'ōpae each or whatever they were given each day. I was thinking all that work, and they get one 'ōpae?! Must have been super 'ono or they had small 'ōpū or the 'opae must have been huge! Yeah, that would be something else interesting to know. [Puni Wai'ale'ale]

Pākalā but the locals call it Pakala. Wish I knew what it was called before the Plantation. And Pā'ula'ula the traditional name for what people called the Russian Fort. Wish I knew more of what the traditional names were. [Puni Wai'ale'ale]

### Change Through Time

Yeah, so just the way that the Robinsons have kept this place intact after all of these years. They didn't develop it and they didn't sell pieces off. [Puni Wai'ale'ale]

But you know, we don't have sugar and so we don't have the industry and that, that does have the impact, you know? We were, I was an agriculture, we're always an agricultural based community, um, we still, we still are. You know, not at the level it was with sugar. Um, um, and the hierarchy, kind of, of the culture. Of you know, society kind of culture. I do remember Kapalawai, and I did date a Robinson girl for a while, and she said, "Hey let's go down and see Aunty Eleanor." I said, "No, no, no. I don't want to do that." [Laughter] It was scary, you know? But we drove down, down the road, and I don't know if you've been there, but you drive down a long road and it kind of fish hooks around and as you came around that turn they have a great big lawn in front of, in front of Kapalawai house. And uh, there were uh peacocks and other birds like that walking around on the property and come a little bit further around here's this huge wooden structure. Huge wooden steps. Looks a little bit out of place. Out of place both in place and in time. You know what I mean? And it was like this, this unrealistic experience. [Mike Faye]

It's overgrown, uh, the grass is clipped every once in a while. They clip the pasture when they put cattle in or horses in. Other than that it pretty much has not changed in the 50 years that I've been here. It's just, it gets overgrown, there's a lot of junk trees, lot of, uh, it's, pretty much just jungle. But it's not really a swampy jungle it's more of a desert jungle. Yeah, the kiawe, and various and sundry. Some coconut trees, all volunteer, kind of thing. But it hasn't changed. [Susan Somers]

Not much, except that from time to time there were big trees on the mauka side and a number of them have been removed by Hurricane Iwa, Hurricane Iniki, knocked over many kiawe trees. I remember seeing, after the hurricane, seeing many kiawe trees knocked over with the roots up in the air. So that was a natural thing. There have been a couple of flood events. So how they're gonna mitigate the potential for flood events is going to be interesting. If, I'm not sure how much, I think on the mauka side, that could be below sea level, the ground could be below sea level. I'm not sure. It seems like it. Because when

you're passing on the highway, you're looking down, on your right side and the highway is just only a few feet above sea level. Uh, so, I think that, and when you look at, even like right now, you're looking at grass, but you know there's water in there, you know, it's marshy, it's wetland. Sometimes you see cattle in there but not often, but cattle are more up on the flat, kula areas on the east side of the gulch. [Keao Nesmith]

It hasn't changed at all. So the place where I live, I mean I'm 53. I grew up over there, and it's , as soon as you turn into my road, the main road, it's like you're going back in time because it is, nothing, only thing got different is the people, right? Like, there's no more grandparents, no more our uncles that still live across the street, no more the little general store that used to be fronting my house right now, you know? So other than, you know, those physical changes or losing kūpuna and little business closing here and there, that place is the freaking same. It's literally like going to a time warp when you go back over there. [Thomas Nizo]

It's like time stands still there. I haven't seen any change... I started working for Gay & Robinson in 2012 and now it's 2025. And it's like everything is still in its place. I have noticed those invasive parakeets in the trees on this side now. But everything else to me seems the same. [Puni Wai'ale'ale]

Other than that, let's see, the only other improvements were like done to the highway or the two edges of the highway with the guardrails. There is that, the, if you, on the Waimea side of the gulch, there's that one entrance, I've only been there a couple of times. I've never gone down into there because there's a hole in there, I've been to the hole, uh, two, three times in my life, and then the entrance to it, I think was improved. Other than that it was just dirt road. And that's the only, those are the only things I can think of, as far as changes are concerned. Yeah. Oh, there, well, the fence that is there, if you go, if do the walk to the surf spot, there's a fence in there, but that fence was not always there when we were kids, there was no fence, that's why you had to watch out for the bull. [Keao Nesmith]

That's one of the nice things, it really hasn't changed much. [Mike Faye]

### Concerns and Recommendations

Well, you can see right here the pond. Yeah, you know, I think that needs to be sensitively, well first of all, researched, find out how it functioned in the, in the day, and then, a sensitive interpretation, I guess, and use. I think it'd be great to have it functioning again. [Mike Faye]

I saw some of the preliminary drawings. I think they're gonna improve access, at least for the surfers that, yeah, come from the, that gotta walk from the main road back to the beach. So they're gonna improve that access but as far as effects on natural and cultural resources, I, I believe in some of the sketches, renderings, they were gonna bring back the loko i'a. And if that's the case then, you know, I would, I would, as a Hawaiian, would welcome that, to bring a resource back of that nature. [Thomas Nizo]

I know that the other, other developers that wanted to, to clean the fishpond and use it as something historic, that the, even people in the community and people at the hotel could appreciate the historic significance. So by restoring it, it would save it, in other words. But right now, there's no public, no public access. And never really has been public access. Primarily because it was the king's property and then once the family purchased it in, in 1865, '64, from the king, it's been private property since then. [Susan Somers]

At night here it gets so dark that the sky is just, so beautiful for that, I don't know if development would affect it, but I mean the only thing that comes to my mind right now would be light pollution. Light pollution and how that would affect people who are out on the water that are guided by stars or use stars for other cultural connections, but I don't know how prevalent that is here. That's the only thing I can think of. [Puni Wai'ale'ale]

And looking at the area, how, that area, we have always regarded as, you know, bushes... wild, and uh, we like our rural spaces, especially on the west side of Kaua'i. We like that our side of the island is rural. And that... we don't have the busy-ness of town and, but, speaking for myself, but I know that it's shared by many of us, we worry about encroaching urbanization, gentrification. So ideas like this are worrisome to much of us, and there is a fishpond in the area that you know, is covered in, in the bushes. [Keao Nesmith]

[In response to what could be done to lessen the adverse effects on cultural practices in the area]: that people get to access that area again, whereas right now no one is accessing it.... You just wonder what would happen to that area that hasn't been touched for so long. Yeah, I don't know. If something or someplace isn't being used, does it miss being used? For sure it depends on the use, but does it also miss hearing voices, does it miss life? I have no answer for that. If it hasn't been accessed all of this time and I don't know who today is actually using that area for cultural practice, then maybe this development gives us the opportunity to go ourselves. Because I feel very blessed that I've been able to go and see and visit that place. And to walk there, you can almost feel it's missing something. I feel like it misses life there. Yeah. At least that house. I feel like that house misses life. [Puni Wai'ale'ale]

You know, I got to go back, years later, as a contractor working on the building and, and it was still very impressive. It, it needs something like this to keep it going otherwise it's just going to fall apart. [Mike Faye]

It depends on the access allowed. I mean, I'm sure the owners and developers must be conscious of local sentiment and sensitivities about such things as access and there is a long kind of push and pull sort of history with the Sinclair-Robinson family because they, they, tens of thousands of acres that they own. Easily if not quarter, maybe quarter of the whole island just in that area going all the way up the mountain and stuff. So it's just as off limits as Ni'ihau is to use and suddenly the access being given is this kind of access and that's just kind of weird to think about... there will be lots of Kaua'i residents who will be, their curiosities will be satisfied by having that sort of access because none of us, very few of us are able to say we've been in this part. So for a lot us, we will be the tourists because, you know, we've never been given access to that area unless under certain circumstances. [Keao Nesmith]

Well, you know I've been involved in the west side community, business community for a long, long time, and uh, we look at this potential project at Kapalawai, I guess would be, 30 years ago? A long time ago, I think the business community really supports it. We think it'll bring needed jobs and business, and visitors to the site. Um, I mean, to the community, that we could really use... the impact to the community I think ends up being very positive. [Mike Faye]

He [Peleke Flores] went to that fishpond at Kapalawai to take a look, I think to see if he wanted to take on that endeavor. And so I bet he could probably just look and know. Yeah, 'cause he's well known for restoring loko i'a and not only loko i'a, but just building, walls, with rocks. He also redid ka Lua Kupapa'u o Nohili, the crypt at Mānā. He redid that and yeah he's just a master with rocks. [Puni Wai'ale'ale]

But other than that, um, maybe working towards the north, just watching the border of Kapalawai turning into Pā'ula'ula, I know there's that one heiau that's near the beach. As you... turn the roundabout, the shoulder, coming back towards, towards, Waimea there? ... On the beach side, yeah. I forget what the heiau's name though, is... Pā'ula'ula, in my mind, is the big, star shaped fort. But at the very end of Pā'ula'ula towards the coast, the road actually turns left. At the end of that left there used to be a heiau and yeah, because some people said, "Hey, they destroyed that heiau to make the wall." On the star. And I'm like, oh, I, that's before my time. I don't know but I've, I've been told that there is supposed to be a heiau out there. [Thomas Nizo]

But... are people excited about this prospect? Hard to say. I mean, I guess I'm just thinking about all the conversation, rumors that have gone on about the potential project. This has been a thing for at least a couple decades, you know, and some people talk about, "What do you think about that proposed resort?" People go, "Resort? What?!" So our initial reaction is, "No, no, no." But the fact that it's going to be like Waimea Plantation Cottages is like, if it's going to be like that then maybe, because we locals really enjoy having staycations over there at the Waimea Plantation Cottages because it's like being home. But more bougie. Because, you know, and we do it all the time, like my family was just there a month ago for the weekend. Waimea Plantation Cottages. So if this is going to be like that, then it gives us those opportunities, but we'll just be any other tourists, you know? 'Cause we'll have the same access as tourists. [Keao Nesmith]

You know, we don't get to see these things, the general public. And so, when a family like the Robinsons, with the property like the, like Kapalawai gets opened up, you know some people have lived in the community all their lives, you know? They might be 60, 80 years old, they've never been there. So yeah, it opens the door a little bit for us to, you know, get in there to see something that we probably wouldn't have been able to see. [Mike Faye]

I mean, you know, nowadays, people are like calling to action, you know, development, military, you know, other things, but I, I believe, that if it's done in a pono way and in discussions, we can work on, work on these things with the community. Thing, things will work, you know? Things work. We gotta progress as a community and we gotta progress... [Thomas Nizo]

But, I mean, that kind of raises a different angle, perspective too, yeah? Because, the poverty in that village, and I don't know if there are plans to demolish, I wouldn't be surprised, really, to be honest. But there is such a stark difference. It would be such a stark difference. I mean, that, this kind of opulence of the resort and then you go the, and I don't know if they got the same idea, I mean, if I look at the design it seems like the, the, the etching, the drawings of the units across there, look uniform. And you're not going to get uniform if you follow the plan of the Waimea Plantation Cottages. Those were houses, actual plantation houses that were lifted and moved to the Waimea Plantation Cottages and then refurbished. And so they're old school plantation, actual old school plantation homes. And they put a plaque on each of them with the names of the last family that actually lived in that house. Wherever, wherever the house was located, whether in Pakala, Kamakani, Kekaha, or whatever. Um, I imagine that in case, I'm not sure there are that many same type of houses left for them to take over to this new location so if that is the case they're probably going to build new units that look no different than you know, over in Poipu, um, and if that is the case, that's sad. That would be sad, to make it just like any other touristy resort and it wouldn't have the same character as the Waimea Plantation Cottages if that's the case. [Keao Nesmith]

I think it's a positive impact to, to number one the family, and it's so important that, you know, when they're happy, the community's happy. When they're not happy, the community's not gonna be happy. Just because they're such a part of it, okay? You know, such an important part of it, but that shouldn't be underestimated, even though they're a very private family... they're well respected. They, on their own, due to how they got Ni'ihau, and how they manage the property, they, you're one of, you're one of them, you know, you're an employee, you're part of the 'ohana, you're treated that way. As 'ohana. If you're from the outside, you're from the outside. [Laughter]. You know, you're not welcome on the property, etcetera, etcetera. And the west side community, in large part, really, I think respects that and, understood they owned that, such a swath of the island that it, what I always say is, they buffer us from development and, and, undesirable, undesirable, um, you know, urban sprawl. And we always say something, you know, "We live on this side of the river," and the other side of the river is, what really, what creates that buffer is the conservativeness and the, uh, uh, you know, the way in which the

Robinsons manage the property. Which is, you know, which is, keeps us isolated and unique, I think. And I don't see this affecting that much. [Mike Faye]

To take care of it [the fishpond] and bring life back to it. [Puni Wai'ale'ale]

I think, the impact to, you know, the, gathering rights, and cultural things, again that property has been in the hands of the, of the Robinsons for so long, the Sinclairs, and then the Robinsons for so long, that if there were gathering rights, nobody remembers. [Mike Faye]

I think, there's gonna be concerns no matter what but I think we can work it out if we can be transparent and if the organization, would, you know, listen to some concerns, community just has to be reasonable, I think, you know, and part of being reasonable is actually listening and seeing what the benefits would come out of, actually, you know, restoring our loko i'a, you know, Peleke Flores is trying to, he's currently bringing back the loko i'a, you know, Nawiliwili and stuff. He's been working on stuff, all that kind stuff for months, you know, too, so to visit that and have him come and do the restoration, and it be funded by this organization, that'd be a partnership, made in heaven. They've got the resources, this group, and Peleke has the skillset and the knowledge and the 'ike and marry those two and save another loko i'a, that would be awesome, I think. [Thomas Nizo]

My understanding is that, you know, they're gonna open up access to the surfing spot and, I think, if done correctly, that'll be positive because the people will have now, kind of like, more legal access to that site. I remember as a kid, the Robinsons would chase down people trying to surf, my brother included, I was never a surfer, my brother included, and they would lock 'em up. And it was like, "Whoa, okay." [Mike Faye]

It also seems that there are units right on the edge of the fishpond too. To give whoever is occupying the unit a beautiful view of this pond and it sounds so romantic, oh my god. But for us Hawaiians, it's like, "Get the f*ck away from my fishpond." [Laughter] It's an actual fishpond, it's an actual old fishpond. It's not for you to gawk at as a tourist, you know what I mean? Uh, yeah, that's all part of that being protected as a local person. But you know, I mean, yeah, so it's very conflicting. It's a very conflicting issue. [Keao Nesmith]

I think one thing being good, for our market, for you know, our local produce, you know, they'll be, hopefully, there'll be folks in town that are spending money on community things and things like that, not overwhelmed, it's not a thousand room hotel or anything like that. I think it's right sized, and uh, yeah, right size. It's kind of like, I don't know if you know this, but I developed the Waimea Plantation Cottages. And you know, on our side of the river, and um, that has, has, you know, very positive community acceptance. From environmentalists and anti-development people too. You know, regular community people. And I think the Kapalawai development will do the same. [Mike Faye]

So, so there's a certain sense of that that seems kind of, "You think of me as a tourist." [Laughter] And I'm like, "I'm special, I'm a local. I'm, I'm more than a tourist." So it's like, the only kind of access that I'm going to be given is as a tourist. And so, because uh, I pretty much believe that a majority of the west side of Kaua'i are very proud of our, our land, and our culture, our local culture, our rural culture. And, so we kinda, we're very on alert about, and I'm sure the Robinsons are very much the same about all of their land holdings. You know, they're very guarded about it, and rightfully so. But the same is true for us, locals, we are also guarded about our local west side, west Kaua'i culture. Um, and so, it shouldn't be surprising to anybody, whether it's the Robinsons or anyone else, that we would have this attitude that... we would be uncomfortable about it. So, I think more there's more a sense of suspicion and trepidation, maybe even fear about this proposal among locals rather than excitement and support and enthusiasm. I'm not aware of anybody going, "Rah, rah! Wow, awesome." [Keao Nesmith]

I do believe that the family respects the culture and will put cultural kind of protections in any kind of agreement they make with somebody. I think, I think, this is not the concern, I think this is a benefit, is I, you ask me these questions made me remember stories from old timers saying that way back, you know, probably in the 1920s or '30s, the fishpond was still functioning. It might not have been in active use but it was functioning. And that, I think this project, done correctly will put that back in and will be something the Native population here can certainly get behind and understand that this is, you know, developed before any white guy came around and you know, be very proud of it. But I think that's one of the things that's lacking. [Mike Faye]

I think people are scared of development but the Robinsons have kept everything the same for so long and have been good stewards. Every other missionary and plantation family have developed and or sold off the land. This development, if it's built, will be far enough back that it won't be seen from the road. Will anyone notice besides the cars that are driving out? You can't see into the area now because of the trees and bougainvillea along the highway. So I don't think people will even notice the difference unless there's light pollution. None of my haumāna that I teach have voiced any concerns to me about it. Yeah, I'm unaware. [Puni Wai'ale'ale]

I believe, like again, saying that it's, you know, looking at their renderings and, and what I've been told, but it's supposed to be a low impact resort, to the point where, you know, there's, they're not gonna get parked next to your cottage, you're supposed to get shuttled to your cottage by a, a, probably like a golf cart type of carrier, uh, all of those cottages are supposed to be like super low key, where it's not even, they don't even foresee having tv and telephone because everybody has cellphones, right, and whatnot. So it's supposed to be very low impact units and I think they actually slimmed down the project, right? From when it first started, it was gonna have x amount of cottages and whatnot and just recently when we saw these renderings, they actually took out, like, I think a hundred something rooms off of that inventory. So, you know, they're kind of listening, they took some of us and we actually had some conversations and I'm like, "Yeah, if you guys did not impact this front part, we want to make sure that the facade on the ocean side looks like, when you're looking from the beach to my house, it's just coconut trees and then you see my house, the back of my house, and then some coconut trees and then you see another little house. So if it's that same type of facade, almost, on the ocean side, it, it would lend to, you know, the people, the existing community on the south side. [Thomas Nizo]

But it's just the whole restriction because of the private uh, ownership... we can't oppose if we don't know... or support when we don't know. I mean, if suddenly, we'd been denied knowledge of anything and then suddenly the only knowledge that we're given is this? Yeah. It shouldn't be surprising that many people are either suspicious or unappreciative or, you know, ambivalent, maybe. [Keao Nesmith]

When, Kaumuali'i did his remodeling of his, Pā'ula'ula and converted it to a, a fort, and then, his, you know, whatever you want to call it, kidnapped or whatever, you know, he leaves the island, and his son, uh, rebels against Kamehameha, which was a big mistake so the Kamehamehas would never capture Kauai now come down and kind of rule with that iron fist and bring the windward chiefs in, that the Kauai Hawaiians pretty much lost their connection to their, you know, their, a lot of their old time cultural things, you know, this new group came in. So, you know, you talk to them about, about the local Hawaiians here, and you talk to them about Russian Fort and Pā'ula'ula and what a significant role it played in early Hawaiian history, early modern Hawaiian history and there's no connection. You know? No connection. And I really think that things like re-naming it to Pā'ula'ula and re-telling the story as Peter Mills does and now gaining, or the restoration of this fishpond and other, uh, historical attributes of the land get restored or at least identified, that, it's going to bring back, it's in their DNA and it's going to bring back, taking pride and a, more ownership than they have now. So I think it's really a positive thing. [Mike Faye]

But then, I guess, when you think, in as far as workers are concerned, there could be, that's definitely a positive. Because the majority of people from Kekaha, vast majority of Kekaha residents actually work way over in Lihu'e or Koloa or Poipu, and much fewer work closer to home. And so it's like, if this is going to provide jobs for uh, that are situated much more close to home. We could, if you wanted to, you could paddle your canoe to work, if this is the case, here, from Kekaha. Or you could, if you wanted to, you could walk, you know, the four, four, I think that's four miles, five miles from Kekaha through there. Uh, you know what I'm saying. It reduces the risk of having to travel so much and having to burn so much fuel every day to go to work far away. And it makes that economic opportunity or advantage, um, much better for west side residents. So, on that side, but you know, why must we do that? Why must we compromise, uh, like that? Ahhhh. I don't know. I, I reserve space in my opinion for some enthusiasm but it hurts. It hurts a little. It hurts a little to give up some of our rural environment. I don't want to do that, really. [Laughter] I like our open brush area. I like that. And um, you know, so there's a lot of aloha. So the aloha we feel as local residents is, uh, we feel we're the guardians of our, not just our home, our, where we actually live, where our house is, but our area, you know, the whole moku. The moku of Kona. We're very protective like that. [Keao Nesmith]

When we first started doing the resort designation, there was a meeting at Kapalawai, they invited the Lions Club, the Rotary Club, and the West Kauai Business Association, and various and sundry, business, you know, companies in Waimea, on the west side, and showed those guys what we're gonna do for the resort and it was overwhelmingly positive. There were a couple of people that asked questions, but they were primarily just, had never been there and didn't really understand. But all of the long-term businesses that had been in Waimea were pretty much 100 percent in favor primarily because it would add, just add jobs to the west side and also the people that would stay at the hotel would go to the restaurants and stuff in Waimea and the shops and spend money. That's what they like, that would be from the business standpoint. [Susan Somers]

It's, it's the destruction for the potential to find actual heiau remnants, remnants of heiau, remnants of kauhale, you know, other artifacts, you know, belongings of kūpuna in the area. The potential for becoming local stewards of the fishpond or purely cultural practices and not for the gawking eyes of tourists and for production. Those are big concerns of ours. It comes along with not being allowed access as private citizens to privately held land for all these decades, past century, whatever, and it goes along with that. So like I said earlier, finally we get to have access but only in the capacity as tourists. Not as interested locals whose only concern is cultural practices. So, yeah, so there is, there is a certain amount of resentment there. That we get treated this way and yet we're not any less local than the Robinsons themselves. Mind you, I do like the Robinsons so I'm not making any statements against the Robinsons. But there's a certain amount of chagrin. [Keao Nesmith]

**Summary of Ethnographic Survey**

Most of the interviewees have learned about Kapalawai through connections to the Robinson family and as residents of Pākalā and Kekaha. Thomas Nizo spent his young years within Kapalawai, Mike Faye in the neighboring upland area, Susan Somers as a member of the Robinson family, Puni Wai'ale'ale as an employee of the Robinson family, and Keao Nesmith as a Hawaiian historian and lifetime Kekaha resident. The interviewees expressed a diversity of connections and memories of the Kapalawai project area and Makaweli Ahupua'a, most of all noting how the area has remained frozen in time with very few changes throughout the years.

The diversity of place names within the surrounding area suggest that this region is one of mana and hints at a mysterious and powerful nature. Names of mana include that of Makaweli: the name of a mo'o of the area, Kekupua: referring to a demigod, a mermaid named Poliolehua linked to the waters

across from Pā'ula'ula, and Kawai'ila'iliahi linked to the ma'i of a Rainbow Maiden of Waimea. The interviewees shared that the name Kapalawai was given to the family house by the Robinson family, with origins linked to the Scottish Lowlands.

The interviewees identified a myriad of cultural practices, archaeological sites, mo'olelo and insight on place names. The rich natural environment of Kapalawai supported and continues to support a suite of cultural practices. These practices were/are primarily undertaken by those granted access and gathering privileges by the Robinson family or at neighboring beaches such as Kaumakani and Pākalā. Cultural practices include 'upena moi (laying net), fishing for 'āholehole, nenue, 'ō'io, and 'ōpio, to'au, ta'ape, pāpio, and mullet, gathering of limu kohu and limu wawae'iole, kiawe wood gathering, hunting, and imu making. There is a celebrated surfing spot at the Pākalā break, called by local surfers "Infinities" or "Lefts" for its long left. The waters in this area were described as "murky" due to river mouth sediment and "sharky." Currently surfing access is limited to walking in through a beach access trail. Public access and subsequent cultural practices have been limited by invitation only since the Sinclair family purchased the land in 1865. Interviewees consistently shared a desire to restore and caretake the loko i'a on the property, which has not been actively used in more than a hundred years.

Archaeological and historic sites discussed include the loko i'a and associated kū'ula or heiau and kauhale for caretaker(s) of the loko i'a, and human burials. The loko i'a is storied to have only allowed men within it and as caretakers. The pond is fed by natural springs. Other sites include a Portuguese bread oven near the fishpond in an overgrown area, a pump that was used to irrigate water out from the fishpond, and a whale blubber rendering pot from the whaling era. The Robinson family home was discussed as an important historic building that should be preserved. One interviewee noted that burials found on the property are confined to the far western side of the property where they were noted and re-interred.

Finally, during the ethnographic interviews, questions, concerns, and recommendations were shared pertaining to the proposed project. A sense of suspicion and trepidation was shared, as the area has been closed to local and Native Hawaiian access for so long and is now being opened for tourist-centric access. The potential for positive outcomes to come from the proposed development if done in a pono way was shared. Potential positive outcomes included the opportunity for the restoration of the loko i'a, improved access for surfers to the "Infinities" surf spot, increased business for local west side vendors, more jobs for west side locals, and restoring the human and cultural connection to Kapalawai.

