



## PLANNING COMMISSION

KAAINA S. HULL, CLERK OF COMMISSION

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

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23 NOV -8 P1:08

- The Planning Commission Meeting will be at:

Līhu'e Civic Center, Moikeha Building  
Meeting Room 2A-2B  
4444 Rice Street, Līhu'e, Kaua'i, Hawai'i

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COUNTY OF KAUAI

- Oral testimony will be taken on specific agenda items, at the public meeting location indicated on the meeting agenda.
- Written testimony indicating your 1) name or pseudonym, and if applicable, your position/title and organization you are representing, and 2) the agenda item that you are providing comment on, may be submitted on any agenda item in writing to [planningdepartment@kauai.gov](mailto:planningdepartment@kauai.gov) or mailed to the County of Kaua'i Planning Department, 4444 Rice Street, Suite 473, Līhu'e, Hawai'i 96766. Written testimony received by the Planning Department at least **24 hours prior** to the meeting will be posted as testimony to the Planning Commission's website prior to the meeting (<https://www.kauai.gov/Government/Boards-and-Commissions/Planning-Commission>). Any testimony received after this time will be retained as part of the record, but we cannot assure the Commission will receive it with sufficient time for review prior to the meeting.

**IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF BOARDS & COMMISSIONS AT (808) 241-4917 OR [ADAVIS@KAUAI.GOV](mailto:ADAVIS@KAUAI.GOV) AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST. UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.**

**PLANNING COMMISSION MEETING NOTICE AND AGENDA**

**Tuesday, November 14, 2023  
9:00 a.m. or shortly thereafter  
Līhu'e Civic Center, Moikeha Building  
Meeting Room 2A-2B  
4444 Rice Street, Līhu'e, Kaua'i, Hawai'i**

**A. CALL TO ORDER**

**B. ROLL CALL**

**C. APPROVAL OF AGENDA**

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

1. August 8, 2023.

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

**F. HEARINGS AND PUBLIC COMMENT**

1. **Continued Agency Hearing**

- a. None for this meeting.

2. **New Agency Hearing**

- a. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-4) to allow construction of a new guest house and associated improvements within Lot 20-A of the Seacliff Plantation Subdivision in Kilauea, involving a parcel situated approximately 850 feet southeast of the Pali Moana Place/Iwalani Lane intersection, further identified as 3839 F Pali Moana Place, Tax Map Key: (4) 5-2-004:093 (Unit 1) affecting a portion of a larger parcel approximately 6.851 acres in size = **Nathaniel Carden and Beth Woods**.

1. Transmittal of Agency Comments to Planning Commission.
    2. Director's Report pertaining to this matter.

- b. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-5), CLASS IV ZONING PERMIT (Z-IV-2024-1), and USE PERMIT (U-2024-1) to allow construction of a new farm dwelling unit and associated site improvements within lot 20-A of the Seacliff Plantation Subdivision in Kilauea, involving a parcel situated approximately 1,300 feet southeast of the Pali Moana Place/Iwalani Lane intersection, adjacent to property identified as 3839 F Pali Moana Place, further identified as Tax Map Key: (4) 5-2-004:093 (Unit 2) affecting a portion of a larger parcel approximately 6.851 acres in size = **Bryan Madani and Kiana Buckley, Trustees of The Madani Buckley Trust**. [Directors Report Received 10/24/2023].

1. Transmittal of Agency Comments to Planning Commission.
    2. Director's Report pertaining to this matter.

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- c. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-6) to allow construction of a new carport with guest house and associated improvements on a lot situated on the mauka side of Kuhio Highway in Hanalei Town directly across the Anae Road/Kūhiō Highway intersection, further identified as 5-5501 Kuhio Highway, Tax Map Key: (4) 5-5-006:016 and containing a land area of approximately 21,780 square feet = **Hanalei O'Zone Fund LLC**.

- 1. Transmittal of Agency Comments to Planning Commission.
- 2. Director's Report pertaining to this matter.

- d. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-7) to allow demolition and reconstruction of a guest house and associated improvements on a lot situated at the Aku Road/Aawa Road intersection in Hanalei Town, along the makai side of Kuhio Highway and further identified as 4437 Aku Road, Tax Map Key: (4) 5-5-010:018 and containing a land area of approximately 7,857 square feet = **2000 Johnson Family Trust**.

- 1. Transmittal of Agency Comments to Planning Commission.
- 2. Director's Report pertaining to this matter.

3. **Continued Public Hearing**

- a. None for this Meeting.

4. **New Public Hearing**

- a. None for this Meeting.

**G. CONSENT CALENDAR**

1. **Status Reports**

- a. 2023 Status Report regarding Class IV Zoning Permit Z-IV-2007-29, Project Development Use Permit PDU-2007-25, and Special Management Area Use Permit SMA(U)-2007-13 at Tax Map Keys: 2-8-015:043, 044 & 082, and 2-8-016:003 & 004 (the "permits"), with approval conditions as set forth in letter dated October 10, 2007 from the Planning Commission of the County of Kauai ) the "Conditions") with **Kauai Blue, Inc.** (formerly SVO Pacific, Inc. & VSE Pacific, Inc.), as the Applicant ("Applicant").

- 1. Director's Report pertaining to this matter.

- b. 2023 Annual Status Report for Special Management Area Use Permit SMA(U)-2004-6, Project Development Use Permit PDU-2004-3, and Class IV Zoning Permit Z-IV-2004-35, Tax Map Keys: (4)2-5-015:025-037, 045-074, 081, Poipu, Kauai – **Poipu Beach Villas, LLC**.

- 1. Director's Report pertaining to this matter.

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

- a. None for this Meeting.

3. Class III Zoning Permits

- a. None for this Meeting.

H. GENERAL BUSINESS MATTERS

- 1. None for this Meeting.

I. COMMUNICATION

- 1. None for this meeting.

J. COMMITTEE REPORTS

1. Subdivision Committee Report

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

K. UNFINISHED BUSINESS (For Action)

- 1. None for this Meeting.

L. NEW BUSINESS (For Action)

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  - a. Transmittal of Agency Comments to Planning Commission.
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3. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-6) to allow construction of a new carport with guest house and associated improvements on a lot situated on the mauka side of Kuhio Highway in Hanalei Town directly across the Anae Road/Kūhiō Highway intersection, further identified as 5-5501 Kuhio Highway, Tax Map Key: (4) 5-5-006:016 and containing a land area of approximately 21,780 square feet = **Hanalei O'Zone Fund LLC.**
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  - a. Transmittal of Agency Comments to Planning Commission.
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#### **M. EXECUTIVE SESSION**

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

1. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-4) to allow construction of a new guest house and associated improvements within Lot 20-A of the Seacliff Plantation Subdivision in Kilauea, involving a parcel situated approximately 850 feet southeast of the Pali Moana Place/Iwalani Lane intersection, further identified as 3839 F Pali Moana Place, Tax Map Key: (4) 5-2-004:093 (Unit 1) affecting a portion of a larger parcel approximately 6.851 acres in size = **Nathaniel Carden and Beth Woods.**
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3. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-6) to allow construction of a new carport with guest house and associated improvements on a lot situated on the mauka side of Kuhio Highway in Hanalei Town directly across the Anae Road/Kūhiō Highway intersection, further identified as 5-5501 Kuhio Highway, Tax Map Key: (4) 5-5-006:016 and containing a land area of approximately 21,780 square feet = **Hanalei O'Zone Fund LLC.**
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5. 2023 Status Report regarding Class IV Zoning Permit Z-IV-2007-29, Project Development Use Permit PDU-2007-25, and Special Management Area Use Permit SMA(U)-2007-13 at Tax Map Keys: 2-8-015:043, 044 & 082, and 2-8-016:003 & 004 (the "permits"), with approval conditions as set forth in letter dated October 10, 2007 from the Planning Commission of the County of Kauai ) the "Conditions") with **Kauai Blue, Inc.** (formerly SVO Pacific, Inc. & VSE Pacific, Inc.), as the Applicant ("Applicant").
6. 2023 Annual Status Report for Special Management Area Use Permit SMA(U)-2004-6, Project Development Use Permit PDU-2004-3, and Class IV Zoning Permit Z-IV-2004-35, Tax Map Keys: (4)2-5-015:025-037, 045-074, 081, Poipu, Kauai – **Poipu Beach Villas, LLC.**
7. Subdivision Application No. S-2024-2  
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Proposed 11-lot Subdivision  
TMK: (4) 4-9-009: 001, Moloa'a and Papa'a, Kawaihau, Kaua'i
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TMK: (4) 2-6-022: 020, Lāwa'i, Kōloa, Kona, Kaua'i

#### **N. ANNOUNCEMENTS**

1. Topics for Future Meetings.

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter, on December 12, 2023. The Planning Commission anticipates this meeting to be held in-person at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Kauai, Hawaii. The Commission will announce its intended meeting method via an agenda electronically posted at least six days prior to the meeting date.



SPECIAL MANAGEMENT AREA (SMA) Minor Determinations

Date (Action)	SMA Minor Permit number	Location (TMK)	Activity/ structure
Approved (11.01.2023)	SMA(M)-2024-5	Princeville (5-3-006:045)	Construction/ Five feet high hog wire fence.

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

November 14, 2023

SHORELINE SETBACK DETERMINATIONS

Application No.	Name of Applicant(s)	Property I.D. (Tax Map Key)	Location	Development/Reasons
SSD-2024-20	Elizabeth McPherson B Trust	(4) 4-7-007:007	Kealia	Single-family residence, guest house, BBQ Pavilion, and pool. / Development is located on a high cliff bluff. Required setback is 100 feet, proposed dwelling is over 400 feet from evidenced shore.

KAUAI PLANNING COMMISSION  
REGULAR MEETING  
August 08, 2023  
**DRAFT**

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Vice Chair Apisa at 9:00 a.m. - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

Mr. Gerald Ako  
Ms. Helen Cox  
Ms. Donna Apisa  
Ms. Glenda Nogami Streufert  
Mr. Jerry Ornellas  
Ms. Lori Otsuka

Excused or Absent

Mr. Francis DeGracia

The following staff members were present: Planning Department – Director Ka'aina Hull, Deputy Director Jodi Higuchi Sayegusa, Staff Planner Dale Cua, Romio Idica, Kenny Estes, and Planning Secretary Shanlee Jimenez; Planning Staff Kristen Romuar-Cabico, 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**

Vice Chair Donna Apisa: Call the meeting to order. We'll start with a 5-minute recess because we've been given a little bit of additional testimony, so that we'll have an opportunity to get through that. Thank you.

Commission went into recess at 9:00 a.m.  
Commission reconvened from recess at 9:02 a.m.

Vice Chair Apisa: Everyone, reminder be sure your microphones are on, and we will start with our roll call, please.

Planning Director Ka'aina Hull: And we're back for roll call, Madam Chair. Commissioner Ako?

Commissioner Gerald Ako: Here.

Mr. Hull: Commissioner Cox?

Commissioner Helen Cox: Here.

Mr. Hull: Commissioner Ornellas?

Commissioner Jerry Ornellas: Here.



Mr. Hull: Commissioner Otsuka?

Commissioner Lori Otsuka: Here.

Mr. Hull: Commissioner Streufert?

Commissioner Glenda Streufert: Here.

Mr. Hull: Commissioner DeGracia is excused. Chair Apisa?

Vice Chair Donna Apisa: Here.

Mr. Hull: You have a quorum, Madam Chair. Next, we have Agenda Item D. Minutes for the Planning Commission meeting of May 9, 2023. Oh, sorry, I apologize. Next, we have C.

### **APPROVAL OF AGENDA**

Ms. Streufert: Are there any changes to it?

Mr. Hull: We don't have any recommended changes.

Ms. Streufert: I move to approve the agenda as presented.

Ms. Cox: I second.

Vice Chair Apisa: We have a motion. All in favor. Aye (unanimous voice vote). Any oppose. Hearing none, motion is approved. 6:0.

### **MINUTES of the meeting(s) of the Planning Commission**

Mr. Hull: Next, we have Agenda Item D. Minutes for the meeting of the Planning Commission on May 9<sup>th</sup>, 2023.

Vice Chair Apisa: Can I have a motion to approve?

Mr. Ako: Move to approve the minutes of the May 9<sup>th</sup>, 2023, Planning Commission meeting.

Ms. Streufert: Second.

Vice Chair Apisa: All in favor? Aye (unanimous voice vote). Any oppose. Hearing none, motion carried. 6:0.

Mr. Hull: We have no additional Receipt of Items for the record. I'll turn it over to the Chair and the County Attorney for the Continued Agency Hearing on Agenda Item F.1.

### **HEARINGS AND PUBLIC COMMENT**

#### **Continued Agency Hearing**

Vice Chair Apisa: We'll go into our Continued Agency Hearing for.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-9) to allow construction of a 5 feet high entry gate, water feature, and associated improvements within the private road right-of-way serving the Makahu'ena Estates Subdivision in Po'ipu, situated along the makai side of Pe'e Road and approximately 60 feet south of its intersection with Pe'e Road, further identified as Tax Map Key: (4) 2-8-021:078, containing a total area of approximately 0.946 acres = **Makahu'ena Preferred A LLC et al.** [Director's Report Received and hearing deferred on 4/11/2023].

1. Stipulation Regarding SMA Use Permit SMA(U)-2023-9 and Construction of a 5 Feet High Entry Gate and to Vacate Contested Case Hearing.

Deputy County Attorney Laura Barzilai: First item of business is to call public testimony, Madam Chair.

Vice Chair Apisa: So today we're considering...

Ms. Barzilai: First we ask for public testimony.

Vice Chair Apisa: I'm sorry, yes. We'll first call for public testimony. Is there anyone here to testify on this matter?

Ms. Barzilai: You may come up, Roslyn.

Vice Chair Apisa: You have three minutes, please.

Ms. Roslyn Cummings: Aloha kakahiaka, ko'u inoa, Roslyn Nicole Manawai'akea Malama mare Cummings, I'm here. First of all, good morning, and thank you guys for your time. So, I'm here as a, my mo'oku'auhau, the land sits under Eke Ese Oponui, it's an LCA, it's an alodial title, so, I'm here to talk about the (inaudible) and bounds, but also to share the ike manawa of that 'aina, so that's the seating house of Kukona and it's in our mo'olelo and our history, not only is it the seating house of Kukona, it's also the burial site of Kukona and Kamaka'amano. Kukona is the father of Manokalanipō. Eke Ese Oponui comes in the genealogy of Kaumuali'i and I'm here to speak 'oia'i'o, the truth of what's happening, and so I bought this law here, HRS 7-1, and it talks about (inaudible), I'm gonna go fast forward down here, the people shall also have a right to drinking water and running water and the right of way. The springs of water and running water and road shall be free to all, on all lands granted in fee simple provided that this shall not be applicable wells and watercourses, which individuals have made for their own use. My whole thing about this project, I see on the agenda what they are doing, but I just wanted to bring forth the 'oia'i'o, the truth of what that land is, so that everyone here knows what I know about that place, so, if you (inaudible) mo'olelo, that is the seating of Kukona, and if you look at (inaudible) Parker, he's a well-known artist. There's a drawing of Kukona standing on the cliffside. That developed area will affect our limu and our health of the surrounding kahakai. It will also affect mauka because when you start to change and alter what's happening on the sea level, the precipitation's gonna start affecting makai. So, I just wanna let you guys know, even though this is a small project, and there's an adjustment, I just want to bring forth the truth of what's happening down there. Mahalo.

Vice Chair Apisa: Thank you for your testimony, and just to remind others too, keep the testimony to the issue of the proposed settlement and gate. Is there anyone else who would like to testify? Seeing none, we will move on. Today we are considering a stipulation of settlement in the matter of SMA U-2023-9, the (inaudible) have requested the commission's approval of the terms and conditions of this stipulation. At this time, we would like to hear the position and explanation of the party, starting with the Department. Deputy County Attorney, Chris Donahoe will present for the Department, and Attorney, Mauna Kea Trask will present for the applicant, Makahu'ena Preferred. Are there any questions from the commissioners?

Ms. Barzilai: Chair, I think first we'll have counsel explain the settlement and explain to the commission why we're here today on this stipulation.

Vice Chair Apisa: Okay. Thank you. Please, Chris, would you like to start?

Deputy County Attorney Chris Donahoe: Absolutely. Thank you, Chair. Good morning, commissioners. Deputy County Attorney Chris Donahoe on behalf of the Department, also present is the Deputy Planning Director. First off, I'd like to send my appreciation to Mr. Trask and his clients in working out this stipulation. We've had extensive communication to try to work out the terms and conditions of this stipulation, and so we went back and forth a lot, but they were always available, always accommodating, so we were able to have meaningful discussions and to address some of the departmental concerns. This stipulation is (inaudible) but the construction of the proposed gate, as well as the water feature, which was one of the concerns that the Department wanted to address as part of this stipulation, and so subject to the conditions that are listed A through F in the stipulation, the Department is satisfied that they can recommend approval of the permits. One of the stipulated conditions would be that the gate and the water feature would be transparent and not opaque, and that would minimize the potential visual impact that was detailed in the Director's Report also that it would remain open daily from sunrise to sunset, which would allow public access during that time period, also signs would be posted to let the public know that it would be open from sunrise to sunset. Signs would also be posted because there were some concerns regarding, obviously there's bird and potential wildlife and so, signs would be posted, warning patrons and persons that use that area to keep their dogs on a leash, they don't want dogs wandering around, so it's very important to remind the public of that. Also, that the height again, to lessen the impact, the visual impact, would be the same as the surrounding rock wall, that's already there, and that the petitioners have agreed to work with the Kaua'i Fire Department to work out the turning radius around the water feature. And the Department is satisfied based on the renderings that have been attached as Exhibit A of the stipulation, that these conditions will be met, so with that the Department is satisfied with the stipulation, that it covers some of the concerns and that we'd be recommending approval with those conditions, and also, we'd be requesting that the contested case hearing be vacated.

Vice Chair Apisa: Thank you very much. Would you like to give your points?

Mr. Mauna Kea Trask: Thank you, Chair. Can you hear me? Is this on?

Vice Chair Apisa: I can, but we're kind of close. I don't know.

Mr. Trask: Yes, thank you, Chair, and honorable members. So, just a real briefly, we do appreciate the Department's willingness to work this out, we think that was the right course of action in this case, and just to reiterate, regarding Makahu'ena, that subdivision was specifically designed to preserve, protect, and maintain the traditional customary practices of the area, all of which focuses to subsistence fishing activities, gathering activities, along the coast. The road itself is a private road, it's built to county standards, but it was not dedicated to or accepted by Council, nor is there any requirement that it is, it's a cul-de-sac, it just ends, and it's an entirely residential area. If you are familiar with the place, if you drive in, right before you enter the subdivision proper, to the right is a public parking lot, I think it's about 8 to 10 stalls, I'm not sure, and the public will go in there, and this gate is makai of that entrance, so it'll have no effect whatsoever to exist in public access to parking, public can park there 24/7, and that is actually, the public parking lot is actually on Lot 9. There's a beach path that proceeds to go to the coast, makai, and then east connects you to the Pointe at Po'ipū and ultimately you can either walk along the beach or go onto Hyatt's beach path and go all the way to Māhā'ulepū if you want. Deputy County Attorney mentioned public access, yes, the public will be able to access the cul-de-sac for whatever reason they'd want to, during sunrise to sunset, but again absolutely no inhibition whatsoever to the dedicated public access and the easement along the coastline. The reason why this came up real briefly

and when you think about it, so I really wanna emphasize, this is not a gated community, it's more like, Kalapaki Circle, you know if you drive up there, pass the tennis courts, pass Marriott, and you're going towards the lighthouse, there's a beach access that is on the airport side, and then there's a small driveway that services the houses, and that's gated, this is similar to that, you know the property is still open but the residential portion, and the reason why is because we're in construction right now, people frequently used to use that as a dog park when it was empty, and they would let your dogs around, that is a concern because we're very conscience of any take of the...the birds present aren't in danger or threatened, but they are on the migratory bird, under the migratory bird treaty, and so we just want to be sensitive to that, plus with safety concerns and we want to make sure the public knows, it's like directed, it takes you to the public area so they don't drive down and can't find where the public access is, so with that, I won't (inaudible) the point. If you have any questions, I'm happy to answer them.

Vice Chair Apisa: Thank you. Commissioners, do you have questions?

Ms. Cox: I have one, actually had two, thank you, you already answered one of them, about where the gate is going to be. The other one has to do with the water, is this going to be recycled water in the water feature?

Mr. Trask: Yes, it's going to be serviced by existing water, (inaudible) that are there, and so, I don't think it's R1, like recycled because the sewer doesn't pump it to it, but it's not...I think it'll be...

Ms. Cox: But it's recycled, what I mean by recycled is, it's the same water going over and over.

Mr. Trask: I think so, yeah.

Ms. Cox: That seems fairly important to me in using water for something like that if it's not reused.

Mr. Trask: Yeah, it's like any water feature, I believe it just goes to the fountain and comes back out, something like that.

Ms. Cox: Okay, thank you.

Vice Chair Apisa: Do we have any other questions?

Ms. Streufert: The Fire Department, you're anticipating that the Fire Department would be able to go around the water feature, and is that where you're anticipating that the fire hydrant is and that they would be using water from there for any emergency that might be in there?

Mr. Trask: Yeah.

Ms. Streufert: Would they be able to reach the farthest end of your (inaudible)?

Mr. Trask: Absolutely. This won't inhibit that at all. It's just a general concern that the Planning Department, you know like common conditions, make sure you work out these things with the agencies. They'll have to get to the last, and they can turn around on the cul-de-sac and come back up, and there is a fire hydrant already located there, all the infrastructure is installed.

Ms. Streufert: Okay. Thank you.

Mr. Ako: Madam Chair. Mr. Trask, let's see, the gate shall remain open from sunrise to sunset, which allow the public to, I guess, walk in there with their dogs for whatever reason. Once the gates are closed, do they still have access to that place or access has been shut off until sunrise?

Mr. Trask: Well, so they won't have access to the residential portion, but they'll always have access to the parking lot and the coast, and so, it's makai, maybe 10 or 20 feet makai of the parking lot entrance.

Mr. Ako: If I just wanted to walk, say I don't know, 10 o'clock at night when it's dark, I wouldn't be able to go through the subdivision over there.

Mr. Trask: There's a pedestrian gate on the right of it.

Mr. Ako: Yeah.

Mr. Trask: Yeah, so if you're going to visit somebody, you can go inside, but generally speaking, it's closed and then the public can go along the normal path.

Vice Chair Apisa: Any further questions from commissioners?

Ms. Cox: Yes, one more. So, if people are visiting the people in there and either going for dinner, so, it's after sunset, they would park in the public parking, and then walk through?

Mr. Trask: No.

Ms. Cox: How does that work?

Mr. Trask: They would just get the code or get buzzed in or whatever.

Ms. Cox: Oh okay, so they can buzz in.

Mr. Trask: Yeah, the parking's for the public.

Ms. Cox: Okay. Thanks.

Ms. Streufert: So, it is a gated community. At least from sunset to sunrise.

Mr. Trask: Well, I would say no just because you're still traversing over, the coastal path is on the existing lots, so it's not a separate lot, you're in the community, you're just makai of a rock wall that was put in place, in order to delineate the shoreline and keep the development mauka of the shoreline, shoreline setback, I'm sorry.

Vice Chair Apisa: Further questions?

Mr. Donahoe: Chair if I may just make one point clarification.

Vice Chair Apisa: Yes.

Mr. Donahoe: Just one the issue with working with the Fire Department, I just want to clarify, as it stands now it still needs to be worked out, whether that water feature will be approved/exist or not, with the Fire Department, depending on their concerns, but that will hopefully be addressed.

Vice Chair Apisa: So, if the Fire Department doesn't approve then it may still need to be altered or amended, or...

Ms. Streufert: (Inaudible).

Mr. Donahoe: At the building permit stage, yes.

Vice Chair Apisa: Right, yes.

Mr. Donahoe: That's all.

Vice Chair Apisa: I recall reading in there something about the Fire Department having access when the gate is closed, has that been resolved?

Mr. Trask: Yeah, they'll have all public safety, fire, ambulance, and even to solid waste, it's private contracted with GID, but they'll be able to get inside there too.

Vice Chair Apisa: Thank you.

Ms. Streufert: One last question. This does not actually relate to the gate, but since its come up very frequently whenever there's a new development going on, is this attached to the sewer system or is it a septic system?

Mr. Trask: I'm thinking it's septic. Pretty sure that it's septic.

Ms. Streufert: Each one has its own septic system.

Mr. Trask: Yeah, and there's been extensive drainage studies, a water (inaudible) test. If you look there is little to no soil there, it was all blue rock, and so they actually had to build building pads in order to accommodate leach fields to keep it high.

Ms. Streufert: And I'm sorry that was not part of this, but it seems to keep coming up frequently.

Mr. Trask: But no injection walls or anything like that.

Vice Chair Apisa: Any further questions? I think we're ready to move on to a possible motion here. A possible motion is either a motion to approve or to deny, or to approve with additional terms. Stipulation Regarding SMA Use Permit SMA(U)-2023-9. Would someone like to make a motion?