Interviewees articulated concerns that the proposed development may change the rural nature of of the west side, which will result in the loss of open brush area and bring more of the "busy-ness" of town; increase light pollution for those that rely on stars for cultural purposes and navigation; the potential to disturb archaeological sites; and prioritize tourism-centric housing over cultural practitioner access. Another concern was that tourists would gawk at the fishpond, which should be used for cultural practices.

The interviewees recommended the following:

- Prioritize access for Native Hawaiian cultural practitioners.
- Restore the loko i'a under guidance of a kahu (specialist, cultural caretaker) of loko i'a and conduct research to provide for sensitive, culturally grounded interpretation.
- The proposed development should financially support the restoration of the loko i'a.
- Include historical learning opportunities within the development.
- Minimize light pollution as much as possible so as not to affect people on the ocean at night.

- Ensure that resort units are not near the edge of the loko i'a out of respect for the fishpond.
- Work with a kahu to guide the restoration of the loko i'a in a way that respects its cultural significance and avoids turning it into a tourist attraction that diminishes its cultural use.
- Improve access to "Infinities" surf spot.
- Hire locally from Kekaha.
- Keep the Robinson family house.
- Avoid the historic footprint of the storied heiau near the border of Kapalawai where it turns into Pā'ula'ula. This heiau's rocks were used to build up Pā'ula'ula.
- Closely monitor for archaeological remnants of kū'ula, heiau, and ancestral artifacts near the loko i'a and elsewhere.
- Consider styling the resort bungalows inspired by the Waimea Plantation Cottages.
- Source any produce or materials that will be a part of the resort function from local farmers and vendors.
- Position the resort development or buffer it with landscaping so that it minimizes the view impact of the houses in Pākalā on the ocean side.
- Construct the development in a pono way.
- Have open and transparent conversations with community members and follow recommendations that are shared.

## SUMMARY AND RECOMMENDATIONS

Pre-contact use of Makaweli centered around cultivation along the river floodplain. Makaweli had an abundance of fresh water that supported and continues to support a diversity of species and freshwater systems (river, springs, loko wai). People traveled between the neighboring districts and accessed resources using the inland trails that passed through the area. Heiau were prevalent in the region, and Kekupua Fishpond located within the project area, was reserved for use by ali'i. During the Māhele, Victoria Kamāmalu was awarded the entirety of Makaweli Ahupua'a and in 1865, Elizabeth Sinclair purchased the lands of Makaweli. The Robinson's residence in Kapalawai was constructed in the mid-1890s. Within the project area, archaeological surveys revealed a ranching and agricultural complex, platform, the Robinson residential complex, Kekupua Fishpond, a Portuguese oven, and pre-contact cultural layer with a human burial were identified. Several heiau were recorded in the region, mainly along the river, not near the current project area, and several have been reported as destroyed. As noted above, a variety of archaeological resources have been found in Makaweli and its environs. The previously documented historic properties within the project area likely remain and it is possible that additional surface and/or subsurface historic properties will be encountered during ground disturbance related to the resort project.

### Cultural Resources, Practices, and Beliefs Identified

The rich natural environment of Kapalawai supported and continues to support a suite of cultural practices. These practices were/are primarily undertaken by those granted access and gathering privileges by the Robinson family. Cultural practices include netting and fishing, limu and kiawe wood gathering, hunting, and imu making. The ocean side of the project area has been long accessed for surfing despite the murky and sharky nature of the waters and limited beach access. The property is home to Kekupua fishpond that has not been managed in more than 100 years. The diversity of place names within the surrounding area suggest that this region is one of mana and hints at a mysterious and powerful nature. Names of mana include that of Makaweli: the name of a mo'o of the area (and directly translates to ghost-like or fearful eyes), Kekupua: referring to a demigod, a mermaid named Poliolehua, and Kawai'ila'iliahi linked to the ma'i of a Rainbow Maiden of Waimea.The name Kapalawai was given to the family house by the Robinson family, with origins linked to the Scottish Lowlands.

Archaeological and historic sites identified during the interviews include the loko i'a and associated kū'ula or heiau and kauhale for caretaker(s) of the loko i'a, and human burials. Other sites include a Portuguese bread oven near the fishpond in an overgrown area, a pump that was used to irrigate water out from the fishpond, and a whale blubber rendering pot from the whaling era. The Robinson family home was discussed as an important historic building that should be preserved. One interviewee noted that burials found on the property are confined to the far western side of the property where they were noted and re-interred.

### Potential Effects of the Proposed Project

The proposed project has the potential to provide financial support and improved access for the restoration of the Kekupua Fishpond, improve access for surfers to the "Infinities" surf spot, increase business for local west side vendors, and provide jobs for west side locals. One of the interviewees remarked on Kapalawai missing a human or cultural connection; there is opportunity, if the project is done in a pono way, to restore this connection. The interviewees also noted that the proposed development may change the rural nature of the west side and increase light pollution within the area which currently has a clear night skyscape. The possibility of disturbing archaeological resources is another effect of the proposed project. Depending on how the project is carried out, there is potential

to restore and prioritize Native Hawaiian and cultural practitioner access to an area that has been off limits in many ways to local residents.

### Confidential Information Withheld

During the course of researching the present report and conducting the ethnographic survey program, no information was withheld in confidentiality.

### Conflicting Information

No conflicting information was obvious in analyzing the ethnographic interviews. On the contrary, a number of themes were repeated and information was generally confirmed by independent sources.

### Recommendations/Mitigations

Recommendations and mitigations for this project identified during the interviews include the following:

- Prioritize access for Native Hawaiian cultural practitioners.
- Restore the loko i'a under guidance of a kahu (specialist, cultural caretaker) of loko i'a and conduct research to provide for sensitive, culturally grounded interpretation.
- The proposed development should financially support the restoration of the loko i'a.
- Include historical learning opportunities within the development.
- Minimize light pollution as much as possible so as not to affect people on the ocean at night.
- Ensure that resort units are not near the edge of the loko i'a out of respect for the fishpond.
- Work with a kahu to guide the restoration of the loko i'a in a way that respects its cultural significance and avoids turning it into a tourist attraction that diminishes its cultural use.
- Improve access to "Infinities" surf spot.
- Hire locally from Kekaha.
- Keep the Robinson family house.
- Avoid the historic footprint of the storied heiau near the border of Kapalawai where it turns into Pā'ula'ula. This heiau's rocks were used to build up Pā'ula'ula.
- Closely monitor for archaeological remnants of kū'ula, heiau, and ancestral artifacts near the loko i'a and elsewhere.
- Consider styling the resort bungalows inspired by the Waimea Plantation Cottages.
- Source any produce or materials that will be a part of the resort function from local farmers and vendors.
- Position the resort development or buffer it with landscaping so that it minimizes the view impact of the houses in Pākalā on the ocean side.
- Construct the development in a pono way.
- Have open and transparent conversations with community members and follow recommendations that are shared.

### Summary and Conclusion

In sum, background research and ethnographic interviews identified a wide range of archaeological resources and cultural practices within the project area and the wider region. The project lands are clearly significant in both the past and present, and the community should be kept informed on the construction plans, and their concerns and recommendations should be considered during all phases of the proposed work.

## GLOSSARY

**'āholehole** Young stage of the Hawaiian flagtail fish.

**ahupua'a** Traditional Hawaiian land division usually extending from the uplands to the sea.

**'āina** Land.

**ali'i** Chief, chiefess, monarch.

**ali'i nui** High chief.

**aloha** Love, affection, compassion, sympathy, kindness, greeting.

**Australian saltbush** The herb *Atriplex semibaccata* in the amaranth family, native to Australia but naturalized in Hawai'i.

**'auwai** Ditch, often for irrigated agriculture.

**'awa** The shrub *Piper methysticum*, or kava, the root of which was used as a ceremonial drink throughout the Pacific.

**bermuda grass** The grass *Cynodon dactylon*, originally from the Middle East. This fast growing species is often used for turf grass.

**bristly foxtail** The invasive grass *Setaria parviflora* found in salt marshes, wet savannas, and flooded areas.

**fingergrass** *Chloris sp.*, a widespread family of invasive grasses with a feathery flower sometimes used in lei pāpale (leis for hats).

**hala** The indigenous pandanus tree, or *Pandanus odoratissimus*, which had many uses in traditional Hawai'i. Leaves were used in mats, house thatch, and basketry; flowers were used for their perfume; keys were utilized in lei and as brushes; roots and leaf buds were used medicinally; and wood was fashioned into bowls and other items.

**hālau** Meeting house for hula instruction or long house for canoes.

**Haole** White person, American, Englishman, Caucasian; formerly any foreigner.

**hāpai** To carry; pregnant.

**heiau** Place of worship and ritual in traditional Hawai'i.

**hīhīwai** The endemic freshwater gastropod, *Neritina granosa*, which is eaten raw or cooked.

**holoholo** To go out or go for a walk or ride.

**huaka'i pō** Night marchers.

**hui** A club, association, society, company, or partnership; to join, or combine.

**'ike** To see, know, feel; knowledge, awareness, understanding.

**'ili** Traditional land division, usually a subdivision of an ahupua'a.

**'iliahi** *Santalum* spp., refers to all types of Hawaiian sandalwood.

**imu** Underground pit or oven used for cooking.

**inoa** Name, title, or namesake.

**iwi** Bone.

**kahu** Honored attendant, guardian, nurse, keeper, administrator, pastor.

**kalo** The Polynesian-introduced *Colocasia esculenta*, or taro, the staple of the traditional Hawaiian diet.

**kama'āina** Native-born.

**kanikau** Lamentation, dirge, mourning chant; to mourn, wail, chant.

**kapu** Taboo, prohibited, forbidden.

**kauhale** A group of houses that comprise the traditional Hawaiian homestead. Often included are a sleeping house, men's eating house, women's eating house, cooking house, and canoe house.

**kawakawa** The bonito, or little tunny fish (*Euthynnus yaito*).

**kia'i** Guard, caretaker; to watch or guard; to overlook, as a bluff.

**kiawe** The algaroba tree, *Prosopis* sp., a legume from tropical America, first planted in 1828 in Hawai'i.

**kīhāpai** Small land division; cultivated garden, patch, orchard, or field; parish of a church.

**klu** *Acacia farnesiana*, a small branching shrub that is a pest in pastures, possibly introduced to Hawai'i in the 1900s for perfume.

**koa haole** The small tree *Leucaena glauca*, historically-introduced to Hawai'i.

**kolohe** Mischievous, unethical, naughty; rascal, prankster, vandal; to misbehave or cheat.

**konohiki** The overseer of an ahupua'a ranked below a chief; land or fishing rights under control of the konohiki; such rights are sometimes called konohiki rights.

**kua 'āina** The country, or a person from the country.

**kula** Plain, field, open country, pasture, land with no water rights.

**kumu hula** Hula teacher/master.

**kuleana** Right, title, property, portion, responsibility, jurisdiction, authority, interest, claim, ownership.

**kupua** Demigod, hero, or supernatural being below the level of a full-fledged deity.

**kupuna** Grandparent, ancestor; kūpuna is the plural form.

**kū'ula** A stone god used to attract fish, an altar near the sea, or a hut where fishing gear was kept with kū'ula images to invoke their power.

**lani** Heaven, sky; very high chief.

**lantana** The historically introduced shrub, *Lantana camara.*

**lawai'a** Fisherman; to catch fish.

**limu** Refers to all sea plants, such as algae and edible seaweed.

**limu kohu** The prized edible seaweed *Asparagopsis taxiformis*.

**limu wāwae'iole** The edible seaweed *Codium edule*, or antler seaweed.

**lo'i, lo'i kalo** An irrigated terrace or set of terraces for the cultivation of taro.

**loko, loko i'a** Pond, lake, pool, fishpond.

**loko wai** Freshwater lake or pond.

**Māhele** The 1848 division of land.

**ma'i** Sickness; sick; menstruating.

**maka** Eye, face; presence, sight.

**maka'āinana** Common people, or populace; translates to "people that attend the land."

**mākāhā** A fish pond sluice gate.

**makai** Toward the sea.

**makalei** Fish trap; supernatural tree from Moloka'i, the root of which was placed at fishponds to attract fish.

**makana** Gift, reward, prize.

**makani** Wind, breeze.

**mana** Divine power.

**mana'o** Thoughts, opinions, ideas.

**mauka** Inland, upland, toward the mountain.

**mele** Song, chant, or poem.

**mele inoa** Name chant, composed to honor someone.

**moi** The threadfish *Polydactylus sexfilis*, a highly prized food item.

**mo'o** Lizard, dragon, water spirit.

**mo'olelo** A story, myth, history, tradition, legend, or record.

**mullet** *Mugil cephalus*, or 'ama'ama, a very choice indigenous fish.

**nenue** The chub, rudder, or pilot fish (*Kyphosus bigibbus, K. vaigiensis*).

**'ohana** Family.

**'ō'io** Ladyfish, bonefish (*Albula vulpes*).

**'ōlelo no'eau** Proverb, wise saying, traditional saying.

**oli** Chant.

**olonā** The native plant *Touchardia latifolia*, traditionally used for making cordage.

**'ō'ō** *Moho nobilis,* the extinct black honey eater. Its black and yellow feathers were used in featherwork.

**'o'opu** Fish of the families *Eleotridae*, *Gobiidae*, and *Bleniidae*.

**'ōpae** Shrimp.

**'ōpelu** Mackerel scad (*Decapterus pinnulatus* and *D. maruadsi*).

**'opihi** Limpets, four types of which are endemic to Hawai'i: *Cellana exarata* ('opihi makaiauli), *C. sandwicensis* ('opihi alinalina), *C. talcosa* ('opihi ko'ele), and *C. melanostoma* (no Hawaiian name). 'Opihi are a prized food in Hawai'i and considered a rare treat today.

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|---|---|
| **ʻōpio** | Youth, youngster, juvenile. |
| **ʻōpū** | Stomach. |
| **paeʻāina** | Hawaiian archipelago. |
| **pākala** | Young of the kala surgeonfish (*Naso* sp.). |
| **palawai** | Lowlands. |
| **pāpio** | A growth stage of various Carangid fishes. |
| **pia** | The Polynesian arrowroot *Tacca leontopetaloides*, traditionally cultivated for food and medicine. |
| **pili** | A native grass, *Heteropogon contortus*. |
| **Pōʻalima** | Friday; also used to refer to work on the chief's plantations, a task that was done on Fridays. |
| **pokpoklo** | Finger algae (*Codium intricatum*), an edible seaweed that is popular in the Philippines. |
| **post-contact** | After A.D. 1778 and the first written records of the Hawaiian Islands made by Captain James Cook and his crew. |
| **pūlehu** | To broil over hot embers. |
| **puʻuone** | Pond near the seashore, as at the end of a stream; divination. |
| **pre-contact** | Prior to A.D. 1778 and the first written records of the Hawaiian Islands made by Captain James Cook and his crew. |
| **taʻape** | The bluestripe snapper *Lutjanus kasmira* that lives in waters 40–300 feet deep or more. |
| **toʻau** | The blacktail snapper. |
| **ua** | Rain, rainy, to rain. |
| **ʻuala** | The sweet potato, or *Ipomoea batatas*, a Polynesian introduction. |
| **uhi** | The yam *Dioscorea alata*, commonly grown for food. |
| **ʻupena** | Fishing net. |
| **wahine** | Woman, wife; femininity. Wāhine is the plural. |
| **wauke** | The paper mulberry, or *Broussonetia papyrifera*, which was made into tapa cloth in traditional Hawaiʻi. |

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**Agreement to Participate in the Pa'akai Analysis for the Proposed Kapalawai Resort Project**
**Gina McGuire, Ethnographer, Keala Pono Archaeological Consulting**

You are invited to participate in a Pa'akai Analysis (PA) for the proposed Kapalawai Resort project, which will be located the ahupua'a of Makaweli in the moku of Kona, O'ahu (herein referred to as "the project"). The Analysis is being conducted by Keala Pono Archaeological Consulting (Keala Pono), a cultural resource management firm, at the request of G70. The ethnographer will explain the purpose of the Analysis, the procedures that will be followed, and the potential benefits and risks of participating. A brief description of the Analysis is written below. Feel free to ask the ethnographer questions if the procedures need further clarification. If you decide to participate, please sign the attached Consent Form. A copy of this form will be provided for you to keep.

**Description of the Project**

This Ka Pa'akai Analysis is being conducted to collect information about the project in Makaweli Ahupua'a, through interviews with individuals who are knowledgeable about this area, and/or about information including (but not limited to) cultural practices and beliefs, mo'olelo, mele, or oli associated with this area. The goal of this Analysis is to identify and understand the importance of any traditional Hawaiian and/or historic cultural resources, or traditional cultural practices within the project area. This Analysis will also attempt to identify any effects that the proposed development may have on cultural resources present, or once present within the project area.

**Procedures**

After agreeing to participate in the Analysis and signing the Consent Form, the ethnographer will digitally record your interview and it may be transcribed in part or in full. The transcript may be sent to you for editing and final approval. Data from the interview will be used as part of the ethno-historical report for this project and transcripts may be included in part or in full as an appendix to the report. The ethnographer may take notes and photographs and ask you to spell out names or unfamiliar words.

**Discomforts and Risks**

Possible risks and/or discomforts resulting from participation in this Analysis may include, but are not limited to the following: being interviewed and recorded; having to speak loudly for the recorder; providing information for reports which may be used in the future as a public reference; your uncompensated dedication of time; possible misunderstanding in the transcribing of information; loss of privacy; and worry that your comments may not be understood in the same way you understand them. It is not possible to identify all potential risks, although reasonable safeguards have been taken to minimize them.

**Benefits**

This Analysis will give you the opportunity to express your thoughts and opinions and share your knowledge, which will be considered, shared, and documented for future generations. Your sharing of knowledge may be instrumental in the preservation of cultural resources, practices, and information.

**Confidentiality**

Your rights of privacy, confidentiality and/or anonymity will be protected upon request. You may request, for example, that your name and/or sex not be mentioned in the Analysis material, such as in written notes, on tape, and in reports; or you may request that some of the information you provide remain off-the-record and not be recorded in any way. To ensure protection of your privacy, confidentiality and/or anonymity, you should immediately inform the ethnographer of your requests. The archaeologist will ask you to specify the method of protection and note it on the attached Consent Form.

**Refusal/Withdrawal**

At any time during the interview process, you may choose not to participate any further and ask the archaeologist for the tape and/or notes. If the transcription of your interview is to be included in the report, you will be given an opportunity to review your transcript, and to revise or delete any part of the interview.

**Consent Form**

I, _____, am a participant in the Pa'akai Analysis (Analysis) for the proposed Kapalawai Resort Project (herein referred to as "the project"). I understand that the purpose of the Analysis is to conduct oral history interviews with individuals knowledgeable about the project and the surrounding ahupua'a in an effort to identify and protect traditional cultural practices and cultural resources.

_____ I understand that Keala Pono Archaeological Consulting (Keala Pono) and/or G70 (the client) will retain the product of my participation (digital recording, transcripts of interviews, etc.) as part of their permanent collection and that these materials will only be used for scholarly, educational, and/or land management purposes.

_____ I hereby grant to Keala Pono and the client the right to use the property that is the product of my participation (e.g., my interview, written materials, and any other materials I provide) for the Analysis as stated above. By giving permission, I understand that I do not give up any copyright or performance rights that I may hold.

_____ I also grant to Keala Pono and the client my consent for any photographs provided by me or taken of me in the course of my participation in the Assessment to be used, published, and copied by Keala Pono and/or the client and its assignees in any medium for purposes of the Analysis.

_____ I agree that Keala Pono and the client may use my name, photographic image, biographical information, statements, and voice reproduction for this Analysis without further approval on my part.

_____ If transcriptions are to be included in the report, I understand that I will have the opportunity to review and edit my transcripts to ensure that they accurately depict what I meant to convey. I understand I have the power to delete any information I deem too sensitive and/or too personal for publication from the transcript. I also understand that if I do not return the revised transcripts after two weeks from the date of receipt, my signature below will indicate my release of information for the draft Assessment, although I will still have the opportunity to make revisions during the draft review process.

_____ I further understand that not giving my consent to any portion of the above listed items will not prevent my mana'o being included in the Analysis. For example, I may decline Keala Pono or their client permission to use my photographic image or biographical information but by signing this Consent Form, still grant my permission for my mana'o to be included in the text of the Analysis.

By signing this consent form, I am acknowledging that I have been informed about the purpose of this Analysis, the procedure, how the data will be gathered, and how the data will be used. I understand that my participation is strictly voluntary, and that I may withdraw from participation at any time without consequence.

_____

**Consultant Signature** **Date**

_____

**Print Name** **Phone**

_____

**Address**

**Thank you for participating in this valuable study.**

**Transcript Release**

I, _____, am a participant in the Ka Pa'akai Analysis for the proposed Kapalawai Resort project (herein referred to as "the project") and was interviewed for the Analysis. I have reviewed the transcripts of the interview and agree that the transcript is complete and accurate except for those matters delineated below under the heading "CLARIFICATION, CORRECTIONS, ADDITIONS, DELETIONS."

I agree that Keala Pono Archaeological Consulting and/or G70, may use and release my identity, biographical information, and other interview information, for the purpose of including such information in a report to be made public, subject to my specific objections, to release as set forth below under the heading "OBJECTIONS TO RELEASE OF INTERVIEW MATERIALS."

**CLARIFICATION, CORRECTIONS, ADDITIONS, DELETIONS:**

**OBJECTIONS TO RELEASE OF INTERVIEW MATERIALS:**

_____

**Consultant Signature** **Date**

_____

**Print Name** **Phone**

_____

**Address**

**Thank you for participating in this valuable study.**

TALKING STORY WITH
**MICHAEL FAYE (MF)**
Oral History for the Proposed Kapalawai Resort Project by Gina McGuire (GM)
For Keala Pono 5/20/2025

GM: Okay, I'm going to start the recording. If you want to start just by telling me a little bit about your background. State your name, where you're from...

MF: Okay. My name is Mike, Michael Faye. Born in Waimea, Kauai. Um, came through St. Theresa School in Kekaha. Ended up going to Hawai'i Prep Academy on the Big Island and then study a year of architecture at Carnegie Mellon University in Pittsburgh, Pennsylvania. Ended up coming back to Kauai and bummed around here for a year or so and then wound up at University of Hawai'i at Mānoa with a degree in business finance.

GM: Nice. Could you share a little bit about your family background?

MF: Um, sure. My father was, uh, Alan Faye Senior. He was the manager at Waimea Sugar Mill Company. A little family owned, uh, around a thousand-acre sugar plantation. Uh, his father was uh, HP Faye, my grandfather and HP was one of the founding members of Kekaha Sugar, of, Kekaha Sugar Company. And the reason he was here in Hawai'i, he immigrated from Norway. He came from the request of his uncle, Vladamir Konustan, who was konohiki of the Waimea district from, I don't know, someplace in the 1850s, because that, I think, the late 1890s. I'm not sure about those dates.

GM: Okay.

MF: So we've been here for a little while.

GM: Yeah. Long history. Um, and then, how have you come to know of the Kapalawai, Makaweli, subject property?

MF: Well, first of all, that's across the river. And that's Robinson property and Robinson property was always off limits. Um, so as far as you know, deep history there, I don't know if I have a deep history although we have numerous pictures of Faye family kids, you know, from the 1890s to the early 1900s visiting and playing and socializing with the various Robinson and Sinclair families. Um, in, yeah, their property on Ni'ihau. But you know, nothing, I don't have anything from, actually, um, Kapalawai itself. I did, one of my, hānai father, was Eddie Duarte, who worked for the Robinsons for a long time and his home was in Pokala Village. And I would visit with him a lot and that's probably where I learned the most about the Kalalau, Kamakuahine, or you know, that whole area.

GM: Okay.

MF: Also, when I was a kid, I had an interest in historical things and Hawaiian culture, artifacts, and such, and I recall doing, eighth grade, I think it was eighth grade, science project, for some reason I decided to map the Russian Fort. [Laughter] So I kind of mapped it. I don't know where the heck that thing is anymore, but I did. You know, I always had an interest in the Russian Fort, and they call it Pā'ula'ula now. For good reason. And, um, was very interested in Peter Mill's book, Hawai'i's Russian Adventure. And the conclusions that he came to, uh, as far as the background, on Pā'ula'ula area and how it, how, I think, I believe, that it extended, the royal compound, basically extended in Kapalawai and into that. That's why the fishpond is there. Yeah, that's kind of my connection.

GM: Okay. That transitions nicely into if there's any cultural or archaeological sites in the area that we should be aware of in the area. So I know you mentioned Pā'ula'ula and the fishpond but if there are other things or you want to expand on those...