Ms. Streufert: I move to approve the Stipulation Regarding SMA Use Permit SMA(U)-2023-9, and Construction of a 5-foot-high entry gate and to vacate the contested case hearing.

Ms. Cox: I'll second that.

Vice Chair Apisa: Is there any further discussion on this? I would like to commend both parties for working this out. I think that's very good. Excellent.

Unknown Commissioner: Admirable.

Vice Chair Apisa: Admirable, good word. Alright we have a motion on the floor, I'll take a roll call please.

Ms. Barzilai: I can do roll call, Madam Chair. Motion to approve Stipulation of settlement. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: 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?

Vice Chair Apisa: Aye.

Ms. Barzilai: Motion carries. 6:0. Settlement is approved.

Mr. Trask: Mahalo, you all.

Mr. Donahoe: Thank you.

Ms. Barzilai: At this time, Madam Chair, we have to close the Agency Hearing so that we can move on.

Vice Chair Apisa: Motion to close the Agency Hearing.

Ms. Otsuka: Motion to close the Agency Hearing.

Ms. Streufert: Second.

Vice Chair Apisa: All in favor. Aye (unanimous voice vote). Any oppose. Hearing none, motion carries. 6:0.

Mr. Hull: Thank you, Madam Chair. Continue on the agenda, on to F.2.

### **New Agency Hearing**

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-12) to allow construction of a new single family residential structure on a parcel situated along the makai side of Kuhio Highway in Kapa'a Town, situated directly across the formerly Kojima Store, approximately 200 feet south of the Kapa'a Neighborhood Center and further identified as 4-1542 Kuhio Highway, Tax Map Key: (4) 4-5-012:048, containing a total area of approximately 2,520 square feet = BENSON C. & ARCELIE A. PERALTA.



Mr. Hull: We don't have anyone signed up to testify on this agency hearing. If you'd like to testify on this agenda item, please approach the microphone, state your name, we can go one at a time, and you just state your name, and you have three minutes for testimony.

Ms. Jennifer Leininger: Hi, I'm Jennifer Leininger, and I'm the owner of 4-1542 Kuhio Highway, which may be confusing because both properties have the same address, mine's the flag lot showing on the map, it's currently residential use, and I was pleased to see that my neighbors are going with residential use on the adjacent property. Although the concern that I have is that I do have future plans to build a duplex on my property, and I just wanted to make sure that they, you know, I'm fine with them building a home, but my concern would be that they would also be fine when my home would partially block their view when I do my plan. The other concern I have is just for emergency vehicles, I only have a 10-foot-wide driveway and so, if they build zero lot line right up to the property line, I don't know, ambulance, fire truck, things that need to get in, I would rather see it be just a little bit further from my driveway, their property line. That's all I had to say.

Vice Chair Apisa: Okay. Thank you for that. We have another testifier.

Mr. Joseph Robinson: Joseph Robinson, I'm helping Mrs. Leininger with her duplex that she just mentioned, and I think at this point we just want to make sure that, she's the front lot, the ocean view lot and that we don't forfeit any of her rights because someone else has a building behind her, and so I don't know if this is where that happens, but I wanted her to, make sure that she retains all her building rights. Thank you.

Vice Chair Apisa: Thank you for your input.

Ms. Leininger: I approve of people building what their property is allowed to be used for, and so I'm not against them building the home, my concern was just that driveway. Thank you.

Vice Chair Apisa: Thank you.

Mr. Hull: If any of the commissioners want to convey that during the actual agenda item where Mr. Peralta and the applicant will be presenting their proposal. I'm sorry, I don't the sign-up sheet with any other names, but is there anyone else in the audience that did or didn't sign but would like to testify on this agenda item that didn't previously testify. Seeing none, the Department would recommend closing the agency hearing.

Ms. Cox: I recommend that we close the agency hearing for Special Management Area Use Permit (SMA(U)-2023-12.

Vice Chair Apisa: Do we have a second to that motion?

Mr. Ornellas: Second.

Vice Chair Apisa: All in favor. Voice vote please. Aye (unanimous voice vote). Motion passes. 6:0.

Mr. Hull: Next on the agenda is.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-13), CLASS IV ZONING PERMIT (Z-IV-2023-11) and USE PERMIT (U-2023-8) to allow construction of a viewing platform and associated site improvements within the Pa'ula'ula State Historical Park in Waimea, along the makai side of Kaumuali'i Highway, approximately

800 feet east of Waimea Town, further identified as Tax Map Key: (4) 1-7-005:003 and containing a total area of 17.26 acres = STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES (DLNR). [Director's Report Received July 25, 2023.]

Mr. Hull: I have one individual signed up for testimony. Keith Yap. Is there anybody, I know no one else signed up to testify. Would anybody else like to testify on this agenda item that didn't sign up, if so, please approach the microphone. Seeing none, the Department would recommend closing the agency hearing.

Vice Chair Apisa: Motion to close the agency hearing.

Ms. Streufert: So moved.

Ms. Cox: Second.

Vice Chair Apisa: We have a motion made and seconded. All in favor. Voice vote please. Aye (unanimous voice vote). Any oppose. Hearing none, motion carries. 6:0.

Mr. Hull: Next, we have.

CLASS IV ZONING PERMIT (Z-IV-2023-12) and USE PERMIT (U-2023-9) to construct a new gymnasium on the Waimea High School campus in Waimea Town, and VARIANCE PERMIT (V-2023-3) to deviate from the height requirement within the Residential zoning district, situated approximately 550 feet mauka of the Ola Road/Kaumuali'i Highway intersection, further identified as 9707 Tsuchiya Road, Tax Map Keys: 1-6-010:004 and 1-6-009:023, and containing a total area of 11.11 acres = STATE OF HAWAII, DEPARTMENT OF EDUCATION. [Director's Report Received July 25, 2023].

Mr. Hull: Sir, are you representing the applicant? Okay, so this is just the agency hearing portion, so we're just calling for public testimony and then we're going to get to it during the actual agenda item. Thank you. We don't have anybody signed up to testify as a member of the public. The applicant and the Department will be giving a report shortly, but I don't have anybody signed up to testify. Is there any member of the public that would like to testify on this Waimea Gymnasium application, if so, please approach the microphone. Seeing none, the Department would recommend closing the agency hearing.

Ms. Cox: So moved.

Ms. Streufert: Second.

Vice Chair Apisa: Alright. All in favor. Voice vote please. Aye (unanimous voice vote). Any oppose. Hearing none, motion carries. 6:0. The Agency Hearing is closed.

Mr. Hull: Next, I will turn Agenda Item H., over to the County Attorney's Office.

### **GENERAL BUSINESS MATTERS**

Ms. Barzilai: Chair, we're on H., General Business Matters. If you can read the notice into the record.

Vice Chair Apisa: Pursuant to Chapter 9, Rules of Practice and Procedure of the Kaua'i County Planning Commission and Chapter 8, Article 27.13 Appeal of the Director's Determination, Kaua'i County Code, 1987 as amended; Appellants Malama Kua aina and Caren Diamond, Executive Director, and in my individual capacity file this Petition for Appeal regarding Try Slow, LLC Shoreline Setback Determination Exemptions, File No. SSD 2023-45, SSD 2023-46, SSD 2023-47 and SSD-2023-48 dated 5/23/2023, TMK 5-8-8:034 noticed on the Planning Commission Agenda June 27, 2023.

Ms. Barzilai: So, first order of business of is to call for public testimony, Madam Chair.

Vice Chair Apisa: Is there anyone here that would like to testify on this matter? Seeing none. The commission is asked to address the appeal of Caren Diamond and Malama Kua'āina from the Director's determination, under CZO Section 27.13 regarding Try Slow LLC. In this matter the commission will assess Petitioner standing to bring this appeal and then either, 1. Accept the appeal and set the matter for contested case before the commission. 2. Accept the appeal and refer the contested case to the office of Boards & Commissions for an assignment of a hearings officer. 3. Deny the appeal for insufficiency of the petition. At this time, we would like to hear the parties' positions on the sufficiency of this petition. Starting with the Petitioner then the Applicant, and finally the Department, to be followed by the commission's questions to the parties, if any. And please keep your arguments to 10 minutes. Thank you.

Ms. Barzilai: Thank you, Chair. All three parties can approach now, if everyone is here. Chair, we can start with the Petitioner.

Vice Chair Apisa: I'd like to start with the Petitioner, Malama Kua'āina and Caren Diamond.

Ms. Caren Diamond: Aloha, Caren Diamond for the record. I'm here both for myself and Malama Kua'āina, a 501(c)(3) non-profit organization that was formed to protect our natural resources. We predominantly work in Wainiha and Hā'ena, and work on shoreline and public trust issues and beach access and things like that. Unfortunately, we're here today because there is no public participation other than filing an appeal on shoreline setback determinations, and so this is four applications for one TMK 588034 that each of the shoreline setback determination exemptions were, the application and the exemptions were given separately, and so there was no combined review of any of this, even though there are five vacation rental cottages, it's nonconforming uses and their nonconforming structures as well. When the setback exemption was given the only notice that the public has of that is when it's also listed on the agenda before the Planning Commission, which gives notice only that it has been approved. So, the only recourse it is for people to file an appeal when they disagree with that. In this particular case four exemptions were given, exemptions because of the building value of being less than 50% of the repair value, so the County Engineer gives them an exemption and there a multitude of issues that I won't go into on the appraisals and evaluations of the repairs and what (inaudible) repairs or unsubstantial improvements or substantial improvements that must adhere to any rebuilding to the current flood codes. This is a VE high flood area that nonconforming houses are allowed to be repaired period, so because this is a development of the five lots and the one lot is before you today in the shoreline setback determinations as well and the lot behind it. In the application that was presented there are no access ways, there is no driveway, there is no parking, there is no showing of the existing cesspools, there no planning for wastewater to be improved, where that would be located, there are no photos that show where this setback line was measured from or it's in a, so what happens is, once the engineer gives an exemption for this, it just exempts it from everything, and so, we are contending that an exemption on building does not equate to the county (inaudible) miss all the rest of the coastal zone management laws that are required, and in (inaudible) a formula cannot diminish our coastal zone management laws, and the ocean here washes up on a regular basis. My family and I moved to that street, Oneone, it's a very short little street, it means, (inaudible) sand, and these were wide in 1980, these were wide open sandy beaches, the four cottages were McBryde cottages, they were very small cottages, there was public access through

us, eight easement that existed on the east side of the property and there's a (inaudible) owned state parcel that houses, (inaudible), which is the survey monument that everything was measured by. So, up until 2004 these beaches were wide open, there was public access, there was state access, the Malapit Family owned that fifth cottage, and fisherman came all the time, it was well used, it accesses the channel. In 2004, the new owner, not this current owner, but a previous owner bought the property, planted the beach, fenced off what was the access, put a wall there and expanded the cottages, and he did all of that with no permits, which resulted in the end, in a settlement agreement with the county and subsequent lawsuits, so Cottage No. 2, which was Cottage No. 4, had stipulations that it was never supposed to be renovated, it has to be removed when it reaches the berm. The parcel is only zoned for three houses, three cottages, not four, and so there was all kinds of agreements, legal agreements that were made, that when the berm reached that fourth structure, it must be removed, and until then it wasn't supposed to be substantially repaired or renovated. When the application came in, it sets the approximate shoreline is ten feet from the structure. There's no telling where that came from, but I do want to say that I don't believe the county can waive certified shorelines (inaudible) in the interest of our public trust, responsibilities to do so when structures are located that close to the shoreline, and...

Ms. Barzilai: Excuse me, Ms. Diamond. Madam Chair, maybe we could ask Ms. Diamond to share about her organization's injury or the harm to her organization, and the personal experience of you and your petitioners with regard to this parcel and this application and the appeal that you've made.

Ms. Diamond: So, personally we have been to the state on a certified shoreline process, which resulted in Diamond vs. State of Hawai'i 1, and Diamond vs. State of Hawai'i 2. There's a long progeny of shoreline cases that protect the public interest. Malama Kua'āina was formed after those decisions to actually continue the work and protecting our public trust interest, and we specifically work on beach protection and ensuring certified shorelines are done correctly at the upper reaches at the wash of the waves, so in this particular case, no shoreline was done or even considered, that county accepts an approximate shoreline from an applicant, that is not based in law or fact or anything, and we do believe diminishing HRS 205A and our coastal zone management laws and especially the responsibility of the state to do the certified shoreline and then the county has a responsibility and obligation to do shoreline setbacks, but the county has no legal rights to do or accept certified shorelines, and that process is a very robust process. There's a lot of public participation in it, there are site visits if shorelines are reviewed by the state surveyor. It's not just what an applicant says, and I do believe that in this having an engineering exemption, doesn't allow the county to waive our laws that protect our public beach access, and it's due to these public trust resources. In front of these cottages ever since it got planted in 2004 the vegetation has encroached and six-months out of the year the beach is actually gone in front of here and then it comes back, and so in the summer time the beach disappears and you cannot walk from east to west without walking in the water or precipitously on a ledge, kind of, and HRS 115 allows for, and provides for landowners being responsible for vegetation that encroaches onto our public trust resources, and waiving the certified shoreline and skipping all that prevents the state from going out and actually looking and actually cleaning up the beach ahead of time. We do believe that if people are allowed to redevelop without consideration of our coastal resources or where those structures are located and if landowners are allowed to just say where an approximate shoreline is and skip where the real shoreline is then we lose our public trust assets.

Vice Chair Apisa: Thank you. I haven't been timing it, but I think it's been 10 minutes or more.

Ms. Barzilai: We're at 9 minutes right now, Chair.

Vice Chair Apisa: Oh, at 9 minutes, okay. Thank you.

Ms. Diamond: I just to add personally, my kids grew up and were raised on that street and beach, it's a really special area, the whole neighborhood. When it got fenced off and planted there was quite upset in the neighborhood. And if you look at the values of what these structures were when they were first built in 1968, and they value of these repairs right now, it'll be questionable as to whether what is happening there, but it's a very special area and it's very beautiful and public access to and along the ocean has been compromised and needs to be restored, as well as the state easement is blocked and should not be. Thank you.

Vice Chair Apisa: Thank you. Perfect timing. Mr. Jung.

Mr. Ian Jung: Good afternoon, Chair, and members of the Commission. Ian Jung on behalf of Try Slow LLC., who is the applicant in these particular shoreline setback determination applications. This is a very simple project, on a very complex property. In this particular case, there's four shoreline setback determinations, on four, not five cottages on this particular lot, and it's one lot, not five lots. So, on this particular property we're dealing with an interior renovation and repair, and the extent of the renovation is just cabinets, windows, and new items that would sort of refresh the property versus any type of major renovation. The way the shoreline setback ordinance was set up, whereby ironically, Ms. Diamond was a part of the review committee that identified how the legislation should be formulated and framed for relatively minor projects, such as this. The idea was, you can come in for repairs and renovations, provided that you show your non-substantial or unsubstantial determination and so, the process is, you first go to the engineering division to confirm whether or not you are under 50% of the value of the structure, and the way the code is structured, it's market value, so you get a licensed appraiser to go in and do a market value and cost approach assessment to it and they come up with a figure, you then deliver that figure along with an itemized list of repair items to the Engineering Division, the Engineering Division will then confirm that unsubstantial status. We went through this very process and we followed the code to a tee on how you get through it, and in this particular case, we had some minor nub additions to the walls, but the Planning Department came back and said, no, we can't have any interior reconfiguration, you have to have the walls exactly the same, floor plan exactly the same, all within the framework of what the existing structures were, so we revised those plans and then resubmitted, and here we are today with an appeal on this. So, our position is, the appeal is flawed because it seems like the petitioner's qualm is with the legislation itself versus the application of legislation. I understand there's concerns about whether or not a shoreline certification is required but the way 205A Part 3 works, is it delegates the responsibility to the county to establish the Shoreline Setback Ordinance, and basically the state law says, you can have a minimum of 20-feet and a maximum of 40-foot setback or the counties can go and create its own ordinance to allow for a greater setback, so as we all know, the County of Kaua'i established a very strict setback ordinance, which by virtue of how it applies, you have setbacks from anywhere between 60 and a 120 feet, so the question is, what do you do with all these nonconforming lots and nonconforming structures that are located in what's called the shoreline setback area, and the framework of the ordinance, which I had previously thought we had all agreed on, was a decent way to deal with it, is you go through the repair exemption, where if you don't mess with the guts, it's sort of the framework that the Planning Department looks at it, and you have your unsubstantial determination, then you can come in through the shoreline setback, and give credit to the Planning Department because that's what they do and they will look at it with a fine toothed comb and say, are you making a little change to the wall or the door entry, no you can't do that, so they make applicants come in and do those repair and reconfiguration of those plan and you come in. The added issue with this particular property is in 2008 and 2018, there was a settlement agreement with county, and in that settlement agreement it recognizes the legal nonconforming of these four structures, and because the county came swinging at this or the prior owner, through the litigation it was resolved that they had to pay \$75,000 to the prior landowner, so we're basically rehashing this issue of the settlement agreement and the repair threshold of what's allowed in a shoreline setback exemption application. Now, it was asserted by the petitioner that you can't do any repairs, but the way the framework of the settlement agreement was, that the county shall not

withhold or unreasonably delay the issuance of any approval or permits sought by the trustees, or any future improvements for the use of the property, so long as the future improvements and use complies with the 2008 settlement agreement, so what does that 2008 settlement agreement say, on page 5, the settlement agreement says, until residence (inaudible) is removed or relocated, it shall not be enlarged or reconfigured, however, ordinary maintenance and upkeep may be performed on residence (inaudible) until it's removal or relocation, so all this is, is a paint job, new windows, new cabinets, and a new kitchen, very simple project. The project is not expanded on or enlarged, it's not going to further encroach into what the petitioner deems as the beach access corridor, it's going to remain in its place. So, on that basis alone, as the issue of standing, we feel like there is no injury in this particular case because it's not a new "development", in fact under SMA Rule, it's non-development because it's repair and renovation to an existing nonconforming cottage. So, working through the SMA definition of non-development, working through the shoreline setback issue of unsubstantial repairs and working through what the HRS says, yes, county, we realize that you guys have the authority under 46-4 to set your own ordinances and you can set the framework of how you deal with shoreline setback exemptions, you can designate the approximate shoreline to issue these repairs because you've set such a great shoreline setback requirement as a part of the overall programming for the shoreline setback ordinance. Imagine if an appeal of every single repair came in with (inaudible) setback requirement, and they are (inaudible), they're established for new projects that are coming in fresh, it's a great ordinance, it sets it back to a degree where you're going to have a buffer for potential impact from coastal hazard, but for the ones that exists, the law has to respect those, the law has to say, hey, we have a scenario where we have to respect the legal nonconforming nature of these particular (inaudible). So, on that basis, we ask that the petition be struck and that it's on the basis that there is no actual injury of no expansion or enlargement and on the fact that it's not a new development, it's a renovation of existing development. Thank you.

Vice Chair Apisa: Thank you.

Mr. Donahoe: Good morning, Chair, and good morning, Commission. Again, Deputy County Attorney, Chris Donahoe, for the Department. The Planning Department is not taking a position on the appellant standing as to whether the petition for appeal can be filed or not, but I just want to just make some brief points because Planning Department understands that it's ultimately the commission's decision as to whether that petition is acceptable or not. One is, does the petition to appeal, is it sufficient to meet RPPC 1-9-21 subsection b., which state, any person who can show that a direct probable harm to his or her person or his or her property interest or probable public harm could occur. From the decision (inaudible) petition to appeal the shoreline setback determination, approval, denial, or determination. On page 5 of the petition to appeal, under reason for appeal and Ms. Diamond briefly touched upon it, it said, preventing further harm to such a well-loved beach area and that such harm from the proposed development includes but is not limited to the serious impact on public impact on public access to and along the shoreline as well as impact social, cultural, and recreational uses. So, the question would be coming from the commission, based on the petition to appeal, have the appellants demonstrated that pursuant to 1-9-21 b, is there probable harm to his or her, the group or to the property interest from specifically the decision that the proposed repairs were exempt from the shoreline setback issue. Second, and Mr. Jung touched on this briefly regarding injury of fact. Now the question becomes, how is the alleged injury directly traceably to the challenged action, which is the determination for the shoreline setback, that the repairs qualified as exempt as the Department made that determination, and understandably the case law in Hawai'i have been pretty liberal with their interpretation, especially when it comes environmental standing. I mean, we got two cases that kind of fit this point, for Maui Electric Company, which is 141 Hawai'i 249, 2017 case, and Protect and Preserve Kahoma versus Maui Planning Commission 149 Hawai'i 304, 2021 case, both Hawai'i Supreme Court cases, and they found that the right to a clean and healthful environment is a substantive property right a guaranteed by Article (inaudible) 11, Section 9 of the Hawai'i Constitution, so someone's right to a clean and healthful environment is an actual property right, however the Supreme Court then held in Kahoma that it had to be defined by existing law

that relates to environmental quality and the Supreme Court found in Kahoma that HRS Chapter 205A, does relate to environmental quality. For the purposes of Article 11, Section 9, so that a property right to a clean and healthful environment can stem from a claim against 205A because that qualifies as a...it relates to environmental quality. So then in Kahoma the Supreme Court went further though and said it requires the environmental group to establish that an actual or threatened injury that is ferally traceable to the defendant's action in a favorable decision would likely provide relief for the petitioners claim to injury. What that means is in that case the Kahoma, the court found that the environmental group had standing to intervene because they did find that there was a legally protected interest in the clean and healthful environment that was traceable. Fairly traceable to what the defendant in that case was trying to do. So, based on those cases the issue that the Planning Commission could address in making its determination as to standing, is whether the appellants in this case had, one, claims to a protectable property interest in the right to a clean and healthful environment as defined by the CZMA, and two, have the (inaudible) established an actual or threatened injury that is fairly traceable to the petitioners actions from which the Planning Commission can provide relief, and that would be the determination as to the exemptions on the shoreline setback determination. If standing is found, these issues and other issues that were brought up by Ms. Diamond and by the petitioners, could be addressed during the contested case hearing. So, that's all. Thank you so much. Unless you have questions.

Ms. Barzilai: Madam Chair, do you want to give the parties two minutes to reply, to rebut at this point?

Vice Chair Apisa: Yes, I think that would be very good.

Ms. Barzilai: To answer anything that's come up.

Vice Chair Apisa: Ms. Diamond?

Ms. Barzilai: Two minutes.

Vice Chair Apisa: Two minutes as for a rebuttal.

Ms. Diamond: Thank you. I mostly want to clarify that we do, it is not a problem only with the shoreline setback ordinance, but it is with these particular applications and these particular exemptions of the shoreline setback ordinance that we have issue with, and largely because they diminished, allow the beach to continue to be diminished and not be into the future. I want to, I mostly want to just address the repair evaluations are not just painting and redoing it, if you look at the building plans, there's substantial amount of red on those building plans, which is demolition and almost everything is demolition, demolition, demolition, and the (inaudible) of those repairs are a 132 thousand, a 150 thousand, 148 thousand, and 132 thousand, that's not just painting, that's...when these structures were originally built they were built for really low value, they were McBryde cottages, they were really small. The previous owner had expanded, taking what was lanais and enclosed them and made them part of the room and put another lanai on each of them, seaward, that was what the problem was, it was the seaward encroachment onto public trust land. When I look at these numbers it looks like they are expanding the numbers again because they don't correspond with the numbers that existed previously for these houses. It also, the main...it is a major problem if nonconforming structures with nonconforming uses can exist into perpetuity and the way that this project does it is certainly questionable and so we urge you to give us, grant us an appeal on this and we can flush out all these issues and I believe Mālama Kua'āina works to preserve our public trust resources and this beach is part of those public trust resources. It's an amazing beach and it certainly deserves better. Thank you.

Vice Chair Apisa: Alright. Thank you. Mr. Jung.



Mr. Jung: Yes, I think the issues here at this phase of the contested case so to speak is, what is the injury in fact and in this case, what is the injury. The house is not being expanded, the repairs that are identified in the building plans, those have been even scaled back more because of the Planning Departments work and how they review these things. So, you have to clout out what's changing and show them on the plans for the demo set and the rebuilding set, but everything counts. Chapter 4 of the FEMA Guidelines identifies everything you have to account for, for the unsubstantial repairs, painting counts, painting a house these days, minimum you're looking at 10 to 20 grand, new kitchen, minimum, you're looking at 10 to 20 grand, everything counts and when you have four cottages, it starts adding up, new windows, getting a window package, that counts, everything you want to do to the reflooring of the house, that counts, so we have to go through an itemized list of everything that counts under that FEMA Guidelines so we can justify to the Engineering Division, this is what we're proposing, and I've even seen it where the Engineering Division comes back out, ok, let's verify your numbers and make sure you accounted for everything in there. So, they have to reach that unsubstantial determination base on a figure and a formula. If every single one of these gets appealed, you guys are going to be very busy because if you look at Lawa'i Beach Road, all of those structures are nonconforming. If look along Hā'ena, you have a significant portion of those, maybe even two-thirds that are nonconforming. What the shoreline setback ordinance did, it set these structures to be nonconforming versus what state law says, maximum of 40, minimum of 20, the county went greater, so by consequence of going greater there had to be this framework to deal with how to address nonconforming and this was the procedure. And challenging the procedure by legislation, that's not what this forum is for, it should go back to council and then let the ordinances get flushed out from a legal review, if you're going to take away the nonconforming provision, but we're here on an exemption that was vetted properly by the Planning Department, that was vetted properly by the Engineering Division and now it's before this body when it's technically not supposed to be. So, we ask that the petitions be vacated and removed.

Vice Chair Apisa: Thank you. Mr. Donahoe.

Mr. Donahoe: Thank you. Briefly, under HRS 205A-22, as the commissioners probably aware, development does not include repair, maintenance, or interior alterations to existing structures, under the CZO 8-1.5 definitions as to repair, repair as applied to structures means the renewal or treatment of any part of an existing structure for the purpose of its maintenance, but repairs shall not apply to any change of construction such as alterations of floors, roofs, walls or the supporting structure of a building or the rearrangement of any of its component parts. And under CZO 8-27.7, which refers to shoreline setback, permitted structures within the shoreline setback area, does include repairs to a lawfully existing structures, including nonconforming structures, provided: A) The repairs do not enlarge, add to or expand the structure; increase the size or degree of non-conformity; or intensify the use of the structure or its impact on coastal processes; B) The repairs do not constitute a substantial improvement of the structure; and D) The Planning Director determines that the proposal complies with the definition of "repair" under Section 8-1.5, and in this matter that determination was made about my client. Thank you.

Vice Chair Apisa: Thank you. I think at this point, just to remind the commissioners that we're here today to make a decision on either to accept or deny the appeal, but I would ask if you have any questions.

Ms. Otsuka: I have a question for Mr. Jung. Ms. Diamond mentioned on the plans that there were red markings signifying demolition, is that just in the interior or...

Mr. Jung: Yeah, that's in the interior, when you remove a window frame you have to show the demolition, because the way the building permits works is, there's a certain list of things that are exempt from building permit but then on certain things that aren't, once you exceed \$10,000 you need a building permit, or if you touch electrical and plumbing, in this case the electrical was going be reconfigured, so that triggered the permit, the permit number and so, the shading from the original plan they were going to

bump out a wall to reconfigure the doorway entry into each of the individual rooms, no structural changes at all, and then the shoreline planner took a look at it and said, no you can't have those (inaudible) walls, so those had to be reconfigured, the plans that is, had to be reconfigured to show that it's just the window frame that's coming off, but the headers and the studs, that all stays same.

Ms. Otsuka: Thank you.

Vice Chair Apisa: Commissioners?

Mr. Ako: Madam Chair if I can? Ms. Diamond, I want to thank you for having so much concern and passion for the island and for all you do in taking care of things that I most of the time just overlook.

Ms. Diamond: Thank you.

Mr. Ako: And for all that you do. I have the document in front of me, which I guess is your letter to appeal the shoreline determination here, and I guess I wanted to clarify certain things in here, a statement in here say that approvals in the shoreline setback determination did not include a determination by the Director that the proposal complies with the definition of repair, can you expand on that.

Ms. Diamond: Sure. 8-27.7D, 8-27.7 is permitted structures within the shoreline setback area and D. requires the Planning Director determines that the proposal complies with the definition of repair under Section 8-1.5, and so, it was a provision that was put in the shoreline setback ordinance to have Ka'aina also agree that whatever was happening was repair. There's a lot of problem with what is repair and what is rebuilding, we've had a lot of structures in the neighborhood being a 100% rebuilt, they're brand-new structures and as a result of what is "repairs", and the shoreline setback ordinance didn't make these particular structures nonconforming, they already were nonconforming to the flood code, so they are nonconforming to the flood code and also shoreline setback.

Mr. Ako: But the Public Works Department did make a recommendation regarding more or less than the 50% to determine whether it's substantial or unsubstantial repairs.

Ms. Diamond: Correct.

Mr. Ako: Okay.

Vice Chair Apisa: Just a clarification, they're nonconforming but they are grandfathered in.

Ms. Diamond: Yes, they are.

Mr. Ako: You also mentioned in here that the application was not complete because there were maps missing via the aerial maps or the scale maps that was in here.

Ms. Diamond: So, the shoreline setback applications have a section that says what's the approximate shoreline distance and then below it, it says, as measured via Google Map and so normally what happens is there's a Google Map with the edge of vegetation and there's just a line drawn between to determine what that distance is. That wasn't included in this application. Another component of that is supposed to be to have a map of everything and so, there was no map determining where the shoreline was, certified or not certified. The map didn't include the walls, the map didn't include access to this project, there is no access on that lot, there is no...

Mr. Ako: The question really becomes, if there were the maps for say, the public or whoever to see, do you think a different determination may have come out from it.

Ms. Diamond: It's hard to say...

Mr. Ako: Or is it just a matter of you saying because the application was incomplete that it should not be considered.

Ms. Diamond: Shoreline laws, the shoreline is determined by the state, the setback gets measured from the shoreline and it's totally arbitrary if you're measuring it from some unknown place, was it that setback, where is that shoreline, and because we're talking about four cottages on one lot that are in a sensitive place on the beach, it would be important to know where that shoreline is.

Mr. Ako: Got it, got it. You also mentioned in here that the county does not have the authority to expand the size of the nonconforming structure, and I know this has come up several times, explain again to me how you view or define the expansion. I think what I heard but we just dealing with interior, yeah.

Ms. Diamond: So, I view it in square footage, so when I look at all the real property, all the old books that gave us square footage of what it is and when you look at real property more currently what the square footage is and then you look at the square footage that they're saying that these cottages are going to be, they don't add up, they're increased in size and so, that's the only thing I have to go by is what they are saying the square footage is going to be.

Mr. Ako: Got it. Thank you.

Vice Chair Apisa: I guess that raises the question, when you say what it's going to be but, I thought I heard earlier that they were maybe modified in the past that we're not dealing with today, but they're not changing it today.

Ms. Diamond: So, they were modified in the past and the real property records recognizes that so after whatever year they corrected it, it was more than ten years ago they added, money came in for the after-the-fact permits and things, the additional square footage was reflected in the records then and so now all of a sudden those cottages are more than a thousand square feet and (inaudible).

Vice Chair Apisa: And that actually happened 10 years ago or more.

Ms. Diamond: No, no, no, no, the increase was to 715 square feet roughly between 700 and 850 square feet, they increased (inaudible) before, but currently in their plans they go from 800 to 1,036 square feet, so I'm just reading what it says on their plans and on the shoreline setback applications it says, do not scale drawings and so there is no scale provided on the shoreline setback determination application. I had to go to Building Department and there there's a scale on drawings.

Vice Chair Apisa: I'm still not clear in that because I'm hearing that they're not increasing the size, now is it a matter of cleaning up old records or I guess, Mr. Jung...

Mr. Jung: Sure, I can address that. So, this was a part of the lawsuit with the county with the prior owner, so my client came in and acquired the property and permits were issued and they were 2006 permits but they were reflected in 2018 because the settlement agreement said, this is what was built and should've been approved, and that was pre 2008, the shoreline setback ordinance and all this stuff established in 2008, and then modified, I think in 2012 and then the repair definition was 2020, which makes it more stringent, so post 2020 the repair definition is a little more stringent or I should say, a lot more stringent,

where you can't rebuild a home anymore, you can't mess with the walls, you can't mess with the guts, as they frame it, so it's a different standard now. But I just want to go back because in Exhibit F. of our shoreline setback application, we have the Google Earth Map with the lines on there so I'm not sure why it wasn't seen with the identified location from what was perceived as a vegetation line, in the past in some of these applications there were questions of whether or not, what that vegetation line, but we made memos and said, hey, this is just an approximate shoreline not a certified shoreline, so Exhibit F. has that information. If you look at the plan, the plans are in the application, but they get filtered through EPR too, so they get uploaded and of course revision in those plans get uploaded and reviewed by the Planning Department staff. So, the application is complete, it included a set of plans, it included the appraisal, it included the determination by the County Engineer, and it included this aerial map, along with the application, so how this is flawed, I'm still having trouble with because we completed all the tasks which are conveniently identified on the application itself and you check the box on whether or not you submitted it, so we would contend that the application is complete for that one.

Ms. Streufert: Can I ask a question, please?

Vice Chair Apisa: Sure, please.

Ms. Streufert: This is actually for the county. The reason that is was not brought up earlier was because it's unsubstantial repairs, less than 50%.

Mr. Donahoe: Yes.

Ms. Streufert: That's a determination, correct?

Mr. Donahoe: That's correct.

Ms. Streufert: If it's less than 50%. How often can a repair be made? In other words, if I came in today and my repairs were for \$40,000 or...

Vice Chair Apisa: 40%?

Ms. Streufert: Or 40% and then tomorrow or next year I come in with another one for 20%, now it's over 60%, but it comes in on separate applications, so how often can you do that and still be within this unsubstantial? I'm looking at procedure more than anything.

Mr. Hull: Once. The formula is calculated within a 10-year time frame.

Ms. Streufert: So once every 10 years?

Mr. Hull: Well, if you had 49.9% within a 10-year time frame, you're not going to be able to come back in again, but say, you came into this, say you came in 2000 the for the first time for repair and the evaluation came out at 20%, you could still come in for an additional 30% within that 10-year time frame. It's done within the Engineering Division because it's done under the Flood Plain Management Program, so it's a national standard in which that analysis is done.

Ms. Streufert: So, it's within 10 years, you can't be over.

Mr. Hull: Right.

Ms. Streufert: Okay. The second question is, this is, and I understand that it is grandfathered and it's nonconforming, but just for my edification, the lot size is .89 acres, it's an R4, does that entitle a person to four structures or only three, because it's not one acre.

Mr. Hull: Well, there's nonconforming structures so I believe some of the structures was there before the establishment of the CZO density standards.

Ms. Streufert: Okay, but in the future if it were .89...

Mr. Hull: If these structures were put there post 1972, it would not entitle it to four structures.

Ms. Streufert: Thank you, that's what I wanted to know.

Mr. Hull: And the last thing I'll say because there's a lot of discussion going on here and on behalf of the Planning Department, there's a lot of things being thrown out here, one of them though I just want to stress is, the ordinance is set up in a manner that the analysis must, I don't even give the 50% exemption, the Engineering Division does and once they do, as long as they're not messing with the walls, then by ordinance we're required to exempt it. I think what the petitioners other issues were, I'm not in objections is, how can you issue an exemption if one of the structures maybe mauka of the shoreline and that is a question that I have myself, of I'm not sure I can do that either, but the way the ordinance lays this out is that I do have to give it, I have to give that exemption from doing an actual survey and determining whether or not this structure is mauka of the shoreline and therefore no longer in their property, and so, (inaudible) I know our attorney said we have no position, and then I know what Mr. Jung is saying, this is being litigated here but this is a question for Council and the legislative body. (Inaudible) going to a legislative body I do think is a perfect venue to do it, is to figure out through this lawsuit, how do we establish the exemption pursuant to the existing ordinance in a situation where it may or may not be, it's very close to but it may or may not be mauka or makai of the shoreline, and that's why the Department welcomes the appeal, and have no objection to it. Thank you.

Vice Chair Apisa: There is a provision about that fourth house though having limited duration.

Mr. Ornellas: The Commissioner raises an interesting point, and that is with the frequency of repairs, now a structure that close to the ocean is going to require frequent repairs, I mean, window frames, no more than 5 years, the salt breeze that'll corrode the nails right off the house, so that's an interesting point, but the issue before us today basically revolves around substantial versus unsubstantial repairs, I think that's at the crux of the issue today. I'm sure injustices have been done in the past, but I think today we're dealing with this particular issue.

Ms. Cox: I would like a little more clarification about what you just said that fourth structure that according, this is number 20 in your letter, Ms. Diamond, about that building four may not be improved and will ultimately be removed from its current location and this is according to the memorandum of enforcement and settlement agreement, 11708, so can somebody explain to me, I mean does this go back to what Ka'aina was saying that because we can't, there's not a clear measurement of whether it's mauka or makai, that we don't...can you clarify this fourth, it's Cottage No. 2 originally.

Mr. Jung: Okay, let me clarify that because I should have had to reconcile. So, the lawsuit identified this as Cottage No. 4, in our application it's Cottage No. 2, so the issue, and I get the sense we have we have four shoreline setback applications and we have three that are not an issue here, so if look and want to identify the Cottage 4/Cottage 2, if that's going to be the issue, that'll be the issue, but the way code is set up, is you don't need a certified shoreline if you're doing repair, the only time you go in for a certified shoreline is if the counties trigger it or State OCCL, Owned Conservation Lands trigger it for any

development. This is not “development”, it’s a repair and renovation, so there’s no provision in the shoreline setback ordinance that requires a certified shoreline in this particular case.

Ms. Cox: I understand that. I guess I would say since the memorandum of enforcement and settlement agreement does say that building number four may not be improved and will be ultimately removed...

Mr. Jung: That’s wrong though, that’s what she wrote. What the actual settlement agreement says is until residence four is removed or located, it shall not be enlarged or reconfigured, however ordinary maintenance and upkeep may be performed on residence four until its removal and relocation. For the purpose of this agreement the crest of the active beach berm shall mean the top of the slope of the beach affected by natural erosion. The Planning Departments staff went out there during this application to inspect it, to look at it. I was informed that it has not by the Planning Department.

Ms. Cox: So, it’s still within the range that’s accepted.

Mr. Jung: Right.

Ms. Cox: According to this.

Mr. Jung: Based on what the settlement provision says.

Ms. Streufert: Could I ask a question of our attorney, please? At this point we seem to be getting into the crux of the matter and I’m getting a little concerned that I don’t that we, I don’t feel comfortable with hearing a contested case or for us to do that.

Ms. Barzilai: I agree, Commissioner.

Ms. Streufert: So, I would ask that, I will move that we accept the appeal and refer the contested case to the Office of Boards and Commissions for the assignment to a hearings officer.

Ms. Cox: I will second that.

Ms. Streufert: It’s not that I don’t...I don’t want to cut off the discussions, but I think we’re getting to the point where we could get ourselves into a situation where we will...

Mr. Ako: I’m sorry, Commissioner, can you repeat that again? I missed it.

Ms. Streufert: Hear the motion?

Mr. Ako: Yeah.

Ms. Streufert: Okay. I move to accept the appeal and refer the contested case to the Office of Boards and Commissions for an assignment to a hearings officer.

Ms. Cox: And I seconded it.

Ms. Streufert: Because there are some legal issues here and there’s some definition issues and I’m not sure that I feel comfortable with being able to determine which ones. And if it is about standing, if the only issue here is about standing, I think it’s been pretty well determined that it may not be for a particular person but for the organization, the 501(c)(3) that she represents there may be some standing for it, but that’s my opinion, it’s not something...

Vice Chair Apisa: I would open it up for discussion and let me know if anyone feels that there is an executive session needed or if you're clear on what action needs to be taken.

Ms. Barzilai: We'd have to withdraw the motion if that were the case, Chair.

Vice Chair Apisa: Oh okay.

Ms. Barzilai: So, right now you'd be at the stage of discussion or there'd have to be a motion to withdraw. Commissioner Streufert would have to withdraw her motion.

Vice Chair Apisa: Okay.

Ms. Barzilai: ...At this point you or you would proceed to a discussion and a vote.

Vice Chair Apisa: We have a motion on the floor, is there any discussion and is the commission ready to vote on it?

Mr. Ako: I'd like to add. I think for myself, it has been stated here earlier, our issue right here is whether we go to appeal or we not going to appeal. It's not to replace our judgment for what has already been put forward from the Department of Public Works or from the Planning Departments or whatever. And yet, when I look and I listen to the arguments that are here, and I think when I look at the process itself, I feel like the process has been followed. There was a determination that was made about substantial or unsubstantial repair, at that point you have really no pre-course but to go into one direction already, and I think we talking about the expansion of a building there, which, in my mind, if we don't change the outside portions of the walls and the...then no matter how you reconstruct the interior I think we're still dealing with the same square footage and therefore there's no expansion of there, and whether there were maps that should have...I guess the maps determined that were there. I guess an issue to me too is the idea about public participation in there and I think, procedurally we do not have public participation in terms of those that are unsubstantial repairs, and I do think that if you follow procedure, what prevents the next person from coming in and saying that, yes, the last time you did follow procedure, but you allowed it to happen. That's why for me I think process and procedure is very key and I just believe that the Department in this case has followed it. I think right now, if the vote comes up right now, I think my vote would be, I would oppose it and vote no.

Ms. Otsuka: Meaning you'd deny that appeal?

Mr. Ako: Yes.

Ms. Cox: So, for me, I agree that procedure is important and following the process is important. This one seems very complicated to me, which is why I was asking that question and you're absolutely right, Glenda that I was getting into content, but that's why I believe it has to go to appeal because to me there's some issues that aren't just any shoreline setback, this is a very unique and complicated situation and for me, I believe that the organization has standing and that we need to have it looked at more closely, which is why I will vote in favor of the appeal.

Vice Chair Apisa: Comment?

Ms. Otsuka: I just agree with Mr. Ako, Commissioner Ako, that Mr. Jung made excellent, convincing remarks that they're not changing anything but the interior, which is necessary.

Ms. Barzilai: You have a motion on the floor, Chair.



Vice Chair Apisa: Any other input here?

Ms. Streufert: I'm sorry, this is really not about...standing is really about not just the renovations but it's about the setback, shoreline setback.

Ms. Cox: Yeah.

Ms. Barzilai: Right now, you are deciding whether, I'm sorry, Madam Chair, you're deciding whether the actions of the Department have resulted in probable public harm to the petitioner and whether the petition follows the physical form of the rules. These are the threshold questions that the commission is deciding today, as opposed to the substance.

Ms. Streufert: But the Planning Department does not have a, would also welcome an appeal.

Ms. Barzilai: It appears that they don't have any opposition.

Ms. Streufert: Okay, alright.

Ms. Barzilai: Would you like to revise or withdraw your motion?

Ms. Streufert: No.

Ms. Barzilai: If not, I think we're ready for a roll call vote.

Ms. Streufert: I will stand by my motion.

Ms. Barzilai: Madam Chair, are you ready to proceed?

Vice Chair Apisa: Not really, but I guess the time has come. Because being the Chair I think I'm going to be a deciding vote and I'm really torn on it.

Mr. Donahoe: Deputy County Attorney, Chris Donahoe. Is there any way we can ask for a 5-to-10-minute recess?

Vice Chair Apisa: I would welcome that, yes, thank you. 5-minute recess.

Mr. Donahoe: Thank you.

Commission went into recess at 10:28 a.m.  
Commission reconvened from recess at 10:38 a.m.

Vice Chair Apisa: Call the meeting back to order. While we're in our discussion period of the motion, I have a quick question for our Planning Director.

Mr. Hull: Good morning, Chair, Ka'aina Hull on behalf of the Planning Department.

Vice Chair Apisa: While I understand the situation in coastal (inaudible) and all of that, I feel like procedure has been followed, but you made a comment that you would welcome an appeal and I just would like a little elaboration on that.

Mr. Hull: The procedure has been followed as it was laid out within the ordinance. I'll be honest, there are some issues in the way that the ordinance is laid out and the way the Engineering Division does 50%

assessment thresholds. The Department is working with the Engineering Division right now to see if they can look at any adjustments that may be necessary, and we believe...the adjustments (inaudible) necessary, but it's following the intent of the ordinance, the way they make those 50% thresholds, but there are issues with it. So, this is one rare situation where I think the procedure is followed but there are still issues at hand whether or not, even though the procedure has been followed to what we feel is a tee, whether or not at the end of the day the purpose and intent of a shoreline setback ordinance is being implemented and that's why I welcome this appeal, via the contested case hearing process to vet those issues out. And Mr. Jung is saying, if you guys get face of the appeal on every single one, we're going to be in trouble, but Ms. Diamond is one of (inaudible) shoreline advocates for the state, this is probably her first appeal, maybe second, in 10 or 15 years, she's not going inundate this body and want to see this (inaudible). This is a unique situation where I don't quite know if the way that the ordinance is set up can vet our certain issues and I would somewhat implore this body to let the appeal in, so through a formal contested case process whereby, Ms. Diamonds interest, the property owners interest, and the Departments duty to implement are all vetted through a formal, official, legal process. But beyond that, I would just ask that, and strongly encourage that this body not really get into the meat of the processes. At the end of the day this is a petition and you folks are reviewing what I would argue is per standing and we believe she does have standing, so we have no objection from the Department position, and I been with you guys over the past year and there was a decision and then we had no objection to it of not having standing for a recent application on south Kaua'i that the courts ultimately said, and generally now, the interpretation of standing is much more liberal than it was several years ago and Ms. Diamonds pursuit and constant advocacy for shoreline issues, I think there's a clear standing between ourself and our organization whenever she or the organization attempts to intervene or participate as a party to coastal properties, and I guess I'll stand on that.

Mr. Jung: May I respond?

Vice Chair Apisa: Yes, I think that would be good.

Mr. Jung: I think the key issue here is the application has been fully vetted and recognized as following it to a tee. What the Planning Department is now trying to walk back on their approach to this is okay, maybe we need some legislative changes to deal with the issues that are not there or are not fully vetted and understood. That's not for this matter, that's for future matters, you have to have legislation and rule making first before you go back and retroactively put it on pending, and in this case, already approved shoreline setback determination. So, that's all that I'd like to share, is that in the future, yeah great, go make (inaudible) to the legislative process that's what it's there for, but that for projects that have been tentatively approved through this process, subject to this pending appeal you can't retroactively throw it on there.

Ms. Barzilai: Madam Chair, we want to give everybody an opportunity to speak, but this is unusual debate when there is a motion pending on the floor. If I understand the motion correctly, it's to accept the sufficiency of the petition and refer the matter as a contested case to a hearings officer. Is that still the motion?

Ms. Streufert: That is correct.

Ms. Barzilai: You don't wish to amend?

Ms. Streufert: No, I do not.

Ms. Barzilai: It's been seconded. Are we ready at this time for a roll call vote?

Vice Chair Apisa: One other question was, because it's a nonconforming or they are nonconforming structures, I guess if there were a tsunami or if there was more than 50% destruction then they would have to go away, they would not be rebuilt, is that correct?

Mr. Hull: I'd have to say at this point, with all due respect, Madam Chair, it's a substantive question that should be taken up in the contested case hearing.

Vice Chair Apisa: Oh okay.

Ms. Streufert: So, this is for the appellant, Caren Diamond, but also for Mālama Kua'āina, so let's not make this a personal issue.

Vice Chair Apisa: No, no, no, no.

Ms. Streufert: It's about the person.

Vice Chair Apisa: It's definitely no. That was a question I had earlier, and I just didn't bring it up.

Mr. Ako: Madam Chair if I can say one more thing before we vote.

Vice Chair Apisa: Yes, please.

Mr. Ako: You know as I sit and listen to everybody here, I know there's a lot of respect that comes from whatever anybody says when they come here, but I think just for myself here, I think that if I believe that the process has been followed then I think I kind of believe what Attorney Jung is saying that the decision is there and for future things we can go ahead and do it and I understand how we need clarification in this, but again, if we follow the procedure I don't think we should be doing it at the expense of somebody who has followed the procedure already here, so I think that's it's going to be something that's going to fall on the back of Try Slow, so I just wanted to say that, I think they become harmed by this if we go ahead and allow the appeal. Thank you.

Mr. Donahoe: Can I respond briefly?

Vice Chair Apisa: Yes, please.

Mr. Donahoe: Again, thank you, Commissioner Ako, but again I think that gets into the substantive issue and not the standing, whether is her and her group harmed by this? And the Departments position is, she has standing because of the liberal flint of the courts that have been going on, so there is no objection to her coming in to bring those issues up through the contested case hearing. Commissioner Cox, you said it yourself, I believe you said it, or was it Commissioner Nogami Streufert, that this is a complex issue.

Ms. Streufert: It is, yes.

Ms. Cox: That was me.

Mr. Donahoe: Standings not a complex issue, the under(inaudible) that can be flushed out during a contested case hearing, that's what could be brought up, that's going to be addressed and all the parties can bring up their concerns at that time too through that process, so (inaudible) position is that would be the most reasonable avenue at this point, allow standing, allow the appeal to go forward and send it our for a contested case hearing.

Ms. Barzilai: So, Chair, there's a few things that can happen right now, so one of the commissioners can call the question, which would force a vote, the motion can be withdrawn, and we can enter into executive session, the motion can be amended, or we can just move straight to the...

Ms. Streufert: I call for the question.

Vice Chair Apisa: Yeah.

Ms. Barzilai: That would force the vote.

Vice Chair Apisa: Alright.

Ms. Streufert: I don't think that much more discussion is going to change anybody, so it's...

Vice Chair Apisa: I would agree, and I think it's time to call for the vote. Voice vote please.

Ms. Barzilai: I think we'll do roll call.