MF: Um, you know, if you read the logs of the early people, or the Westerners coming here, there is no way in hell that they convince commoners to paddle his canoe across the river. And, you know, got Pā'ula'ula. So you know, we got to understand that that was a pretty significant place. And by expansion, you know, the compound, and what kept them fed and everything, the fish in the fishpond. I don't know of specific sites or stories but, I would be, extremely careful on, or I'd be extremely diligent in uh, doing the historical inventorying and, you know, study of that area. Just because the significance, again, of those kings, up to Kaumuali'i, yeah?

GM: Okay, um, so I haven't been to the area myself. So it's a pretty substantial stream separating the areas?

MF: The Waimea River.

GM: Right, sorry. Got it. [Laughter] Pretty substantial.

MF: Yeah, so Captain Cook lands there and they note the, I'll read Peter Mill's book, Hawai'i's Russian Adventure, but basically you know, the sailors, came in, there's a large community on the Waimea side of the river and they hike up and they see the Menehune Ditch and they talk about that, but they see the structure on the other side of the river, and this is the Pā'ula'ula Heiau. And you know, royal complex, and uh, they try to get the Natives to take them across. [Laughter] No amount of nails or knives or anything like that could convince any of the maka'āinana to cross the river. You know, to go there. My other connection, I guess I have to the Pā'ula'ula site, is that, the Faye family owned, well still owns, a member of the Faye family owns, the um, Gulick-Rowell house, an early missionary home on the Waimea side of the river but, you know, by the time the missionaries got there in 1820, what is that 40 years or so after, Kaumuali'i is way more relaxed, and invites them to construct their homes there next to his re-modeled heiau, now called the Russian Fort. Um, so you know, there's, there's that huge chunk of history there at, at that Russian Fort slash Pā'ula'ula site that I believe extends down all the way over to the Kapalawai area.

GM: Yeah, that makes sense. Are you aware of any gathering practices, either historical, or continuing today, within that project area?

MF: Um, no, again, nothing terribly significant, you know? People fish along the shoreline, you know, that's pretty much it. But you know, the Robinson family had been very private about that kind of stuff, so permission to get on that land is um, you know, always by an invitation, or by special request only.

GM: And the fishpond is not active?

MF: No.

GM: Okay. So I can pull up the map since we're on... share my screen. [Showing map] This is the proposed development plan. Do you think this footprint would affect any site of cultural significance or access to a site of cultural significance?

MF: Well, you can see right here the pond. Yeah, you know, I think that needs to be sensitively, well first of all, researched, find out how it functioned in the, in the day, and then, a sensitive interpretation, I guess, and use. I think it'd be great to have it functioning again. I also, you know,

the Robinsons did hire me, my, my company, detail and construction, to work on the Kapalawai House. Very large structure, yeah?

GM: I think you can see it on the aerial.

MF: Yeah, you can. You can see it from space. No, no. [Laughs] But, um, yeah, that needs to be sensitively... I've worked on a lot, a lot of historical homes. I would have loved to have work on Kapalawai, I always wanted to, but I mean to restore it. But I'm not [inaudible]. Plus the artifacts and the personal effects that, the last time I was in the building, you know, I think Aubrey Robinson, looked like he just closed the door and left for the evening.

GM: That's cool.

MF: I mean, seriously, his, yeah, it was pretty cool. I don't know, I'm just really hoping that the um, the family, the Robinson family and any developer should proceed with, you know, super sensitivity.

GM: Mmhmm. So, while development in the area continues, what do you think could be done to lessen adverse effects on, both cultural practices, but also the community in the area.

MF: What community?

GM: [Laughter]. West side, west side.

MF: Well, you know I've been involved in the west side community, business community for a long, long time, and uh, we look at this potential project at Kapalawai, I guess would be, 30 years ago? A long time ago, I think the business community really supports it. We think it'll bring needed jobs and business, and visitors to the site. Um, I mean, to the community, that we could really use. Uh, I don't, I think the impact to the community I think ends up being very positive.

I think, the impact to, you know, the, gathering rights, and cultural things, again that property has been in the hands of the, of the Robinsons for so long, the Sinclairs, and then the Robinsons for so long, that if there were gathering rights, nobody remembers. [Laughter]. My understanding is that, you know, they're gonna open up access to the surfing spot and, I think, if done correctly, that'll be positive because the people will have now, kind of like, more legal access to that site. I remember as a kid, the Robinsons would chase down people trying to surf, my brother included, I was never a surfer, my brother included, and they would lock 'em up. And it was like, "Whoa, okay."

Um, but, yeah, as far as, I think it's a positive impact to, to number one the family, and it's so important that, you know, when they're happy, the community's happy. When they're not happy, the community's not gonna be happy. Just because they're such a part of it, okay? You know, such an important part of it, but that shouldn't be underestimated, even though they're a very private family, the, the uh, they're well respected. They, on their own, due to how they got Ni'ihau, and how they manage the property, they, you're one of, you're one of them, you know, you're an employee, you're part of the 'ohana, you're treated that way. As 'ohana. If you're from the outside, you're from the outside. [Laughter]. You know, you're not welcome on the property, etcetera, etcetera. And the west side community, in large part, really, I think respects that and, understood they owned that, such a swath of the island that it, what I always say is, they buffer us from development and, and, undesirable, undesirable, um, you know, urban sprawl. And we always say something, you know, "We live on this side of the river," and the other side of the river is, what really, what creates that buffer is the conservativeness and the, uh, uh, you know, the way in which the Robinsons manage the property. Which is, you know, which is, keeps us isolated and unique, I think. And I don't see this affecting that much.

I think one thing being good, for our market, for you know, our local produce, you know, they'll be, hopefully, there'll be folks in town that are spending money on community things and things like that, not overwhelmed, it's not a thousand room hotel or anything like that. I think it's right sized, and uh, yeah, right size. It's kind of like, I don't know if you know this, but I developed the Waimea Plantation Cottages. And you know, on our side of the river, and um, that has, has, you know, very positive community acceptance. From environmentalists and anti-development people too. You know, regular community people. And I think the Kapalawai development will do the same.

GM: Okay. You kind of hinted at this earlier with the place names and Pā'ula'ula, but do you have any mo'olelo, mele, oli, or place names that we should be aware of for that area?

MF: Sorry, I don't.

GM: Okay. And just in your experiences and life in the area could you talk about how the area has changed, from when you were younger 'til now.

MF: That's one of the nice things, it really hasn't changed much.

GM: That's nice to hear.

MF: But you know, we don't have sugar and so we don't have the industry and that, that does have the impact, you know? We were, I was an agriculture, we're always an agricultural based community, um, we still, we still are. You know, not at the level it was with sugar. Um, um, and the hierarchy, kind of, of the culture. Of you know, society kind of culture. I do remember Kapalawai, and I did date a Robinson girl for a while, and she said, "Hey let's go down and see Aunty Eleanor." I said, "No, no, no. I don't want to do that." [Laughter] It was scary, you know? But we drove down, down the road, and I don't know if you've been there, but you drive down a long road and it kind of fish hooks around and as you came around that turn they have a great big lawn in front of, in front of Kapalawai house. And uh, there were uh peacocks and other birds like that walking around on the property and come a little bit further around here's this huge wooden structure. Huge wooden steps. Looks a little bit out of place. Out of place both in place and in time. You know what I mean? And it was like this, this unrealistic experience. Thank God Aunty Eleanor wasn't there. [Laughter] You know, I got to go back, years later, as a contractor working on the building and, and it was still very impressive. It, it needs something like this to keep it going otherwise it's just going to fall apart.

GM: So preserving that will be important.

MF: I think so. You know, we don't get to see these things, the general public. And so, when a family like the Robinsons, with the property like the, like Kapalawai gets opened up, you know some people have lived in the community all their lives, you know? They might be 60, 80 years old, they've never been there. So yeah, it opens the door a little bit for us to, you know, get in there to see something that we probably wouldn't have been able to see.

GM: Okay. You kind of already covered this but I'll ask it anyway. But are there any cultural concerns that the community have for that area?

MF: Again, I really don't think so because it's been closed off for so many years. And, I do believe that the family respects the culture and will put cultural kind of protections in any kind of agreement they make with somebody. I think, I think, this is not the concern, I think this is a benefit, is I, you ask me these questions made me remember stories from old timers saying that way back, you know, probably in the 1920s or '30s, the fishpond was still functioning. It might not have been in active use but it was functioning. And that, I think this project, done correctly will put that back in and will

be something the Native population here can certainly get behind and understand that this is, you know, developed before any white guy came around and you know, be very proud of it. But I think that's one of the things that's lacking. You know? When, Kaumuali'i did his remodeling of his, Pā'ula'ula and converted it to a, a fort, and then, his, you know, whatever you want to call it, kidnapped or whatever, you know, he leaves the island, and his son, uh, rebels against Kamehameha, which was a big mistake so the Kamehamehas would never capture Kauai now come down and kind of rule with that iron fist and bring the windward chiefs in, that the Kauai Hawaiians pretty much lost their connection to their, you know, their, a lot of their old time cultural things, you know, this new group came in. So, you know, you talk to them about, about the local Hawaiians here, and you talk to them about Russian Fort and Pā'ula'ula and what a significant role it played in early Hawaiian history, early modern Hawaiian history and there's no connection. You know? No connection. And I really think that things like re-naming it to Pā'ula'ula and re-telling the story as Peter Mills does and now gaining, or the restoration of this fishpond and other, uh, historical attributes of the land get restored or at least identified, that, it's going to bring back, it's in their DNA and it's going to bring back, taking pride and a, more ownership than they have now. So I think it's really a positive thing.

GM: Okay, and then my last question unless there's anything you want to add, is if there's anyone you recommend we talk story to?

MF: Did you talk to my cousin Christine Faye?

GM: No.

MF: She's the director up at Hui o Laka in Kōke'e, Kōke'e Museum. She would be a good one to talk to. She's kind of the historian in the family. Um, Keith Robinson, if you haven't already. He's, he's got all kinds of stories. Um, you know, I would have recommended Aletha Ka'ohi but she passed unfortunately. Um, yeah, I would talk to Christine. 'Cause she's got a lot of, she knows the stories way better than I do.

GM: Okay.

MF: And then Aletha was, I never did anything, in this cultural kind of arena without first consulting Aletha. [Laughter] But um, unfortunately like I said, she passed away about a year ago. I would read, I would talk to Peter Mills.

GM: I know him!

MF: Yeah, he's in Hilo right? At UH Hilo. He would, he may have some contacts, because of, you know, his research behind it, his books. But yeah, if much for that area, must read is Peter Mills, Hawai'i's Russian Adventure, not to be confused with Russia's Hawai'i Adventure by somebody else 20, 30 years ago. Completely different. If you really want to get the perspective, I think the older book first, which is a completely different interpretation than Peter Mills. But I've talked at length with Aletha about this and we went, "Yeah, we've finally found somebody to write the story the right way."

GM: Oh good.

MF: Or interpret the history of that site the right way.

GM: Alright, well those are all my questions. I really appreciate your time. What I'll do is I'll type this up and return the transcript...

TALKING STORY WITH
**KEAO NESMITH (KN)**
Oral History for the proposed Kapalawai Resort project by Gina McGuire (GM)
For Keala Pono 5/29/2025

GM: So if it's okay with you I have a list of questions and if okay with you I'll audio record you and then I'll type it up and give it back to you and then you can make any changes you would want to make. This is for the cultural impact assessment.

KN: Okay.

GM: Okay. So, if you can share a little bit about yourself, where you were born and where you grew up. Little bit of background information.

KN: I was born in Waimea and raised in Kekaha.

GM: And then just your name for the record.

KN: Keao Nesmith.

GM: And then can you share about your 'ohana background.

KN: Um, I was born Waimea, raised in Kekaha, Hawaiian Homestead land. My mom is Hawaiian. She's originally from Hilo. My dad is haole from Texas and uh, seven of us in my family. Seven of us kids and uh, I am number six in the family.

GM: Wow. I'm the youngest so I get that.

KN: Ohh, so you know.

GM: I know the way.

KN: You know the hand-me-down rule.

GM: [Laughter] So Peter Mills recommended we reach out to you, but can you share a little bit about how you know about this area and your relationship to it?

KN: Uh, well it runs along the highway and everyone knows the highway is the only way to get from east to west and so you have to pass there. And so that's been the case for most of my life. And looking at the area, how, that area, we have always regarded as, you know, bushes... wild, and uh, we like our rural spaces, especially on the west side of Kaua'i. We like that our side of the island is rural. And that... we don't have the busy-ness of town and, but, speaking for myself, but I know that it's shared by many of us, we worry about encroaching urbanization, gentrification. So ideas like this are worrisome to much of us, and there is a fishpond in the area that you know, is covered in, in the bushes. So it's uh, you know, access to the fishpond, potential fishpond, because it's privately owned, um, we can't just go there so it's just stuff you hear about. And uh, so there's a, there's a lot of mystery involved in that area. For me, the only access been to walk the trail to get to the surf spot.

And growing up, we used to be, it used to make us nervous, made me nervous to walk that trail because there used to be bulls over there and sometimes they would chase. So that's always the warning is if you're gonna walk, Pakala's, the surf spot and walk the trail, watch out for the bulls. Uh, but that's the character of the place, you know? It kind of represents the wild character of the place, the natural character of the place. So there is a certain sort of romantic association about the place because it's so rural.

GM: Okay, that kind of dovetails on my next question. You mentioned the fishpond, but if you know of any traditional sites or cultural sites, archaeological or historic structures, or burials that we should be aware of in the project area?

KN: I wouldn't know of actual burial sites so I can only assume. And uh, but I am aware that, for example, Queen Lili'uokalani did her tour around Kaua'i, well she did a couple tours, each time, she went, so I think that's two times. I could be wrong but I think it's two times. Um, while she was queen. I know one was while she was queen, another might be when she was princess. Um, stayed there, so that would have been Sinclair family property at the time. And she actually stayed there, uh, on her island tour and then from there they went to Ni'ihau and then to Nihoa on the tour. But before and I think on the way back they stopped there and stayed there as well, her entourage.

GM: That's pretty cool. Are you aware... I know you mentioned the surf spot, but any traditional gathering practices within that area?

KN: Well, obviously there's a fishpond there, there's going to be a village associated with it. If there's going to be a fishpond there'll be a village nearby because it is conducive to living spaces, you know, kauhale, in the area. It's a great situation, actually, if you're thinking back in time, it's a great area to live because of the access to resources, natural resources, in the area. And your access to mauka and makai is actually pretty good even back then, on horseback or on foot. So you can only assume that it was a very rich area. Even today, it's like it can be dry, um, on the kula, you know the plains, left and right, east and west of the gulch. But the gulch is always green. So, it, it's a very favorable place for living, uh, especially back in the, back in the days, I would say. What I mean by that is 1950s and earlier. When I was a kid there were a few times where we, I went with my parents to go visit, uh, family friends who were living in the houses on the mauka side of the highway. So I've been up and down to those houses, area on the mauka side. And I was a kid at the time, but I remember how nice and green it was, how lush it was compared to the surrounding areas. So I'm sure there must be a lot of material in the historical record of house sites and things there. And um, like I said, it's mostly bush, so it's very rural.

GM: Okay, so this property, so it has a really interesting history that it's been private for a long time. But do you think the proposed development would affect a place of cultural significance or access to a place of cultural significance?

KN: It depends on the access allowed. I mean, I'm sure the owners and developers must be conscious of local sentiment and sensitivities about such things as access and there is a long kind of push and pull sort of history with the Sinclair-Robinson family because they, they, tens of thousands of acres that they own. Easily if not quarter, maybe quarter of the whole island just in that area going all the way up the mountain and stuff. So it's just as off limits as Ni'ihau is to use and suddenly the access being given is this kind of access and that's just kind of weird to think about. Uh, yeah, so, there will be lots of Kaua'i residents who will be, their curiosities will be satisfied by having that sort of access because none of us, very few of us are able to say we've been in this part. So for a lot us, we will be

the tourists because, you know, we've never been given access to that area unless under certain circumstances. If you ever did work for the Robinsons then you would have had certain access. So, yeah, I wonder, are the Robinsons going to abandon their family house over there?

GM: You know, I don't have their plan for the family house, I think they're going to continue to preserve it. They're going to continue to own the property and then the developer coming in to put the resort, I think it's a leasehold opportunity.

KN: So Robinsons will maintain ownership?

GM: Yeah.

KN: Okay, yeah because their house, I'm sure, must be a historical place already.

GM: For sure. So this next question is as development continues, and this can be broader than this proposed development, but in the area what could be done to lessen adverse effects on cultural practices in that area?

KN: Current cultural practices. The only current cultural practices we've been allowed because it's been private property is surfing. I don't know what other kind of things. I believe there was an effort some years ago by community members to go and restore the fishpond area but I guess that is, the fishpond itself, I think, I don't know, is property of the Robinsons too. Yeah, I just don't know. But it's just the whole restriction because of the private uh, ownership. Uh, we can't oppose if we don't know. You know, so... or support when we don't know. I mean, if suddenly, we'd been denied knowledge of anything and then suddenly the only knowledge that we're given is this? Yeah. It shouldn't be surprising that many people are either suspicious or unappreciative or, you know, ambivalent, maybe.

But, uh, are people excited about this prospect? Hard to say. I mean, I guess I'm just thinking about all the conversation, rumors that have gone on about the potential project. This has been a thing for at least a couple decades, you know, and some people talk about, "What do you think about that proposed resort?" People go, "Resort? What?!" So our initial reaction is, "No, no, no." But the fact that it's going to be like Waimea Plantation Cottages is like, if it's going to be like that then maybe, because we locals really enjoy having staycations over there at the Waimea Plantation Cottages because it's like being home. But more bougie. Because, you know, and we do it all the time, like my family was just there a month ago for the weekend. Waimea Plantation Cottages. So if this is going to be like that, then it gives us those opportunities, but we'll just be any other tourists, you know? 'Cause we'll have the same access as tourists.

So, so there's a certain sense of that that seems kind of, "You think of me as a tourist." [Laughter] And I'm like, "I'm special, I'm a local. I'm, I'm more than a tourist." So it's like, the only kind of access that I'm going to be given is as a tourist. And so, because uh, I pretty much believe that a majority of the west side of Kaua'i are very proud of our, our land, and our culture, our local culture, our rural culture. And, so we kinda, we're very on alert about, and I'm sure the Robinsons are very much the same about all of their land holdings. You know, they're very guarded about it, and rightfully so. But the same is true for us, locals, we are also guarded about our local west side, west Kaua'i culture. Um, and so, it shouldn't be surprising to anybody, whether it's the Robinsons or anyone else, that we would have this attitude that... we would be uncomfortable about it. So, I think more there's more a sense of suspicion and trepidation, maybe even fear about this proposal among locals rather than excitement and support and enthusiasm. I'm not aware of anybody going, "Rah, rah! Wow, awesome."

But then, I guess, when you think, in as far as workers are concerned, there could be, that's definitely a positive. Because the majority of people from Kekaha, vast majority of Kekaha residents actually work way over in Lihu'e or Koloa or Poipu, and much fewer work closer to home. And so it's like, if this is going to provide jobs for uh, that are situated much more close to home. We could, if you wanted to, you could paddle your canoe to work, if this is the case, here, from Kekaha. Or you could, if you wanted to, you could walk, you know, the four, four, I think that's four miles, five miles from Kekaha through there. Uh, you know what I'm saying. It reduces the risk of having to travel so much and having to burn so much fuel every day to go to work far away. And it makes that economic opportunity or advantage, um, much better for west side residents. So, on that side, but you know, why must we do that? Why must we compromise, uh, like that? Ahhhh. I don't know. I, I reserve space in my opinion for some enthusiasm but it hurts. It hurts a little. It hurts a little to give up some of our rural environment. I don't want to do that, really. [Laughter] I like our open brush area. I like that. And um, you know, so there's a lot of aloha. So the aloha we feel as local residents is, uh, we feel we're the guardians of our, not just our home, our, where we actually live, where our house is, but our area, you know, the whole moku. The moku of Kona. We're very protective like that.

GM: Can you, since you're the first person I've talked to who's surfed there, can you talk a little bit about what the surf spot is like over there?

KN: I'm not a surfer myself and um, the access, it's been years since I actually went down the trail. The times that I did go, it was more to spend time and I was with friends. Plus, throughout my life I've had lots of friends in the village just next and uh, so I have spent lots of time growing up with my friends at their homes over in the village just next. So from there I've been able to look over, you know, and such.

But, I mean, that kind of raises a different angle, perspective too, yeah? Because, the poverty in that village, and I don't know if there are plans to demolish, I wouldn't be surprised, really, to be honest. But there is such a stark difference. It would be such a stark difference. I mean, that, this kind of opulence of the resort and then you go the, and I don't know if they got the same idea, I mean, if I look at the design it seems like the, the, the etching, the drawings of the units across there, look uniform. And you're not going to get uniform if you follow the plan of the Waimea Plantation Cottages. Those were houses, actual plantation houses that were lifted and moved to the Waimea Plantation Cottages and then refurbished. And so they're old school plantation, actual old school plantation homes. And they put a plaque on each of them with the names of the last family that actually lived in that house. Wherever, wherever the house was located, whether in Pakala, Kamakani, Kekaha, or whatever. Um, I imagine that in case, I'm not sure there are that many same type of houses left for them to take over to this new location so if that is the case they're probably going to build new units that look no different than you know, over in Poipu, um, and if that is the case, that's sad. That would be sad, to make it just like any other touristy resort and it wouldn't have the same character as the Waimea Plantation Cottages if that's the case.

It also seems that there are units right on the edge of the fishpond too. To give whoever is occupying the unit a beautiful view of this pond and it sounds so romantic, oh my god. But for us Hawaiians, it's like, "Get the f*ck away from my fishpond." [Laughter] It's an actual fishpond, it's an actual old fishpond. It's not for you to gawk at as a tourist, you know what I mean? Uh, yeah, that's all part of that being protected as a local person. But you know, I mean, yeah, so it's very conflicting. It's a very conflicting issue.

GM: Yeah, for sure. Um, do you have any mo'olelo, mele, oli, place names that we should know for that area?

KN: The story of Queen Lili'uokalani should be expanded upon. If you want I can help provide that because they were reported on in the Hawaiian language newspapers and that's where I read about it. Also, there are mele, there are mo'olelo. Makaweli is the name of a mo'o of the area. Uh, and the name of that particular gulch is Kekupua. And, uh, Kekupua means the kupua, the demigod, or the demigod or the, could be a mo'o, could be a term that you use to talk about a mo'o. The, exactly what the name of that kupua is would have to be researched. So Kekupua, Makaweli, are all references to what sounds to me just by the name alone, epic stories. And exactly what those stories are need to be researched.

But the potential for esoteric knowledge is huge. Just given the names alone. Pākalā, pākala is a type of fish. And there's a Pākalā over on Ni'ihau too so there's a correspondence with Pākalā here, Kaua'i, Pākalā over on Ni'ihau. Uh, Makaweli. Yeah. Uh, right, so there, there's kind of a, in the past, you know, even now there's kind of a essence, uh, of, it's kind of spooky. It's kind of a spooky area. I guess because it is uh, it's a gulch, so it's kind of a shady... and it's, there's a lot of big trees and shade and stuff, so it kind of lends to the feeling. Even when you walk the trail to get to the surf spot, there's kind of, for me anyway, and I'm not the only one I know who gets that kind of heebie-jeebies feel, out in the area. I don't think that's a bad thing necessarily. It's just, it adds to the character, it lends to the mana of this area. And to me, that's a positive, not a negative.

Uh, so yeah, the potential for a lot of happenings in the lower is [inaudible] for the area. And then, you know this part right here, there's no way that you got a fishpond there and not have a heiau or a kū'ula. It's just impossible. There's no way. So you cannot have a fishpond like that from centuries ago and not have a kū'ula, not have a heiau, not have a kia'i or kahu whose living quarters were in that area. Super conducive and habitable to permanent living. And so on and so forth. Uh, I don't know the names of the shark kupua who are in the area. I did work on the boats for the boat companies before, that would take tourists to Nāpali side. So every day we would go to work on the water, we would pass this area. Um, you know, it's not, uh, it's not a nice beach, it's not a nice beach. It's always murky, always muddy. So for whoever stays on the beach, you're not staying in a beautiful white sand beach with ideal conditions and clear water, and you know, not at all. It's actually brown, murky water. Lots of, what do you call, river mouth sediment, in that area. Shark attacks happen maybe, if not every year, every other year, somebody gets a nibble or worse in the area. So yeah, it has all of those things going.

GM: I will for sure, one thing we do is look into the place names, but sounds like there's a lot of mo'olelo behind the inoa.

KN: Yeah, yeah. It could be that Makaweli could be the name of a shark too. I mean, it sounds very sharky.

GM: It does. [Laughter]

KN: [Laughter]

GM: This might be a toss out question 'cause it sounds like the area hasn't changed that much, but in your lifetime, can you share how the area has changed or not changed?

KN: Not much, except that from time to time there were big trees on the mauka side and a number of them have been removed by Hurricane Iwa, Hurricane Iniki, knocked over many kiawe trees. I remember seeing, after the hurricane, seeing many kiawe trees knocked over with the roots up in the air. So that was a natural thing. There have been a couple of flood events. So how they're gonna mitigate the potential for flood events is going to be interesting. If, I'm not sure how much, I think on the mauka side, that could be below sea level, the ground could be below sea level. I'm not sure.

It seems like it. Because when you're passing on the highway, you're looking down, on your right side and the highway is just only a few feet above sea level. Uh, so, I think that, and when you look at, even like right now, you're looking at grass, but you know there's water in there, you know, it's marshy, it's wetland. Sometimes you see cattle in there but not often, but cattle are more up on the flat, kula areas on the east side of the gulch.

GM: Trying to picture in my head.

KN: Other than that, let's see, the only other improvements were like done to the highway or the two edges of the highway with the guardrails. There is that, the, if you, on the Waimea side of the gulch, there's that one entrance, I've only been there a couple of times. I've never gone down into there because there's a hole in there, I've been to the hole, uh, two, three times in my life, and then the entrance to it, I think was improved. Other than that it was just dirt road. And that's the only, those are the only things I can think of, as far as changes are concerned. Yeah. Oh, there, well, the fence that is there, if you go, if do the walk to the surf spot, there's a fence in there, but that fence was not always there when we were kids, there was no fence, that's why you had to watch out for the bull.

GM: You've mentioned this already, if there's any other cultural concerns or just community concerns related to the project area.

KN: Yeah, yeah. It's, it's the destruction for the potential to find actual heiau remnants, remnants of heiau, remnants of kauhale, you know, other artifacts, you know, belongings of kūpuna in the area. The potential for becoming local stewards of the fishpond or purely cultural practices and not for the gawking eyes of tourists and for production. Those are big concerns of ours. It comes along with not being allowed access as private citizens to privately held land for all these decades, past century, whatever, and it goes along with that. So like I said earlier, finally we get to have access but only in the capacity as tourists. Not as interested locals whose only concern is cultural practices. So, yeah, so there is, there is a certain amount of resentment there. That we get treated this way and yet we're not any less local than the Robinsons themselves. Mind you, I do like the Robinsons so I'm not making any statements against the Robinsons. But there's a certain amount of chagrin.

GM: And then my last question is if there's any other kūpuna, kama'āina, cultural or lineal descendants or other knowledge holders that we should be reaching out to, that might be willing to share because that's the other, it's been hard to get people to talk.

KN: Really? I'm kind of surprised, I guess. I guess those who might be afraid are those who have certain business dealings or maybe they're, they lease land from the Robinsons so they're afraid of retribution from the Robinsons if they speak out, maybe, or if you identify them by name, maybe they, they worry about that. Maybe if you assign them a code instead of their name, they might speak out. But actually, a lot of people aren't afraid to grumble about the Robinsons and are not afraid to, you know, let them have it in a public hearing. I'm a lot more nuanced because I appreciate the contributions the Robinsons have played toward the preservation of Hawaiian language and the people of Ni'ihau, even wilder than here on Kaua'i. That kind of a thing, I mean, the vast majority of Ni'ihau, I mean Robinson land holdings here on Kaua'i are left as, you know, wild land, brush. This is the first time for me to know so much about their potential, um, urbanization effort. Um, so, yeah, let me see, you want me to drop names?

GM: If you're comfortable. Or you can check with them first if you want to and then get back to me, but yeah, just anybody you think we should reach out to...

KN: Uh, yeah the Taniguchis, the hunters, it's the hunters of the west side who are familiar, the surfers, the fishermen, um, people who throw net and stuff like that. So Taniguchi family is a big family, Waimea Valley. Uh, let's see, the Guitarro family, many families in the Ni'ihau community, I can see them being more reticent, you know, hesitant to speak up, but, hey whatever, you can't go wrong with asking. Let's see, and then when you talk to them, they'll drop more names. The Kaohi family, Waimea families, yeah? The Taniguchis, Kaohi, the Guitarro, uh, A'ama family, yeah, and I'm thinking of people who might have had land access.

Of course if you're talking about the people who have been surfing in that surf spot for years and years, there's, then you're going to be expanding the scope to people from around the island because there are people who drive in from north shore, east side, just to go surf right over there. And that's kind of a different category of people compared to the rest of us who are actually longtime residents of the west side, Kaua'i. 'Cause for them, it's a special use, they come the spot, go surf, and go home and for us, we kind of live in the area, many of us do surf there, I am not one of them. But uh, we pass through the area. For those of us who, even if we only pass through, we notice the differences, the change, the differences that happen, the changes to the land, because we pass so often that we're able to compare this year to 10 years ago and 20 years ago because we're, that's the only way to get around the island. Yeah, so, if you go and talk to these people they can drop more potential contacts for you.

GM: Okay, thank you. That's all my questions unless there's anything else you'd like to add that we didn't cover.

KN: No. Overall, I'll be sad when it happens. I won't be celebrating it. But maybe down the road I might even go stay there for some time. But I think I'll be more sad than anything.

GM: Okay, well thank you so much for sharing your mana'o, I really appreciate it.

TALKING STORY WITH
**THOMAS NIZO (TN)**
Oral History for the proposed Kapalawai Resort project by Gina McGuire (GM)
For Keala Pono 5/30/2025

GM: I just want to make sure that it's okay to record you.

TN: Okay.

GM: So to start, please state your name, where you were born, grew up, and a little bit of background information.

TN: Thomas Nizo, well, Thomas Milimilinakalawelioihelua Nizo. 53 years old. Grew up in Pākalā, Makaweli, and Kekaha, Kaua'i.

GM: Okay. Can you share a little bit about your family background?

TN: Okay, so, both grandparents, my, you know, moved out from Ni'ihau to Kaua'i to work on, you know, Makaweli Sugar Company, Olokele Sugar Company, but both sets of grandparents, both from Ni'ihau, both grandfathers worked as security for the Robinson family, was my mom's dad, and my dad's dad was the priest or minister for the Robinson family on Ni'ihau and served as the, I think, like the, general labor, but they migrated, migrated back to Kaua'i, ah, probably, I was in the '70s, so probably, like in the '50s, yeah, the '50s or '40s, came back to Kaua'i. And then, you know, they had my, both sets, both my mom and my dad were born here on Kaua'i, so, yeah, so like, I think about the '40s or '50s they came back here to, to uh, Kaua'i, so, one set of my grandparents, uh, just, not too long ago, maybe 20 years ago, they used to live in Kekupua, which is the upper side of Makaweli and Kapalawai, but my parents, my dad, and my mom, um, we used to live in Kapalawai. There's a little, a little town that was owned by the [inaudible name] and Robinson family. Probably like six houses in that Kapalawai area, uh when I was growing up, so I probably grew up in that little town, or that little housing village, maybe until fourth grade I think. In Kapalawai.

GM: Well that answers my next question, how did you learn about the subject area.

TN: Oh. [Laughter] Yeah, so. Lived there, played there, I was kolohe there, catching chickens, learned how to ride a bike, uh, yeah, went down surfing on the, on the coast, because Kapalawai, like, borders the bay, and, you know? We used to get on our boogie boards and just ride the stream, the little river down to the beach, you know? Learned how to lay net there with my grandparents, both sides. Fish, gather, at that bay, and then, uh, yeah, so, those, those were good times. Simple, good times.

GM: What um, feel free to not answer this but what kind of fish were you catching over there?

TN: Oh, 'āholehole, nenue, uh, you know, the, 'ō'io, 'ōpio, yeah, all the regulars.

GM: Nice. Do you know of any traditional sites, that can include historic buildings, cultural sites, archaeological sites, structures, or burials that we should be aware of on the property?

TN: Yeah, so, not so much burials. I, I wasn't told about burials in that area, but definitely there's the loko i'a right in front of the main Robinson house there now. Right in the, that house, where it's situated, if you had a map, if you're looking at it from, standing on the makai side looking mauka, that house, it's on the south end of that house, more towards Makaweli. Pakala side, still have a

fishpond over there. I know about the fishpond because we used to, you know, when it kind of overflowed, when it came to a crest we used to dig the, dig the sand, and open the mākahā and all the rubbish and some of the fish came out, so yeah, we used to get scoldings or whatever. [Laughter] I mean, other than that loko i'a, and the fact that those houses are very old in nature, so I don't know if that would be a historic, you know, like historic structure, I, I would think so. That's the only really two things that in my head that I can recollect. Mostly about the loko i'a though. Well, other than the heiau on the opposite side, that was Pā'ula'ula. Yeah.

GM: The mākahā was still operational when you were growing up?

TN: Uh, not operational. It wasn't, it was just there. And that's another reason why we kinda dug around it or dug through it, because it wasn't really holding the fish like it was supposed to but it had some fish because it was, the fish was just trapped inside because it was low tide, right? And they couldn't get out, so. But it was built by a stream. It stay by a freshwater stream in that area.

GM: So I know you mentioned, go holoholo, go fishing, but are there any other traditional gathering practices that we should be aware of? Either on the property itself or in the surrounding area?

TN: Ahhhh, I know we used to, we, like I said, my grandfather was one of the security guards at Ni'ihau, so when he came here, he was kind of afforded the same liberties, so he had kind of like a master key. So, we used to camp inside, like I said, go, you know, lay net, 'upena moi, and then we used to and get kiawe for imu and just pūlehu and stuff like that. We used to just gather, when we went in there we used to just gather kiawe. That wasn't super plentiful in that area at that time. Outside of that, just, just fishing and, uh, yeah, just fishing and limu and stuff like that.

GM: What kine limu has over there?

TN: Uh, limu kohu.

GM: Kohu? Okay.

TN: Limu kohu, and then the big squishy one, what they call pokpoklo, but I think this is a green spongy one, I don't think it's called... I forget what it's called, everybody called it pokpoklo. It's super squishy ad very thick and green, dark green.

GM: I think that's wāwae'iole.

TN: Oh that is wāwae'iole?

GM: It looks like a rat's foot or something like that?

TN: Yeah, yeah. But that's the one, that thing you no need refrigerate. Like if you refrigerate it shrinks.

GM: Oh, I didn't know that.

TN: Yeah, so usually, just keep it out, and not really refrigerate it and you eat it with 'opihis and some onion and tomato.

GM: Sounds good. And then, since you've surfed in that area, can you share a little bit about what that surf spot is like?

TN: They call that, they call that Lefts I believe. Because it's yeah, and they might call it PK's, some guys might call it PK's, some guys call it Lefts. But yeah, so even like right now, I live in Pakala. I mean in Makaweli, Pakala. My house is the break. Right, but, so you, when used to come down with our boogie boards on the stream to where the ocean, we just boogie board in that bay but the break is a little outside of that, behind my current house now. So Kapalawai kinda sits on that bay, you know and the bay wraps around if you go back north, wraps through Pā'ula'ula and then if you go south it wraps through Makaweli or Pakala. And so I currently live right in Pakala, like, right on the beach, right at the break.

GM: Nice.

TN: Yeah. [Laughter]

GM: Very cool. Um, do you think the proposed development would affect a place of cultural significance or access to a place of cultural significance?

TN: No, because I saw some of the, I saw some of the preliminary drawings. I think they're gonna improve access, at least for the surfers that, yeah, come from the, that gotta walk from the main road back to the beach. So they're gonna improve that access but as far as effects on natural and cultural resources, I, I believe in some of the sketches, renderings, they were gonna bring back the loko i'a. And if that's the case then, you know, I would, I would, as a Hawaiian, would welcome that, to bring a resource back of that nature. But other than that, um, maybe working towards the north, just watching the border of Kapalawai turning into Pā'ula'ula, I know there's that one heiau that's near the beach. As you turn the corn— turn the roundabout, the shoulder, coming back towards, towards, Waimea there?

GM: There's a heiau on the beach side?

TN: On the beach side, yeah. I forget what the heiau's name though, is.

GM: This is a different heiau than Pā'ula'ula?

TN: Well, Pā'ula'ula, in my mind, is the big, star shaped fort. But at the very end of Pā'ula'ula towards the coast, the road actually turns left. At the end of that left there used to be a heiau and yeah, because some people said, "Hey, they destroyed that heiau to make the wall." On the star. And I'm like, oh, I, that's before my time. I don't know but I've, I've been told that there is supposed to be a heiau out there.

GM: Okay, good to know. I'm from Big Island so if I sound lost it's 'cause I haven't been to the area.

TN: Oh, oh, okay.

GM: As development continues in the area is there anything that can be done to lessen adverse effects on cultural practice?

TN: Mmm. No, I, especially, I mean, I believe, like again, saying that it's, you know, looking at their renderings and, and what I've been told, but it's supposed to be a low impact resort, to the point where, you know, there's, they're not gonna get parked next to your cottage, you're supposed to get shuttled to your cottage by a, a, probably like a golf cart type of carrier, uh, all of those cottages are supposed to be like super low key, where it's not even, they don't even foresee having tv and telephone because everybody has cellphones, right, and whatnot. So it's supposed to be very low

impact units and I think they actually slimmed down the project, right? From when it first started, it was gonna have x amount of cottages and whatnot and just recently when we saw these renderings, they actually took out, like, I think a hundred something rooms off of that inventory. So, you know, they're kind of listening, they took some of us and we actually had some conversations and I'm like, "Yeah, if you guys did not impact this front part, we want to make sure that the facade on the ocean side looks like, when you're looking from the beach to my house, it's just coconut trees and then you see my house, the back of my house, and then some coconut trees and then you see another little house. So if it's that same type of facade, almost, on the ocean side, it, it would lend to, you know, the people, the existing community on the south side.

GM: So it sounds like they're trying as much as possible to minimize...

TN: Yeah, I think so. We've had conversations and like I said, meetings, and, and they've, they've changed some of their renderings to accommodate that, yeah?

GM: Are there any mo'olelo, mele, oli, or place names that we should be aware of for the area?

TN: Ohhh man, I wish I could remember all of the, not oli or mele, but those place names, but yeah, it's been awhile. [Laughter] But I don't, I don't, yeah I don't know any, any oli that was sang to me or taught to me by my kūpuna about particularly Kapalawai.

GM: Okay. Are there, is there, is there anything you would refer us to for place names?

TN: Ah shoot. Yeah...

GM: No worries, I just thought I would ask.

TN: Yeah, no, I mean, I do have a map in my office. It kind of just describes all of the, like the valleys, the valley place names, the peaks, and then, a lot of the bays. In my office. I could take a picture and send it to you on my phone.

GM: Yeah, I mean we go through all old maps and stuff, just if there was something specific you though we should.

TN: Oh, yeah, no.

GM: And then as far as you remember, in your experience, how has the area changed or not changed to now?

TN: It hasn't changed at all. So the place where I live, I mean I'm 53. I grew up over there, and it's , as soon as you turn into my road, the main road, it's like you're going back in time because it is, nothing, only thing got different is the people, right? Like, there's no more grandparents, no more our uncles that still live across the street, no more the little general store that used to be fronting my house right now, you know? So other than, you know, those physical changes or losing kūpuna and little business closing here and there, that place is the freaking same. It's literally like going to a time warp when you go back over there.

GM: That's pretty cool. There's not too many places like that left.

TN: Yeah, and you know, putting that to the Robinson family, you know, and really holding down those areas and, and I mean, you can look at it from both ways, right? It's, are they just being sugar, sugar tycoons and keeping, keeping people out, right, and then you can look at it as man, they did it.

They've been doing a great job on preserving an area like that. And especially Ni'ihau, right? That's one of the concentrated points of Hawai'i that has their own dialect of Hawaiian and probably Hilo, Hawai'i Island has their own dialect too, but you know, they have a whole island, that they always speak that and that's a cool thing.

GM: That is a cool thing.

TN: So them holding down that space, yeah it's their rules and their time, but if you can live within those rules, which I've lived between those means for the last 53 years of my life and I don't intend to leave, even though, even though I own three houses on the outside. I still pay rent over there, because that place is special. I have two smokers and one imu and a 25 by 50 commercial kitchen to kill cows, pigs, chickens, sheep, goats, you name it, we kill it and we eat it, smoke it, in the imu, whatever.

GM: I'm like, can you invite me over? [Laughter]

TN: Come on over.

GM: Is there, that made me think, is there hunting on the property?

TN: Yeah, so back in, when we used to go camping over there, like I said, my grandfather, my grandfather had some of those liberties because he was the security on Ni'ihau, he um ,we used to go over there and camp in Alehua, not Alehua, is it Alehua? No. Ahhh, I forget the name, it's not Alehua. But anyway, um, we, we's camping over there and we just walk, we're walking down the ways through the bushes and set your hook up, catch a pig, bring it to the beach, you know, tie it up, burn it, take all the hair off of it, and just imu that thing right down on the beach. So lot of feral pigs, even 'til today. Yeah.

GM: Okay, I only have two more questions. Are you aware of any cultural concerns the community might have?

TN: [Talking to someone in the background] But um, what was your question again?

GM: Concerns, community or cultural concerns.

TN: I mean, you know, nowadays, people are like calling to action, you know, development, military, you know, other things, but I, I believe, that if it's done in a pono way and in discussions, we can work on, work on these things with the community. Thing, things will work, you know? Things work. We gotta progress as a community and we gotta progress as... [speaks to someone in background]

But yeah, I think, there's gonna be concerns no matter what but I think we can work it out if we can be transparent and if the organization, would, you know, listen to some concerns, community just has to be reasonable, I think, you know, and part of being reasonable is actually listening and seeing what the benefits would come out of, actually, you know, restoring our loko i'a, you know, Peleke Flores is trying to, he's currently bringing back the loko i'a, you know, Nawiliwili and stuff. He's been working on stuff, all that kind stuff for months, you know, too, so to visit that and have him come and do the restoration, and it be funded by this organization, that'd be a partnership, made in heaven. They've got the resources, this group, and Peleke has the skillset and the knowledge and the 'ike and marry those two and save another loko i'a, that would be awesome, I think. Yeah, so.

GM: And my last question, unless there's anything you want to add, is if there's anyone you recommend we talk story with. So that can be kūpuna, kama'āina, other knowledge holders who we should talk to.

TN: I mean there's a lot of kūpuna, but those kūpuna, they're just shy, yeah? So just try to think who would be, who would be able to express what they want to express, yeah? But I mean, Uncle John Beniamina, is another kupuna that I work a lot with, and um, he'd be a good person, he's been there all his life too. I just don't know how open he would be.

GM: Alright, well is there anything else you want to add?

TN: No, I'm good. So if you're ever on Kaua'i, if you coming, give me a call.

GM: Oh I will. [Laughter] Thank you so much for your time, Uncle.

TN: Mahalo! Okay. Aloha.

TALKING STORY WITH
**SUSAN SOMERS (SS)**
Oral History for the Proposed Kapalawai Resort Project by Gina McGuire (GM)
For Keala Pono 5/20/2025

GM: [Recording starts]. Thank you. And so what I'll do is I'll record you and then I'll type up your interview and then I'll get that back to you so you can make any changes that you might want to make before it goes into the report.

SS: Okay, that's fine.

GM: Okay! So our first question is just to start by telling us about yourself, your name, where and when you were born, where you grew up and went to school.

SS: Okay, my name is Susan Somers. I was born in Albuquerque, New Mexico. I went to the University of New Mexico where I majored in fine arts. I met my husband David Somers when he was also studying at the University of New Mexico. David is a direct descendant of Aubrey Robinson. We were married in, 19, 1974 and moved to Hawai'i so I've been in Hawai'i for 50 plus years. And is there anything else along those lines that you need?

GM: No, that was great. I don't know if you want to share anything about your husband's family background?

SS: Uh, my husband is David Somers, his mother is Lois Robinson Somers. Her father was Selwyn Robinson and Selwyn's father was Aubrey Robinson whose house was at Kapalawai, he built at Kapalawai.

GM: Okay, yeah, so the next question is your relationship or your experiences with that, with the Kapalawai area.

SS: Uh, I worked for Dan Robinson starting in 1988 and um, when someone wanted to tour the, Aunty Eleanor, excuse me, I started in '80, yeah, '88. And when Aunty Eleanor died, um, she was the last person to live in Kapalawai, and if somebody needed to go through, they would ask me to take 'em through. So I would ask questions of family members and learned a lot about the house and the people that were there. Um, uh, I've been part of the family, I guess, for 50 years and you know, when you, when, we've been here for at least that long.

GM: Okay. Do you know of any traditional sites or historically significant buildings that are located at the property? And this could be uh cultural sites, archaeological sites, anything like that, that we should be aware of.

SS: Um, back when it was first going to be a resort, we had an archaeological survey done. Um, I believe at the time, and you'll have to look up the dates because I've left since then. They, they were required to do six holes along the ocean and the, the ocean front of the property is a little over a mile, I believe, mile and a half, maybe, and they dug six holes and found no bones of any kind and they, I believe, they ended up doing 27 holes because they couldn't believe that there were no, um, burials, and they finally found burials on the far western side of the property where they noted them and they were re-buried.

There is a pile of rocks on the west side of the property that is, when the field just to the west, which we call it Field 1, had been plowed, they would pick up rocks and dump them just over the property

line at Kapalawai, they are a pile of rocks, they are not an ancient Hawaiian wall, they are a pile of rocks. It's a ramp, actually, it's the shape of a ramp that they would drive up and dump the rocks. There's a, um, old, um, I'm not sure if it's a Portuguese or Spanish bread oven. [Speaking to someone else]: Do you remember? I'm asking my husband. Spanish or Portuguese? It depends on the shape of the top, it's either if it's flat, it's Portu— Spanish, if it's round, it's Portuguese. So it's a Portuguese bread oven which is, toward the ocean side near the uh, fishpond. Kind of halfway between the house and the fishpond. It's in a very overgrown area and it's still there. Any other sites other than the house itself, there's, at the fishpond there's an old pump that they used to use the water from the fishpond to do irrigation. And, it's just sitting there, I don't know if it's considered a, something important. There's also an old whale blubber rendering pot, if you will, that is also in that area. Um, left over from, you know, whaling, whaling days. Uh, uh, now there's all sorts of fences and stuff, but nothing really archaeologically important.

GM: So the burials you mentioned on the western side of the property, were those in the sand?

SS: Yeah. Towards the beach in the sand in the corner towards the ocean side in the corner there. They're marked on the maps that they made at the time and are notated as an important archaeological site but that was the only iwi that they found.

GM: Are you aware of any traditional gathering practices at the property or in the surrounding area?

SS: Uh, no. Uh, the area was of, probably controlled by the ali'i of their time, the king at the time, their housing, the ali'i lived, pre-contact, either by the, either on the hill above where the Russian Fort is, or sorry, Pā'ula'ula is now, um, they lived in that area so they probably controlled that entire property and so that's one reason why number one, the, there were no burials because it would have been controlled by the king and you wouldn't bury in the king's property. So that's probably why there are no large-scale burials of any kind. I think they found, I think it was one set of remains, two sets of remains. Something like that, one. And uh, they don't know at what point that burial was made but it was not anywhere near the main part of the property, any other kind of gatherings or anything, it, it was pre-contact, I doubt if there would have been any. They would have been, probably been in the Russian Fort area, not necessarily where the house is. The, um...

GM: You mean like for plants and stuff?

SS: Oh, you're talking, gathering rights, I thought you meant gathering of people, gathering.

GM: Oh! No, that's also good to know.

SS; Okay, gathering rights, as far as I know there was, because the, the pre- the family I wouldn't know. Once the family was there, it, they pretty much probably would have had cattle or sheep in the front pasture, um, that wouldn't have been, horses also, there was a horse and buggy there, in, at the house that they used to go into Waimea for church, uh, there, it was not used. It was their private property and so therefore there wasn't anything that would have been used for ancient, cult—, ancient gathering rights or any kind of Hawaiian um, rights of any kind.

GM: Is the fishpond still being used?

SS: No. No, it's overgrown. There's quite an extensive report in the original, when they originally went to the County for resort designation for the property, 20 years ago or more. And, um, so there's a very extensive report done by Dr. Bill, William Kikuchi, who was an expert on fishponds for the State of Hawai'i and just happened to also live on Kauai. Dr. Kikuchi's report that he did, is to the, um, County Council or to the Planning Department is quite extensive. I've read it once and it's

probably better that you guys can get that than, than have me and my ancient memory report it. But, uh, anyway, he, the only things that I read that stick out from my memory from that, that you'll have to read that is, number one, he said that, the Planning Department was recommending that it be, the fishpond right now is kind of overgrown with lilies and all sorts of, coconut trees, or float, coconuts floating on it, you can barely even tell that it is there. It's fed by three to five natural springs, that keep it fresh water. Uh, they used it, the family used it for tilapia and probably the, uh, the Hawaiians, the fishpond is built, maybe 900 years old, something like that. I can't remember. Again, you really need to look at Dr. Kikuchi's report. But the, the king probably had fresh fish, um, in there, for his use, because that was all part of the king's property. They said that the only man could, and if you were going to do it traditionally, only men were allowed to go into the fishpond and take care of it and, and, they had to be naked. And the County department decided that they were not going to impose that restriction on the resort because that really wouldn't be [laughter] a good draw for the hotel to have only men naked.