Vice Chair Apisa: I mean, I'm sorry, I meant roll call.

Ms. Barzilai: No problem. Commissioner Ako?

Mr. Ako: Do we have to go alphabetical order?

Ms. Barzilai: Yes.

Mr. Ako: No.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Yes.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: No.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Yes.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Yes.

Ms. Barzilai: Chair Apisa?

Vice Chair Apisa: It's a really, really tough vote, but I think based on that last court decision, that the commission more or less was shot down that there was standing, I will vote yes.

Ms. Barzilai: The motion carries. 4:2. The matter will be referred as a contested case to a hearings officer.

Mr. Ako: Thank you for coming.

Mr. Jung: Thank you, Commissioners.

Mr. Donahoe: Thank you.

Ms. Diamond: Thank you, Commissioners.

Mr. Hull: Returning as your Clerk. Moving on to the next agenda item, this is New Business L.

**NEW BUSINESS (For Action)**

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-12) to allow construction of a new single family residential structure on a parcel situated along the makai side of Kuhio Highway in Kapa'a Town, situated directly across the formerly Kojima Store, approximately 200 feet south of the Kapa'a Neighborhood Center and further identified as 4-1542 Kuhio Highway, Tax Map Key: (4) 4-5-012:048, containing a total area of approximately 2,520 square feet = **BENSON C. & ARCELIE A. PERALTA.**

Mr. Hull: I'll turn this over to Romio for the Director's Report pertaining to this matter.

Ms. Barzilai: Ka'aina, excuse me just one moment. Will we be handling the issue of the permit from Makahu'ena?

Mr. Hull: Oh, my goodness!

Ms. Barzilai: We can take it out of order. I don't think they'll be any opposition. If the Chair wants to suspend the rules.

Mr. Hull: I'm so sorry. I should've called...

Ms. Barzilai: No problem.

Mr. Hull: It's been a strange day.

Ms. Barzilai: It's okay.

Mr. Hull: Let me call the correct agenda item up. I apologize to Peralta's, there's one more agenda item. Agenda Item, L.1.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-9) to allow construction of a 5 feet high entry gate, water feature, and associated improvements within the private road right-of-way serving the Makahuena Estates Subdivision in Po'ipu, situated along the makai side of Pe'e Road and approximately 60 feet south of its intersection with Pe'e Road, further identified as Tax Map Key: (4) 2-8-021:078, containing a total area of approximately 0.946 acres = **Makahuena-Preferred A LLC et al.** [Director's Report Received and hearing deferred on 4/11/2023].

Mr. Hull: There was of course a settlement agreement, I don't know much they're going to go into that being that you folks just went over it, but I'll turn it over to the Department first, and the applicant is here of course for after.

Mr. Donahoe: Good morning again, Commissioners. Deputy County Attorney, Chris Donahoe. As it's set forth in the stipulation as I went through the terms and conditions, the Departments decision based on the Director's Report as well as the conditions set forth in the stipulation, we will be recommending approval under those specific conditions.

Mr. Mauna Kea Trask: Thank you. I just appreciate the opportunity to work with the Department.

Vice Chair Apisa: Thank you. Commissioners?

Ms. Barzilai: If there's any substantive...discussion on the substance of the permit itself. Any questions?

Ms. Streufert: I think we did that.

Vice Chair Apisa: Are we ready to move straight into a motion?

Ms. Streufert: I move to approve the Departments stipulation...

Mr. Hull: One second, Commissioner. Being that this is technically a separate agenda item, we maybe want to call for public testimony. We have nobody signed up, but it is technically separate. We have no one signed up. Is there anyone that would like to testify on this agenda item? If so, please approach the microphone. Seeing none, I'll turn it back over to you, Chair.

Vice Chair Apisa: Alright. Thank you. Back to, are we ready to entertain a motion?

Ms. Streufert: I move to approve the stipulation regarding SMA Use Permit (SMA(U)-2023-9 in construction of a 5-foot-high entry gate and to vacate the contested case hearing.

Ms. Barzilai: Actually Commissioner. Excuse me, Chair. It would be to approve the permit itself, so it would be, if you wish to approve it would be, a motion to approve SMA U and then the permit number. At this time, you're considering the permit itself.

Ms. Streufert: I see.

Mr. Donahoe: And Commissioner, if I may just clarify, on that motion, it would be the Departments position, a motion to approve it subject to the conditions contained in the stipulation that was approved earlier.

Ms. Barzilai: Thank you.

Ms. Streufert: Great. Okay. So moved.

Mr. Donahoe: Oh, sorry. I would've worded it better, sorry.

Vice Chair Apisa: Do we have a second?

Ms. Cox: Second.

Vice Chair Apisa: Any discussion? Roll call vote, please.

Mr. Hull: Roll call vote. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair Apisa?

Vice Chair Apisa: Aye.

Mr. Hull: Motion passes, Madam Chair. 6:0.

Vice Chair Apisa: That was a fun one. Thank you.

Ms. Cox: Yes, it was.

Mr. Hull: Sorry about that again. Moving now into item L.2.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-12) to allow construction of a new single family residential structure on a parcel situated along the makai side of Kuhio Highway in Kapa'a Town, situated directly across the formerly Kojima Store, approximately 200 feet south of the Kapa'a Neighborhood Center and further identified as 4-1542 Kuhio Highway, Tax Map Key: (4) 4-5-012:048, containing a total area of approximately 2,520 square feet = **BENSON C. & ARCELIE A. PERALTA.**

Mr. Hull: I'll now turn it over to Romio for the summary of the Director's Report pertaining to this matter.

Staff Planner Romio Idica: Thank you. Good morning, Madam Chair and Commissioners. First, I'd like to make a correction on the floor in regards to the public hearing notices that went out for publication. The project was described as a multi-family dwelling unit, actually the development being proposed is a three-story single-family dwelling, so with that said:

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

Mr. Idica: That concludes my summary. Any questions for myself or the applicant?

Mr. Ornellas: Yes, I do have a question regarding the zero-line setbacks on that 10-foot right of way.

Mr. Idica: Oh, okay. This particular parcel is zoned commercial general, so it does comply to the commercial development standards within the CZO as zero.

Mr. Ornellas: Thank you.

Ms. Otsuka: The flag lot resident mentioned about the zero-property line. Is it set that it will be built that close?

Mr. Idica: That is correct.

Ms. Streufert: Does this comply with the emergency vehicle access?

Mr. Idica: As of now we do not have any comments from the Fire Department, however when the building permit will be submitted and routed to the fire agency, and they will probably provide comments then.

Mr. Hull: They will comment approve or deny based on whether or not the access meets their requirements.

Mr. Idica: That's correct, thank you.

Ms. Streufert: You don't have any comments.

Mr. Hull: We don't have any comments from them at this point.

Ms. Streufert: One last question. This is in a residential area, there's houses on both sides.

Mr. Idica: It's SPAC, Special Planning Area C, with an underlying zoning (inaudible) general commercial. Residents are allowed in general commercial county zoning designations.

Ms. Streufert: Right, but I mean, there are residences around.

Mr. Idica: That is correct. To the west there is a multi-family dwelling, and then to the east is a restaurant.

Ms. Streufert: Okay, and no one has any problems with the zero setbacks.

Mr. Idica: I haven't received any public comments opposing the setbacks.

Mr. Ornellas: I couldn't determine from the reading of the fuel tank of the former Morita Service Station had been removed or is it still in place?

Mr. Idica: It has been removed.

Mr. Ornellas: Thank you.

Ms. Streufert: This is not in a VDA, correct?

Mr. Idica: That is correct, it's not in the Visitor Destination Area.

Ms. Streufert: So, with the two, with the four parking spaces that you have underneath, is it potentially possible that two families could live there? Because it's two parking spaces per residence.



Mr. Idica: That is correct. It is a single-family dwelling; however, they are providing two more extra parking.

Ms. Streufert: And they are going to be using this for long-term rental.

Mr. Idica: That is correct.

Ms. Streufert: That is their intent.

Mr. Ako: Chair, real quick. What's the difference between a three-story building and a three-story plus attic, and a four?

Mr. Idica: Okay, here we go. So, this particular property is affected by coastal hazard zone VE, within that designation, an attic is not considered a floor. I know, I know.

Ms. Streufert: But it has to be less than 40-feet, correct?

Mr. Idica: That is correct, the overall height.

Ms. Streufert: Overall has to be 40 feet so it doesn't really matter.

Mr. Idica: Yes.

Mr. Ako: In my mind the attic is the place where I put all my stuff that I don't use. That you have to climb into, but this one is an office?

Mr. Idica: That is correct, yes. Personal space, yes.

Ms. Otsuka: I understand that it does meet the required height limit, however I'm concerned the location how it fronts the highway, that I hope upon completion it blends well and is compatible with its surrounding environment, and I cannot see people driving on the highway and it's just a massive dwelling standing out. So, I hope it's compatible because it's an impressive size, but I understand the lot is small, so they have to go up, but it's an impressive size. Thank you.

Ms. Streufert: Would the Department have any problems with having an additional condition in there saying that this is not to be used for short-term rentals because it is not in a VDA? Understanding everybody knows it's not in the VDA, but because there are eight bathrooms and five bedrooms, (inaudible) one can easily see how that could happen and so if that were a condition even if it is stated.

Vice Chair Apisa: I have confidence in our Planning Department, they're pretty watchful on tracking down illegal vacation rentals.

Mr. Hull: Yeah, to the point, Commissioner Streufert, regardless of having a condition or not, the Department would enforce if we found them advertising for vacation rental short-term on this property. Having said that, I think the phrase I heard today, earlier this morning was, suspender in belts, we don't mind doubling up on, if there was a proposal to have additional conditions, we wouldn't have any objections.

Ms. Streufert: I'm trying to figure this out. And it's not because I would anticipate these people would do anything about it, it's that the permits go with the land and the building and not with the owners and consequently if it were stated in then that would be, that would make me feel much...

Mr. Hull: And then from that we would just adjust the Director's Report to have, amend the Director's Report to have final conditions stating, the subject property shall not be used for Transient Vacation Rental purposes. If that works, Commissioner Streufert.

Ms. Streufert: If it works. Yes, it works.

Ms. Otsuka: I agree. I would...because as you said, the Planning Department would catch any illegal, but say the people did not advertise it, and just through word of mouth, oh, you can stay at my...you know, if they don't do it legally, I would feel more comfortable if it was a condition.

Vice Chair Apisa: Possibly phrasing that in a positive, instead of, it may not be a vacation rental, maybe that any rental must be 180 days or more, which I think is what the definition is, drawing the line between a vacation and a long-term rental. Just throwing that out as a thought.

Ms. Otsuka: Thank you.

Mr. Ako: What will happen if the zoning is changed and you now allow transient rental there, and you have a condition in there saying that you cannot...?

Mr. Hull: In the event, and that would be a legislative process, Commissioner Ako. That would be a legislative process that the County Council would have to do and not be vetoed by the mayor's office. So, it would have to be legislative to pull the Visitor Destination Area (inaudible) up to incorporate that property. If that was done in the future this property with that condition would not be able to rent as a vacation rental. I don't foresee any council making that (inaudible) in the foreseeable future, but if it did happen this would be prohibited under that condition.

Ms. Cox: So, I have a question that I think is not specific to this, but it brings it up, so you can tell me I should just not even ask it. But do we have any limits on how many bedrooms and bathrooms or anything within a rental? I found myself just sort of questioning the size of this thing, but I realize it meets all the criteria, I just wonder if there was anything we don't have...

Mr. Hull: No, we don't have any limitations and in fact, part of, in response to the housing crisis that's occurring recently, among series of amendments that happened with the (inaudible) of zoning ordinance, one was freeing up the definition of family to really incorporate both related and non-related individuals. One, from a standpoint we just can't go out and DNA test people in homes, but with that freeing up of who can reside in a single-family dwelling, which is really just anybody, and not having a limitation on sizes or bedroom counts, this does meet the parameters. I can say certain areas like south Kaua'i and west Kaua'i having gone through farm-based code do have limitations on the body and sizes of those structures to prevent what is the concern of monster home developments that have happened. Kapa'a does not have that type of overlay.

Ms. Cox: Okay. Thank you.

Vice Chair Apisa: Just a comment that I would add is, the zero lot line, building right up to the lot line, understanding that it is a very small lot, I don't see that's it a lot of difference, but also being in the real estate field I know sometimes walls are not exactly straight and you get a one inch encroachment or something, it just seems a little risky to build right up to the property line and I guess keeping in mind consideration for the neighbor that spoke earlier, concerned about emergency vehicles which I heard we don't have the response back yet. It's just a comment to let you know what's going on inside of my head.

Mr. Ornellas: Along those lines, when you talk, are we (inaudible) eaves?

Mr. Idica: Because the structure is at a zero-lot line no eaves can penetrate that, so basically it is going to be a firewall, so no eaves can protrude over the property lines.

Vice Chair Apisa: To build on that, a firewall means that there's no window along that side.

Mr. Idica: That is correct.

Vice Chair Apisa: That if there's a fire in the building it cannot go into the neighbor's property. But then no eaves makes me think of a roof line and water runoff or whatever. Most roofs have a slope, and there potentially could be water runoff, which is coming from the heavens, so I guess there's nothing you can do about that, but it could affect a neighbor.

Ms. Streufert: Will that wall be a firewall, and are there any windows on that?

Mr. Idica: (Inaudible) we can maybe defer to the architect, but I believe that yes, it'll be a rated firewall.

Vice Chair Apisa: Are we ready to maybe hear from the applicant? I think we've given Romio enough questions. Thank you. Is the applicant present? Or representative?

Ms. Nalani Mahelona: Aloha Kakahiaka, my name is Nalani Mahelona, architect for Benson Peralta. Here to answer any questions you may have.

Vice Chair Apisa: Maybe if you could elaborate, we were just talking about the firewall. My understanding is that a firewall is a solid, certain density wall with no windows, is that correct or...

Ms. Mahelona: Partially correct, a firewall is a one-hour fire rated wall, which may have windows that are also rated for the one-hour rating. So, the construction could either be a CMU or a wood framing with a plywood that's rated.

Ms. Streufert: So, are there windows on that wall then?

Ms. Mahelona: There are windows for daylighting, and they are rated at actually a 45-minute rating which complies to the one-hour composition fire rated wall under the building code, and the fire code, so the structure complies with all.

Vice Chair Apisa: I think that means; I see a questioned look.

Ms. Streufert: I think 45 minutes is not quite an hour.

Ms. Mahelona: The same goes for a garage door, you have a 45-minute rating on a one-hour firewall construction.

Vice Chair Apisa: Any other questions from the commissioners for the applicant?

Ms. Cox: Maybe going back to your other concern about the eaves, so if there's a firewall and it's right on the property line and then you can't go over...what is the roofs structure, I probably should've been able to tell from the...

Ms. Mahelona: So, the firewall usually goes, I think three feet pass the sloped roof and that's where we can collect water and drain it out onto the property, and the same for the back flat roof portion, the wall goes, I think three feet pass the floor line, so what you will is a three story, similar to Otsuka's and some other projects in that area.

Vice Chair Apisa: So, there would be gutters along there, so gutter would not protrude into the neighbor's property.

Ms. Mahelona: No, the water will collect and come to the owner's property at the rear portion, and we have gravel back there so the water should start to penetrate the site before discharging into the drainage system at the road. But the idea is to keep most of the water on the properties site and to go back into the water table.

Vice Chair Apisa: Just going back to the neighbor's concern about the 10-foot driveway and accessibility by emergency vehicles and we don't have that info yet, do you have a Plan B in mind if there is a concern about emergency vehicles? I don't know what the requirement is for emergency vehicles, is 10 feet sufficient?

Ms. Mahelona: You know, my understanding would be if they go in for a permit that would be called out on their portion of the property because when we put in for a permit for a property the agency only reviews that property, if it was a CPR the scene would be set differently. So, we're complying to the codes in the area on the zero setback for the commercial general zoning. I can't really answer that question.

Vice Chair Apisa: That's a good point, they are entirely separately properties. Thank you for pointing that out.

Ms. Streufert: I don't think I read anywhere, is this going to be attached to a sewer line or is this a cesspool, there was a cesspool underneath it, and is it now filled in and is there a sewer line or is there going to be a septic system or what's the...

Ms. Mahelona: Yeah, pending the approval by the Department, the owner will apply for sewer and water. So, there will be no septic design, there's not enough room.

Ms. Streufert: Right, that's what I was looking at. So, there is a sewer line that's available?

Ms. Mahelona: Yeah.

Ms. Streufert: Okay.

Ms. Mahelona: On Kuhio Highway.

Ms. Streufert: Okay. That was my concern.

Vice Chair Apisa: Commissioners have any other questions?

Ms. Barzilai: You need a recommendation from the Department, Chair.

Vice Chair Apisa: Hearing none, we're ready for our recommendation from the Department. Thank you to the applicant.

Mr. Idica: Based on the foregoing evaluation and conclusion, it is hereby recommended that the construction of a 3-story single-family residence under Special Management Area Use Permit SMA(U)-2023-12 be approved with the following conditions as amended.

Mr. Hull: So, (inaudible) amended, I'll double check if there are no objections to the vacation rental amendment that I read, that we would make as part of our friendly update to recommendation, but if there

are objections then the Department can stand down and I think they would have to go through a motion and discussion and a vote on it, which the Department has no problems with it either.

Mr. Ako: I'm not real comfortable with that, with that condition but saying that I don't think I'm in the position right now to stop this.

Mr. Hull: Oh no, no. I think Commissioner Ako, with that all we needed is one objection, I think with that the Department wouldn't amend its recommended conditions of approval and I think it would just be incumbent upon a commissioner or Commissioner Streufert, if she wanted to read this as a proposal and take a motion and then a formal vote on it.

Mr. Ako: So, I can make a motion on it.

Vice Chair Apisa: I would agree with you, I think it's like overkill to included what when it's already not in a TVR zone and unlikely that it...

Ms. Streufert: Then I would suggest that it be, that a statement in there that, as this property is not within the VDA currently all rules should apply to a non-VDA residence.

Ms. Barzilai: So, Commissioner Streufert I think what Clerk Hull is saying is that because we have an objection from a commissioner, you have to propose a (inaudible) of motion to amend.

Ms. Streufert: Right, and I'm asking if could something like that be done where it is not, it's a statement of fact, it is not in the VDA and it cannot be used based upon the current. If it becomes a VDA then it can be allowed, but as it currently stands it is not in the VDA and it cannot be used for that, and the clerk is writing something up for me.

Mr. Ako: Sorry to prolong the meeting.

Ms. Streufert: No. I think also Condition No.7, which it says that you have to comply with all of the departments, like Public Works, Fire, Transportation, and Water should hopefully be sufficient for the concern about emergency vehicles.

Mr. Idica: Yes, when I do have any comments from the Fire Department, I will forward it to the applicant.

Mr. Ornellas: I will probably be voting for the motion, however I'm uncomfortable with the building itself (inaudible) a solid wall on the windward side doesn't lend itself to ventilation, the building will be energy inefficient and (inaudible) it's going to be viewed as a monster house by the public and I'm going to hear the residence (inaudible). Anyway, with that said...

Ms. Streufert: It meets all the standards.

Mr. Hull: Okay, I can read a draft, possible last condition. A possible draft condition for Commissioner Streufert would read, the subject property is not located in the Visitor Destination Area, as such the subject property shall not be used for Transient Vacation Rental purposes. In the event that the property is subsequently placed within the Visitor Destination Area, Transient Vacation Rental use of the subject property is permissible pursuant to all relevant zoning codes.

Ms. Streufert: So move.

Vice Chair Apisa: You like that last sentence.

Ms. Streufert: Pursuant to?

Mr. Hull: All relevant zoning codes.

Ms. Streufert: I don't understand your objection to it.

Vice Chair Apisa: The whole thing seems redundant to me, but...

Ms. Streufert: It probably is I won't deny that. It's just that we have had many contested cases here people have read things into thinks that into agreements that have been passed by previous commissions that have caused us some issues, so I'm trying to make this clear for the next commissioners who may be coming on board.

Vice Chair Apisa: So, basically what I heard is that it is not in the VDA and so vacation rentals are not eligible, but if the VDA line should be changed to include this property then they would be allowed.

Ms. Otsuka: Correct.

Ms. Streufert: Pursuant to the objection that we had from Commissioner Ako.

Ms. Cox: Yes.

Ms. Otsuka: Correct.

Mr. Ako: I will second that.

Vice Chair Apisa: Is the applicant in agreement with that?

Ms. Mahelona: Yeah, that sounds good. Thank you.

Vice Chair Apisa: Okay.

Mr. Hull: I don't want to muddy these waters, but I just want to set for the record, that their condition is for vacation rentals but for the record hotels and motels are permissible in the commercial district in this part of Kapa'a.

Mr. Ornellas: And there is one right next door.

Mr. Hull: Yes.

Ms. Streufert: Understood.

Ms. Barzilai: So, there's no opposition to the amendment?

Vice Chair Apisa: I'm not hearing any opposition, so that would be Condition No. 12, I believe.

Mr. Hull: Correct for the Director's Report.

Ms. Cox: I'm sorry, but you just muddied the waters for me, so does that mean that after this is built, they could come in and say, we want to run this as a motel or hotel? Because it's ok (inaudible).

Mr. Hull: They would have to get the appropriate zoning permits and if this area requires a use permit for a hotel/motel, so if they wanted to convert this into a hotel/motel they would have to come back to the Planning Commission.

Ms. Cox: Okay.

Ms. Streufert: Because right now it's a single-family dwelling.

Ms. Cox: Right, just wanted to make sure they couldn't just switch over.

Mr. Hull: Yeah.

Ms. Otsuka: I just thought of a question, Romio, if this was brought to us as a multi-family dwelling, would certain specifications be different?

Mr. Idica: The only change I can see is the parking requirements because again, it'll still be reviewed under the commercial general development standards.

Ms. Otsuka: Thank you.

Vice Chair Apisa: Are we ready for a motion? I'm ready for a motion. Is anyone ready?

Ms. Otsuka: The motion was...

Ms. Barzilai: There's no motion.

Mr. Hull: There were no objections to the draft conditions, so the Department (inaudible) to our recommendation.

Ms. Streufert: Alright. I move then to approve Special Management...

Mr. Hull: I really apologize, but we did not take public testimony. So, if you don't mind, I'll...we took during agency hearing. I don't have a sign-up list for this agenda item, but if there is any member of the public that would like to speak on this agenda item, please approach the microphone. Seeing none, I think it's okay to proceed now. Sorry.

Ms. Streufert: Thank you. I move to approve Special Management Use Permit SMA(U)-2023-12 as amended.

Ms. Otsuka: Second.

Vice Chair Apisa: Wasn't very enthusiastic, but we have a second. Is there any discussion on the matter? Roll call vote, please.

Mr. Hull: Roll call. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye, without enthusiasm.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair Apisa?

Vice Chair Apisa: Aye.

Mr. Hull: Motion passes. 6:0.

Ms. Mahelona: Mahalo.

Mr. Hull: Next, we have.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-13), CLASS IV ZONING PERMIT (Z-IV-2023-11) and USE PERMIT (U-2023-8) to allow construction of a viewing platform and associated site improvements within the Pa'ula'ula State Historical Park in Waimea, along the makai side of Kaumuali'i Highway, approximately 800 feet east of Waimea Town, further identified as Tax Map Key: (4) 1-7-005:003 and containing a total area of 17.26 acres = **STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES (DLNR).** (Director's Report Received July 25, 2023).

Mr. Hull: Before I turn it over to Dale, we don't have anybody signed up, but is there any member of the public who would like to testify on this agenda item, we did close the agency hearing, but this is a separate agenda item, so if anybody would like to testify, please approach the microphone. Seeing none, I'll turn this over to Dale for a summary of the Director's Report pertaining to this matter.

Staff Planner Dale Cua: Good morning, Madam Chair, and members of the Commissions.

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

Mr. Cua: At this time, I'd like to conclude the Director's Report.

Vice Chair Apisa: Thank you, Dale. Is there an applicant present?

Ms. Martha Yent: Aloha, Commissioners, Martha Yent with the Department of Land and Natural Resources Division of State Parks. The project started with state funds to renovate the comfort station, it was built in 1980, or 1976, and repaved the parking lot, but we took the opportunity to apply for federal funds, which allowed us to expand the scope into these interpretive elements. One of our key goals in this project for the interpretation is to bring forth the Hawaiian history of the site, unfortunately when we did the interpretation back in 1987, it was very heavy on the Russian history, so we subsequently searched,



we now know how important Kaumuali'i was to the history and the fact that the Russian American company was actually a very minor player in the history of this site. The other things that we wanted to address were the installation of the King Kaumuali'i statue and I want to acknowledge the Friends of Kaumuali'i for carrying that project through, so we want to expand the walkways to have that incorporated into the visitation pattern, and then the boardwalk and viewing platform is really to address the impacts that we've been seeing on the site over the years. We have visitors climbing over the walls, we have a lot of foot traffic starting to erode the surface of the fort interiors, so this was meant to be a way to just manage and just protect the site without really making a major change. We tried to design the features to be low impact. We did consult with the National Historic Landmark Program because the site was declared a landmark back in 1962, and I thought their response was very telling, they said it's sits lightly on the land, and it can be removed, it doesn't involve a lot of excavation, we tried to minimize that, so archaeologically we've tried to be sensitive to the site as well. And then I just wanted to mention we formed a working group back in 2018 after the 200-year commemoration of the building of the fort, and this working group has been instrumental in the planning for the site, it involves Waimea community, some Russian/American organizations, we tried to broaden the perspective, and I think we've got support for the project, I haven't heard any major objections, we are still waiting for feedback from the State Historic Preservation Division. You may be aware how long things take, but we have prepared a preservation plan and archaeological inventory survey and an archaeological monitoring plan, so, we've tried to cover all of their requirements for the permit from that perspective. I think I'll turn it over to the consultants, they were going to provide you with more details.