GM: [Laughter]

SS: I didn't have a problem with that [laughter]. Apparently just, you know, it was probably sexist or something that women were not allowed anywhere near it. But anyway, read that through. That's the only things I remember from the report, but um, and so I believe the County said you can clean it up, however you need to, to, explain that you don't need to do it the ancient Hawaiian way.

GM: Is there, are there fishermen that are actively fishing in that area?

SS: No. Um, they occasionally, people will walk along the coastline and the, the above, they're allowed, as you know, from the high-water mark to the ocean, to walk along and there will be, locals will be fishing off there. But it's not a very good fishing area. Occasionally you'll see people walking along but it's mostly just for exercise, it's not really a fishing area anymore. And the fishpond is, I doubt if it has any fish in there at all.

GM: Okay. Do you think the proposed development would affect any place of cultural significance or access to a place of cultural significance?

SS: I can't really speak to that, really. Um, I know that in other, I haven't really talked to the people that, [inaudible] people that are going to be doing the hotel in great depth as to what their plans are, you'd have to talk to them about it, but the, I know that the other, other developers that wanted to, to clean the fishpond and use it as something historic, that the, even people in the community and people at the hotel could appreciate the historic significance. So by restoring it, it would save it, in other words. But right now, there's no public, no public access. And never really has been public access. Primarily because it was the king's property and then once the family purchased it in, in 1865, '64, from the king, it's been private property since then.

GM: Okay. As development continues, what could be done to lessen adverse effects on cultural practices?

SS: There aren't any current cultural practices in the area. There has not been since 1864 when the family purchased the property. So, um, you're talking, what is it, one hundred and twenty five years, something like that? There's only been cultural practices of the family [laughter] if you will. Not the community at large, it would have been the family. And, and, that had, that lived there. So it, that, that question really doesn't apply.

GM: Okay. Are there any mo'olelo, mele or oli, place names that we should be aware of for the property?

SS: As far as I know the house was named Kapalawai, which was named by, the, the family, when they built the house back in 1898. And Kapalawai is Hawaiian, means the lowlands. And the family being from Scottish ancestry, the Scottish had referred the, they had the highlands and the lowlands. And the Highlanders were Scottish and the Lowlanders were Scottish and so they named it because it was the lowlands. And lowlands in Hawaiian is kapalawai.

GM: Okay. That's pretty cool.

SS: So it's Scottish, it's uh, there's Scottish meaning to it. I do not know any, or any names of the area. The family's always called, the family, the fishpond, they didn't have a name for it that I'm aware of. I've seen it on maps as Kekupua Fishpond. But Kekupua is more, is on, is more mauka of the highway, the Kekupua area, so I, I don't know who's, I've never heard the family members call it anything other than 'the fishpond.'

GM: Um, in your experiences, how have you seen the project area change since you've been there?

SS: Um, it's, it's overgrown, uh, the grass is clipped every once in a while. They clip the pasture when they put cattle in or horses in. Other than that it pretty much has not changed in the 50 years that I've been here. It's just, it gets overgrown, there's a lot of junk trees, lot of, uh, it's, pretty much just jungle. But it's not really a swampy jungle it's more of a desert jungle. Yeah, the kiawe, and various and sundry. Some coconut trees, all volunteer, kind of thing. But it hasn't changed.

GM: Okay. Are you aware of any other cultural concerns the community might have related to cultural practices in the property area or in the surrounding area?

SS: No, no. 'Cause there's not been, you know, any cultural practices would have been prior to 1864. And I'm not aware of any cultural practices other than that the king lived nearby. Yeah, but, yeah, when we first started doing the resort designation, there was a meeting at Kapalawai, they invited the Lions Club, the Rotary Club, and the West Kauai Business Association, and various and sundry, business, you know, companies in Waimea, on the west side, and showed those guys what we're gonna do for the resort and it was overwhelmingly positive. There were a couple of people that asked questions, but they were primarily just, had never been there and didn't really understand. But all of the long-term businesses that had been in Waimea were pretty much 100 percent in favor primarily because it would add, just add jobs to the west side and also the people that would stay at the hotel would go to the restaurants and stuff in Waimea and the shops and spend money. That's what they like, that would be from the business standpoint.

GM: Okay, well this is my last question, but is there anyone else that you recommend we talk story to?

SS: Ah, that's a really good question. Um, uh, [sighs], I don't know if Bruce is available. Um, he's the oldest member of the family that's still around but he's on Ni'ihau most of the time. So he's really hard to get ahold of.

GM: Bruce Robinson?

SS: Yeah. But other than that, uh, hmm, yeah, most of the old timers have passed away. I mean, and now we're the old timers.

GM: Those are all my questions, but do you have an email address where I could send your transcript.

SS: Certainly. My email is [removed from report].

GM: And then mailing address for a small makana?

SS: No, no. I no need. No need, I'm fine.

GM: Okay, well thank you so much for your time. This was really helpful.

SS: Certainly. If you need more information, there are two books that I would recommend. And one of them is called, *Ni'ihau, Pele's Hawaiian Adventure* but, and it's written by Steven Gentry, it came out, uh, a year or so, two years ago and there's a very extensive chapter in there about Kapalawai and the family at Kapalawai. And that's a, it's a very thick book. You can get it on Amazon. And it's by Steven Gentry. G-E-N-T-R-Y. And it's called *Ni'ihau, Pele's Hawaiian Landfall, a history.* And it primarily talks about Ni'ihau but it does have a large section on Kapalawai. And there's another book that I heartily recommend, and it's called *Robinson Family Governess*, and it's by Judith Burtner, B-U-R-T-N-E-R. And, it's a, um, it's also on Amazon as a matter of fact but it's kind of a biography of a governance in 1911, 1912, of a lady that came over from California to be the governess for the two younger kids at Kapalawai. Eleanor and Lester and what life was like at Kapalawai for the two years. It's primarily taken from the letters that she wrote home. And Judy Burtner is her granddaughter, grand-niece, sorry, that she collected the letters and put them together into this book. And it's very good, about what life was like, how they lived, what they did, and she lived at Kapalawai for those two years. Three years, sorry, three years. So I would recommend both of those books to give you a good sampling. Because a lot of the history that I know, I got from reading books like these so I'm just kind of regurgitating information. A lot of them are not very truthful about a lot of the information about the family that's been written through, in the past, but, both of these books were, um, more accurate from the stories that I was told by the family members and so I think these were more accurate as to what life was like at Kapalawai at that time.

GM: Okay.

SS: And the history of the place. Especially the Ni'ihau book by Mr. Gentry. Very, very detailed. And it would be a really good reference for you to quote from. Because that'll give you a lot more information that I could, I've probably lost or forgotten most of the information that he has in his.

GM: Okay. I will for sure check them out.

SS: Definitely and I think that'll help you out considerably. And I know my mother-in-law, who has since passed, helped him and her daughter Nancy helped him with family letters and things. So, uh, a lot of the histories that they were able to, to share with him is in that book.

GM: Okay, well thank you so much for your time, I really appreciate it.

SS: Certainly, happy to help.

TALKING STORY WITH
**PUNI WAI'ALE'ALE (PW)**
Oral History for the proposed Kapalawai Resort project by Gina McGuire (GM)
For Keala Pono 5/30/2025

GM: With your permission I would love to audio record you, so what I would do is I would type it up and return it to you so you can make any changes.

PW: Oh, cool.

GM: I have, I think it's 12 questions.

PW: Okay, yeah.

GM: So the first one is, could you tell me a little bit about yourself, state your name, a little bit about where you were born and grew up and your 'ohana background.

PW: Okay, my legal name is Sherri Kawaiho'onani Wai'ale'ale. And I was born and raised on O'ahu, went to Kamehameha where I grew my love for the language and the culture, went to UH Hilo and majored in Hawaiian Studies and then, got hāpai and moved to California. I lived there until my son graduated from high school and then moved back to Kaua'i in 2009. That's basically how I got to Kaua'i. I immediately continued my kumu hula training on the west side with my kumu hula Doric Kaleonui Yaris, until he passed away in 2014.

GM: Oh, I'm so sorry.

PW: Mahalo. I miss him but he had already given me his kūpuna to teach and so I still continue to teach them until this day in Waimea. And I am also the kumu for the Kaua'i Museum's hālau in Līhu'e named Na Wāhine o Waimakua. I started working for Gay & Robinson in 2012 part time and full time in 2015 where I am now taking care of their plantation housing. That's basically my background and where I have received the information I would share with you regarding Makaweli and Kapalawai.

GM: Do you want to share any personal stories or your relationship to Kapalawai?

PW: Through my employment at Gay & Robinson I live in Makaweli and I have been able to go to Kapalawai to check on the big house or to take contractors and visitors. That's been special because it isn't accessible by many people.

So even just the name, "Kapalawai." I always wondered how it got its name because I can't find it printed anywhere. So asking family members I learned that their original family gave the name to the house and that area. They honored the lowlands of Scotland where they came from. Palawai means lowlands in Hawaiian. So Ka-palá-wai (w pronounced as a v), I believe would be the true pronunciation if it were a Hawaiian word but if the family named it that, then Kapalawai (w pronounced as a w) I guess, was, would be correct, because it was their name. I always felt that was interesting. I keep searching, paying attention when people talk, especially to kūpuna who have lived here for a long time, but I don't hear anyone refer to it as anything else than that. I am still curious what the original name of that area was called.

And then I got to spend time with Aunty Aletha Kaohi. She would take me to blessings that she would do, like at PMRF, mostly, and she had so much love for our ali'i. Learning from her was

definitely a blessing, and she told me that that place was bought from Princess Victoria Kamāmalu, Kamehameha's granddaughter. But also Ka'ahumanu's daughter. And that, to me, just blew my mind. How did that happen? [Laughter] But being owned by Kamāmalu, surely that place must have been frequented by ali'i, especially since they didn't find any burials. When Gay & Robinson first planned for the resort they were required to do studies to make sure there weren't any unknown burials. Susie Somers said contractors dug holes to look for iwi kūpuna, but they couldn't find any. So, wouldn't that possibly mean, that ali'i used that area to at least vacation or rest there in that area. Otherwise, people would have been buried there and there would have been communities there I would think. And I felt that that was interesting.

I've also wondered what made Kamāmalu want to sell that place. I don't know.

So I learned that Kamehameha IV heard the family wanted to leave so he offered to sell them land but then he passed away before the deal was complete, so the family finalized the deal with his older brother, Kamehameha V. Kapalawai is so close to Pā'ula'ula too, that I wonder, did Kaumuali'i spend time there? You gotta wonder. But it must have been so dry there before sugarcane, before the Robinsons started doing their Hawai'i Sugar Company and Olokele, and all of that water got brought down from the valleys above.

Going onto the property and seeing where the fishpond is, is another interesting thing to me. Fresh water so close to the beach and wondering how long did the family keep it going? 'Cause it was a working fishpond when they first got the land and they had maintained that for a while and then eventually used the water for irrigation because it was so dry. And when you think about that now, you're like, "What?!" [Laughter] I don't know, did they not like fish? Maybe they were more meat eaters with the cattle and the sheep that they were bringing in.

GM: It does have a unique interesting history.

PW: Yeah, so just the way that the Robinsons have kept this place intact after all of these years. They didn't develop it and they didn't sell pieces off. I so appreciate the opportunity that I get to be able to see it and to learn more about it. So I am totally interested in learning more after you speak to everyone and all of the information that everyone else shares about the place. Like the area mauka of the highway, Kekupua. That place was named for the kupua that lived off of that old government road, and so, really?! Like who knows more about that? Because that, that would be super cool to learn about. Did the man change into a mo'o? Was he cool to people or did he chase people away?

Aunty Aletha used to talk about the mermaid named Poliolehua, which would come up across from where Pā'ula'ula is. Was she a good mermaid? Are there bad mermaids? [Laughter] I don't know. The kūpuna mention these little gems, but then, I don't hear much more about it anywhere else. And why was that? Is it that people kept it private because it was so special to them? Or did new people move into the area and no longer care about those old stories and stop telling them?

Just like Kawai'ula'iliahi where the Makaweli River runs into the Waimea River and the water turns red. I heard a story from a kupuna that said that was when you knew that the Rainbow Maiden had her ma'i. I'm like, who is this Rainbow Maiden? Where is she? What's her real name? The kupuna never referred to her by a Hawaiian name, just the Rainbow Maiden, and the Rainbow Maiden would entice men to follow her. She would play music and sing and men would hear her and follow her voice and then would get lost in the forest and it's like, did the men come back? Were they lost forever? [Laughter] What?!

GM: This is in Makaweli?

PW: The kupuna was from Makaweli. You hear tidbits of that kind of information and you want to learn more but there aren't a lot of details to be found.

GM: Was there a mo'o associated with that loko i'a?

PW: I don't know, I didn't hear of one in that fishpond but could it have been the same one from Kekupua which is across the highway? I have no idea.

GM: I just thought I would ask.

PW: I know. I would love to know that. You would think, like most every other fishpond had one. It would have been cool if they had something like a makalei too. You heard of the makalei at Kawainui?

GM: No.

PW: The makalei was a magical tree that fish were attracted to. Haumea's young grandson worked at this fishpond every day and at the end of the day when they would pass out the fish to the workers, he would be overlooked because he was a small boy. It happened more than once so his grandmother instructed him to take a branch of the makalei and lead all of the fish out of that fishpond and take them someplace else because he had been overlooked. Is there something cool like that associated with the Kapalawai fishpond? I just don't know who has all this information.

GM: I'm not sure if anybody does at this point.

PW: I know, it's so sad. Yeah. I don't know if someone's hanging onto it because it's so special. I hope that's what it is. And that there are families that know and that eventually you will find those families. Just thinking that maybe Kaumuali'i used to spend time there, because of its location being so close to Pā'ula'ula, would be really cool if you could find that out. But maybe Aunty Aletha's family would know, like her daughters and granddaughters?

Aunty Aletha spent so much time making Kaumuali'i' a household name here on Kaua'i. When she worked at the visitor's center she would ask the kids, "Who was Kaua'i's last king?" And they're like, "Kamehameha." And she'd be like, "No!" [Laughter] Right? And so, after hearing that, this one kupuna, Aunty Aletha, this amazing and determined and sole lady went to the mayor and she said, "You need to declare next year as the Year of King Kaumali'i." And so he did. And because he did the DOE incorporated lessons about Kaumuali'i into the schools.

And then Aunty Aletha went to her Kamehameha class reunion and met the artist Brook Parker at the craft fair. He had a painting of Kaumualli'i. Well, there weren't any portraits or paintings of Kaumuali'i, just written descriptions so we don't know what he looks like. I believe Brook went to Bishop Museum and surrounded himself with items that were Kaumuali'i's and fasted until a vision came to mind of what he looked like and painted it. Aunty Aletha sees this painting and said, "I need that picture." And he says okay and he gives it to her and she raises money and she gets that picture put into every classroom on Kaua'i so that when children think of Kaumuali'i they can put a face to the name. Aunty Aletha provided all the teachers with a timeline of his life so that they could teach about him. And then she organized festivals, music competitions and commissioned songs to be written for him. So this one lady, made his name famous again in our generation. Just awesome. Maybe she had conversations with her family about where he frequented while he was on this side? So knowledgeable.

GM: What is her, what is her last name?

PW: Kaohi. K-A-O-H-I. Aletha. So she recently passed away in April 2024. And...

GM: That's an incredible story though.

PW: She was unreal. Just from that Kamehameha response, she decided these kids don't know who he is, what can I do? And then she did all of that. We can only hope to contribute to the world like she has, yeah? So I live in Pākalā but everyone says Pakala, which is in Makaweli, and it is known today for fishing and surfing so I'm sure that back in the day ali'i would have wanted to ride waves here. Especially on the west side of the island, this is arguably the best place for surfing because of its long wave that breaks to the left. And yeah, the fishing is still great for to'au, ta'ape, pāpio and mullet so I can't imagine how it was back in the day.

GM: Do people still fish down that shoreline?

PW: I don't know about at Kapalawai, because that's pretty far if you don't have access to it. But in the villages where people live, and the beaches at the bottom of Kaumakani people are always going fishing there either walking in or going in with a four wheel drive. When there are fishing tournaments we get calls from organizers and competitors asking for the gates to be left open overnight. So I would say yes, the fishing is still good. The surfing is the best on the west side. Yeah, even the surfers renamed the surf break there, they call it Infinities, because the ride is so long.

GM: I love that.

PW: Yeah, it's really so beautiful.

GM: I'm from Big Island. I'm on the Puna side. That's why when you said you went UH Hilo I was like, yeah! UH Hilo!

PW: Oh, best teachers man, yeah, yeah, best teachers. I don't know why everyone gets hyped over UH Mānoa. Go Vulcans! [Laughter]

GM: But yeah, I haven't been. I've been to Waimea, I went up to Pu'u 'Ōpae area for a project, but I don't, I'm not familiar with the area so I appreciate all the detail you've been sharing, it's really helpful.

PW: Yeah, so, even the name like Pu'u 'Ōpae, there's a lot of other names on this side that include "'ōpae" in it. I would think all of those rivers that run through the valleys must have been full of 'ōpae, and there was that legend about the menehune, when they were asked to build the Menehune Ditch, that the payment they asked for was 'ōpae and so the people had to make sure that every menehune had 'ōpae. So that must have been something the place was known for, right, to have a legend like that? For the menehune to agree to do such back breaking work, to have one 'ōpae each or whatever they were given each day. I was thinking all that work, and they get one 'ōpae?! Must have been super 'ono or they had small 'ōpū or the 'opae must have been huge! Yeah, that would be something else interesting to know.

GM: Do you know what kind of fish that would have traditionally been raised in the loko i'a there?

PW: I do not. Yeah, I do not. But have you talked to Peleke Flores?

GM: Not yet.

PW: Because he's done work at different loko i'a around the pae'āina. And so I know that he was asked about this one and about maybe bringing it back because he has for others and I know that he visited the area. He went to that fishpond at Kapalawai to take a look, I think to see if he wanted to take on that endeavor. And so I bet he could probably just look and know. Yeah, 'cause he's well known for restoring loko i'a and not only loko i'a, but just building, walls, with rocks. He also redid ka Lua Kupapa'u o Nohili, the crypt at Mānā. He redid that and yeah he's just a master with rocks.

GM: Okay. So you've talked about, so, you've addressed a lot of my questions already, but I'll ask more specifically, in addition to surfing and fishing, are there any other traditional gathering or access practices in the area?

PW: I would guess no, just because I think once the family purchased it, I don't know that they would have allowed outsiders into the area. To my knowledge, I, will say no.

GM: Okay. Do you think the proposed development would affect any place of cultural significance or access to a place of cultural significance?

PW: That's a good question. Well because we don't have access to it now [laughter], would it affect anything? It's not going to be tall, tall high rises so not seen from the road. But maybe stargazing?

GM: Because it's a really clear sky right now.

PW: At night here it gets so dark that the sky is just, so beautiful for that, I don't know if development would affect it, but I mean the only thing that comes to my mind right now would be light pollution. Light pollution and how that would affect people who are out on the water that are guided by stars or use stars for other cultural connections, but I don't know how prevalent that is here. That's the only thing I can think of.

GM: That's actually really beautiful, I appreciate you saying that. Nobody thinks about lani space, so I love that, I really love that. As they are developing, if this goes through or other things in the area go through, is there anything that can be done to lessen adverse effects on cultural practices in the area.

PW: Hmm, that people get to access that area again, whereas right now no one is accessing it.

GM: Right.

PW: You just wonder what would happen to that area that hasn't been touched for so long. Yeah, I don't know. If something or someplace isn't being used, does it miss being used?

GM: Depends on the use.

PW: For sure it depends on the use, but does it also miss hearing voices, does it miss life? I have no answer for that. If it hasn't been accessed all of this time and I don't know who today is actually using that area for cultural practice, then maybe this development gives us the opportunity to go ourselves. Because I feel very blessed that I've been able to go and see and visit that place. And to walk there, you can almost feel it's missing something. I feel like it misses life there. Yeah. At least that house. I feel like that house misses life.

GM: Maybe the fishpond too, to have kia'i.

PW: Yeah. To take care of it and bring life back to it. Yeah.

GM: You mentioned a few place names and a few mo'olelo but if there are any other place names, mo'olelo, mele, oli that we should be aware of. I know you mentioned Kapalawai, Kekupua, and Pākalā. How did you say it, Pākalā?

PW: Yeah, Pākalā but the locals call it Pakala. Wish I knew what it was called before the Plantation. And Pā'ula'ula the traditional name for what people called the Russian Fort. Wish I knew more of what the traditional names were.

GM: Okay. And then I know you've said you've been in the area since '09, 2010, but in your experience how has the area changed or not changed?

PW: It's like time stands still there. I haven't seen any change. [Laughter]

GM: That's so nice to hear that.

PW: Right? [Laughter] Yeah, so I started working for Gay & Robinson in 2012 and now it's 2025. And it's like everything is still in its place. I have noticed those invasive parakeets in the trees on this side now. But everything else to me seems the same.

GM: And then I know you mentioned the loko i'a and that they dug and they didn't find any burials but do you know of any other cultural sites or historic structures that we should be aware of in the project area?

PW: None to my knowledge.

GM: Okay. Okay, and then my last question is if you're aware of any cultural or community concerns towards that area?

PW: Any concerns? I think people are scared of development but the Robinsons have kept everything the same for so long and have been good stewards. Every other missionary and plantation family have developed and or sold off the land. This development, if it's built, will be far enough back that it won't be seen from the road. Will anyone notice besides the cars that are driving out? You can't see into the area now because of the trees and bougainvillea along the highway. So I don't think people will even notice the difference unless there's light pollution. None of my haumāna that I teach have voiced any concerns to me about it. Yeah, I'm unaware.

GM: And then my last question, but you've already referred me to Carrie Newcomb, and then Peleke, and Aunty Aletha's family, but if there's anyone else you recommend I reach out to?

PW: Is Susie Somers on your list?

GM: I spoke with her last week, yeah. She was very helpful.

PW: She would be the best person because she is part of the family and did the tours there for years and really because she's just so interested and knowledgeable about the family history. Did she recommend that you talk to anybody?

GM: She had a couple people. We haven't interviewed any of the Robinsons themselves but she recommended a couple of them. Yeah.

PW: Excellent.

| Preliminary Entitlements Timetable<br>Kapalawai Resort | 2025<br>Q4 | 2026<br>Q1 | <br>Q2 | <br>Q3 | <br>Q4 | 2027<br>Q1 | <br>Q2 | <br>Q3 | <br>Q4 |
|---|---|---|---|---|---|---|---|---|---|
| **Supplemental Environmental Impact Statement** | | | | | | | | | |
| *SEISPN & Scoping Meeting* | | | | | | | | | |
| *Draft SEIS, Publication, Comment Period* | | | | | | | | | |
| *Final SEIS, Respond to Comments, Submittal* | | | | | | | | | |
| *Final SEIS Acceptance (30d)* | | | | | | | | | |
| **SMA, Class IV Zoning & Use Permit** | | | | | | | | | |
| *Application* | | | | | | | | | |
| *Processing* | | | | | | | | | |
| *County Planning Commission* | | | | | | | | | |

BEFORE THE PLANNING COMMISSION
OF THE COUNTY OF KAUAI

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|---|---|
| In the Matter of the Petition to<br><br>AMEND ORDINANCE NO. PM-2002-356 AS AMENDED IN PART BY ORDINANCE NO. PM-2006-385 FOR REAL PROPERTY SITUATED AT KAPALAWAI, MAKAWELI, ISALND OF KAUA'I, STATE OF HAWAI'I, KAUAI TAX MAK KEY (4) 1-7-005:001, KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII INC., A HAWAII CORPORATION, ROBINSON FAMILY PARTNERS, A HAWAII GENERAL PARTNERSHIP, BRUCE B. ROBINSON, ALICES EST ROBINSON.<br><br>In the Matter of the Petition to<br><br>FOR THE REVOCATION OF SPECIAL MANAGEMENT AREA USE PERMIT SMA(U)-2002-6, PROJECT DEVELOPMENT USE PERMIT PDU-2002-15, AND CLASS IV ZONING PERMIT Z-IV-2002-20 AND REPORT PERTAINING TO KAUA'I TAX MAP KEY (4) 1-7-005:001, KAPALAWAI, MAKAWELI, ISLAND OF KAUA'I, STATE OF HAWAI'I, KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII INC., A HAWAII CORPORATION, ROBINSON FAMILY PARTNERS, A HAWAII GENERAL PARTNERSHIP, BRUCE B. ROBINSON, ALICES EST ROBINSON. | DOCKET NO. ZA-2026-2<br><br>**DECLARATION OF MAX W. J. GRAHAM, JR.** |

## DECLARATION OF MAX W. J. GRAHAM, JR.

MAX W. J. GRAHAM, JR. hereby declares as follows:

1. I am an attorney in good standing licensed by the State of Hawaii and a partner in Belles Graham LLP ("Firm").

2. The Firm, including myself and Michael J. Belles, have been retained by Kerzner International Limited ("Kerzner") to assist it in matters relating to the development of a resort project on land located at Kapalawai, Makaweli, Kauai, Hawaii, identified by Kauai Tax Map Key No. (4) 1-7-005:001 (the "Kapalawai Project").

3. As part of our representation of Kerzner, we attended meetings between the Planning Department and the County Attorney's Office of the County of Kauai, and Kerzner's representatives and consultants, as shown on the Kapalawai/County Meeting Chronology attached hereto as Exhibit "A".

4. The primary purposes of these meetings was to resolve issues relating to: Kerzner's proposed modifications to the initial design and layout of the Kapalawai Project; the performance deadlines contained in the Zoning Ordinances for the Kapalawai Project; and how these issues might be resolved (including by the filing of a Zoning Amendment by Kerzner).

5. Although the County appeared to be receptive to the filing by Kerzner of a Zoning Amendment to resolve these issues, it eventually informed Kerzner that the Zoning Amendment would not be processed unless and until Kerzner submitted, and the County accepted, a Supplemental Environmental Impact Statement ("SEIS").

6. Consistent with the County's suggestions, I prepared a draft Zoning Amendment and Kerzner commenced having the necessary studies prepared for the SEIS. The County, however, filed its Petition For Zoning Amendment (to revoke the Resort zoning for the Kapalawai Project) and Petition For The Revocation Of SMA Permit, Project Development Use Permit And Class IV Zoning Permit (for the Kapalawai Project) before Kerzner could finalize its Zoning Amendment and SEIS.

I declare, verify, certify, and state under penalty of perjury that the foregoing is true and correct.

MAX W. J. GRAHAM, JR.

## KAPALAWAI/COUNTY MEETING CHRONOLOGY

| DATE | PLACE | COUNTY | APPLICANT | SUBJECT |
|---|---|---|---|---|
| **2023** | | | | |
| June 1 | County Building | Ka'āina Hull (Planning Director)<br>Planning Department Staff | Group 70 Consultants<br>Jim Ratkovich<br>Bill Witte<br>Gay & Robinson<br>Stephanie Aiona<br>Michael Belles<br>Max Graham, Jr. | • Review Site Plans<br>• Discuss Status |
| August 3 | County Building | Ka'āina Hull (Planning Director)<br>Jodi Higuchi-Sayegusa<br>(Deputy Planning Director)<br>Planning Department Staff:<br>Romio Idica/Dale Cua | Jeff Overton (G70)<br>Rene Matsumura (G70)<br>Jim Ratkovich<br>Bill Witte<br>Michael Belles<br>Max Graham, Jr. | • Status of Project<br>• Next Steps |
| September 27 | County Building | Ka'āina Hull (Planning Director)<br>Planning Department Staff | Jim Ratkovich<br>Consultants<br>Michael Belles | • Status of Project |
| **2024** | | | | |
| March 8 | County Building | Ka'āina Hull (Planning Director)<br>Planning Department Staff | Laurel Loo<br>Michael Belles<br>Max Graham, Jr. | • Discuss Status, Zoning Amendment, EIS |

EXHIBIT "A"

| DATE | PLACE | COUNTY | APPLICANT | SUBJECT |
|---|---|---|---|---|
| April 18 | County Building | Ka'āina Hull (Planning Director)<br>Jodi Higuchi-Sayegusa<br>(Deputy Planning Director) | Jim Ratkovich<br>Bill Witte<br>Jeff Overton (G70)<br>Michael Belles<br>Max Graham, Jr. | • Status/EIS/ZA/DLNR/ Completion Condition/ Project Scope |
| July 25 | County Building | Ka'āina Hull (Planning Director)<br>Jodi Higuchi-Sayegusa<br>(Deputy Planning Director)<br>Matt Bracken (County Attorney)<br>Laura Barzilai<br>(Deputy County Attorney) | Laurel Loo<br>Michael Belles<br>Max Graham, Jr. | • Status<br>• Legal Issues (ZA/EIS/Condition re: Completion) |
| August 12 | County Conference Room | Mayor Derek Kawakami<br>Reiko Matsuyama<br>(Managing Director)<br>Ka'āina Hull (Planning Director)<br>Jodi Higuchi-Sayegusa<br>(Deputy Planning Director)<br>Matt Bracken (County Attorney)<br>Laura Barzilai<br>(Deputy County Attorney) | David Louie<br>Jim Ratkovich<br>Bill Witte<br>Phil Keat (RFP)<br>Brian Yamase (G&R)<br>Max Graham, Jr. | • Status<br>• County Position<br>• Legal Issues |
| November 19 | County Attorney Office | Matt Bracken (County Attorney)<br>Laura Barzilai<br>(Deputy County Attorney) | David Louie<br>Max Graham, Jr. | • Legal Issues (ZA/EIS/Condition/DLNR) |

| DATE | PLACE | COUNTY | APPLICANT | SUBJECT |
|---|---|---|---|---|
| 2025 | | | | |
| January 16 | County Building | Ka'āina Hull (Planning Director)<br>Romio Idica<br>(Planning Department Staff) | Jeff Overton (G70)<br>Rene Matsumura (G70)<br>Jim Ratkovich<br>Bill Witte<br>Michael Belles<br>Max Graham, Jr. | • Status<br>• ZA<br>• EIS<br>• Next Steps |
| April 15 | County Attorney Office | Matt Bracken (County Attorney) | David Louie<br>Max Graham, Jr. | • Legal Issues (ZA/EIS/Condition/DLNR) |
| April 21 | County Building | Ka'āina Hull (Planning Director)<br>Romio Idica<br>(Planning Department Staff)<br>Laura Barzilai<br>(Deputy County Attorney) | Jim Ratkovich<br>Bill Witte<br>Rene Matsumura (G70)<br>Laurel Loo<br>Max Graham, Jr. | • Status (ZA/EIS/Condition) |
| August 8 | County Building | Ka'āina Hull (Planning Director) | Max Graham, Jr.<br>Michael Belles | • Status<br>• ZA/EIS<br>• COK Petition to Rezone and Revoke SMA/PD Use Permit/Class IV ZP |

BEFORE THE PLANNING COMMISSION

OF THE COUNTY OF KAUAI

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|---|---|
| In the Matter of the Petition to<br><br>AMEND ORDINANCE NO. PM-2002-356 AS AMENDED IN PART BY ORDINANCE NO. PM-2006-385 FOR REAL PROPERTY SITUATED AT KAPALAWAI, MAKAWELI, ISALND OF KAUA'I, STATE OF HAWAI'I, KAUAI TAX MAK KEY (4) 1-7-005:001, KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII INC., A HAWAII CORPORATION, ROBINSON FAMILY PARTNERS, A HAWAII GENERAL PARTNERSHIP, BRUCE B. ROBINSON, ALICES EST ROBINSON.<br><br>In the Matter of the Petition to<br><br>FOR THE REVOCATION OF SPECIAL MANAGEMENT AREA USE PERMIT SMA(U)-2002-6, PROJECT DEVELOPMENT USE PERMIT PDU-2002-15, AND CLASS IV ZONING PERMIT Z-IV-2002-20 AND REPORT PERTAINING TO KAUA'I TAX MAP KEY (4) 1-7-005:001, KAPALAWAI, MAKAWELI, ISLAND OF KAUA'I, STATE OF HAWAI'I, KERZNER INTERNATIONAL MANAGEMENT SERVICES HAWAII INC., A HAWAII CORPORATION, ROBINSON FAMILY PARTNERS, A HAWAII GENERAL PARTNERSHIP, | DOCKET NO. ZA-2026-2<br><br>SPECIAL MANAGEMENT AREA USE PERMIT SMA(U)-2002-6, PROJECT DEVELOPMENT USE PERMIT PDU-2002-15, AND CLASS IV ZONING PERMIT Z-IV-2002-20<br><br>CERTIFICATE OF SERVICE |

BRUCE B. ROBINSON, ALICES EST ROBINSON.


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CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Kerzner International Management Services Hawaii Inc.'s Consolidated Statement of Opposition to (1) The Petition to Rezone; and (2) The Petition to Revoke Permits and Request for Contested Case Hearing was filed and served on this day, via First Class Mail, Certified Mail, and via email, on the following persons:

KAUAI PLANNING COMMISSION (12 Copies)
Mr. Francis DeGracia, Chair
Kaua'i County Planning Department
4444 Rice Street, Suite A473
Lihue, HI 96766

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ROBINSON FAMILY PARTNERS, a Hawaii General Partnership

DATED: November 5, 2025.

DAVID M. LOUIE
JOSEPH A. STEWART
RYAN D. LOUIE

LAUREL K.S. LOO

Attorneys for
KERZNER INTERNATIONAL
MANAGEMENT SERVICES
HAWAII INC.

**Shanlee Jimenez**

---

**From:** kiersten zalia <kierstenzalia01@gmail.com>
**Sent:** Friday, November 7, 2025 6:07 PM
**To:** Planning Department
**Subject:** I Reject this Project

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

I Kiersten Rodrigues-Parraga, Testify against any building, development, or tampering of this area and demand a proper 343 community meeting that includes full disclosure and open Q&A before any next decisions are made.

## Shanlee Jimenez

**From:** Maureen Niehaus <maureensurf@gmail.com>
**Sent:** Saturday, November 8, 2025 9:18 AM
**To:** Planning Department
**Subject:** Zoning amendment

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

I would like to express my opposition to re zoning this property to build a resort. I feel it is detrimental to the ocean, coast line marine animals and plants. It will also negatively impact the livelihood of people living in the area and people using the area for recreation. Please do not let this amendment pass, Thank you Maureen Taylor-Niehaus Sent from my iPhone

## Shanlee Jimenez

**From:** Charles Iona <investigate800@gmail.com>
**Sent:** Saturday, November 8, 2025 12:54 PM
**To:** Planning Department
**Subject:** Kapalawai Project In Opposition To The Down Zoning From Resort to Agriculture
**Attachments:** WRITTEN TESTIMONY FOR KAPALAWAI.docx

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

Please see my attached testimony.

Thank you.....

Charles Iona
(808) 478-5042
investigate800@gmail.com

**WRITTEN TESTIMONY**

Date: November 7, 2025

Time: 1500 hours

Subject: Kapalawai Project

Aloha –

Members of the Planning Commission. My name is Charles Iona and I am a member of the westside community residing in Waimea. I've been living on Kauai since 2005. I would like to add my testimony on the subject matter that is before the Planning Commission slated for November 10, 2025 regarding the proposed down zoning at Kapalawai from Resort Zoning to the proposed Agriculture Zoning.

I am opposed to down zoning because the Robinson Lands is already surrounded by Agriculture Lands. What is in peril at this time is whether Gay and Robinson will be able to sustain its maintaining of its lands without source revenue. Within the last 7 years three of the largest seeds companies in the United States that had its operations on Gay and Robinson Land has left. Dow AgroSciences, Syngenta/Hartung, and Becks Hybrid have all departed and closed its agricultural farming operations on Kauai.

For the last 20 years, the Kapalawai project has been on the books for a resort project. To change the zoning would mean the resort itself cannot be built thus putting an already economic strain on the Gay and Robinson operations. This resort project would mean sustainable jobs for the westside community. Traffic would be held to a minimum because the already traffic build up would be down sized because the westside community would not need to venture for employment beyond Kapalawai.

The already struggling businesses on the westside of Kauai needs an influx of new revenue created to help sustain the area as one of its anchor tenants.

I urge the Commissioners to vote down the proposed rezoning from resort to agriculture and to allow the Robinson Family to build this resort to help sustain their operations financially and to perpetuate their legacy in keeping their lands for generations to come.

Respectfully,

Charles Iona

808.478.5042

## Shanlee Jimenez

**From:** Donna Kauai <donnakauai808@gmail.com>
**Sent:** Saturday, November 8, 2025 10:33 PM
**To:** Planning Department
**Subject:** Written Testimony on Agenda item: County Zoning Amendment ZA-2026-2

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

To: Kaua'i County Planning Department and Planning Commission Board

My name is Donna CK NAKAHARA. I am native Hawaiian. I am submitting testimony on agenda item County Zoning Amendment ZA – 2026–2 to revoke and revert project site resort zoning designation back to its agricultural origins.

My family has resided in Waimea, Kaua'i for many generations.

The current resort proposal doesn't take into consideration:

1. The high bacterial level in Pakala ocean per the Surfrider Foundation and Department of Health.

2. Limited access for surfers and fisherman to the ocean.

3. The lack of management plan for tourism in Waimea and Kokee. For example tourist visiting Kokee State Park hike around and parks wherever, creating hazards on the roads.
Walk around unsafe and undersigned hiking areas.

4. Lack of workers. Every business on Kaua'i, is having a difficult time securing employees. Example: Hotel One, in Hanalei has to bring in workers from out of state.

5. The lack of water resource for the resort. Waimea River and the taro patches around have less and less water throughout the years.

I urge you to keep Pakala in agricultural in land. Again revoke and revert project site zoning designation back to agricultural origins.

Thank you for your consideration.

Sent from my iPhone

## Shanlee Jimenez

**From:** eden valiant <edenvaliant@hotmail.com>
**Sent:** Sunday, November 9, 2025 8:55 AM
**To:** Planning Department
**Subject:** November 10th Hearing Testimony
**Attachments:** Kauai County - Nov 10th Hearing.pdf

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

Aloha,

Please see the attached PDF for my testimony in support of the county's decision to revert the acreage of Kapalawai, Makaweli back to agricultural zoning.

Mahalo,

Eden

**November 9th, 2025**

**To Whom It May Concern,**

The surfers of Kaua'i stand in strong support of reverting the acreage of Kapalawai, Makaweli back to agricultural zoning — protecting this land from resort development and preserving what makes West Kaua'i unique.

We stand **for** responsible stewardship of the island, not just against another resort. Kapalawai represents one of the last stretches of coastline that still reflects *old Hawai'i* — unlike much of Kaua'i's coastline, which has been transformed by large-scale tourism.

I have the privilege of calling Pakala my home break, but this is not about keeping it for ourselves. It's about protecting what cannot be replaced. A resort may bring short-term jobs, but it often comes at the expense of long-term sustainability — driving up the cost of living, consuming limited resources, straining our infrastructure, and eroding the local culture that visitors come here to experience in the first place. These developments rarely serve local families; they serve outside investors whose decisions are made far from here.

West Kaua'i deserves **respect, restoration, and sustainable development** — investments in regenerative agriculture, affordable housing, and small local businesses that keep wealth and opportunity within the community. Selling land to the highest bidder is not progress; it's surrender. Once lost, the *mana* and identity of this place cannot be restored.

We have limited land, limited coastline, and limited surf breaks. At Pakala, there is a deep culture of respect, lineage, and etiquette — values that protect both the ocean and those who call it home. If access to these places becomes something that can be bought, that culture will disappear forever.

My friend and fellow surfer **Buna Leialoha** said it best:

> "The ocean will never change unless man changes it. The land will always change unless someone steps up to keep it the way it is — to keep it from becoming another Waikīkī. We have enough Waikīkīs, enough Po'ipūs, enough Hanaleis. What is left for our people? My name is Buna Leialoha. I've surfed every place from Waipi'o Valley to Polihale. We've had enough. It's time to give back to the people and the community. That's my mana'o. Aloha."

Buna has traced his family lineage back thousands of years to the island of Kaua'i. He currently resides with friends on Maui, but is looking for a way back to West Kaua'i.

Our kuleana — our shared responsibility — is to protect these places for future generations. Please, for the sake of the land, the community, and the integrity of our island, **say no to resort development at Kapalawai** and uphold agricultural zoning on West Kaua'i.

Mahalo for your time and consideration.

Eden Valiant

**DEPARTMENT OF PLANNING**
**KA'ĀINA HULL,** DIRECTOR
**JODI A. HIGUCHI SAYEGUSA,** DEPUTY DIRECTOR

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

**TRANSMITTAL OF SUPPLEMENTAL INFORMATION TO PLANNING COMMISSION**

DATE: **November 9, 2025**

ITEM NUMBER: H.4.

RE: In the Matter of a Notice of Violation and Order to Pay Fines, for 1) illegal commercial events within the Agricultural District (weddings, retreats, spiritual events and private ceremonies) and the failure to cease and desist and secure the required permits, and 2) the construction of seven (7) yurts without the required permits, related to the property located at Hui Road, Anahola, Kauai, TMK 49003001, KALALEA TRUST, applicant, as Appeal File CC-2025-1.

Attached for the Planning Commission's reference is supplemental information.

**DEPARTMENT OF PLANNING**
**KA'ĀINA HULL,** DIRECTOR
**JODI A. HIGUCHI SAYEGUSA,** DEPUTY DIRECTOR

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

AUG 2 8 2024

# FIRST NOTICE OF VIOLATION

VIA CERTIFIED MAIL

Kalalea Plantation
Kalalea Plantation LLC
PO Box 1139, Kilauea, HI 96754

Kalalea TR
4470 Wailapa Rd
Kilauea HI 96754 1139

Kalalea Plantation LLC
6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

**SUBJECT: Comprehensive Zoning Ordinance (CZO) Violation On:**
**Hui Rd Master Anahola, HI 96703**
**Tax Map Key: 49003001**

The Planning Department conducted an investigation of the subject property and verified violation(s) of the follwing Kaua'i County Code (KCC):

**§ 8-3.1 Zoning Permits.**

(a) When Required. No person shall undertake any construction or development or carry on any activity or use, for which a Zoning Permit is required by this Chapter, or obtain a Building Permit for construction, development, activity or use regulated by this Chapter, without first obtaining the required Zoning Permit.

**§ 8-3.5 Enforcement, Legal Procedures and Penalties.**

(a) Enforcement, Legal Procedures and Penalties.

...

(2) It shall be the duty of the Planning Commission and Planning Director to enforce the

provisions of this Chapter and it shall be the duty of all law enforcement officers of the County of Kaua'i to enforce this Chapter and all the provisions thereof.

...

(4) Any building or structure or other improvement or development set up, erected, constructed, altered, enlarged, converted, moved, or maintained contrary to the provisions of this Chapter or any use of land contrary to the provisions of this Chapter shall be unlawful and a public nuisance. The County Attorney shall immediately commence an action or proceeding for the abatement, removal, or enjoinment thereof in the manner provided by law, and shall take such other steps, and shall apply to such courts as may have jurisdiction to grant relief that will abate or remove such building, structure, improvement, development or use, and restrain and enjoin any person from setting up, erecting, building, maintaining, or using any such building, structure, improvement or development, or using any property contrary to the provisions of this Chapter.

(5) The remedies provided for in this Article shall be cumulative and not exclusive.

**VIOLATION:**

**On August 26, 2024, the Planning Department., through its investigation, verified that seven (7) structures (Yurts) were present on the subject property without the required zoning permit.**

**The construction of seven (7) structures (Yurts) without the required zoning permit constitutes a violation.**

**In addition, under KCC Section 3.5, any improvement, development, or use of land contrary to the provisions of KCC Chapter 8 is unlawful and a public nuisance.**

**REMEDIAL ACTION REQUIRED:**

Pursuant to Hawai'i Revised Statues Section 46-1.5(24) and KCC Section 8-3.5, you must correct the violation, remove the construction or development, or obtain the proper zoning permits for the referenced alteration, and cease and desist the unpermitted activity and use immediately.

In addition, should you fail to rectify the violation, you are hereby notified of the following:

1. A fine of up to five thousand dollars ($5,000.00) may be imposed for the above noted violation(s).
2. An additional civil fine of up to five thousand dollars ($5,000.00) an item, per day for each day in which the violation persists.
3. You may also be subject to criminal prosecution.

Contact Bambi Emayo of the Planning Department at 241-4051, or at aemayo@kauai.gov, within fifteen (15) calendar days upon receipt of this letter to provide a remedial action plan. Failure to do so provides us with no other alternative but to pursue enforcement action.

KA'ĀINA S. HULL
Director of Planning

**DEPARTMENT OF PLANNING**
**KA'ĀINA HULL,** DIRECTOR
**JODI A. HIGUCHI SAYEGUSA,** DEPUTY DIRECTOR

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

AUG 2 8 2024

# FIRST NOTICE OF VIOLATION

VIA CERTIFIED MAIL

KALALEA TRUST
4470 WAILAPA RD
KILAUEA, HI 96754

KALALEA PLANTATION LLC
6623 LAS VEGAS BLVD UNIT 340
LAS VEGAS NV 89119

SUNRISE HUI FARM LLC
2955 AUKELE STE 201
LIHUE HI 96766

**SUBJECT: COMPREHENSIVE ZONING ORDINANCE (CZO) VIOLATION ON HUI RD ANAHOLA, HI 96703**
**Tax Map Key: 490030010003**

The Planning Department conducted an investigation of the subject property and verified violation(s) of the follwing Kaua'i County Code (KCC):

**Chapter 8, Comprehensive Zoning Ordinance**

**Section 8-1.5 Definitions.**

**"Campground, Developed"** means land or premises designed to be used, let, or rented for compensation, monetary or otherwise, for transient occupancy...

**"Transient" or "transients"**
means any person who owns, rents, or uses a dwelling unit or a portion thereof for 180 days or less, ...

**Article 2. Designation of Districts.**
**Section 8-2.4 Uses in Districts.**
The following table designates allowable uses in the various zoning districts, and whether the specific uses require a Use Permit within the zoning districts permitted.

**Article 8. Agriculture Districts (A)**
**Section 8-8.7 Developed Campgrounds in Agriculture Zoning Districts**
Developed campgrounds are prohibited in all Agriculture Zoning Districts. (Ord. No. 1105, December 2, 2021).

**Article 17. Time Share and Transient Vacation Rentals**
**Section 8-17.1 Limitations on Location**
Except as provided in this Section, time share units, time share plans and transient vacation rentals are prohibited.

**Sec. 8-3.5 Enforcement, Legal Procedures and Penalties.**
(a) Enforcement, Legal Procedures and Penalties.

...

(2) It shall be the duty of the Planning Commission and Planning Director to enforce the provisions of this Chapter and it shall be the duty of all law enforcement officers of the County of Kaua'i to enforce this Chapter and all the provisions thereof.

...

(4) Any building or structure or other improvement or development set up, erected, constructed, altered, enlarged, converted, moved, or maintained contrary to the provisions of this Chapter or any use of land contrary to the provisions of this Chapter shall be unlawful and a public nuisance. The County Attorney shall immediately commence an action or proceeding for the abatement, removal, or enjoinment thereof in the manner provided by law, and shall take such other steps, and shall apply to such courts as may have jurisdiction to grant relief that will abate or remove such building, structure, improvement, development or use, and restrain and enjoin any person from setting up, erecting, building, maintaining, or using any such building, structure, improvement or development, or using any property contrary to the provisions of this Chapter.

(5) The remedies provided for in this Article shall be cumulative and not exclusive.

**VIOLATION:**

**On 8/27/2024, Planning Inspector Joan Ludington, through her investigation, verified that a Developed Campground for Transient occupancy was present on the subject property. Also, the use of commercial events (weddings, retreats, spiritual events, and private ceremonies) was present on the subject property.**

**The Developed Campground for Transient occupancy along with the use of Commercial Events (weddings, retreats, spiritual events and private ceremonies) on the subject property is generally not permitted within the Agricultural District and constitutes a violation.**

**In addition, under KCC Section 3.5, any improvement, development, or use of land contrary to the provisions of KCC Chapter 8 is unlawful and a public nuisance.**

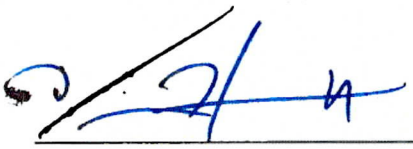
**REMEDIAL ACTION REQUIRED:**
Pursuant to KCC §8-3.5, you are directed to comply with the following requirements immediately:

1. Correct the violation, and cease and desist the use of the subject property as a Developed Campground
2. Cancel all accommodation commitments for the property.
3. Submit documentation that all website ads have been terminated.
4. Submit documentation that all future commitments for use of the property have been terminated.

In addition, pursuant to KCC §8-3.5, should you fail to rectify the violation, you are hereby notified of the following:

1. A fine of up to thousand dollars ($10,000.00) may be imposed for the above noted violations.
2. An additional civil fine of up to ten thousand dollars ($10,000.00) per day for each day in which the violation persists.
3. You may also be subject to criminal prosecution.