Vice Chair Apisa: Thank you.

Unknown Male: Good morning.

Vice Chair Apisa: State your name for the record please.

Mr. Marc Ventura: My name is Marc Ventura. Just want to say, good morning, Ka'aina Hull, Commissioner Apisa, and honorable members of the Commission. My name is Marc Ventura, I'm a fourth generation Kaua'i resident and architect, for about 30 years been working on Kaua'i and I'm working with DLNR here, and Bow Engineering on the project design, so I think you guys have gotten the package, and become somewhat familiar with the project. I'd like to just kind of briefly go over and show you the map and kind of go over the major elements of the project. Hopefully this works for everybody, I'll just kind of cut it this way. This is an overall site plan of the project, so okay Jessie's coming up. Okay, so here's the project site here. There are two major components to the project, I'll say, as was discussed by both Dale and Martha touched on it a little bit, but we've got r and m, repair and maintenance, and then we've got the, the new element is the boardwalk and the viewing platform, so the repair and maintenance item's happening here, there's a restroom, in pretty badly need of repair. We're going to be doing a re-roof on that, and some improvements, repaving the parking, which is damaged. There's some flood issues over there. There's a main kiosk sign that we're going to repair that goes into some history of the space, we're doing some electrical improvements at the entry, there's an electrical meter that is currently non-compliant, so we're going to relocate that and bring that into compliance, and we're re-doing and installing a new park sign. Also, we are re-doing the coral pathways which over the years, you can't even tell they're there anymore, but the red here sort of delineates where those pathways are. We're replacing the water fountain, and landscaping and irrigation work, and the bulk of r and m work. This is the landscape plan currently, the dark green area show what are in our budgetary base bid, so we're kind of doing the back areas, this is the recently installed, I think it was late 2020, where the Kaumuali'i statue was put in, and so we're going to be landscaping and providing irrigation of the dark green area, the budget permitting, we'll extend into the lighter green areas. These sort of fingers along here, they are running along the newly aligned, the coral pathways. You can kind of see in this image where the old walkways were, so we're basically following those, and improving that. Really the intent of

all of is to try to help guide the visitor and to sort of enhance their experience while at the same time protecting the existing fort grounds. The other major element is the new component, which is the boardwalk and viewing platform, so what we have here, it's very similar to, some you have probably been out to Hā'ena, to the boardwalks out there, low profile, low maintenance, and as I put, pretty nice, low impact, this boardwalk is roughly 72-feet long from the entry, this is entry wall walking, and it sort of brings one into the fort and to a viewing platform, with rails along the sides, so what it does is it sort of elevates the visitor above, but it also, the intent is we sort of keep them out of the fragile rock areas and the fragile landscape areas of the fort, but yet they still get the viewing experience. Martha touched a little bit on the low impacts of the foundation design, again, similar to Hā'ena, our finished floors are about 12 inches above the ground and we sort of tried to maximize our spacing of foundation footings, which go in from about six to eight inches in the ground, it's like a large tofu blocks, so it's not a major footing, it's almost like a floating structure. The finally this slide shows some imagery of what this might look like, it's a little bit hard to read but here's the main Kaumuali'i Highway and the pathways that bring you in and that's the entry to the fort at the walls. This image shows where the wall opens up, that's all existing and the boardwalk will come in through and there's another view of what that looks like with this platform at the end. One other thing I'll say is the length of that was sort of determined by our accessibility, or ADA accessibility guideline, so we had to maintain a minimum amount of slope to do that. And that covers most of it, so any questions.

Ms. Streufert: Is the viewing platform within the fort area?

Mr. Ventura: It is within, yes. So, if the fort area being this kind of dark area around here, this walkway comes in, not too far but it comes in about 70, about 80 feet, 72 feet of length on the walkway and it's a 6 foot (inaudible), it's a small platform at the end of that. But yeah, it'll take you into the walls of the fort.

Ms. Streufert: Okay.

Vice Chair Apisa: Any other questions from the commissioners?

Mr. Ornellas: Yeah, I got a question. So, the fort was built, supposedly on the site of a heiau that existed prior to the fort, is that correct?

Mr. Ventura: I believe (inaudible) speak to that. Yes, it is.

Mr. Ornellas: So, are there any remnants of that heiau at all or do we have a footprint of where it originally was?

Vice Chair Apisa: Yes, could someone in the audience come forward?

Mr. Ventura: I believe that the report went in and mapped out some of the burials, some of the history.

Mr. Hull: Sorry, sorry, if you can state your name and also speak into the microphone.

Vice Chair Apisa: Yes, speak into the microphone, please.

Ms. Maureen Fodale: Maureen Fodale, Friends of King Kaumuali'i.

Vice Chair Apisa: Speak into the microphone, please.

Ms. Fodale: Maureen Fodale, Friends of King Kaumuali'i, so we put the statue up. Yeah, if you were inside the fort, you all have inside the fort, there is an area that has an old ships (inaudible) in a pile of

rocks that's always, per Martha, always been very protected because we know that Kaumuali'i's grandson is buried there, and that if you saw pictures, Dr. Mills, who just did (inaudible) saw pictures of the first drawing by Ellis, who was with Cook, and if you blow it up, so, this from a ship looking at the fort and the town of Waimea on the left, you can see it through an expanded view, the area where that mound is and it still exists and we haven't done anything except to kind of tidy it up, not removing rocks or anything. So, it's more, not dead center but it's more central than where the viewing platform will be.

Mr. Ornellas: Thank you.

Ms. Fodale: And I think that Peter said that there, Dr. Mills said that there may have been some other burial, nothing has been changed except just the grass was cut inside.

Vice Chair Apisa: Thank you for your good work of getting that statue up, I'm a proud contributor.

Ms. Fodale: Thank you.

Vice Chair Apisa: Further questions from the commissioners?

Ms. Fodale: Can I say one more thing?

Vice Chair Apisa: Sure.

Ms. Fodale: The other thing that we're working on, kind of jointly with DLNR and Friends, Chris (inaudible) there's a committee is besides the interpretive signs, I have grants to do web based story boards, multi-media web based story boards, just to begin them so that there will be QR codes out the story boards because that way there isn't a (inaudible) on site, and besides the QR codes you could access it on our site anyways so for people who may not be inclined or even nearby we have lots of Friends of King Kaumuali'i are from the mainland and other islands that are older and would be interested but aren't going to travel here to see it so it will expand the amount that we're able to fit on the 2 by 3 interpretive sides with additional information.

Vice Chair Apisa: Thank you. Ready for the recommendation, Planner Cua.

Ms. Streufert: Could I ask just one more thing?

Vice Chair Apisa: Sure.

Ms. Streufert: The platform and the walkway will accommodate wheelchairs, so does that mean that it is totally ADA compliant?

Mr. Ventura: Yes, it is. That is correct.

Vice Chair Apisa: I think we're ready for the recommendation.

Mr. Cua: The Department is recommending approval of the project, and the Department stands by the 10 conditions that's represented in the report you have. If you have any questions, I'm available to answer them.

Vice Chair Apisa: Thank you. If there are no further questions, I'll entertain a motion.

Mr. Ornellas: Move to approve Special Management Area Use Permit SMA(U)-2023-13, Class IV Zoning Permit Z-IV-2023-11 and Use Permit U-2023-8.

Ms. Otsuka: Second.

Vice Chair Apisa: We have a motion on the floor, roll call vote please.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair Apisa?

Vice Chair Apisa: Aye. Motion carried. 6:0.

Ms. Streufert: Could I just say one thing? I really appreciate the fact that you were having such a light footprint on this area, that speaks a lot to the, to your honoring the history of that whole area, and of the heiau that's shown to ensure that everything is there, so thank you very much for doing that, and thank you for all of the work that all of you have been doing.

Vice Chair Apisa: Thank you.

Mr. Ventura: Thank you, appreciate it.

Mr. Hull: Next we have.

CLASS IV ZONING PERMIT (Z-IV-2023-12) and USE PERMIT (U-2023-9) to construct a new gymnasium on the Waimea High School campus in Waimea Town, and VARIANCE PERMIT (V-2023-3) to deviate from the height requirement within the Residential zoning district, situated approximately 550 feet mauka of the Ola Road/Kaumuali'i Highway intersection, further identified as 9707 Tsuchiya Road, Tax Map Keys: 1-6-010:004 and 1-6-009:023, and containing a total area of 11.11 acres=  
**STATE OF HAWAII, DEPARTMENT OF EDUCATION. [Director's Report Received July 25, 2023].**

Mr. Hull: I don't have anybody signed up for this agenda item but is there any member of the public not part of the applicant group, but any member of the public that would like to testify on this agenda item. Seeing none, I'll turn it over to Kenny for the Director's Report, summary of the Director's Report.

Staff Planner Kenny Estes: Good morning, Madam Chair, and members of the Planning Commission.

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

Mr. Estes: I'll hold off on the Departments recommendation.

Vice Chair Apisa: Thank you. Is the applicant...

Mr. Hull: The applicants here.

Mr. Taeyong Kim: Good morning, Commissioners. My name is Taeyong Kim, I'm the Environmental Planner for the subject project. We have reviewed the Director's Report and have concurred with the findings, recommendations, and conclusions of the report. I would like to say that I also am accompanied by our project architects, Kendall Ellingwood, and actually our project team is here, but most importantly our Athletic Director is also here, so I would like to clarify one point, and that is that although it is not part of the application the disposition of the existing gymnasium has not yet been resolved, it's a matter between the county and the state since the state operates the gymnasium but it resides on county land, so during our public informational meeting on June 28<sup>th</sup>, well the mayor and several council members were present at that presentation and they expressed the commitment to resolve disposition of that building. And this is for the Director, I would also like to express our appreciation, to Kenny, and to Dale for their assistance in guiding us through this application process.

Vice Chair Apisa: Thank you. Commissioners, open to questions for the applicant.

Ms. Otsuka: Being a Waimea Elementary School alumni, I was quite excited about this plan, however just reading some, I didn't expect anyone to be against this, but in this mornings...there's a reverend from Waimea United Church of Christ commenting about some issues, and I was concerned mainly about the parking. He feels as with certain events the parking is going to overflow into the church parking which then his congregation will not be able to find parking, so is this an issue that was in your consideration...

Mr. Kim: Yes. Through the environmental assessment process and through the plans that were presented to the public during the informational meeting, there is an additional 75 parking stalls added to the master plan, and we should also keep in mind that this is simply a replacement facility, so no increase in attendance is expected. The current existing gymnasium can accommodate approximately 800 people, I understand from the AD that actually the fire code maximum capacity for the existing gym is 830 or so, the new gymnasium is for 840, essentially we expect no net increase in automobiles or visitors, well possibly more people would want to come see the new gym, but outside of that, outside of it's primary purpose, we don't expect any increase in traffic.

Ms. Otsuka: Thank you.

Vice Chair Apisa: If I read this, what we got this morning, if I read that correctly, right now there is overflow parking at the church, is that correct or am I misreading that? Oh, I see the Athletic Director, maybe he has some input.

Mr. Kim: There's a lot of neighborhood issues (inaudible).

Mr. John Kobayashi: John Kobayashi, Athletic Director Waimea High School, Madam Chair and Committee. I guess the biggest event at Waimea High School is graduation. Right now, the church area

their front lawn we no longer use that area, it's fenced off. In the past when I first started 20+ years ago, a lot of the congregation members that came to watch their keiki, and came to watch their nieces and nephews, and their grandchildren would park there, the reverend put a stop to that at one of our games, and we do not use that area anymore, so basically was that south of Tsuchiya Road is the Community Center, we do utilize that area, but during school as well as events, but that's not part of the church property, it's part of the county property, so even during graduation unless he allows it, no one parks in his spot.

Vice Chair Apisa: Thank you. The other point that they raised was noise from events that's been disruptive, and county ordinance exists states that sporting events are not to interrupt worship at the historic stone church in Waimea. I don't know, is there any history?

Mr. Kobayashi: well, we do not have any KIF sanctioned events on Sundays. I know we do have games scheduled during the week, no more than two events. We do however allow our community and youth organizations to use it on the only free day that we have, we've had Kaua'i Pop Warner Association, the Wrestling Association, basketball leagues, volleyball leagues, that may use it for special tournaments that happen maybe once a year. We try to let them know that they need to stay below Tsuchiya Road, but a lot of these events are for the west side and for the island of Kaua'i, and like I said, a lot of them involve congregation members.

Vice Chair Apisa: Thank you. Commissioners, any other questions?

Ms. Streufert: Yeah, go back to the parking thing. You said there's 840, your anticipation is 840 seats.

Mr. Kim: Design capacity.

Ms. Streufert: At capacity, 840.

Mr. Kobayashi: Currently that's the capacity of the gym. At usual games, we're lucky to get 200 to 250 spectators per game, and it depends on how the season goes. If it's a championship games, well, it's going to be...I apologize for that, but it's going to be at capacity.

Ms. Streufert: Don't apologize.

Mr. Kobayashi: But most games, volleyball, basketball, max capacity on any given night may not, probably not exceed 300.

Ms. Streufert: Because if it's 840 maximum capacity and we have a requirement for 8 seats per each parking stall, there should be 105 parking spaces and right now there's 97, as I read this, so that's 8 that we are missing. Do we need a variance for that?

Mr. Hull: Kenny can answer that.

Mr. Estes: Commissioner, there's also existing parking located along Tsuchiya Road, as well as the new parking that's being proposed, so I believe that's...about how much...

Mr. Kim: 75 new ones.

Mr. Estes: 75 new ones, but along Tsuchiya Road?

Ms. Streufert: As long as you've taken this into account. I just to make sure that we're following, since we're into procedure at this (inaudible) we're following the procedures. The second question I have is about, as you know we have a lot of issues with sewage disposal on the island, and right now you've got a cesspool that's underneath, I think it's being built over a cesspool site, is that correct? But you've got a lot of percolation tests, but you also say that you're going to be, there are no sewer lines, but it will be serviced by a gravity feed sewer line to the existing sewer line. That's part of the plan, is that correct?

Mr. Kim: I believe that's what's stated in the report.

Ms. Streufert: Correct.

Mr. Kim: i.e., the attachment.

Ms. Streufert: So, you will be attached to a sewer system and not relate to...

Mr. Kim: To a sewer system, yes.

Ms. Streufert: Okay. As you well know, cesspools close to the shores like that can lead to a lot of contamination. Those are my only questions. Actually, I have...what is a gravity feed sewer line?

Mr. Kim: Just means that it's flowing down.

Ms. Streufert: I thought it was some other kind of thing that I wasn't aware of.

Mr. Hull: It flows downhill. The proverbial.

Mr. Ako: Madam Chair, if we don't have any other questions, you think I can add my commentary to this?

Vice Chair Apisa: Please.

Ms. Cox: I have a question.

Mr. Ako: Oh, please, go ahead.

Ms. Cox: Sorry, do you want...

Mr. Ako: No, go ahead.

Ms. Cox: Okay, my question was just about PV panels, I noticed they are not part of the original plan but isn't it a lot easier to do that as part of the original construction rather than adding them later?

Mr. Kim: I am going to defer this question to our DOE staff or our project (inaudible). Yes, you are correct, it is not part of the scope (inaudible) this.

Ms. Cox: Right, I saw that.

Mr. Kendall Ellingwood: Hi, my name is Kendall Ellingwood, I'm an architect with Design Partners, the project architect with this project. So, it is not in our current scope to have PV panels on the roof, but it is designed to be, it could be added at a later time if needed. There's infrastructure there as well as the structure is designed to do so and one of the reasons we have a standing seam metal roof is that it could easily attach onto it, with that noted, I know that the DOE has their own ideas of ideas of PV panels and

what to do with them, and our understanding is that their preference is no longer to put it on top of buildings but create parking structures with PV panels and other items that meet their energy needs and I believe they've had some maintenance issues with having PV panels on the roof and so forth, so it was not part of this project program to have PV panels on the roof.

Ms. Cox: But you have the infrastructure so that if...

Mr. Ellingwood: Yes.

Ms. Cox: Okay. Thank you very much.

Mr. Ako: If I can, Madam Chair, I want to add, as I was growing up athletics was such a big deal in my life. I grew up in a gym that was, who knows how old, and as small as I was, I knew it was a very old gym as a little kid and I know how much effort was put into getting the funding for this because Kaua'i has three gyms over here and three of them are about the same age and it's really old, but I am just so excited to have a new gym for Waimea High School. I know Kenny you wish you was born probably several decades after, so that you'd be able to use this, but I also wanted to compliment the works of your Athletic Director, John Kobayashi out there, I think he's kind of god-like figure out on the west side, as well as state wide, and the impact that he has put upon these future athletes that are coming forward and as well as those that has passed his way, as well as those that he has mentored from, and I think this is such a great thing to bring competitiveness to the island, to bring just the pride that Kenny you bring, and John that you bring, you give tot kids, their families, their community, and I think that is just such an invaluable thing that you have and I just wanted to say, thank you for all that you guys do for the island, for the state and for all of us. Thank you.

Vice Chair Apisa: I feel like I should clap at that.

Mr. Ellingwood: If I may add, we're from O'ahu and we've designed several other gymnasiums and when I saw, like you noted, how old your current structures are, I was really sad, that you know, the kids of Kaua'i deserve what they have on the other islands, and I think we're just privileged to be able to design this facility and I think it's really well deserved.

Vice Chair Apisa: So, I think we've exhausted the questions. Is anyone ready to make a motion? Or wait, I guess we have to hear the recommendation.

Mr. Estes: I'll read the recommendation. Based on the foregoing evaluation and conclusion, it is hereby recommended that Class IV Zoning Permit Z-IV-2023-12, Use Permit U-2023-9 and Variance Permit V-2023-4 be approved subject to the following requirements as noted in the Director's Report.

Vice Chair Apisa: Thank you.

Mr. Hull: I can say, Kenny obviously (inaudible) things for (inaudible) Kenny's also a proud Waimea graduate, all-star in array of different sports, but this is a report, the first time I've ever had to ask Kenny to try again, and he had to take a second stab because the first report just said, go Big Blue, Kenny Estes. (Inaudible).

Ms. Streufert: I move to approve Class IV Zoning Permit Z-IV-2023-12, Use Permit U-2023-9 and Variance Permit V-2023-4, subject to the requirements and the recommendations in the Director's Report.

Ms. Otsuka: Second.



Vice Chair Apisa: We have a motion on the floor. Can we have a roll call vote, please.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye. And I think it's great also, I know this is required but I think it's great that there's going to be another emergency shelter on the west side.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair Apisa?

Vice Chair Apisa: Aye.

Mr. Hull: Motion passes, Madam Chair. 6:0.

Vice Chair Apisa: I'll just add that even though my grandkids go to Kapa'a, Oceanfront Sotheby's is a proud sponsor of the Waimea Athletic. I know we see our logo on the back of your T-shirts.

Ms. Streufert: Go west side.

Mr. Hull: With that we have no additional agenda items. No potential topics for future meetings. I think Coco Palms is on the horizon for their status report.

Vice Chair Apisa: That's October, right?

Mr. Hull: That'll probably be transmitted next month or two. We have a couple applications coming back to you concerning (inaudible) the County Attorney's response to an inquiry that was made on a couple applications that went before the commission earlier. We don't anticipate those being done on the August 22<sup>nd</sup> meeting we have that published as an announcement, but it is not set in stone that was just an anticipation, at this point we don't anticipate an August 22<sup>nd</sup> meeting, but that formal notice will happen seven days prior to the next meeting, which right now we're anticipating be September 12<sup>th</sup>. And with that we have no further announcements.

Ms. Otsuka: Just one, I thank you for putting this gymnasium at the very end because it somehow closes this meeting on a high note, so thank you for arranging it in this order. Motion to adjourn.

Vice Chair Apisa: Do we have a second?

Ms. Cox: Second.

Vice Chair Apisa: I was just going to make a comment quickly before we adjourn. I notice that we will be back here at the Office of Boards & Commissions on August...

Mr. Hull: That we just put as an anticipation, like I said, tentatively we may have a meeting August 22<sup>nd</sup>, but with the agenda items and things that come, it looks like we probably will not be having that meeting, but that will be affirmed the next week or two.

Vice Chair Apisa: It looks like our old meeting...

Mr. Hull: When we do come on September 12<sup>th</sup>, we do anticipate that being held in the Planning Commission room where it's originally held, but we'll make that formal notice on our website once we're able to determine that.

Vice Chair Apisa: That was the point I was trying to get to. Thank you. We have a motion on the floor. All in favor of voice vote? Yeah, did we have a second?

Ms. Cox: Yeah, I seconded it.

Vice Chair Apisa: All in favor? All in favor? Aye (unanimous voice vote). Motion passes. 6:0. Meeting is adjourned.

Vice Chair Apisa adjourned the meeting at 12:09 p.m.

Respectfully submitted by:

Lisa Oyama

Lisa Oyama,  
Commission Support Clerk

( ) Approved as circulated (date of meeting approved).

( ) Approved as amended. See minutes of \_\_\_\_\_ meeting.

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Attorney for Applicants  
NATHANIEL CARDEN and BETH WOODS

BEFORE THE PLANNING COMMISSION

OF THE

COUNTY OF KAUA`I

In the Matter of the Application	)	SMA PERMIT NO. _____
	)	USE PERMIT NO. _____
	)	
Of	)	APPLICATION FOR SPECIAL
	)	MANAGEMENT AREA USE PERMIT
	)	AND USE PERMIT;
NATHANIEL CARDEN and	)	EXHIBITS "A" – " "
BETH WOODS,	)	
affecting real property	)	
at Kilauea, Island and County of Kaua`i,	)	
State of Hawai`i, more particularly	)	
Identified as Tax Map Key No.	)	
(4) 5-2-004:093, Unit 1, containing an	)	
area of 140,089 square feet,	)	
more or less	)	
_____	)	

APPLICATION FOR SPECIAL MANAGEMENT AREA USE PERMIT  
AND USE PERMIT

**F.2.a./L.1.**

**NOV 14 2023**

I. APPLICANTS AND OVERVIEW

A.. Applicants: The Applicants are NATHANIEL CARDEN and BETH WOODS, who have authorized Laurel Loo of McCorriston Miller Mukai MacKinnon, LLC, to file this Application.

B. Property: The Property is located at 3839F Pali Moana Place, Kilauea, Kauai, Hawaii, and is more particularly identified as Tax Map Key (4) 5-2-4:093, CPR Unit 1. A legal description of the Property is described in the Deed to the Property, attached hereto as Exhibit "A".

C. Overview of Application: The Applicants already contains a farm dwelling and a pool. Applicants previously received a permit for a 495-square-foot guest house, subject of SMA (M) 2023-10, but with changes in zoning laws now instead seeks a permit for an 800-foot guest house with kitchen.

II. LAND USE DESIGNATIONS AND DESCRIPTIONS

A. SLUC: The State Land Use is designated Agricultural.

B. County zoning: County zoning is Agriculture and Open, and also contains a portion of Special Treatment zoning.

C. The General Plan Designation: The General Plan designation is Agricultural.

D. Special Management Area: The Property is in the Special Management Area.

E. Flood: The Property is designated flood zone X, which zone corresponds to areas outside the one percent annual chance floodplain and areas protected from the

one percent annual chance flood by levees. No base flood elevations or depths are shown within this zone. Flood insurance is not required in this zone.

### III. COMPREHENSIVE ZONING ORDINANCE

A. Agricultural. The purpose of this district, pursuant to Sec. 8-8.1 of the Comprehensive Zoning Ordinance is it:

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 .. (a) To protect the agriculture potential of lands within the County of Kaua'i to insure a resource base adequate to meet the needs and activities of the present and future. (b) To assure a reasonable relationship between the availability of agriculture lands for various agriculture uses and the feasibility of those uses. (c) To limit and control the dispersal of residential and urban use within agriculture lands.

B. Open. The coastal edge of the Property is designated as Open zoning.

Pursuant to Section 8-9.1 of the CZO:

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 resources;
- (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.

#### C. Open-STR

A portion of the unit is designated Open/Special Treatment. Pursuant to Section 8-11.2 of the CZO, this zoning includes:

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.

#### IV. NATIVE HAWAIIAN AND CULTURAL USES, COMMUNITY INPUT

The Kapa`akai analysis is attached hereto as Exhibit "B".