Contact Joan Ludington of the Planning Department at (808) 241-4052, or at jludington@kauai.gov, within fifteen (15) calendar days upon receipt of this letter to provide a remedial action plan. Failure to do so provides us with no other alternative but to pursue enforcement action.



KAAINA S. HULL
Director of Planning

**DEPARTMENT OF PLANNING**
**KA'ĀINA HULL,** DIRECTOR
**JODI A. HIGUCHI SAYEGUSA,** DEPUTY DIRECTOR

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

SEP 2 4 2024

**SECOND AND FINAL NOTICE OF VIOLATION**

**VIA CERTIFIED MAIL / EMAIL**

**Kalalea Plantation**
**Kalalea Plantation LLC**
**PO Box 1139, Kilauea, HI 96754**

Kalalea TR
4470 Wailapa Rd
Kilauea HI 96754 1139

Kalalea Plantation LLC
6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

**SUBJECT: COMPREHENSIVE ZONING ORDINANCE (CZO) VIOLATION ON:**
**Hui Rd Master Anahola, HI 96703**
**Tax Map Key: 49003001**

On August 28, 2024, the Planning Department issued you a First Notice Of Violation regarding violations on the subject property. To date, September 24, 2024 the Planning Department has verified the ongoing violations of the Kaua'i County Code (KCC) Chapter 8, known as the Comprehensive Zoning Ordinance (CZO), specifically:

**KCC Sec. 8-3.1 (a) When Required.** No person shall undertake any construction or development or carry on any activity or use, for which a zoning permit is required by this Chapter, or obtain a building permit for construction, development, activity or use regulated by this Chapter, without first obtaining the required zoning permit.

**The construction of seven (7) structures (Yurts) without the required zoning permit constitutes a violation.**

**SECOND AND FINAL NOTICE:**

On September 16, 2024, the Planning Department met with Carl Langschmidt (Kalalea TR) to rectify said violations. The owner, Carl Langschmidt (Kalalea TR), have fail to submit a remedial action plan by, the prescribed, September 23, 2024.

Planning Inspector Bambi Emayo, through his investigation, verified that the violation of the construction of seven (7) structures (Yurts) without the required zoning permit is still present on the subject property. Thus, the violation of the construction of seven (7) structures (Yurts) without the required zoning permits violation remain after reasonable notice was given and requests to correct or cease the violation were made.

Pursuant to Hawai'i Revised Statutes Section 46-1.5(24) and KCC Section 8-3.5, you are hereby subject to the enforcement, legal procedures, and penalties specified in the Order that accompanies this Second and Final Notice of Violation.

Should you have any questions, please feel free to contact Inspector Bambi Emayo of my staff at 241-4051, or email at aemayo@kauai.gov.

KA'ĀINA S. HULL
Director of Planning

**DEPARTMENT OF PLANNING**
**KA'ĀINA HULL,** DIRECTOR
**JODI A. HIGUCHI SAYEGUSA,** DEPUTY DIRECTOR

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

SEP 2 4 2024

**Kalalea Plantation**
**Kalalea Plantation LLC**
**PO Box 1139, Kilauea, HI 96754**

Kalalea TR
4470 Wailapa Rd
Kilauea HI 96754 1139

Kalalea Plantation LLC
6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

## ORDER

**Pursuant to Hawai'i Revised Statutes Section 46-1.5(24) and Kaua'i County Code Section 8-3.5,**

IT IS HEREBY ORDERED that you shall:

1. Pay a fine of five thousand dollars ($5,000.00) for the above noted violation(s).

2. An additional civil fine of up to five thousand dollars ($5,000.00) an item, per day for each day in which the violation persists.

3. Immediately cease and desist the violation(s).

This Order shall become final thirty (30) calendar days after the date of its delivery, posting on the property, or publication in a newspaper of general circulation in the County of Kaua'i. Failure to correct the violation or pay the total amount of the civil fine imposed within ninety (90) days of this Order's delivery, posting, or publication may result in a lien placed on the subject property.

Pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission (RPPPC), you have a right to appeal this Order to the Planning Commission. The form of an appeal must conform to the RPPPC. An appeal to the Planning Commission shall not stay any provision of

this Order. The RPPPC are available online at the Planning Department's website: https://www.kauai.gov/Planning.

DATED: Lihu'e, Kaua'i, Hawai'i, September 24, 2024

KA'ĀINA S. HULL
Director of Planning

**DEPARTMENT OF PLANNING**
**KA'ĀINA HULL,** DIRECTOR
**JODI A. HIGUCHI SAYEGUSA,** DEPUTY DIRECTOR

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

SEP 2 4 2024

## SECOND AND FINAL NOTICE OF VIOLATION

**VIA CERTIFIED MAIL / EMAIL**

**Kalalea TR**
**4470 Wailapa Rd**
**Kilauea HI 96754 1139**

Kalalea Plantation LLC
6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

**SUBJECT: COMPREHENSIVE ZONING ORDINANCE (CZO) VIOLATION ON:**
**Hui Rd Master Anahola, HI 96703**
**Tax Map Key: 49003001**

On August 28, 2024, the Planning Department issued you a First Notice Of Violation regarding violations on the subject property. To date, September 24, 2024 the Planning Department has verified the ongoing violations of the Kaua'i County Code (KCC) Chapter 8, known as the Comprehensive Zoning Ordinance (CZO), specifically:

**Article 2. Designation of Districts.**
**Section 8-2.4 Uses in Districts.**
The following table designates allowable uses in the various zoning districts, and whether the specific uses require a Use Permit within the zoning districts permitted.

**Article 8. Agriculture Districts (A)**
**Section 8-8.7 Developed Campgrounds in Agriculture Zoning Districts**
Developed campgrounds are prohibited in all Agriculture Zoning Districts. (Ord. No. 1105, December 2, 2021).

**The continued use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permit constitutes a violation.**

**SECOND AND FINAL NOTICE:**

Subsequently, on September 16, 2024, the Planning Department met with Carl Langschmidt (Kalalea TR) to rectify said violations. The owners Carl Langschmidt (Kalalea TR) have fail to submit a remedial action plan by, the prescribed, September 23, 2024.

Planning Inspector Joan Ludington, through her investigation, verified that the violation of the use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permit is still present on the subject property.

Thus, the use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permit violation remain after reasonable notice was given and requests to correct or cease the violations were made.

Pursuant to Hawai'i Revised Statutes Section 46-1.5(24) and KCC Section 8-3.5, you are hereby subject to the enforcement, legal procedures, and penalties specified in the Order that accompanies this Second and Final Notice of Violation.

Contact Joan Ludington of the Planning Department at (808) 241-4052, or at jludington@kauai.gov. within fifteen (15) calendar days upon receipt of this letter to provide a remedial action plan. Failure to do so provides us with no other alternative but to pursue enforcement action.

KA'ĀINA S. HULL
Director of Planning

**DEPARTMENT OF PLANNING**
KA'ĀINA HULL, DIRECTOR
JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR

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

SEP 24 2024

**Kalalea TR**
**4470 Wailapa Rd**
**Kilauea HI 96754 1139**

Kalalea Plantation LLC
6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

## ORDER

**Pursuant to Hawai'i Revised Statutes Section 46-1.5(24) and Kaua'i County Code Section 8-3.5,**

IT IS HEREBY ORDERED that you shall:

1. Pay a fine of ten thousand dollars ($10,000.00) for the above noted violation(s).

2. An additional civil fine of up to ten thousand dollars ($10,000.00) an item, per day for each day in which the violation persists.

3. Immediately cease and desist the violation(s).

This Order shall become final thirty (30) calendar days after the date of its delivery, posting on the property, or publication in a newspaper of general circulation in the County of Kaua'i. Failure to correct the violation or pay the total amount of the civil fine imposed within ninety (90) days of this Order's delivery, posting, or publication may result in a lien placed on the subject property.

Pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission (RPPPC), you have a right to appeal this Order to the Planning Commission. The form of an appeal must conform to the RPPPC. An appeal to the Planning Commission shall not stay any provision of this Order. The RPPPC are available online at the Planning Department's website: https://www.kauai.gov/Planning.

DATED: Lihu'e, Kaua'i, Hawai'i, September 24, 2024

KA'ĀINA S. HULL
Director of Planning

**DEPARTMENT OF PLANNING**
**KA'ĀINA HULL,** DIRECTOR
**JODI A. HIGUCHI SAYEGUSA,** DEPUTY DIRECTOR

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

FEB 18 2025

**VIA CERTIFIED U.S. MAIL, RETURN RECEIPT REQUESTED AND FIRST CLASS U.S. MAIL**

**Kalalea Trust**
**4470 Wailapa Rd**
**Kilauea HI 96754 1139**

**Kalalea Plantation**
**Kalalea Plantation LLC**
**PO Box 1139, Kilauea, HI 96754**

Kalalea Plantation LLC
6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

## THIRD NOTICE OF VIOLATION

**SUBJECT: COMPREHENSIVE ZONING ORDINANCE (CZO) VIOLATION ON:**
**Hui Rd Master, Anahola, HI 96703**
**Tax Map Key: 490030010003**

On August 28, 2024, the Kaua'i County Planning Department issued a "First Notice Of Violation". On September 24, 2024, it issued a "Second Notice Of Violation" and "Order," to Kalalea Trust, levying penalties in the amount of five thousand dollars ($5,000.00) for the following violation: The construction of seven (7) structures (Yurts) without the required zoning permit. On January 29, 2025, the Planning Department verified continued violations regarding the construction of seven (7) structures (Yurts) without the required zoning permit. You are on notice that you are in continuing violation of Kaua'i County Code (KCC) Chapter 8, known as the Comprehensive Zoning Ordinance (CZO), specifically:

**KCC Sec. 8-3.1 (a) When Required.** No person shall undertake any construction or development or carry on any activity or use, for which a zoning permit is required by this Chapter, or obtain a building

permit for construction, development, activity, or use regulated by this Chapter without first obtaining the required zoning permit.

**The construction of seven (7) structures (Yurts) without the required zoning permit constitutes a violation. As of February 4, 2025, there is no remedial action.**

**FINAL NOTICE:**

On January 29, 2025, Planning Inspector Jaret Towler, through his investigation, verified that the violation of the construction of seven (7) structures (Yurts) without the required zoning permit is still present on the subject property. Violations continue after reasonable notice was provided to you, and requests to correct or cease the violation were made.

Pursuant to Hawai'i Revised Statutes Section 46-1.5(24) and KCC Section 8-3.5, you are hereby subject to the enforcement, legal procedures, and penalties specified in the Order that accompanies this Third Notice of Violation.

Should you have any questions, please feel free to contact Inspector Jaret Towler of my staff at 808-241-4073, or email at jtowler@kauai.gov, within fifteen (15) calendar days upon receipt of this letter to provide a remedial action plan. Failure to do so provides us with no other alternative but to pursue further enforcement action.

DATED: Lihu'e, Kaua'i, Hawai'i, February 18, 2025

KA'ĀINA S. HULL
Director of Planning

**DEPARTMENT OF PLANNING**
**KA'ĀINA HULL,** DIRECTOR
**JODI A. HIGUCHI SAYEGUSA,** DEPUTY DIRECTOR

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

FEB 18 2025

**VIA CERTIFIED U.S. MAIL, RETURN RECEIPT REQUESTED AND FIRST CLASS U.S. MAIL**

**Kalalea Trust**
**4470 Wailapa Rd**
**Kilauea HI 96754 1139**

**Kalalea Plantation**
**Kalalea Plantation LLC**
**PO Box 1139, Kilauea, HI 96754**

Kalalea Plantation LLC
6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

## SECOND ORDER

**Pursuant to Hawai'i Revised Statutes Section 46-1.5(24) and Kaua'i County Code Section 8-3.5.**

IT IS HEREBY ORDERED that You Shall:

1. Pay an additional civil fine in the amount of Five Thousand Dollars ($5,000.00) for the continued violation(s);

2. Your current balance of fines for the construction of seven (7) structures (yurts) without the required zoning permits, in violation of the Comprehensive Zoning Ordinance § 8-3.1, is Ten Thousand Dollars ($10,000.00);

3. You must immediately cease and desist the violation(s) of the construction of seven (7) structures (yurts) without the required zoning permits, in violation of the Comprehensive Zoning Ordinance § 8-3.1;

4. An additional civil fine of up to Ten Thousand Dollars ($10,000.00) may be levied against you, per day, for each day in which the violation of the Comprehensive Zoning Ordinance § 8-3.1 persists.

This Order shall become final thirty (30) calendar days after the date of its delivery, posting on the property, or publication in a newspaper of general circulation in the County of Kaua'i. Failure to correct the violation and pay the total amount of the civil fines imposed within ninety (90) days of this Order's delivery, posting, or publication can result in a lien filed against the subject property.

Pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission (RPPPC), you have a right to appeal this Order to the Planning Commission. The form of an appeal must conform to the RPPPC. An appeal to the Planning Commission shall not stay any provision of this Order. The RPPPC are available online at the Planning Department's website: https://www.kauai.gov/Planning.

DATED: Lihu'e, Kaua'i, Hawai'i, February 18, 2025

KA'ĀINA S. HULL
Director of Planning

**DEPARTMENT OF PLANNING**
**KA'ĀINA HULL,** DIRECTOR
**JODI A. HIGUCHI SAYEGUSA,** DEPUTY DIRECTOR

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

FEB 18 2025

**VIA CERTIFIED U.S. MAIL, RETURN RECEIPT REQUESTED AND FIRST CLASS U.S. MAIL**

**Kalalea Trust**
**4470 Wailapa Rd**
**Kilauea HI 96754 1139**

**Kalalea Plantation**
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**PO Box 1139, Kilauea, HI 96754**

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6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

## THIRD NOTICE OF VIOLATION

**SUBJECT: COMPREHENSIVE ZONING ORDINANCE (CZO) VIOLATION ON:**
**Hui Rd Master Anahola, HI 96703**
**Tax Map Key: 490030010003**

On August 28, 2024, the Kaua'i County Planning Department issued a "First Notice Of Violation". On September 24, 2024, it issued a "Second And Notice Of Violation" and "Order", to Kalalea Trust, levying penalties in the amount of Ten Thousand Dollars ($10,000.00) for the following violation: The continued use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permit. On January 29, 2025, the Planning Department verified continued violations regarding the continued use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permit. You are on notice that you are in continuing violation of the Kaua'i County Code (KCC) Chapter 8, known as the Comprehensive Zoning Ordinance (CZO), specifically:

**Article 2. Designation of Districts.**
**Section 8-2.4 Uses in Districts.**
The following table designates allowable uses in the various zoning districts, and whether the specific uses require a Use Permit within the zoning districts permitted.

**Article 8. Agriculture Districts (A)**
**Section 8-8.7 Developed Campgrounds in Agriculture Zoning Districts**
Developed campgrounds are prohibited in all Agriculture Zoning Districts. (Ord. No. 1105, December 2, 2021).

**The continued use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permit constitutes a violation. As of February 4, 2025, there is no remedial action.**

**FINAL NOTICE:**
On January 29, 2025, Planning Inspector Jaret Towler, through his investigation, verified that the violation of the use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permit is still present on the subject property. Violations continue after reasonable notice was provided to you, and requests to correct or cease the violation were made.

Pursuant to Hawai'i Revised Statutes Section 46-1.5(24) and KCC Section 8-3.5, you are hereby subject to the enforcement, legal procedures, and penalties specified in the Order that accompanies this Third Notice of Violation.

Should you have any questions, please feel free to contact Inspector Jaret Towler of the Planning Department at (808) 241-4073, or email at jtowler@kauai.gov, within fifteen (15) calendar days upon receipt of this letter to provide a remedial action plan. Failure to do so provides us with no other alternative but to pursue further enforcement action.

DATED: Lihu'e, Kaua'i, Hawai'i, February 18, 2025

KA'AINA S. HULL

**DEPARTMENT OF PLANNING**
KA'ĀINA HULL, DIRECTOR
JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR

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

FEB 18 2025

**VIA CERTIFIED U.S. MAIL, RETURN RECEIPT REQUESTED AND FIRST CLASS U.S. MAIL**

**Kalalea Trust**
**4470 Wailapa Rd**
**Kilauea HI 96754 1139**

**Kalalea Plantation**
**Kalalea Plantation LLC**
**PO Box 1139, Kilauea, HI 96754**

Kalalea Plantation LLC
6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

## SECOND ORDER

**Pursuant to Hawai'i Revised Statutes Section 46-1.5(24) and Kaua'i County Code Section 8-3.5.**

IT IS HEREBY ORDERED that you shall:

1. Pay an additional fine in the amount of Ten Thousand Dollars ($10,000.00) for the continued noted violation(s)

2. Your current balance of fines for the continued use of the Commercial Events (weddings, retreats, spiritual events, and private ceremonies) within the Agricultural District without the required zoning use permit, in violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7, is Twenty Thousand Dollars ($20,000.00);

3. You must immediately cease and desist the violation(s) of the continued use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permit, which is in violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7;

4. An additional civil fine of up to Ten Thousand Dollars ($10,000.00) may be levied, per day for each day in which the violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7 persists.

This Order shall become final thirty (30) calendar days after the date of its delivery, posting on the property, or publication in a newspaper of general circulation in the County of Kaua'i. Failure to correct the violation or pay the total amount of the civil fine imposed within ninety (90) days of this Order's delivery, posting, or publication may result in a lien placed on the subject property.

Pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission (RPPPC), you have a right to appeal this Order to the Planning Commission. The form of an appeal must conform to the RPPPC. An appeal to the Planning Commission shall not stay any provision of this Order. The RPPPC are available online at the Planning Department's website: https://www.kauai.gov/Planning.

DATED: Lihu'e, Kaua'i, Hawai'i, February 18, 2025

KA'ĀINA S. HULL
Director of Planning

**DEPARTMENT OF PLANNING**
**KA'ĀINA HULL,** DIRECTOR
**JODI A. HIGUCHI SAYEGUSA,** DEPUTY DIRECTOR

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

VIA CERTIFIED MAIL/FIRST-CLASS MAIL

AUG 27 2025

**KALALEA TRUST**
**4470 WAILAPA RD**
**KILAUEA, HI 96754**

Kalalea Plantation LLC
PO Box 1139
Kilauea, HI 96754

Kalalea Plantation LLC
6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

## FOURTH NOTICE OF VIOLATION

**SUBJECT: COMPREHENSIVE ZONING ORDINANCE (CZO) VIOLATION ON:**
**HUI RD ANAHOLA, HI 96703**
**Tax Map Key: 490030010003**

On August 28, 2024, the Planning Department issued a "First Notice of Violation" instructing you to immediately cease and desist the use of the property for Commercial Events (including weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permits.

On September 24, 2024, a "Second Notice of Violation" and "Order", was issued to Kalalea Trust, levying penalties of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit.

On February 18, 2025, a "Third Notice of Violation" and "Second Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit. As of this date, the total penalties for the violation (continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit) amount to Twenty Thousand Dollars ($20,000.00).

To date, August 21, 2025, the Planning Department has verified the ongoing violation of the Kaua'i County Code (KCC) Chapter 8, known as the Comprehensive Zoning Ordinance (CZO), specifically:

**Article 2. Designation of Districts.**

**Section 8-2.4 Uses in Districts.**

The following table designates allowable uses in the various zoning districts, and whether the Specific uses require a Use Permit within the zoning districts permitted.

**Article 8. Agriculture Districts (A)**

**Section 8-8.7 Developed Campgrounds in Agriculture Zoning Districts**

Developed campgrounds are prohibited in all Agriculture Zoning District's. (Ord. No. 1105, December 2, 2021).

**The continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit. As of August 21, 2025, there is no remedial action.**

**FINAL NOTICE:**

On August 21, 2025, Planning Inspector Joan Ludington confirmed through her investigation that the violation of the use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permit is still present on the subject property. These Violations persist despite prior notices and orders requiring corrective action.

Pursuant to Hawai'i Revised Statutes Section 46-1.5(24) and KCC Section 8-3.5, you are hereby subject to the enforcement, legal procedures, and penalties specified in the "Third Order" that accompanies this "Fourth Notice of Violation".

Contact Joan Ludington of the Planning Department at (808) 241-4052, or at jludington@kauai.gov. within fifteen (15) calendar days upon receipt of this letter to provide a remedial action plan. Failure to do so provides us with no other alternative but to pursue enforcement action.

DATED: Lihu'e, Kaua'i, Hawai'i, August 22, 2025

KA'ĀINA S. HULL
Director of Planning

**DEPARTMENT OF PLANNING**
**KA'ĀINA HULL,** DIRECTOR
**JODI A. HIGUCHI SAYEGUSA,** DEPUTY DIRECTOR

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

**VIA CERTIFIED U.S. MAIL/FIRST CLASS U.S. MAIL**

AUG 27 2025

**Kalalea Trust**
**4470 Wailapa Rd**
**Kilauea HI 96754 1139**

Kalalea Plantation
Kalalea Plantation LLC
PO Box 1139, Kilauea, HI 96754

Kalalea Plantation LLC
6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

## THIRD ORDER

**Pursuant to Hawai'i Revised Statutes Section 46-1.5(24) and Kaua'i County Code Section 8-3.5.**

IT IS HEREBY ORDERED that you shall:

1. Pay an additional fine in the amount of Ten Thousand Dollars ($10,000.00) for the continued noted violation(s)

2. Your current balance of fines for the continued use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permits, in violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7 is Thirty Thousand Dollars ($30,000.00);

3. You must immediately cease and desist the violation(s) of the continued use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permits, in violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7;

4. An additional civil fine of up to Ten Thousand Dollars ($10,000.00) may be levied, per day for each day in which the violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7 persists.

This Order shall become final thirty (30) calendar days after the date of its delivery, posting on the property, or publication in a newspaper of general circulation in the County of Kaua'i. Failure to correct the violation or pay the total amount of the civil fine imposed within ninety (90) days of this Order's delivery, posting, or publication may result in a lien placed on the subject property.

Pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission (RPPPC), you have a right to appeal this Order to the Planning Commission. The form of an appeal must conform to the RPPPC. An appeal to the Planning Commission shall not stay any provision of this Order. The RPPPC are available online at the Planning Department's website: https://www.kauai.gov/Planning.

DATED: Lihu'e, Kaua'i, Hawai'i, August 22, 2025

KA'ĀINA S. HULL
Director of Planning

**DEPARTMENT OF PLANNING**
**KA'ĀINA HULL,** DIRECTOR
**JODI A. HIGUCHI SAYEGUSA,** DEPUTY DIRECTOR

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

VIA CERTIFIED MAIL/FIRST-CLASS MAIL

AUG 28 2025

**KALALEA TRUST**
**4470 WAILAPA RD**
**KILAUEA, HI 96754**

Kalalea Plantation LLC
PO Box 1139
Kilauea, HI 96754

Kalalea Plantation LLC
6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

## FIFTH NOTICE OF VIOLATION

**SUBJECT: COMPREHENSIVE ZONING ORDINANCE (CZO) VIOLATION ON:**
**HUI RD ANAHOLA, HI 96703**
**Tax Map Key: 490030010003**

On August 28, 2024, the Planning Department issued a "First Notice of Violation" instructing you to immediately cease and desist the use of the property for Commercial Events (including weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permits.

On September 24, 2024, a "Second Notice of Violation" and "Order", was issued to Kalalea Trust, levying penalties of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit.

On February 18, 2025, a "Third Notice of Violation" and "Second Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit.

On August 21, 2025, a "Fourth Notice of Violation" and "Third Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit. As of this date, the total penalties for the violation (continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit) amount to Thirty Thousand Dollars ($30,000.00).'

To date, August 22, 2025, the Planning Department has verified the ongoing violation of the Kaua'i County Code (KCC) Chapter 8, known as the Comprehensive Zoning Ordinance (CZO), specifically:

**Article 2. Designation of Districts.**
**Section 8-2.4 Uses in Districts.**
The following table designates allowable uses in the various zoning districts, and whether the Specific uses require a Use Permit within the zoning districts permitted.

**Article 8. Agriculture Districts (A)**
**Section 8-8.7 Developed Campgrounds in Agriculture Zoning Districts**
Developed campgrounds are prohibited in all Agriculture Zoning District's. (Ord. No. 1105, December 2, 2021).

**The continued use of the property for Commercial Events (weddings, retreats, spiritual events, and private ceremonies) within the Agricultural District without the required zoning use permit. As of August 22, 2025, there is no remedial action.**

**FINAL NOTICE:**
On August 22, 2025, Planning Inspector Joan Ludington confirmed through her investigation that the violation of the use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permit is still present on the subject property. These Violations persist despite prior notices and orders requiring corrective action.

Pursuant to Hawai'i Revised Statutes Section 46-1.5(24) and KCC Section 8-3.5, you are hereby subject to the enforcement, legal procedures, and penalties specified in the "Fourth Order" that accompanies this "Fifth Notice of Violation".