Applicant has also written to the State of Hawai'i Historic Preservation Division and the Burial Council, advising them of an application for a guest house, and has received no comments or concerns.

Applicant's designer in 2022 presented a guest house proposal to the Kilauea Neighborhood Association "KNA"). There were no comments. Applicant's designer in March 2023 has also transmitted final plans for this application to the KNA with no negative comments received thus far.

#### V. COASTAL ZONE MANAGEMENT ACT AND SPECIAL MANAGEMENT AREA RULES AND REGULATIONS

The Special Management Area Rules and Regulations of the County of Kauaʻi  
state:

No development shall be approved unless the Director or the Planning Commission  
has found that:

1) 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, safety, and welfare, 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;

2) The development is consistent with the objectives and policies, as enumerated in HRS Chapter 205A and as referred to in Section 3.0 above, and the Special Management Area guidelines set forth in these Rules and Regulations; and

3) The development is consistent with the county general plan and zoning ordinances. Such a finding of consistency does not preclude concurrent processing where a general plan or zoning amendment may also be required.

Chapter 205A of the Hawaiʻi Revised Statutes lists as its objectives: recreational resources, historic resources, scenic and open space resources, coastal ecosystems, economic uses, coastal hazards, managing development, public participation, beach protection, marine resources, recreational resources, historic resources, scenic and open space resources, coastal ecosystems, economic uses, coastal hazards, managing development, public participation, beach protection and marine resources.

This application is for a single guest house, which will complete the development of the unit. There is already a farm dwelling and pool on the unit. The interior of the guest

house is 798 square feet; with an outdoor lanai, the total footprint of the guest house is 1,122 square feet. Thus the total lot coverage for the unit, including the main dwelling, of 7,988 square feet, is 9,110 square feet. Together with the neighboring unit's improvements, total lot coverage for the entire TMK will be 3% upon full buildout.

The site plans for the proposed guest house are attached as Exhibits "C-1 and "C-2". The floor plan is attached as Exhibit "D." The elevations are submitted as Exhibit "E."

Because of the foregoing, the development will not have any substantial or adverse environmental or ecological impact. As such, the development is consistent with the objectives and policies of HRS Chapter 205A and the SMA guidelines adopted by the County.

#### VI. OTHER LAND FEATURES

A. Threatened and Endangered Species. According to the University of Hawaii Rare Species database, there are no known or reported threatened and endangered species within or adjacent to the Property.

B. Soils. The majority of the property is LhE2 (Lihue silty clay 25-40% slopes, eroded.) Approximately 10% of the unit is LdD (Lihue silty clay, 15-25% slopes). A small portion in the northwestern corner appears to be in the LhB (Lihue silty clay 0-8% slopes.) Most of the property has a rating of "E", or 0-30% productivity. Approximately 10% of the northwestern corner, including the agriculture zone, has a productivity rating of 70-84%, or a "B" rating.

C. Tsunami: The Property is not in the Tsunami Evacuation Zone.



VII. IMPACT OF THIS DEVELOPMENT

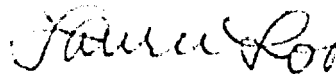
As stated in Sections IV. and V. above, there are no known historic or ecologic impacts that would be created by this development.

VIII. CONCLUSION

Applicant respectfully requests the granting of a SMA Use permit to allow the proposed guest house with kitchen and lanai.

DATED: Lihu'e, Kaua'i, Hawai'i, September 06, 2023

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Laurel Loo".

Laurel Loo

Attorney for Applicant NATHANIEL CARDEN  
And BETH WOODS



## APARTMENT DEED

KNOW ALL PEOPLE BY THESE PRESENTS:

SCHLESSINGER & SCHLESSINGER COMPANY, a Nebraska general partnership, whose mailing address is 632 N. 159<sup>th</sup> Street, Omaha, Nebraska 68118, hereinafter called the "Grantor", in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to the Grantor paid by NATHANIEL CARDEN, single, and BETH WOODS, single, both of whose mailing address is 13 S. Thurlow Street, Hinsdale, Illinois 60521, hereinafter called the "Grantee", the receipt of which is hereby acknowledged, does hereby grant and convey unto the Grantee, as joint tenants with full rights of survivorship, their heirs and assigns, the property described in Exhibit "A" attached hereto and incorporated herein by reference.

AND the reversions, remainders, rents, issues, and profits thereof, and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with the improvements thereon and all rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith, unto the Grantee, according to the tenancy herein set forth, forever.

The Grantor hereby covenants with the Grantee that the Grantor is lawfully seised in fee simple of the premises described herein and has good right to sell and convey the same; that the same are free and clear of all encumbrances except as set forth herein and except for the lien of real property taxes not yet required by law to be paid; and that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

This conveyance and the respective covenants of the Grantor and the Grantee shall be binding on and inure to the benefit of the Grantor and the Grantee, respectively. The terms "Grantor" and "Grantee" as and when used herein, or any pronouns used in place thereof, shall mean and include the singular or plural number, individuals, partnerships, trustees and corporations, and each of their respective heirs, personal representatives, successors and assigns. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed herein.

The Grantee hereby agrees and covenants with the Grantor that the Grantee will observe, perform, comply with and abide by the Declaration of Condominium Property Regime and the Bylaws described in Exhibit "A" hereto.

This Apartment Deed may be executed in counterparts. Each counterpart shall be executed by one or more of the parties hereinbefore named and the several counterparts shall constitute one instrument to the same effect as though the signatures of all the parties are upon the same document.

IN WITNESS WHEREOF, the Grantor and the Grantee have caused these presents to be  
duly executed on this 12th day of February, 2019.

*(SIGNATURES CONTINUED ON NEXT PAGE)*

GRANTOR:

SCHLESSINGER & SCHLESSINGER COMPANY,  
a Nebraska general partnership

By Joel Schlessinger  
JOEL SCHLESSINGER, Trustee of the Joel  
Schlessinger Living Trust dated March 5, 1997  
Its general partner

STATE OF Nebraska )  
COUNTY OF Douglas ) SS:

On this 12th day of February, 2019, before me appeared  
JOEL SCHLESSINGER, Trustee of the Joel Schlessinger Living Trust dated March 5, 1997, to  
me personally known, who, being by me duly sworn or affirmed, did say that such person(s)  
executed the foregoing APARTMENT DEED dated February 12, 2019, which  
document consists of 10 page(s), as the free act and deed of such person(s), and if  
applicable, in the capacities shown, having been duly authorized to execute such instrument in  
such capacities.



Teresa M. Meyer  
Name of Notary:  
Notary Public, in and for said County and State.

My commission expires: 8-15-2022

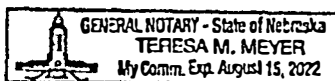
GRANTOR:

SCHLESSINGER & SCHLESSINGER COMPANY,  
a Nebraska general partnership

By Nancy B. Schlessinger  
NANCY B. SCHLESSINGER, Trustee of the  
Nancy B. Schlessinger Living Trust dated  
March 11, 1997  
Its general partner

STATE OF Nebraska )  
COUNTY OF Douglas ) SS:

On this 12th day of February, 2019, before me appeared  
NANCY B. SCHLESSINGER, Trustee of the Nancy B. Schlessinger Living Trust dated  
March 11, 1997, to me personally known, who, being by me duly sworn or affirmed, did say that  
such person(s) executed the foregoing APARTMENT DEED dated February 12,  
2019, which document consists of 10 page(s), as the free act and deed of such person(s),  
and if applicable, in the capacities shown, having been duly authorized to execute such  
instrument in such capacities.



Teresa M. Meyer  
Name of Notary:  
Notary Public, in and for said County and State.

My commission expires: 8-15-2022

GRANTEE:

NATHANIEL CARDEN  
NATHANIEL CARDEN

BETH WOODS  
BETH WOODS

STATE OF ILLINOIS )  
COUNTY OF COOK ) SS:

On this 14<sup>TH</sup> day of FEBRUARY, 20 19, before me appeared NATHANIEL CARDEN, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing APARTMENT DEED dated UNDATED, 20    , which document consists of 10 page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Catherine M. Brodbeck

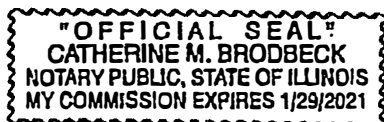
Name of Notary:

Notary Public, in and for said County and State.

My commission expires: 1/29/2021

STATE OF ILLINOIS )  
COUNTY OF COOK ) SS:

On this 14<sup>TH</sup> day of FEBRUARY, 20 19, before me appeared BETH WOODS, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing APARTMENT DEED dated UNDATED, 20\_\_\_\_, which document consists of 10 page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Catherine M. Brodbeck  
Name of Notary:  
Notary Public, in and for said County and State.  
My commission expires: 1/29/2021



**EXHIBIT "A"**

-FIRST:-

Unit No. 1 of the Condominium Project known as "LA PALOMA CONDOMINIUM" as established by Declaration of Condominium Property Regime dated April 13, 2001, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-064463, and as shown on Condominium Map No. 3254 and any amendments thereto.

Together with appurtenant easements as follows:

Exclusive easements to use other limited common elements appurtenant thereto designated for its exclusive use by the Declaration, and the Condominium Map.

-SECOND:-

An undivided one-half (1/2) fractional interest appurtenant to the Apartment and in all common elements of said Project as described in the Declaration.

The land upon which said Condominium Project "LA PALOMA CONDOMINIUM" is located being more particularly described as follows:

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 2896 to C. Titcomb) situate, lying and being at Kilauea Bay, Kilauea, Island and County of Kauai, being LOT 20A, being a portion of the consolidation of Lots 8, 9 and 20, Seacliff Plantation at Kilauea Bay, containing an area of 6.851 acres, more or less.

Together with a nonexclusive easement appurtenant to said Lot to use Roadway Lots 27, 28 and 29 of the Seacliff Plantation at Kilauea Bay Community for ingress and egress purposes, Reserving However, unto Roberson/Larson Partners, and/or The Pali Moana Company, their successors and assigns, the right from time to time to convey said Roadway Lots 27, 28 and/or 29 to a community organization or such other entity for the care and maintenance of the same, or to convey said Roadway Lots 27, 28 and 29 to the County of Kauai as a public road in which latter event, the said easements shall be automatically extinguished.

Together with a nonexclusive easement for ingress and egress for beach access and parking of vehicles over and across Easement "Q-1", known as Kahili Quarry Road, containing an area of 1.818 acres, more or less, as granted by Easement Deed for Access and Parking dated March 1, 1988, recorded in Liber 21703 at Page 797.

Together with the right, as provided in the Declaration, to use Easement "ET-1" (being a 20 foot wide equestrian trail), Easement "PT-1" (being a 20 foot wide pedestrian trail), and Easement "PA-1" (being a picnic area), which easements are over and across the Remainder of

Lot 9 of the Seacliff Plantation subdivision map prepared by Portugal and Associates, Inc., dated July 15, 1988, for the Consolidation of A Portion of the Remainder of Lot 9 with Lot 11 into Lot 11-A and Remainder of Lot 9.

Together with access and utility easement over, under, through and across Easement "B-1" across Lot 9-A, in favor of Lot 20-A, containing an area of 0.222 acres, more or less, as granted by Substitution and Termination of Easement dated September 5, 1991, recorded as Document No. 91-132904.

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 2896 to C. Titcomb) situate, lying and being at Kilauea, Island and County of Kauai, State of Hawaii, being EASEMENT "B-1", containing an area of 0.222 acres, more or less.

Together also with: a nonexclusive easement for pedestrian and vehicular purposes as a roadway over and across (a) a 30 foot wide road known as "KAIHILI QUARRY ROAD", containing area of 4.589 acres, more or less, (b) a parcel containing an area of 1.665 acres, more or less, (c) a parcel containing an area of 0.538 acre, more or less, and (d) a parcel containing an area of 0.506 acres, more or less, as granted by instrument dated December 17, 2002, recorded as Document No. 2003-003808, and subject to the terms and provisions contained therein.

Said parcel(s) of land being more particularly described in Declaration of Condominium Property Regime dated April 13, 2001, recorded in said Bureau of Conveyances as Document No. 2001-064463.

Being the same premises conveyed to SCHLESSINGER & SCHLESSINGER COMPANY, a Nebraska General Partnership, by APARTMENT DEED dated March 4, 2002, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-040211.

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature.
2. The terms and provisions contained in the DECLARATION OF COVENANT, CONDITIONS AND RESTRICTIONS OF THE SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY dated August 31, 1983, recorded in Liber 17405 at Page 411.

Said Declaration was amended by instrument dated --- (acknowledged March 1, 1988, March 2, 1988, March 3, 1988 and March 7, 1988), recorded in Liber 21704 at Page 1, dated September 9, 1988, recorded in Liber 22367 at Page 21, dated December 28, 1988, recorded in Liber 22766 at Page 559, and dated June 3, 2002, etc., recorded as Document No. 2002-105319.

3. The terms and provisions contained in the DECLARATION RE ELECTRICAL USE dated July 25, 1988, recorded in Liber 22226 at Page 340.

4. Each lot shall be subject to sheet flow surface waters to such lots from the roadways fronting the respective lot, as set forth in AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY dated September 9, 1988, recorded in Liber 22367 at Page 21.

5. GRANT OF VIEWPLANE EASEMENT dated December 13, 1990, recorded as Document No. 90-195551, in favor of Lot 9, over and across Lot 20, referred to as Easement "A", being more particularly described therein.

6. Concrete swale along portion of boundary fronting Pali Moana Place, as shown on consolidation map prepared by Cesar C. Portugal, Registered Professional Land Surveyor, with Portugal & Associates, Inc., dated July 16, 1991, revised July 24, 1991.

7. Encroachments or any other matters which a survey prepared after July 16, 1991, revised July 24, 1991 would disclose.

8. The terms and provisions contained in the following:

DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR "LA PALOMA CONDOMINIUM" CONDOMINIUM date April 13, 2001, recorded as Document No. 2001-064463.

Condominium Map No. 3254 and any amendments thereto.

-Note:- Any recorded amendments to the Declaration of Horizontal or Condominium Property Regime amending the assignment of parking stalls to and from apartments other than the specific apartment described herein, are not shown.

9. The terms and provisions contained in the BY-LAWS OF THE ASSOCIATION OF UNIT OWNERS dated April 13, 2001, recorded as Document No. 2001-064464.

10. WAIVER AND RELEASE dated January 8, 2001, recorded as Document No. 2001-006874, by ROBERT J. CAMPBELL and CLARITA S. CAMPBELL with the BUILDING DIVISION OF THE DEPARTMENT OF PUBLIC WORKS OF THE COUNTY OF KAUAI, regarding indemnify and holds harmless the County of Kauai from any claim, action, suit, or demand of any kind which could or will arise out of the absence of county-supplied water.

11. The terms and provisions contained in the APARTMENT DEED dated March 4, 2002, recorded as Document No. 2002-040211.

12. Any unrecorded leases and matters arising from or affecting the same.



***Ka Pa'akai* Assessment Related to  
Native Hawaiian Traditional and Customary Practices**

**TMK No: (4) 5-2-004:093 (Lot 20A, Unit 2), owned by Bryan Buckley**

**Prepared by Dawn N.S. Chang, Esq.  
December 2022**

**I. Introduction**

**A. Subject Property and Proposed Project**

**BUCKLEY** – Bryan Buckley (landowner) owns the real property identified as TMK: (4) 5-2-004:093 (Lot 20A, Unit 2) located within the Kilauea Ahupua'a Hanalei District, Island and County of Kaua'i, State of Hawai'i (subject property). The subject property is located at 3839-F Pali Moana Place, Kilauea, Hawai'i 96754, containing approximately 3.635 acres within the Seacliff Plantation Kilauea subdivision. The subject property is County zoned Agricultural Open Space and Special Treatment District. The Landowner is submitting a (permit) to the Kaua'i County Planning Department (KCPD) for the construction of a single-family dwelling, pool, garage/pool equipment storage, and concrete driveway with a total lot coverage of 158,340 sq.ft. (proposed project). The subject property is adjacent to the property owned by Nathaniel Carden and Beth Woods.

The subject property is located within the Seacliff Plantation<sup>1</sup>, a gated community bordered by Kilauea Point National Wildlife Refuge on the north, Kilauea Agricultural Park across Pali Moana Place to the west, and the mouth of Kilauea Stream not far east (the stream is approximately 665 m east from the subject property). The project area falls within the Kilauea Ahupua'a, which is part of Hanalei District.

**B. Kaua'i County's Constitutional Obligation**

The State and its agencies are obligated to preserve and protect the reasonable exercise of customarily and traditionally exercised rights of Native Hawaiians to the extent feasible. This

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<sup>1</sup>"At the base of extinct volcano Nihoku, the gated community of Plantation is one of the most desirable complexes of its kind in the area. Located partway between the town of Kilauea and the Kilauea Lighthouse, this master-planned community offers its residents an exceptional quality of living." The Seacliff Plantation consists of 25 estates, many of which have been further divided via the Hawai'i CPR process providing about twice the number of homesites. It is composed of 48 building sites, which range in size from 3 to 10 acres. Prior to the 1970s, the land where Seacliff Plantation is currently located was once part of the Kilauea Sugar Plantation. *Seacliff Plantation Realtor's website*.

affirmative obligation is set forth in the Hawai‘i State Constitution (Article XII, section 7)<sup>2</sup>, State Laws (Hawai‘i Revised Statutes Sections 1-1 and 7-1), and judicial precedent. The Court has held that state agencies may not act without independently considering the effect of their actions on Hawaiian traditions and practices. Public Access Shoreline v. Hawai‘i County Planning Commission (PASH), 903 P.2d 1246, 79 Haw. 425 (1995).

To assist the state and its agencies in fulfilling its constitutional obligation as set forth in Article XII, section 7, the court has provided an analytical framework “to accommodate the competing interests of protecting native Hawaiian culture and rights, on the one hand, and economic development and security, on the other.” Ka Pa‘akai O Ka ‘Āina v. LUC (Ka Pa‘akai), 94 Haw. at 46, 7 P.3d at 1083 (2000). The analytical framework provides the following, (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. at 47, 7 P.3d at 2084.

### **C. Scope and Purpose of the *Ka Pa‘akai* Assessment**

The Landowner has requested that an expert consultant (Consultant) be engaged to conduct an assessment related to Native Hawaiian traditional and customary practices, if any, on the subject property. The assessment shall consist of archival research of existing historic preservation documentation, pedestrian field inspection by the archaeological consultant, and outreach to individuals and families who may have a lineal and cultural connection (hereinafter referred to as Cultural Descendants) to the subject property or vicinity of the subject property, Native Hawaiian cultural practitioners, or members of the community who may have knowledge of Native Hawaiian traditional and customary practices, on the subject property or in the vicinity, including areas *outside*<sup>3</sup> the subject property. The Consultant shall prepare a written assessment of the Ka Pa‘akai analytical framework for the subject property which shall supplement the Landowner’s Application to the Director of the Planning Department or to assist the Planning Commission with its Ka Pa‘akai analysis.

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<sup>2</sup> Article XII, section 7 of the State Constitution provides that the State reaffirms its obligation 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.

<sup>3</sup> The court in Ka Pa‘akai found that LUC erred in not considering resources *outside* the proposed project site. “Moreover, none of the LUC’s findings or conclusions addressed possible native Hawaiian rights or cultural resources *outside* of KD’s 235-acre RMP, such as Ka Pa‘akai’s members’ use of the mauka-makai trails to reach salt-gathering areas, the religious significance of the 1800-1801 lava flow, or the gathering of Pele’s Tears.” Ka Pa‘akai 7 P.3d at 1086, 94 Haw. at 49.

#### **D. Cultural Consultation**

On August 25, 2022, the Consultant extended an invitation to several Cultural Descendants and knowledgeable community members to visit the subject property, talk story, and be briefed by the architect, Santo Giorgio, on the proposed project. Gary Smith and Dr. Mehana Blaich Vaughan accepted the invitation and joined us at the subject property and shared their mana'o. Gary describes himself as an "old timer" who has first-hand experience of many of the traditions of Kilauea. He was born on and worked on the plantation, and after graduating from college he returned to Kilauea. Gary's father was the plantation manager. Many in the community describe "Uncle Gary" as the unofficial historian of Kilauea. Mehana lives in Kilauea and her husband and children have ancestral ties to the area. She is an Associate Professor at the University of Hawai'i at Mānoa in the Department of Natural Resources and Environmental Management in the College of Tropical Agriculture and Human Resources, a Sea Grant College Program and Hui 'Āina Momona appointee, and a graduate from Harvard University, the University of Hawai'i at Mānoa, and Stanford University.

#### **E. Consultant's Qualification**

My mother is Edna Kealohapauole Ho'okano Shiroma, her father was Kamiko Ho'okano, his father was Willy Ho'okano, and his mother was Louisa Cooke Ho'okano, and his father was 'Iokewe Ho'okano. Our 'ohana come from the ahupua'a of Kahalu'u on Oahu and still own several kuleana parcels that were used for lo'i kalo and residence. My Tutu and other members of our 'ohana are buried on our kuleana lands in both marked (headstone) and unmarked (near a ti or pōhaku) burials. Our 'ohana are lawai'a (fishers) who practiced traditional fishing using ko'a and continue to fish in an area traditionally known as Ka-waha-o-ka-manō (Kaneohe Bay).

I have a master's degree in Social Work and was a community organizer for the Queen Lili'uokalani's Children's Center in Waimanalo in the 1970's. I graduated from the William S. Richardson School of Law in 1985. After graduating from law school, I clerked for Judge Walter Heen with the Intermediate Court of Appeals for several years before joining the State Attorney General's (AG) Office. As a Deputy Attorney General, I served as counsel to various Boards and Commissions with the Department of Land and Natural Resources. During my tenure at the AG's Office, I had the privilege of drafting the Hawai'i State Burial Laws (HRS, Chapter 6E-42) and litigating numerous cases involving Native Hawaiians rights and issues, including State v. OHA (2009) involving the alienation of state ceded lands which was decided by the U.S. Supreme Court. Since 2001, I have been the principal and owner of Ho'ākea LLC dba Ku'iwalu, a consulting firm that specializes in facilitating culturally sensitive and contentious issues, including preparation of Ka Pa'akai Assessments. Currently, I also sit on the Hawai'i State Land Use Commission. In addition to my private consulting work, I offer training on Native Hawaiian Land Laws and Rights, including on Traditional and Customary Native Hawaiian Rights (Ka Pa'akai Assessments), to private and government agencies.

## II. Ka Pa‘akai Analysis

### A. The identity and scope of valued cultural, historical, or natural resources on the subject property or within the vicinity of the property, including the extent to which traditional and customary Native Hawaiian rights are exercised on the property.

1. Review of archival research based upon previous archaeological documentation and recent field inspection.<sup>4</sup> The archaeological documentation<sup>5</sup> identified the following valued cultural, historical, or natural resources on or outside the subject property:

- **Place Names**

A number of notable geographic features occur in the vicinity of the project area. Kīlauea stream, which flows from the south of the project area to the west before emptying into the ocean, strongly influences not only the natural landscape but human settlement on and use of it. The stream serves as the boundary between Kīlauea Ahupua‘a and Kāhili Ahupua‘a, and (surviving) terraces for traditional-style agriculture often follow its curve. Kāhili means “feather standard” (carried by attendants to herald royalty). The name Mōkōlea (or Mōkōlea Point) refers to a promontory north of the mouth of Kīlauea stream and means “plover island (mō here being short for moku)” as it is a key seabird nesting location (albeit not strictly an island). Another important nesting area for seabirds can be found north of Kīlauea Point, on a small island named Moku‘ae‘ae, which John Clark (2003) interprets as simply meaning “fine [i.e., small] island.”<sup>6</sup>

- **Wahi Pana**

There are stories or traditions associated with some of the wahi pana (legendary places) in Kīlauea Ahupua‘a. While Menehune are associated with the makai (oceanward) portion of Kīlauea, not only as builders but as fishermen plying the waters offshore Kīlauea from a settlement at Hanalei Bay to the west (Wichman 1985:36), the mauka (mountainward) portion of the ahupua‘a is also home to a great work said to have been accomplished by non-human prowess. The celebrated chief Manokalanipō was said to have commanded a supernatural mo‘o (lizard) to open up the mauka part of Kīlauea, where the land was good for planting, but water

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<sup>4</sup> In 2022, Ku‘iwalu retained the services of Scientific Consultant Surveys (Archaeological Consultant) to prepare an Archaeological Literature Review and Field Inspection (LRFI) for a 6.851 acre parcel in Seacliff Plantation, Kilauea Ahupua‘a, Hanalei District, Island of Kaua‘i, Hawai‘i, TMK: (4) 5-2-004:093. The LRFI includes relevant information on Traditional background, Historic Setting, Previous Archaeology in the project area vicinity, and the results of the field inspection. Relevant excerpts of the LRFI will be referenced in the Ka Pa‘akai Assessment. Attachment A is a copy of the LRFI.