Contact Joan Ludington of the Planning Department at (808) 241-4052, or at jludington@kauai.gov. within fifteen (15) calendar days upon receipt of this letter to provide a remedial action plan. Failure to do so provides us with no other alternative but to pursue enforcement action.

DATED: Lihu'e, Kaua'i, Hawai'i, August 23, 2025

KA'ĀINA S. HULL
Director of Planning

**DEPARTMENT OF PLANNING**
**KA'ĀINA HULL,** DIRECTOR
**JODI A. HIGUCHI SAYEGUSA,** DEPUTY DIRECTOR

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

**VIA CERTIFIED U.S. MAIL/FIRST CLASS U.S. MAIL**

**AUG 28 2025**

**Kalalea Trust**
**4470 Wailapa Rd**
**Kilauea HI 96754 1139**

Kalalea Plantation
Kalalea Plantation LLC
PO Box 1139, Kilauea, HI 96754

Kalalea Plantation LLC
6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

## FOURTH ORDER

**Pursuant to Hawai'i Revised Statutes Section 46-1.5(24) and Kaua'i County Code Section 8-3.5.**

IT IS HEREBY ORDERED that you shall:

1. Pay an additional fine in the amount of Ten Thousand Dollars ($10,000.00) for the continued noted violation(s)

2. Your current balance of fines for the continued use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permits, in violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7 is Forty Thousand Dollars ($40,000.00);

3. You must immediately cease and desist the violation(s) of the continued use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permits, in violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7;

4. An additional civil fine of up to Ten Thousand Dollars ($10,000.00) may be levied, per day for each day in which the violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7 persists.

This Order shall become final thirty (30) calendar days after the date of its delivery, posting on the property, or publication in a newspaper of general circulation in the County of Kaua'i. Failure to correct the violation or pay the total amount of the civil fine imposed within ninety (90) days of this Order's delivery, posting, or publication may result in a lien placed on the subject property.

Pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission (RPPPC), you have a right to appeal this Order to the Planning Commission. The form of an appeal must conform to the RPPPC. An appeal to the Planning Commission shall not stay any provision of this Order. The RPPPC are available online at the Planning Department's website: https://www.kauai.gov/Planning.

DATED: Lihu'e, Kaua'i, Hawai'i, August 23, 2025

KA'ĀINA S. HULL
Director of Planning

**DEPARTMENT OF PLANNING**
**KA'ĀINA HULL,** DIRECTOR
**JODI A. HIGUCHI SAYEGUSA,** DEPUTY DIRECTOR

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

VIA CERTIFIED MAIL/FIRST-CLASS MAIL

AUG 29 2025

**KALALEA TRUST**
**4470 WAILAPA RD**
**KILAUEA, HI 96754**

Kalalea Plantation LLC
PO Box 1139
Kilauea, HI 96754

Kalalea Plantation LLC
6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

**SIXTH NOTICE OF VIOLATION**

**SUBJECT: COMPREHENSIVE ZONING ORDINANCE (CZO) VIOLATION ON:**
**HUI RD ANAHOLA, HI 96703**
**Tax Map Key: 490030010003**

On August 28, 2024, the Planning Department issued a "First Notice of Violation" instructing you to immediately cease and desist the use of the property for Commercial Events (including weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permits.

On September 24, 2024, a "Second Notice of Violation" and "Order", was issued to Kalalea Trust, levying penalties of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit.

On February 18, 2025, a "Third Notice of Violation" and "Second Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit.

On August 21, 2025, a "Fourth Notice of Violation" and "Third Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit.

On August 22, 2025, a "Fifth Notice of Violation" and "Fourth Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use

permit. As of this date, the total penalties for the violation (continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit) amount to Forty Thousand Dollars ($40,000.00).'

To date, August 23, 2025, the Planning Department has verified the ongoing violation of the Kaua'i County Code (KCC) Chapter 8, known as the Comprehensive Zoning Ordinance (CZO), specifically:

**Article 2. Designation of Districts.**
**Section 8-2.4 Uses in Districts.**
The following table designates allowable uses in the various zoning districts, and whether the Specific uses require a Use Pennit within the zoning districts permitted.

**Article 8. Agriculture Districts (A)**
**Section 8-8.7 Developed Campgrounds in Agriculture Zoning Districts**
Developed campgrounds are prohibited in all Agriculture Zoning District's. (Ord. No. 1105, December 2, 2021).

**The continued use of the property for Commercial Events (weddings, retreats, spiritual events, and private ceremonies) within the Agricultural District without the required zoning use permit. As of August 23, 2025, there is no remedial action.**

**FINAL NOTICE:**
On August 23, 2025, Planning Inspector Joan Ludington confirmed through her investigation that the violation of the use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permit is still present on the subject property. These Violations persist despite prior notices and orders requiring corrective action.

Pursuant to Hawai'i Revised Statutes Section 46-1.5(24) and KCC Section 8-3.5, you are hereby subject to the enforcement, legal procedures, and penalties specified in the "Fifth Order" that accompanies this "Sixth Notice of Violation".

Contact Joan Ludington of the Planning Department at (808) 241-4052, or at jludington@kauai.gov. within fifteen (15) calendar days upon receipt of this letter to provide a remedial action plan. Failure to do so provides us with no other alternative but to pursue enforcement action.

DATED: Lihu'e, Kaua'i, Hawai'i, August 24, 2025

KA'ĀINA S. HULL
Director of Planning

**DEPARTMENT OF PLANNING**
KA'ĀINA HULL, DIRECTOR
JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR

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

**VIA CERTIFIED U.S. MAIL, RETURN RECEIPT REQUESTED AND FIRST CLASS U.S. MAIL**

**AUG 29 2025**

**Kalalea Trust**
**4470 Wailapa Rd**
**Kilauea HI 96754 1139**

Kalalea Plantation
Kalalea Plantation LLC
PO Box 1139, Kilauea, HI 96754

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6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

## FIFTH ORDER

**Pursuant to Hawai'i Revised Statutes Section 46-1.5(24) and Kaua'i County Code Section 8-3.5.**

IT IS HEREBY ORDERED that you shall:

1. Pay an additional fine in the amount of Ten Thousand Dollars ($10,000.00) for the continued noted violation(s)

2. Your current balance of fines for the continued use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permits, in violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7 is Fifty Thousand Dollars ($50,000.00);

3. You must immediately cease and desist the violation(s) of the continued use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permits, in violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7;

4. An additional civil fine of up to Ten Thousand Dollars ($10,000.00) may be levied, per day for each day in which the violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7 persists.

This Order shall become final thirty (30) calendar days after the date of its delivery, posting on the property, or publication in a newspaper of general circulation in the County of Kaua'i. Failure to correct the violation or pay the total amount of the civil fine imposed within ninety (90) days of this Order's delivery, posting, or publication may result in a lien placed on the subject property.

Pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission (RPPPC), you have a right to appeal this Order to the Planning Commission. The form of an appeal must conform to the RPPPC. An appeal to the Planning Commission shall not stay any provision of this Order. The RPPPC are available online at the Planning Department's website: https://www.kauai.gov/Planning.

DATED: Lihu'e, Kaua'i, Hawai'i, August 24, 2025

KA'ĀINA S. HULL
Director of Planning

**DEPARTMENT OF PLANNING**
**KA'ĀINA HULL,** DIRECTOR
**JODI A. HIGUCHI SAYEGUSA,** DEPUTY DIRECTOR

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

VIA CERTIFIED MAIL/FIRST-CLASS MAIL

**SEP 2 2025**

**KALALEA TRUST**
**4470 WAILAPA RD**
**KILAUEA, HI 96754**

Kalalea Plantation LLC
PO Box 1139
Kilauea, HI 96754

Kalalea Plantation LLC
6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

## SEVENTH NOTICE OF VIOLATION

**SUBJECT: COMPREHENSIVE ZONING ORDINANCE (CZO) VIOLATION ON:**
**HUI RD ANAHOLA, HI 96703**
**Tax Map Key: 490030010003**

On August 28, 2024, the Planning Department issued a "First Notice of Violation" instructing you to immediately cease and desist the use of the property for Commercial Events (including weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permits.

On September 24, 2024, a "Second Notice of Violation" and "Order", was issued to Kalalea Trust, levying penalties of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit.

On February 18, 2025, a "Third Notice of Violation" and "Second Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit.

On August 21, 2025, a "Fourth Notice of Violation" and "Third Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit.

On August 22, 2025, a "Fifth Notice of Violation" and "Fourth Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the

property for Commercial Events within the Agricultural District without the required zoning use permit.

On August 23, 2025, a "Sixth Notice of Violation" and "Fifth Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit. As of this date, the total penalties for the violation (continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit) amount to Fifty Thousand Dollars ($50,000.00).

To date, August 24, 2025, the Planning Department has verified the ongoing violation of the Kaua'i County Code (KCC) Chapter 8, known as the Comprehensive Zoning Ordinance (CZO), specifically:

**Article 2. Designation of Districts.**
**Section 8-2.4 Uses in Districts.**
The following table designates allowable uses in the various zoning districts, and whether the Specific uses require a Use Permit within the zoning districts permitted.

**Article 8. Agriculture Districts (A)**
**Section 8-8.7 Developed Campgrounds in Agriculture Zoning Districts**
Developed campgrounds are prohibited in all Agriculture Zoning District's. (Ord. No. 1105, December 2, 2021).

**The continued use of the property for Commercial Events (weddings, retreats, spiritual events, and private ceremonies) within the Agricultural District without the required zoning use permit. As of August 24, 2025, there is no remedial action.**

**FINAL NOTICE:**
On August 24, 2025, Planning Inspector Joan Ludington confirmed through her investigation that the violation of the use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permit is still present on the subject property. These Violations persist despite prior notices and orders requiring corrective action.

Pursuant to Hawai'i Revised Statutes Section 46-1.5(24) and KCC Section 8-3.5, you are hereby subject to the enforcement, legal procedures, and penalties specified in the "Sixth Order" that accompanies this "Seventh Notice of Violation".

Contact Joan Ludington of the Planning Department at (808) 241-4052, or at jludington@kauai.gov. within fifteen (15) calendar days upon receipt of this letter to provide a remedial action plan. Failure to do so provides us with no other alternative but to pursue enforcement action.

DATED: Lihu'e, Kaua'i, Hawai'i, September 2, 2025

KA'ĀINA S. HULL
Director of Planning

4444 Rice Street, Suite A473 • Līhu'e, Hawai'i 96766 • (808) 241-4050 (b)
An Equal Opportunity Employer

**DEPARTMENT OF PLANNING**
**KA'ĀINA HULL,** DIRECTOR
**JODI A. HIGUCHI SAYEGUSA,** DEPUTY DIRECTOR

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

**VIA CERTIFIED U.S. MAIL, RETURN RECEIPT REQUESTED AND FIRST CLASS U.S. MAIL**

SEP 2 2025

**Kalalea Trust**
**4470 Wailapa Rd**
**Kilauea HI 96754 1139**

Kalalea Plantation
Kalalea Plantation LLC
PO Box 1139, Kilauea, HI 96754

Kalalea Plantation LLC
6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

## SIXTH ORDER

**Pursuant to Hawai'i Revised Statutes Section 46-1.5(24) and Kaua'i County Code Section 8-3.5.**

IT IS HEREBY ORDERED that you shall:

1. Pay an additional fine in the amount of Ten Thousand Dollars ($10,000.00) for the continued noted violation(s)

2. Your current balance of fines for the continued use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permits, in violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7 is Sixty Thousand Dollars ($60,000.00);

3. You must immediately cease and desist the violation(s) of the continued use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permits, in violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7;

4. An additional civil fine of up to Ten Thousand Dollars ($10,000.00) may be levied, per day for each day in which the violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7 persists.

This Order shall become final thirty (30) calendar days after the date of its delivery, posting on the property, or publication in a newspaper of general circulation in the County of Kaua'i. Failure to correct the violation or pay the total amount of the civil fine imposed within ninety (90) days of this Order's delivery, posting, or publication may result in a lien placed on the subject property.

Pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission (RPPPC), you have a right to appeal this Order to the Planning Commission. The form of an appeal must conform to the RPPPC. An appeal to the Planning Commission shall not stay any provision of this Order. The RPPPC are available online at the Planning Department's website: https://www.kauai.gov/Planning.

DATED: Lihu'e, Kaua'i, Hawai'i, September 2, 2025

KA'ĀINA S. HULL
Director of Planning

**DEPARTMENT OF PLANNING**
**KA'ĀINA HULL,** DIRECTOR
**JODI A. HIGUCHI SAYEGUSA,** DEPUTY DIRECTOR

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

VIA CERTIFIED MAIL/FIRST-CLASS MAIL

**SEP 3 2025**

**KALALEA TRUST**
**4470 WAILAPA RD**
**KILAUEA, HI 96754**

Kalalea Plantation LLC
PO Box 1139
Kilauea, HI 96754

Kalalea Plantation LLC
6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

## EIGHTH NOTICE OF VIOLATION

**SUBJECT: COMPREHENSIVE ZONING ORDINANCE (CZO) VIOLATION ON:**
**HUI RD ANAHOLA, HI 96703**
**Tax Map Key: 490030010003**

On August 28, 2024, the Planning Department issued a "First Notice of Violation" instructing you to immediately cease and desist the use of the property for Commercial Events (including weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permits.

On September 24, 2024, a "Second Notice of Violation" and "Order", was issued to Kalalea Trust, levying penalties of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit.

On February 18, 2025, a "Third Notice of Violation" and "Second Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit.

On August 21, 2025, a "Fourth Notice of Violation" and "Third Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit.

On August 22, 2025, a "Fifth Notice of Violation" and "Fourth Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the

property for Commercial Events within the Agricultural District without the required zoning use permit.

On August 23, 2025, a "Sixth Notice of Violation" and "Fifth Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit.

On August 24, 2025, a "Seventh Notice of Violation" and "Sixth Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit. As of this date, the total penalties for the violation (continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit) amount to Sixty Thousand Dollars ($60,000.00).

To date, August 25, 2025, the Planning Department has verified the ongoing violation of the Kaua'i County Code (KCC) Chapter 8, known as the Comprehensive Zoning Ordinance (CZO), specifically:

**Article 2. Designation of Districts.**
**Section 8-2.4 Uses in Districts.**
The following table designates allowable uses in the various zoning districts, and whether the Specific uses require a Use Permit within the zoning districts permitted.

**Article 8. Agriculture Districts (A)**
**Section 8-8.7 Developed Campgrounds in Agriculture Zoning Districts**
Developed campgrounds are prohibited in all Agriculture Zoning District's. (Ord. No. 1105, December 2, 2021).

**The continued use of the property for Commercial Events (weddings, retreats, spiritual events, and private ceremonies) within the Agricultural District without the required zoning use permit. As of August 25, 2025, there is no remedial action.**

**FINAL NOTICE:**
On August 25, 2025, Planning Inspector Joan Ludington confirmed through her investigation that the violation of the use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permit is still present on the subject property. These Violations persist despite prior notices and orders requiring corrective action.

Pursuant to Hawai'i Revised Statutes Section 46-1.5(24) and KCC Section 8-3.5, you are hereby subject to the enforcement, legal procedures, and penalties specified in the "Seventh Order" that accompanies this "Eighth Notice of Violation".

Contact Joan Ludington of the Planning Department at (808) 241-4052, or at jludington@kauai.gov. within fifteen (15) calendar days upon receipt of this letter to provide a remedial action plan. Failure to do so provides us with no other alternative but to pursue enforcement action.

DATED: Lihu'e, Kaua'i, Hawai'i, September 3, 2025

KA'ĀINA S. HULL
Director of Planning

**DEPARTMENT OF PLANNING**
KA'ĀINA HULL, DIRECTOR
JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR

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

**VIA CERTIFIED U.S. MAIL, RETURN RECEIPT REQUESTED AND FIRST CLASS U.S. MAIL**

SEP 3 2025

**Kalalea Trust**
**4470 Wailapa Rd**
**Kilauea HI 96754 1139**

Kalalea Plantation
Kalalea Plantation LLC
PO Box 1139, Kilauea, HI 96754

Kalalea Plantation LLC
6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

## SEVENTH ORDER

**Pursuant to Hawai'i Revised Statutes Section 46-1.5(24) and Kaua'i County Code Section 8-3.5.**

IT IS HEREBY ORDERED that you shall:

1. Pay an additional fine in the amount of Ten Thousand Dollars ($10,000.00) for the continued noted violation(s)

2. Your current balance of fines for the continued use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permits, in violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7 is Seventy Thousand Dollars ($70,000.00);

3. You must immediately cease and desist the violation(s) of the continued use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permits, in violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7;

4. An additional civil fine of up to Ten Thousand Dollars ($10,000.00) may be levied, per day for each day in which the violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7 persists.

This Order shall become final thirty (30) calendar days after the date of its delivery, posting on the property, or publication in a newspaper of general circulation in the County of Kaua'i. Failure to correct the violation or pay the total amount of the civil fine imposed within ninety (90) days of this Order's delivery, posting, or publication may result in a lien placed on the subject property.

Pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission (RPPPC), you have a right to appeal this Order to the Planning Commission. The form of an appeal must conform to the RPPPC. An appeal to the Planning Commission shall not stay any provision of this Order. The RPPPC are available online at the Planning Department's website: https://www.kauai.gov/Planning.

DATED: Lihu'e, Kaua'i, Hawai'i, September 3, 2025

KA'ĀINA S. HULL
Director of Planning

**DEPARTMENT OF PLANNING**
KA'ĀINA HULL, DIRECTOR
JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR

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

VIA CERTIFIED MAIL/FIRST-CLASS MAIL

SEP 4 2025

**KALALEA TRUST**
**4470 WAILAPA RD**
**KILAUEA, HI 96754**

Kalalea Plantation LLC
PO Box 1139
Kilauea, HI 96754

Kalalea Plantation LLC
6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

**NINTH NOTICE OF VIOLATION**

**SUBJECT: COMPREHENSIVE ZONING ORDINANCE (CZO) VIOLATION ON:**
**HUI RD ANAHOLA, HI 96703**
**Tax Map Key: 490030010003**

On August 28, 2024, the Planning Department issued a "First Notice of Violation" instructing you to immediately cease and desist the use of the property for Commercial Events (including weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permits.

On September 24, 2024, a "Second Notice of Violation" and "Order", was issued to Kalalea Trust, levying penalties of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit.

On February 18, 2025, a "Third Notice of Violation" and "Second Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit.

On August 21, 2025, a "Fourth Notice of Violation" and "Third Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit.

On August 22, 2025, a "Fifth Notice of Violation" and "Fourth Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the

property for Commercial Events within the Agricultural District without the required zoning use permit.

On August 23, 2025, a "Sixth Notice of Violation" and "Fifth Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit.

On August 24, 2025, a "Seventh Notice of Violation" and "Sixth Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit.

On August 25, 2025, a "Eighth Notice of Violation" and "Seventh Order" was issued to Kalalea Trust, imposing an additional penalty of Ten Thousand Dollars ($10,000.00) for the continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit. As of this date, the total penalties for the violation (continued use of the property for Commercial Events within the Agricultural District without the required zoning use permit) amount to Seventy Thousand Dollars ($70,000.00).

To date, August 26, 2025, the Planning Department has verified the ongoing violation of the Kaua'i County Code (KCC) Chapter 8, known as the Comprehensive Zoning Ordinance (CZO), specifically:

**Article 2. Designation of Districts.**
**Section 8-2.4 Uses in Districts.**
The following table designates allowable uses in the various zoning districts, and whether the Specific uses require a Use Permit within the zoning districts permitted.

**Article 8. Agriculture Districts (A)**
**Section 8-8.7 Developed Campgrounds in Agriculture Zoning Districts**
Developed campgrounds are prohibited in all Agriculture Zoning District's. (Ord. No. 1105, December 2, 2021).

**The continued use of the property for Commercial Events (weddings, retreats, spiritual events, and private ceremonies) within the Agricultural District without the required zoning use permit. As of August 26, 2025, there is no remedial action.**

**FINAL NOTICE:**
On August 26, 2025, Planning Inspector Joan Ludington confirmed through her investigation that the violation of the use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permit is still present on the subject property. These Violations persist despite prior notices and orders requiring corrective action.

Pursuant to Hawai'i Revised Statutes Section 46-1.5(24) and KCC Section 8-3.5, you are hereby subject to the enforcement, legal procedures, and penalties specified in the "Eighth Order" that accompanies this "Ninth Notice of Violation".

Contact Joan Ludington of the Planning Department at (808) 241-4052, or at jludington@kauai.gov. within fifteen (15) calendar days upon receipt of this letter to provide a remedial action plan. Failure to do so provides us with no other alternative but to pursue enforcement action.

DATED: Lihu'e, Kaua'i, Hawai'i, September 4, 2025

KA'ĀINA S. HULL
Director of Planning

**DEPARTMENT OF PLANNING**
**KA'ĀINA HULL,** DIRECTOR
**JODI A. HIGUCHI SAYEGUSA,** DEPUTY DIRECTOR

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

**VIA CERTIFIED U.S. MAIL, RETURN RECEIPT REQUESTED AND FIRST CLASS U.S. MAIL**

**SEP 4 2025**

**Kalalea Trust**
**4470 Wailapa Rd**
**Kilauea HI 96754 1139**

Kalalea Plantation
Kalalea Plantation LLC
PO Box 1139, Kilauea, HI 96754

Kalalea Plantation LLC
6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

## EIGTH ORDER

**Pursuant to Hawai'i Revised Statutes Section 46-1.5(24) and Kaua'i County Code Section 8-3.5.**

IT IS HEREBY ORDERED that you shall:

1. Pay an additional fine in the amount of Ten Thousand Dollars ($10,000.00) for the continued noted violation(s)

2. Your current balance of fines for the continued use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permits, in violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7 is Eighty Thousand Dollars ($80,000.00);

3. You must immediately cease and desist the violation(s) of the continued use of the Commercial Events (weddings, retreats, spiritual events and private ceremonies) within the Agricultural District without the required zoning use permits, in violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7;

4. An additional civil fine of up to Ten Thousand Dollars ($10,000.00) may be levied, per day for each day in which the violation of the Comprehensive Zoning Ordinance §§ 8-2.4 and 8-8.7 persists.

This Order shall become final thirty (30) calendar days after the date of its delivery, posting on the property, or publication in a newspaper of general circulation in the County of Kaua'i. Failure to correct the violation or pay the total amount of the civil fine imposed within ninety (90) days of this Order's delivery, posting, or publication may result in a lien placed on the subject property.

Pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission (RPPPC), you have a right to appeal this Order to the Planning Commission. The form of an appeal must conform to the RPPPC. An appeal to the Planning Commission shall not stay any provision of this Order. The RPPPC are available online at the Planning Department's website: https://www.kauai.gov/Planning.

DATED: Lihu'e, Kaua'i, Hawai'i, September 4, 2025

KA'ĀINA S. HULL
Director of Planning

**DEPARTMENT OF PLANNING**
KA'ĀINA HULL, DIRECTOR
JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR

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

SEP 26 2025

**VIA CERTIFIED U.S. MAIL, RETURN RECEIPT REQUESTED AND FIRST CLASS U.S. MAIL**

**Kalalea Trust**
**4470 Wailapa Rd**
**Kilauea HI 96754 1139**

**Kalalea Plantation**
**Kalalea Plantation LLC**
**PO Box 1139, Kilauea, HI 96754**

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6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

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Lihue HI 96766

**FINAL NOTICE FOR REMITANCE OF FINE PAYMENT**

**SUBJECT: COMPREHENSIVE ZONING ORDINANCE (CZO) VIOLATION ON:**
**Hui Rd Master Anahola, HI 96703**
**Tax Map Key: 490030010003**

The purpose of this letter is to give FINAL NOTICE FOR REMITANCE of money owed regarding your levy and order to pay a fine of ninety thousand dollars ($90,000.00) for the violations of Sec. 8-3.1 Zoning Permits, Section 8-8.7 Developed Campgrounds in Agriculture Zoning Districts and Section 8-2.4 Uses in Districts of the Comprehensive Zoning Ordinance.

You were mailed multiple "Notice of Violation & Order to Pay Fines" where you were levied and ordered to pay fines in total of ninety thousand dollars ($90,000.00). As of THIS DATE this penalty remains unpaid.

SUBMIT PAYMENT IMMEDIATELY
Unless the Planning Department receives full payment within 14 days of the date of this notice, legal action against your penalty will be taken. Failure to remit the fine amount of ninety thousand dollars

($90,000.00) will result in the Director instituting a civil action seeking enforcement of the order under Kaua'i County Code, Section 8-3.5(b) (4) (5). Failure to pay the total amount of the civil fine imposed within thirty (30) days of this Order may result in a lien placed on the subject property. You are advised to give this matter your immediate attention.

KA'ĀINA S. HULL
Director of Planning