<sup>5</sup> The Consultant acknowledges that the archival research generally relies upon archaeological research and interpretations from sources that may not have a cultural connection to the place or interpretations that are not from primary source documents (i.e., Hawaiian language data and research). However, the information may provide a source of information that may be relevant in identifying valued cultural, historical, and natural resources in the area, including traditional and customary practices. For purposes of this Ka Pa‘akai Assessment, where the community and cultural informants may dispute or provide contrary information to the archival research, the archival information will not be included in the text of this Assessment but will remain as part of the LRFI.

<sup>6</sup> LRFI at page 9.

was lacking, for agriculture. Three long irrigation ditches on slopes of Kīlauea mauka resembled the claw marks of a mo‘o, and the ridge above Kīlauea stream was called Kamo‘okoa, meaning “brave lizard” (Wichman 1998:102).

Wichman (1998:103) also relates a story that purports to explain the “volcanic cone open to the ocean” resulting in the “long beach unprotected by any reef” at the coast of Kīlauea Ahupua‘a, as well as “three huge stones” that once stood atop the cone but “have since been moved, with great difficulty, to make room for sugarcane.” These features were attributed to the actions of the volcano goddess Pele: Pele had come to Kaua‘i and fallen in love with Lohi‘au, a chief of Hā‘ena. She promised to find a home for the two of them, but whenever she struck her staff, she was met by water, for her sister Nā-maka-o-kaha‘i, goddess of the sea, was her enemy. Pele caused an eruption here, but it was soon extinguished when the sea goddess broke down the walls of the crater, drowning the fire with the ocean. [Wichman 1998:103]. Already frustrated by her sister’s sabotage, Pele is enraged when “three beautiful sisters” named “Kalama, Pua, and Lāhela” laughed at the failure of her efforts, and she promptly turns all three into stone, leaving them in place as an object lesson of why she should not be ridiculed.<sup>7</sup>

- **Mo‘olelo**

Kīlauea Ahupua‘a is mentioned as part of the long journey of Hawai‘i island chief Lonoikamakahiki to see for himself “the famous trunkless koa [Acacia koa] tree of Ka-hiki-kolo, a tree from which earlier warriors had fashioned war clubs” (Wichman 2003:67). This journey began with Lonoikamakahiki accompanied by “his favorites, his warriors as companions and also his servants” but this retinue soon abandoned him, and when he “happened to look back to see where the rest of his people were” he found “only a solitary man following him... a stranger with whom he had no acquaintance” (Fornander 1916-17, Vol 4:352). The stranger was Kapa‘ihiahilina, a Kaua‘i native who had heard that the Hawai‘i ali‘i had been deserted by his followers, and brought “a calabash of poi [a Hawaiian dish made from the fermented root of the taro which has been baked and pounded to a paste] with some ‘o‘opu [general name for fishes included in the families Eleotridae, Gobiidae, and Blennidae] fish” as provisions for Lonoikamakahiki (Wichman 2003:68). Lonoikamakahiki was determined to press on to his destination and observing that Kapa‘ihiahilina scrupulously observed the kapu (taboos, prohibitions) that were accorded to royalty, told his faithful companion that they would proceed as equals: Lonoikamakahiki said to him: “do not hold me in sacredness because you are my own brother. I have nothing dearer than yourself, therefore, where I sleep there will you sleep also. Do not hold me aloof, because all that is good has passed and we are now travelling in the region of the gods.” In consequences of this, the king’s wishes were observed, and they sat down together. [Fornander 1916-17, Vol 4:352]. The food that Kapa‘ihiahilina had brought ran out, but he foraged hala (screw pine. Pandanus tectorius) fruit for food, and also braided ferns into garments to replace the malo (male’s loincloth) made of tapa (bark cloth) they wore, which had been damaged by rain. With the aid of this skilled friend, Lonoikamakahiki achieved his wish to see the trunkless koa tree, and returned safely home, where he made his new trusted confidante his prime minister. The meteoric rise of this outsider [Wichman (2003:67) characterizes the Kaua‘i man as a chief himself, but Fornander (1916-17, Vol 4:352) does not give him any rank] led to jealousy from Lonoikamakahiki’s subordinate chiefs, who began plotting against

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<sup>7</sup> Id. at page 9-10.



Kapa'ihiahilina. The plotters eventually convinced Lonoikamakahiki to bar his friend from his presence by spreading rumors that Kapa'ihiahilina had slept with his wife. Kapa'ihiahilina then composed a chant reminding Lonoikamakahiki of their friendship, and how they had faced adversity together in their passage through the wilderness of Kīlauea (and other parts of Kaua'i), a part of which says:

We ate of the ripe pandanus in our wanderings,  
Thus were our days of hunger appeased, my companion,  
My companion of the tall pandanus,  
From Kilauea to Kalihi;  
The pandanus that had been partly eaten,  
Of Pooku in Hanalei.

Hala ia mao a ka ua ilaila, e ke hoa-e,  
Hele aku a ai i ka pua pala o ka hala  
Hala ia la pololi o ka ua ilaila, e ke hoa.  
He hoa i ka nahele la uhala loloa,  
Mai Kilauea a Kalihi la;  
O ka hala i aina kepaia,  
O Pooku i Hanalei-la.  
[Fornander 1916-17, Vol 4:358-359]

This chant reminded Lonoikamakahiki of his affection for his friend and all that Kapa'ihiahilina had done for him, and he gave orders that his friend be restored to the prime minister position and the plotters be executed.

Kīlauea Ahupua'a is also mentioned as the place where an ali'i named Kāhili ruled, but the mo'olelo that speaks of him actually takes place in Kīpū Ahupua'a, near the Hulē'ia River and Mount Hā'upu. Kāhili arrives in Kīpū at the court of the ali'i nui (high chief) Hina, famed for her beauty, just in time to become the subject of a rivalry between the Kaua'i ali'i nui and a rival beauty visiting from O'ahu, Pele'ula. Pele'ula had heard that "Kaua'i women were the most beautiful" while holding court at her home of Waialua, and proud of the splendor of her court and her own charms, had made up her mind to visit Kaua'i to settle the question of where the greatest beauty lay (Wichman 1991:110). Hina welcomed the visiting Pele'ula and invited all her own subordinate ali'i to present themselves, all the better to show off Kaua'i. When Kāhili arrived, both Hina and Pele'ula saw that he was exceptionally handsome and agreed to make him the prize in a contest between them, initially ten rounds of kilu (a throwing game; also: a small gourd or coconut shell, usually cut lengthwise, used to play the game of kilu). A game of kilu ordinarily featured many players who threw at targets placed in front of other participants to pick a partner for a kiss (or more), comparable in this respect to the contemporary game of spin-the-bottle. So enamored were the two female ali'i nui, however, that they instead asked Kāhili to be the sole target in a direct kilu contest between the two of them. The handsome young ali'i was all too happy to be the center of attention, showing his value as stakes by performing a dance and chant in which he declared "Here are the bones of Ko'olau, / The 'ulu, breadfruit tree [Artocarpus altilis] and warrior of Kilauea" (Wichman 1991:114). The two women proved to be equally adroit at kilu, and instead decided to have a beauty contest, letting Kāhili pick which of

them he found to show her charms to best advantage. Both women prepared themselves with their best adornments and present their own dances and chants before the court. Pele'ula showed off well, but Hina's performance evoked not only her own beauty but the natural wonder of Kaua'i. Even her rival had to admit that "the beauties of Kaua'i are beyond compare" (Wichman 1991:119). To commemorate this, a profile of Hina, called Hinaiuka, was carved on the face of Hā'upu.<sup>8</sup>

- **Lifestyle and Subsistence**

Edward and Elizabeth Handy (1972) note that Kīlauea has long been a favorable location for agriculture, and naturally became a population center as well. On the island of Kauai there were five areas where development of food resources produced concentration of population. One of the best deep-sea fishing areas was along the windward or Napali coast. Adjoining this to the southward were localities where irrigated taro was cultivated extensively in terraces, termed lo'i, at Hā'ena, Hanalei, and Kīlauea. [Handy and Handy 1972:269]

Handy and Handy (1972) also note that the tendency for relatively steep terrain in this region, especially upland, inhibited terracing for wet kalo agriculture. Agriculture was likely on kula (lit. plain, pasture, in context: dryland suitable for dry cultivation in contrast to wet cultivation in lo'i) lands with 'uala as the favored staple crop.

Kīlauea is watered by a small river whose headwaters take the flow of streams above Kalihiwai as well as those coming down sloping kula lands above Kīlauea. This is a peculiar terrain, with terraces along the north side of the river toward its seaward end belonging to Kīlauea and those on the south side to the small ahupua'a named Kāhili. A mile upstream is a small, terraced area, but beyond this there were no terraces, for the mainstream flows in a narrow gulch, and so do other side streams which flow into the Kīlauea River. [Handy and Handy 1972:421]<sup>9</sup>

- **Water and Marine Resources**

Wichman's (1985:36) account of the Menehune favoring fishing grounds offshore of Kīlauea indicates that marine resources were ample, despite the lack of a reef in the collapsed cinder cone that shapes the beach. Mōkōlea and Moku'ae'ae are now part of a nature reserve (see Cultural Resources, below), but these seabird nesting sites were also a source of food. "In the interview of a local resident, Kwai Chew Lung (Chow) ... he recalls that the Hawaiians used to pick up baby chicks on Moku'ae'ae Rock... he also remembers going fishing there and hunting for eggs to eat" (Frederickson and Frederickson 1989:15).<sup>10</sup>

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<sup>8</sup> Id. at pages 12-13.

<sup>9</sup> Id. at pages 13-14.

<sup>10</sup> Id at page 14.

- **Cultural Resources**

Thomas Thrum (1907) recorded a single heiau named Pailio in Kīlauea Ahupua‘a, as well as another heiau named Kipapa in Kāhili Ahupua‘a, but based on later investigations, it would appear that both heiau have been destroyed by subsequent activity (see Previous Archaeology, below). There is considerable amount of remnant Pre-Contact Hawaiian terracing near Kīlauea Stream (on private lands), southwest of the current project area, especially where the terrain is steep and uninviting to post-Contact development.

In some cases (see Previous Archaeology, below), post-Contact agricultural and habitation features have been found built over or reusing the Pre-Contact terracing. While the native Hawaiian population decreased in the 19th century, immigration brought in new settlement, including many Asian workers employed by the Kilauea Sugar Company plantation. Asian-style rice pond fields that were likely developed from remains of older native Hawaiian lo‘i (to the south of the project area Clark and Rechtman 2010, Clark et al. 2011), and the presence of a Japanese Cemetery to the west (Cleghorn 2001, Spear 2014, Hulen and Barna 2021), speak to the historical demographic changes in Kīlauea Ahupua‘a.

In the present day, some cultural resources in Kīlauea Ahupua‘a are accessible through programs for preservation of historic locations and traditional culture. A number of structures have been placed on the National Register of Historic Places (NRHP). This includes several buildings associated with the Kīlauea plantation, as well as the Daniel K. Inouye Kilauea Point Lighthouse located within the Kilauea Point National Wildlife Refuge (KPNWR). A number of Hawaiian cultural organizations partner with the KPNWR to provide access to the coastal region for traditional cultural practices (see Land Use in the Post-Contact Period to the Present).<sup>11</sup>

- **Mahele Awards and Kanaina Testimony**

The Indices of Awards Made by the Board of Commissioners to Quiet Land Titles in the Hawaiian Islands (Land Commission 1929) do not list any Land Commission Awards (LCA) in Kīlauea Ahupua‘a. Lloyd Soehren’s (2002-2019) Hawaiian Place Names database notes that Kīlauea Ahupua‘a was “returned by Kekauonohi, retained by aupuni at the Mahele.” The Office of Hawaiian Affairs (n.d.) Kipuka Online Database suggests a slightly more complex transaction in which Kīlauea Ahupua‘a was “relinquished by Mikahela Kekauonohi to Kamehameha III” and “relinquished by Kamehameha III to Government.” It should be noted that LCA No. 8559-B, the claim for the crown lands of Hawaii in the name of William C. Lunalilo, includes Kāhili and Kalihiwai Ahupua‘a, the ahupua‘a east and west of Kīlauea Ahupua‘a, whereas Nāmāhana Ahupua‘a to the northwest was claimed by Keahikuni Kekau‘ōnohi (also called Mikahela or Miriam) as part of LCA No. 11216. It makes geographic sense that the King, Kekau‘ōnohi, or both once had a claim on Kīlauea Ahupua‘a given their claims on adjacent ahupua‘a.

The Indices (Land Commission 1929) do list seven other LCAs in Kāhili Ahupua‘a and 28 other LCA in Kalihiwai Ahupua‘a aside from those of the Crown (LCA No. 8559-B; Lunalilo); these are presumably kuleana claims. The seven kuleana claims in Kāhili Ahupua‘a are the kuleana awards closest to the current project area, and cluster on the east bank of Kīlauea stream, mostly

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<sup>11</sup> Id. at pages 14-15.

near the stream mouth. LCA No. 10333, claimed by Naiamaneo on behalf of her deceased husband Oopu, and confirmed by Royal Patent Grant No. 3370 in 1856, sits on the present border with Kīlauea Ahupua‘a (Waihona ‘Āina N. d.). The other six LCAs in Kāhili Ahupua‘a are LCA Numbers 9067, 10013, 10013-B, 10015, 10082, and 10083.

Māhele records indicated that there were other claims made for lands in Kīlauea Ahupua‘a during the Māhele, but none were awarded.<sup>12</sup> This includes a claim (No. 6529) by Holokukini,<sup>13</sup> on the basis that he served as konohiki for Kīlauea Ahupua‘a under Aaron Keali‘iahonui (husband of Kekau‘ōnohi), and six other claims, all of which were rejected or abandoned. Among the kuleana claims was one (No. 9217) that gained some later notoriety for (the claimant) Kealawa‘a complaining that “I returned my claim to land of Kilauea to the Konohiki for the land is being filled with cattle & I have no desire to combat them [sic]” (Waihona ‘Āina 2005).<sup>14</sup>

- **Kilauea Sugar Company and Kilauea Railroad system**

Charles Titcomb would eventually go on to purchase the whole of Kīlauea Ahupua‘a in 1863 and start a plantation there. Jesse Condé and Gerald Best (1983:150) indicate the plantation was sold to Captain John Ross and Edward P. Adams in 1877. According to the Kaua‘i Historical Society (N.d.), the plantation was subsequently incorporated as a company, Kilauea Sugar Company Limited, in 1880 and would remain in operation for over 90 years: It became known as Kilauea Sugar Plantation Company after purchase by a California corporation in April 1899.

Headquarters were in San Francisco, California, with local operations in Kīlauea, Kaua‘i, Hawai‘i. In 1955, C. Brewer and Company Ltd., the company’s Honolulu sugar factor (agent), purchased a majority of stock, and the company reverted to its original name, Kilauea Sugar Company Limited. All sugar operations were terminated on December 31, 1971. [Kaua‘i Historical Society N.d.:2]

William Dorrance and Francis Morgan (2000:32) note that “Kilauea Sugar Company was among the smallest in the Islands,” which, given that they indicate it reached “5,000 acres” suggests the economy of scale required for success during the heyday of commercial sugar in Hawai‘i. Carol Wilcox (1996:84) explains that the plantation “had to make the best of marginal conditions. Plagued by rocky terrain, small size, few water resources, and its remote, windward location, it never enjoyed the success of other, better situated plantations.” While the plantation was not as massive as some of its peers, it boasted its own railroad to haul sugar to the mill. The Kaua‘i Plantation Railway (2008) website recorded those railroads on Kaua‘i island used unusually narrow gauge, but the railroad at Kilauea, the first on the island of Kaua‘i, was even narrower.

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<sup>12</sup> While there were no Mahele claims that may have been actually awarded, the sworn Kanaina testimony indicates that there were native Hawaiian who lived in the area but abandoned their claims because they were unable to compete with the introduced cattle. (Attachment A of the LRFI)

<sup>13</sup> Although the Mahele records indicate that Claim No. 6529 was not awarded the Kanaina testimony to the claim references 4 lo‘is in the ili of Puaa and 6 lo‘is in Kilauea belonging to Holokukini called Maluwai ili and a house lot, a pasture and 2 tenants. Id. LRFI at pages A10 -A11. Since the claim was not awarded there is no location of the lo‘i’s or house lot.

<sup>14</sup> Id. at pages 19 – 22.

In late 1881 management of the Kilauea Plantation ordered rail equipment from the John Fowler Co, of Leeds, England. Rail, spikes, locomotive and cars arrived on Kauai late in 1881 and by the end of 1882 the line was in operation. The track gauge was 2' and the tiny (likely 6 tons) 0-4-2 Fowler locomotive could move up to ten loaded cars of cut cane in one train. While the original line at Kilauea Plantation remained at 2' gauge to the end, all the other lines on Kauai chose 30" gauge, the only Island in the Hawaiian Chain to run with this gauge.

Condé and Best (1983:150) report that “rail equipment for Kilauea was duly shipped to Kauai and by a curious twist was not only the first railroad built on that island, but it had its first spike driven by an [sic] Hawaiian Princess” on September 24, 1881. This dignitary was Princess Regnant Lydia Kamaka‘eha, who would in a decade be crowned as Queen Lili‘uokalani, the last monarch of the Kingdom of Hawai‘i. She was visiting Kaua‘i, and had not been aware of the railroad, but upon arriving at Kīlauea Village, she was greeted by employees of the Plantation: ...she was informed that at that moment the first piece of track for the first railway on Kauai was about to be laid, and it would be considered an honor if Her Royal Highness would drive the first spike, which she kindly consented to do. Proceeding to the plantation... a large crowd had collected; the Royal Standard having been hoisted on a temporary staff. Her Royal Highness... took great interest in all these particulars and expressed her great satisfaction at being able to be present at the laying of the first railway on the Island of Kauai and trusted it might soon gird the whole island and so develop its resources and promote the industry of its people. [Pacific Commercial Advertiser 1881 in Condé and Best 1983:151]

By November of 1881, the railroad at the Kilauea Sugar Company plantation was operational, with three miles of track laid. Both sugar operations and the railroad grew over the next several decades, and “in 1910, Kilauea’s railroad system was comprised of 12 ½ miles of permanent track, 5 miles of portable track, 200 cane cars, six sugar cars and four locomotives” (Soboleski 2017).

Much of the infrastructure built up for the Kilauea plantation did not survive to the current day. The railroad was phased out first: “Kahili Landing and its railroad track was abandoned beginning in 1928, when sugar from the mill was trucked to Ahukini Landing instead, and by the spring of 1942, trucks had replaced railroad locomotives and cane cars as the means of hauling sugarcane to the Kilauea mill” (Soboleski 2017). Wilcox (1996) states that the land continued to see some agricultural use after sugar operations ended in 1971, but there was no upkeep of the plantation irrigation system, and parts of it were destroyed while others were simply abandoned: ... no mechanism was established to secure the easements or maintain the old system. Over the years the connections between reservoirs and delivery systems were destroyed by roads, pasture, development, neglect, and intent. The Hanalei Ditch was abandoned, its flumes and siphon no longer operable. The connection from the Kalihiwai Reservoir to Stone Dam was destroyed, as was that between Puu Ka Ele and Morita reservoirs. Puu Ka Ele and Koloko reservoirs' delivery systems were gone. C. Brewer established Kilauea Irrigation Company, a public utility, to administer the surviving sections that service its guava farming operation. By the mid-1990s, some reservoirs stood alone with little utilitarian purpose. [Wilcox 1996:85]<sup>15</sup>

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<sup>15</sup> Id. at pages 22- 24.

One archaeological site was identified during the field inspection on June 1, 2022. The site was designated as Temporary Site 1 (TS-1) and was comprised of two features: a railroad bridge culvert (Feature 1), and remnant section of railroad track (Feature 2) was found on the subject property. The on-site archaeologist determined that the site was post-Contact in nature recorded it with photographs and two GPS points taken at the center points of its two features. Figure 7 shows these GPS points superimposed on a client-provided construction map.

Feature 1 (Fe. 1; railroad bridge culvert) was built using basalt and mortar construction and is in good overall condition, protected by thick vegetation that surrounds it. Both ends of the culvert tunnel are exposed and the interior is passable. Feature 2 (Fe. 2; piece of old railroad track) was discovered approximately 12 m east of Fe. 1, by using a metal detector to allow detection through the dense vegetation. Figures 8 through 16 are photographs of the features, and Table 3 summarizes the location and condition of the features. These features were constructed as a part of the railroad built to haul sugar for the plantation operated by the Kilauea Sugar Company. Another portion of that railroad located to the northwest was previously designated as SIHP Site No. 50-30-04-01812. It is possible that other remnant portions of the railroad may be found under the foliage or even under the ground surface of other nearby property parcels.<sup>16</sup>

- **Kilauea Point National Wildlife Refuge**

Kilauea Point National Wildlife Refuge (KPNWR) occupies Kīlauea Point peninsula, Mōkōlea Point peninsula, Crater Hill, and the coastline north of the project area. The wildlife refuge was established in 1985 and expanded to its current extent in 1988. KPNWR is administered by the US Fish and Wildlife Service (FWS) and is open to visits (and thus serves as a tourist attraction). The FWS maintains the refuge to protect and preserve not only flora and fauna, especially migratory seabirds and the endangered nēnē (Hawaiian goose, *Nesochen sandvicensis*), but also the Daniel K. Inouye Kīlauea Point Lighthouse and Light Station. The FWS also partners with local native Hawaiian organizations such as Kaipuwai Foundation and Na Kia'i Nihoku, that “perform Native Hawaiian cultural practices and ceremonies at Nihoku summit on the summer and winter solstice and the spring and fall equinox” (Fish and Wildlife Service N.d.).<sup>17</sup> Additionally, portions of KPNWR are open to fishing, and “native Hawaiian fishing at Kīlauea (East) Cove” is recognized as a cultural practice (Fish and Wildlife Service N.d.).<sup>18</sup>

2. *Information from Cultural Consultation that identified the following cultural, historical, and natural resources, including traditional and customary Native Hawaiian practices that may be related to or within the vicinity of the subject property:*<sup>19</sup>

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<sup>16</sup> Id. at page 39 – 49, Figures 8 to 16.

<sup>17</sup> In addition, Dr. Mehana Blaich Vaughan noted that “through these organizations, hālau visit the area to conduct ceremony and offer hula and oli, due to the site’s significance in Pele traditions and other hula practice. Kia’i Kāhili also works with FWS on their coastal lands.”

<sup>18</sup> Id. at page 24-25.

<sup>19</sup> Not all of the Cultural Descendants assert that they are ancestral descendants to the ahupua’a tenant of the subject property. However, the court in PASH noted, “[t]he right of each ahupua’a tenant to exercise traditional and

- **Bird Hunting**

*As a young man I often hunted the pasture lands of Nihoku for pheasants. At the time, the land all the way to the Kahili river was used by Gay and Robinson for cattle grazing. The road down to Kahili was fenced on both sides with 4 heavy gauge, single wire strands held up by Kiawe posts that due to their scarcity were strategically placed to best take advantage of their strength and longevity. These posts were brought in from the west side as they did not grow here. The fence spaces between the major posts were further supported by locally cut guava wood which also helped to keep the wire strands from sagging as the wire was u-nailed to many of these fill-in posts. No barbed wire was used so we could easily pass between the wire strands when moving from the makai pasture to the Nihoku pasture. Sometimes we would start our hunt on the plateau just above the project site. There the plantation's field road followed the iron wood lined valley edge and then as it reached the slopes of Nihoku there was a small seldom used road built during the war that led East into the Nihoku pasture where the Robinson's had a corral. This area was called Marine Camp since it was occupied during the war by Marines who guarded the pre-radar installation atop Nihoku. The remains of the old redwood train trestle bridge that traversed the valley were still visible in the 1960s.*

*For our hunting we would traverse the makai side of the valley taking a detour to cover the Northern slopes of Nihoku which are hidden from almost all southern vantage points. No seabirds frequented the area during those years. We continued down into Kahili, crossing over the fences on both sides of the quarry. Unlike the mauka pasture where the grass was as short as a lawn, the makai pasture was heavily overgrown so hunting was limited to the open areas. Once complete, we would walk back up the valley and pass the subject property before returning to our vehicle. Sometimes we would start our hunt at Kahili and do the trip in reverse. The valley floor and drainage area were covered in heavy growth of guava, cats' claw, and Christmas berry. The stream usually had some water in it which was seepage water that relied heavily on the fact that the plantation irrigated the field above it and Kilauea usually had ample rain to keep the seepage actively flowing. Pheasants favored this protected area where water was available during the heat of the day.<sup>20</sup> (Gary Smith)*

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customary practices remains intact, notwithstanding arguable abandonment of a particular site, although this right is potentially subject to regulation in the public interest.” PASH 903 P.2d at 1271, 79 Haw at 450. Thus, their comments are relevant to the Assessment even if they are not descendants of the ahupua'a tenant.

<sup>20</sup> Portions of the talk story or information provided by Gary Smith and Dr. Mehana Blaich Vaughan are in *italics*. A copy of the Assessment was distributed to Gary Smith and Dr. Mehana Blaich Vaughan. The Assessment has been revised in accordance with Gary Smith's comments. The Consultant also received comments from Dr. Mehana Blaich Vaughan and used her best efforts to revise the Assessment in accordance with her comments. Dr. Mehana Blaich Vaughan referenced the “extensive cultural consultation given by multiple different individuals on the cultural significance of Nihoku and traditional and customary practices which take place on the mountain and in surrounding areas.” She references the planning director's reports and recommendations, and interview transcripts for the Green proposed development in Seacliff for lot 11-a throughout 2021 and 2022 in the public record. In the Consultant's view, *Ka Pa 'akai* rights are personal rights that require a determination of how the identified resources (step 1) will be affected or impaired by the proposed action (step 2), and then determine a feasible action to be taken to protect native Hawaiian traditional and customary rights. The Consultant's difficulty with referencing other cultural consultation is the uncertainty of whether this proposed action (the construction of the subject property)

- **Fishing**

*Fishermen would also use this spot to park their car and walk to go fishing at Makapili Rock. The field road turned and continued westward along the base of Nihoku and met up with the Japanese cemetery road, known today as Mihi Rd. Here one could turn right and travel on that road up to the top of Nihoku. Fishermen going to Makapili Point would use this road as well. (Gary Smith)*

*Appreciate the reference to the importance of Nihoku for fishing. Not mentioned is its significance along with the lands above Kahili river as significant kilo sights for fishing, yet this activity is referred to frequently in kama 'āina testimony as well as for hunting of pigs, not just pheasant. (Dr. Mehana Blaich Vaughan)*

- **Kilauea Japanese Cemetery**

*Known today as the Kilauea Japanese Cemetery it got its start as a Chinese cemetery circa 1870 and then Japanese Cemetery around 1900. By 1910 some Koreans were also interred as well. Today there is no evidence of Chinese or Korean graves. No other races were buried there until 2000 when a formal nonprofit association was created to assume ownership of the land from C. Brewer. I am currently its president. (Gary Smith)*

- **Pailio heiau**

*Pailio heiau may have been located above the subject property. The heiau is associated with Chief Halanikikaupua and is associated with Nihoku. There is an oli and hula that references ilio and is associated with Nihoku. (Gary Smith)*

- **Kilauea Sugar Plantation Company and Railway**

*The Kilauea Sugar Plantation Company has a long and rich history in Kilauea. It was the smallest plantation in the Hawaiian Islands and the most northern plantation on Kauai. The plantation began in 1863 by Mr. Titcomb who bought the Kilauea land from King Kamehameha IV. The Kilauea railroad was the first built on Kauai and the first spike was driven by Lydia Kamaka'eha Princess Regnant (later to become Queen Lili'uokalani) on September 24, 1881. The Kilauea railroad was three miles long. Due to the hauling of cane by trucks which substantially reduced the harvesting costs at Kilauea, the railroad was put out to "permanent pasture" in 1942. However, the rail crossing/bridge/culvert which was built circa 1890 still exists on the subject property. Although the rail bed appears to have been altered by fill and grading, it still sufficiently documents the original path of the railway system. (Gary Smith)*

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would have an effect on their traditional and customary practices. For this reason, the Consultant has not included the record of the extensive cultural consultation recommended by Dr. Mehana Blaich Vaughan in this Assessment.



- **Nihoku**

*Nihoku is referenced in the Hawaiian publication, Ke Kumu Hawaii dated March 30, 1836, in association to Lono's travels on Kauai. The article describes Lono's rule as benevolent and sites extraordinary examples of his kindness and compassion for the people of Kauai. He shares his sad news of the loss of his wife. It is Lono's mana and stature as the highest chief of Hawaii island and his presence in Nihoku that elevates Nihoku to a place of cultural significance.*

*The name Nihoku appears in several historical sources. One, Nihoku appears in the 3/30/1836 Vol. II, No. 7 nupepa Ke Kumu Hawaii by a contributor known only as "P" under the headline No Lon. Two, it also appears in Ka Mo'olelo no Hiiakaikapoliopole by Hooulumahie pg 19 where Nihoku is credited with its own wind name Aopoomuku. Three, it appears in the 1863 Royal Patent No 2896 Kamehameha IV to Charles Titcomb. Four, Nihoku also appears in Ka mo'olelo...kekahi Ali'i Kahiko o Kaua'i one of these chiefs mentioned is Halanikikaupua of Nihoku. Further, the order in which Pele puts Nihoku in her wind chant places it minimally between Kahili and Nāmāhana. This source of information is from the ka poe Kahiko. It is the entire hill itself that is Nihoku. (Gary Smith)*

*Other sources which are more valuable for this region, written in their original Hawaiian and translated by knowledgeable Hawaiian language speakers include the mo'olelo of A'ahoaka, a chant written for Puapualenalena including the Hala groves of Nihoku, and multiple nupepa articles including Kanikau written by 'ohana of the area published in the 19th century. Pele's wind chant offers another source as does Uncle Gary's place names map based on many of these sources. A few of these are included in the link below, but A'ahoaka and Pele are separate searches. Both are referenced in a document compiled by our community and shared by county in Green contested case hearing materials.*

*<https://www.dropbox.com/s/0zj6fcx093zww4m/Kahili%20archival%20docs%20copy.pdf?dl=0>*

*Nihoku is considered culturally significant for its association with mo'olelo, kilo (celestial navigation), hula & oli, visual landmark, fishing, hunting, Makahiki trail, and cultural practices. Climbing to the top of Nihoku as a youngster was considered a "rite of passage" for those who grew up in Kilauea. It was a visual landmark that could be seen from a distance, but you knew you were getting close to Kilauea if you could see Nihoku. For people who grew up in the area, the area where Seacliff Plantation subdivision is situated is considered part of the "cultural landscape" of Nihoku. (Dr. Mehana Blaich Vaughan)*

- **Gullies**

*Also, gullies which hold water are significant areas, whether or not sites can be found there. Considering the location of the subject parcel, at the foot of Nihoku, above the river and directly across from some of the most significant sites and settlements, it is likely that this aina was a*

*corridor between the top of the mountain and the river, and thus important. I believe this gully would have contained water, permitted agriculture and also bathing, or preparation for ceremony, either at Nihokū crest or at the Pailio heiau location thought to be nearby. So, despite sites other than the railway bridge not being found, the gully itself, what is planted there, and retaining access through that area seem important. (Dr. Mehana Blaich Vaughan)*

**B. The extent to which these resources, including traditional and customary Native Hawaiian rights will be affected or impaired by the proposed action**

**1. Findings from the LRFI regarding impacts of the proposed project on historic properties.**

- **Pre-contact features or sites**

The general pattern seen in the previous archaeological work in the vicinity is one that is common to many regions of the Hawaiian Islands where commercial sugar or pineapple agriculture occurred. Remaining Pre-Contact sites are largely found within gullies or other areas of uneven ground, especially near water features. Relatively flat areas, such as tablelands have been subject to considerable ground disturbance for large scale commercial cultivation and Pre-Contact features that may (likely) have been present there have been removed or destroyed.

Based on the findings of this LRFI, only an historic-era cultural resource was identified. Note that portions of the project area were heavily overgrown and more intensive survey during AIS could lead to the identification of additional historical-era resources associated with the railway line. No excavations were conducted during this LRFI and thus, there remains the slight possibility that Pre-Contact cultural resources such as habitation area could be documented in subsurface contexts below the plow zone. The same would hold true for iwi kupuna (ancestor bones): only a slight possibility that such exist on this plateau area. The majority of traditional burials in the area have been documented near the direct coastline and in sandy sediment.<sup>22</sup>

- **Railroad bridge culvert and section of the railroad track**

The LRFI identified within the subject property, a railroad bridge culvert and section of railroad track (TS-1) that could be impacted by activity within the subject property and should be preserved and protected.

**2. *Specific comments from the Cultural Consultation related to the impacts of the proposed project to the valued resources, including traditional and customary Native Hawaiian rights and resources:***

- **Railroad bridge culvert**

*The culverted train crossing (railroad bridge culvert) is not only a post-contact historic feature, but it also has cultural significance because of its association with Princess Lydia Kamaka'eha*

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<sup>22</sup> LRFI, at page 49.

*Princess Regnant (later to become Queen Lili'uokalani). The overgrowth has probably protected it over the years since the railroad stopped operating, but it is in pristine condition and should be protected, preserved, and honored. (Gary Smith and Dr. Mehana Blaich Vaughan)*

- **Impacts to the cultural landscape of Nihoku, including the ability to exercise traditional and customary practices associated with Nihoku and Kilauea**

*For many of the Kilauea community, especially the Native Hawaiians who have ancestral connections to Kilauea, they feel strongly that the entire Seacliff Plantation subdivision, has and will adversely impact the cultural landscape of Nihoku, including their traditional and customary native Hawaiian rights. They believe that although the proposed project may not individually impact the cultural landscape, it is the collective impact of the entire Seacliff Plantation Subdivision that has adversely impacted their cultural practices, rights, and resources. The Cultural Descendants, especially kupuna, no longer have access to fishing, hunting birds, practicing kilo, visual corridor of Nihoku, climb Nihoku, and access to walk the annual Makahiki trail through Kilauea. (Gary Smith and Dr. Mehana Blaich Vaughan)*

### **III. RECOMMENDED CONDITIONS**

- A. Based upon the archival research, previous archaeological studies and relevant comments from the Cultural Consultation, the following feasible action or mitigation measures, should be taken to reasonably protect Native Hawaiian rights and resources, and are recommended conditions to the Planning Department or Planning Commission for consideration:<sup>23</sup>**

- **Regarding the protection and preservation of the railroad bridge culvert and section of the railroad track (TS-1).**
  1. Further documentation of the historic property (TS-1) should be prepared to determine its extent, age, function, and significance.
  2. Until the extent of TS-1 is confirmed to not extend onto the subject property through further documentation, the Landowner agrees to coordinate with Cultural Descendants and knowledgeable community members<sup>24</sup> on the protection and preservation of the railroad bridge culvert and sections of the railroad track located on the subject property. The following are specific recommendations by the Cultural Descendants:
    - The stone culvert floor at intake should be repaired and the stone head walls be cleared of vegetative growth. Loose rocks should be secured in place and cemented if formerly affixed in that manner;
    - The drain way, at least up to 15 feet on either side of the lowest point where the water naturally flows should remain as it is with the existing buffalo grass

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<sup>23</sup> These recommended conditions are in addition to any conditions proposed by the Kaua'i County Planning Department.

<sup>24</sup> Including Gary Smith and Dr. Mehana Blaich Vaughan.

as a bulwark against erosion. Ultimately the invasive grass can be kept in check by weed whacking, encroachment of naupaka and the shaded canopy of the new dry land forest;

- Development in this area should contain a large buffer from the gully, control for erosion and runoff, not allow for substantial movement that changes the slope and shape of the terrain and contain sediment so as to avoid filling the railway tunnel further, as is already observable;
- The rail crossing/bridge/culvert built circa 1890, should be placed on the State of Hawai'i Historic Registry;
- Although the rail bed appears to have been altered by fill and grading, it still sufficiently documents the original path of the railway system. It should also be included in the registry process. Any subsequent work along the bed which reveals the original tracks and elevation should be documented by photos, survey elevations and GPS info, and updated in the registry;
- The Landowner should place a commemorative plaque at the site and inform the Seacliff Plantation Owner's Association of the significance of the structure. The Owner's Association should inform other owners along the rail path to take pride in its presence by preserving any evidence of its path through their properties as well;
- The Seacliff Plantation Subdivision storm drain exit on the property above the crossing should never be altered or extended and that the drainage field remain continually grassed to avoid soil erosion;
- Lastly, the Landowner should make genuine efforts to accommodate up to four (4) annual field trips from school groups or historical organizations and researchers.

- **Regarding the planting of native plants.**

3. The Landowner shall consider the planting of native plants in gulch within the subject property. Native plants can include naupaka, Milo, Kukui, Noni and Kou to provide the basic canopy and ground cover. In addition, but not mandatory are plantings of Ohia and Koa which would be more challenging for the property owner to keep viable. Their inclusion and success would speak volumes to the Landowner's care and concern in the re-establishment of a true native dry land forest.

- **Regarding iwi kupuna.**

4. There remains the slight possibility that pre-Contact cultural resources such as habitation area could be documented in subsurface contexts below the plow zone. The same would hold true for iwi kupuna: only a slight possibility that such exist on this plateau area. The majority of traditional burials in the area have been documented near the direct coastline and in sandy sediment. However, cultural informants have referred to burial sites in the areas, therefore, grading and development in the area should be minimized to avoid inadvertent discovery of iwi kupuna. Although no iwi kupuna have been discovered on the subject property, in the event iwi kupuna are discovered, all work in the immediate area shall cease and the

Landowner shall contact SHPD, and any Cultural Descendants recognized by the Kaua'i Ni'ihau Island Burial Council for the area.

- **Regarding “reasonable”<sup>25</sup> mitigation impacts to Nihoku as a cultural landscape**

5. Cultural Descendants and members of the Kilauea community have raised concerns that although the Landowner's proposed project may not individually impact traditional and customary practices, the collective and cumulative impact from the past development and any proposed development, including the proposed project within Seacliff Plantation, has and will adversely impact the traditional and customary practices of Native Hawaiians' rights and resources associated with the cultural landscape of Nihoku and Kilauea. In the spirit of Article XII, Section 7 that seeks to find balance between preserving and protecting traditional and customary native Hawaiian rights and private landowners' right to develop, the Landowner agrees to request a meeting with the Seacliff Plantation Homeowner's Association to explore opportunities to engage, collaborate, and coordinate with the Cultural Descendants and Kilauea community to constructively address their concerns related to the adverse impacts of Seacliff Plantation's development on traditional and customary practices exercised by native Hawaiians rights and resources. These concerns include reasonable access to the ocean (especially for kupuna) to hunt pigs, fish, gather resources for subsistence and conduct education and ceremonies such as Makahiki, solstice and equinox observances and kilo events.<sup>26</sup>

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<sup>25</sup> The court has held that any conditions placed on a permit should be deemed 'reasonable' and must bear an essential nexus to the legitimate State interests under Art. XII, section 7, and must be 'roughly proportional' to the impact of the proposed action. PASH v. HPC, 79 Haw. 425, 436 (1995).

<sup>26</sup> Haiku Plantations Association v. Lono, 618 P.2d 312 (1980). Haiku Plantations subdivisions is a gated community in Kaneohe and residents are members of the Haiku Plantation Association. The Association was required to provide vehicular right-of-way access to the mauka kuleana owner. The kuleana owner appealed the trial court's determination that his access did not include the right to park. Although the Hawaii Appellate court did not expand the access easement to include parking it did uphold the right-of-way easement for ingress and egress granted pursuant to HRS §7-1.

**ARCHAEOLOGICAL LITERATURE REVIEW AND  
FIELD INSPECTION FOR A 6.851-ACRE PARCEL AT  
SEACLIFF PLANTATION, KĪLAUEA AHUPUA‘A,  
HANAIEI DISTRICT, ISLAND OF KAUA‘I, HAWAI‘I  
[TMK: (4) 5-2-004:093]  
LOT 20A UNITS 1 & 2**

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## **INTRODUCTION**

At the request of Ku'iwalu Consulting, Scientific Consultant Services, Inc. (SCS) has conducted this archaeological Literature Review and Field Inspection (LRFI) for a 6.851-acre Parcel (Lot 20A, Units 1 & 2) in Seacliff Plantation, Kīlauea Ahupua'a, Hanalei District, Island of Kaua'i, Hawai'i [tax map key (TMK) parcel: (4) 5-2-004:093]. The project area is shown on a portion of a United States Geological Survey (USGS) topographical map, a Tax Map Key (TMK) map, and a Google aerial photograph (Figures 1 through 3).

The field inspection was conducted on June 1, 2022, by SCS Archaeologist Jason Stolfer, M.A. under the supervision of the Principal Investigator Michael F. Dega, Ph.D, and consisted of a 100% pedestrian survey across the project area.

During survey, a single archaeological site, designated Temporary Site 1 (TS-1) was identified. This site was comprised of a railroad bridge culvert, as well as a nearby section of railroad track. It is likely that TS-1 was part of the railroad built to haul sugar for the plantation operated by the Kilauea Sugar Company, and that other portions of that railroad may still be present in the vicinity.

This report is not intended to meet HAR §13-276 requirements for an Archaeological Inventory Survey (AIS), but aims to identify potential cultural resources in the project area and its vicinity, and to provide in brief the history of relevant archaeological research within Kīlauea Ahupua'a. Thus, the scope of work for the current investigation includes the following two aspects:

- Literature review consisting of a study of previous archaeological reports pertaining to the project area and its vicinity. This research is conducted in order to determine 1) known archaeological and cultural sites that have been recorded in the project area, 2) features, sites, or cultural resources that may be associated with the subject property adjacent to it, if any, to assist in the *Ka Pa 'akai* Assessment, and 3) support appropriate recommendations to State Historic Preservation Division (SHPD).
- Field inspection via pedestrian survey of the project area. This inspection is conducted in order (1) to identify any surface archaeological features and (2) to investigate and assess the potential for impact to such sites. This assessment will also identify any sensitive areas that may require further investigation or mitigation before work on the project proceeds.

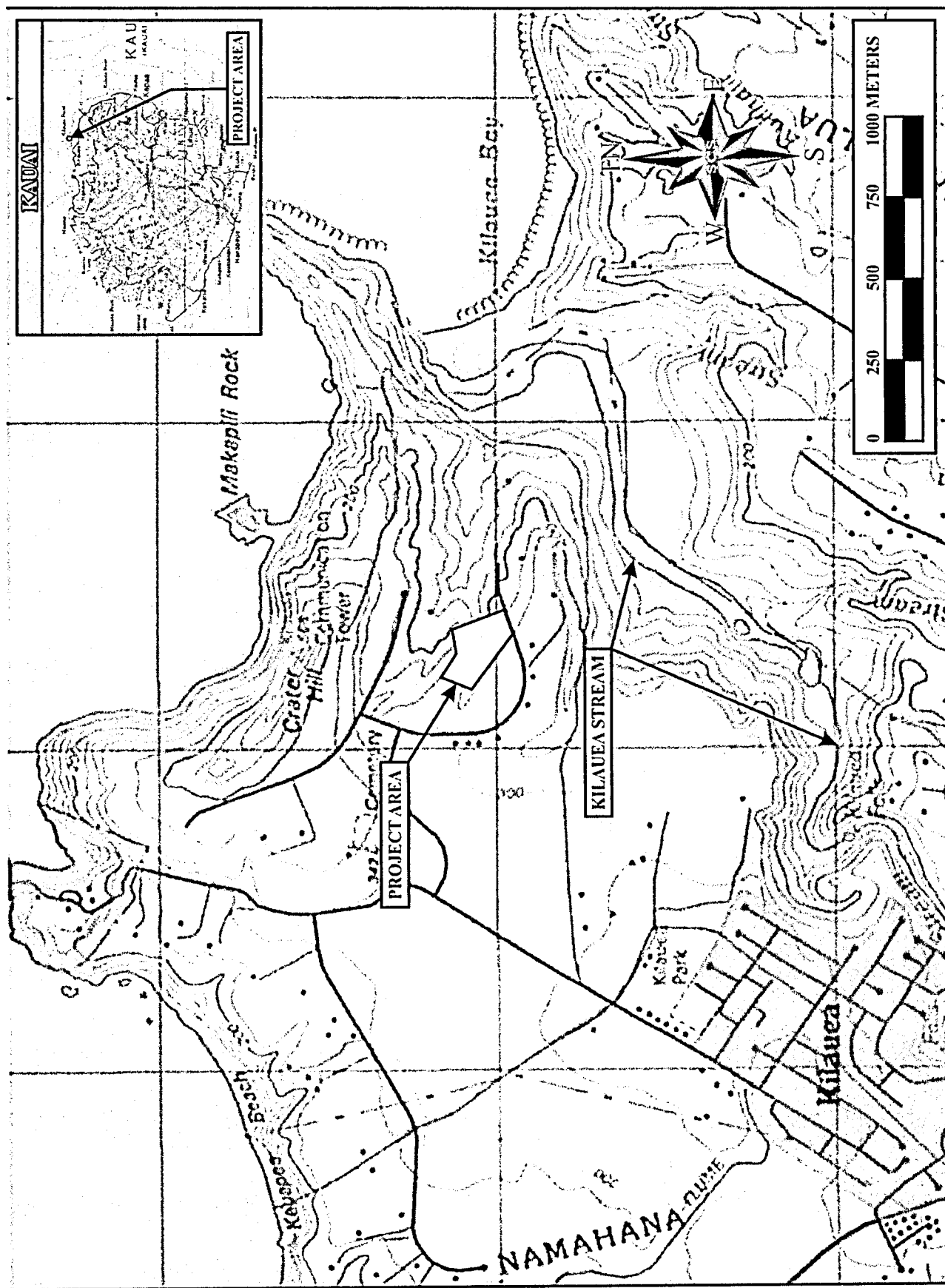


Figure 1: A portion of a 1998 USGS topographic map (Anahola, HI quadrangle; 1:25,000 scale) showing the location of the project area and the nearby Kilauea Stream

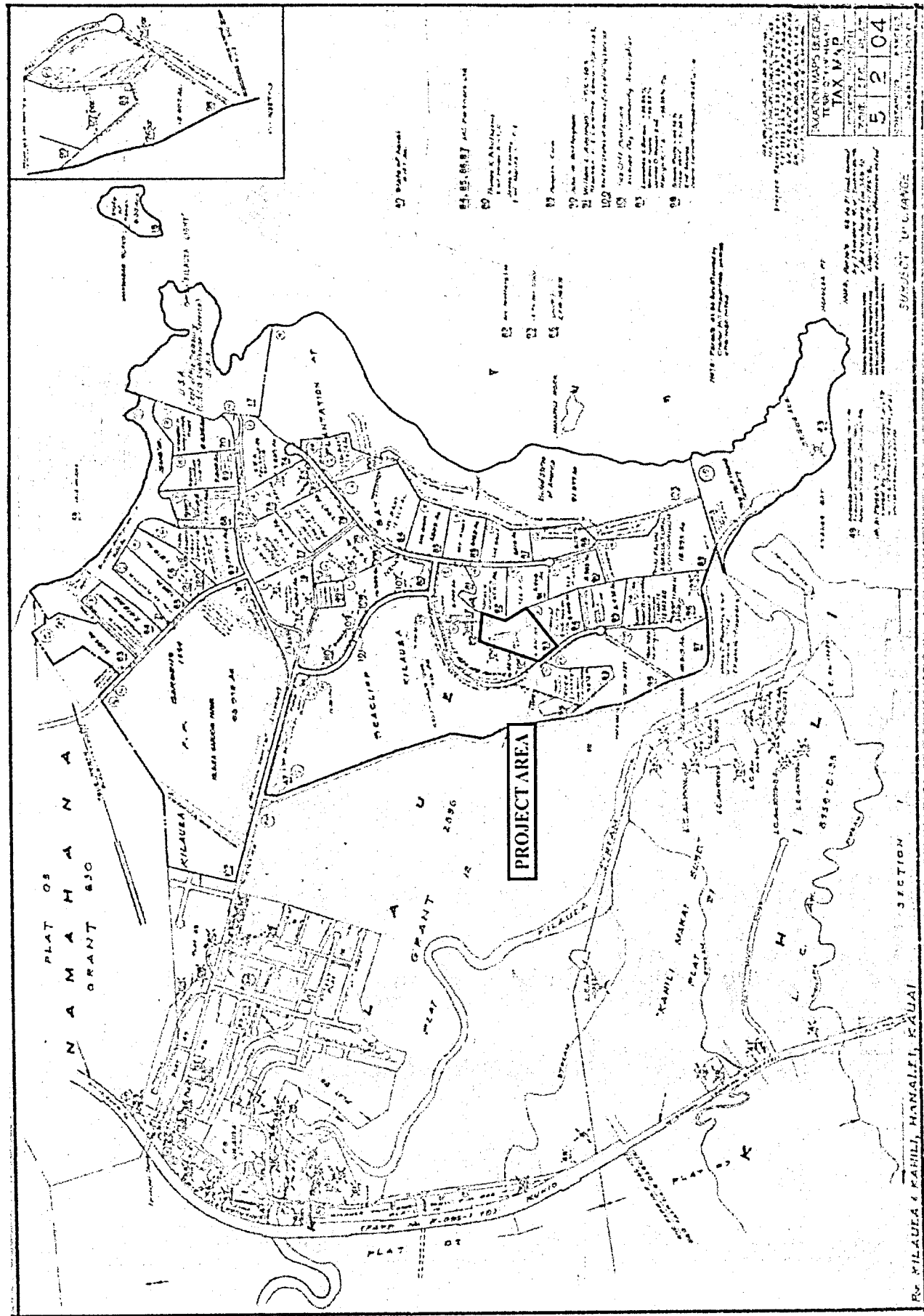


Figure 2: A Tax Map Key map showing the location of the project area in the context of zone 5, section 2, plat 4 (Real Estate Data, Inc., 1992)

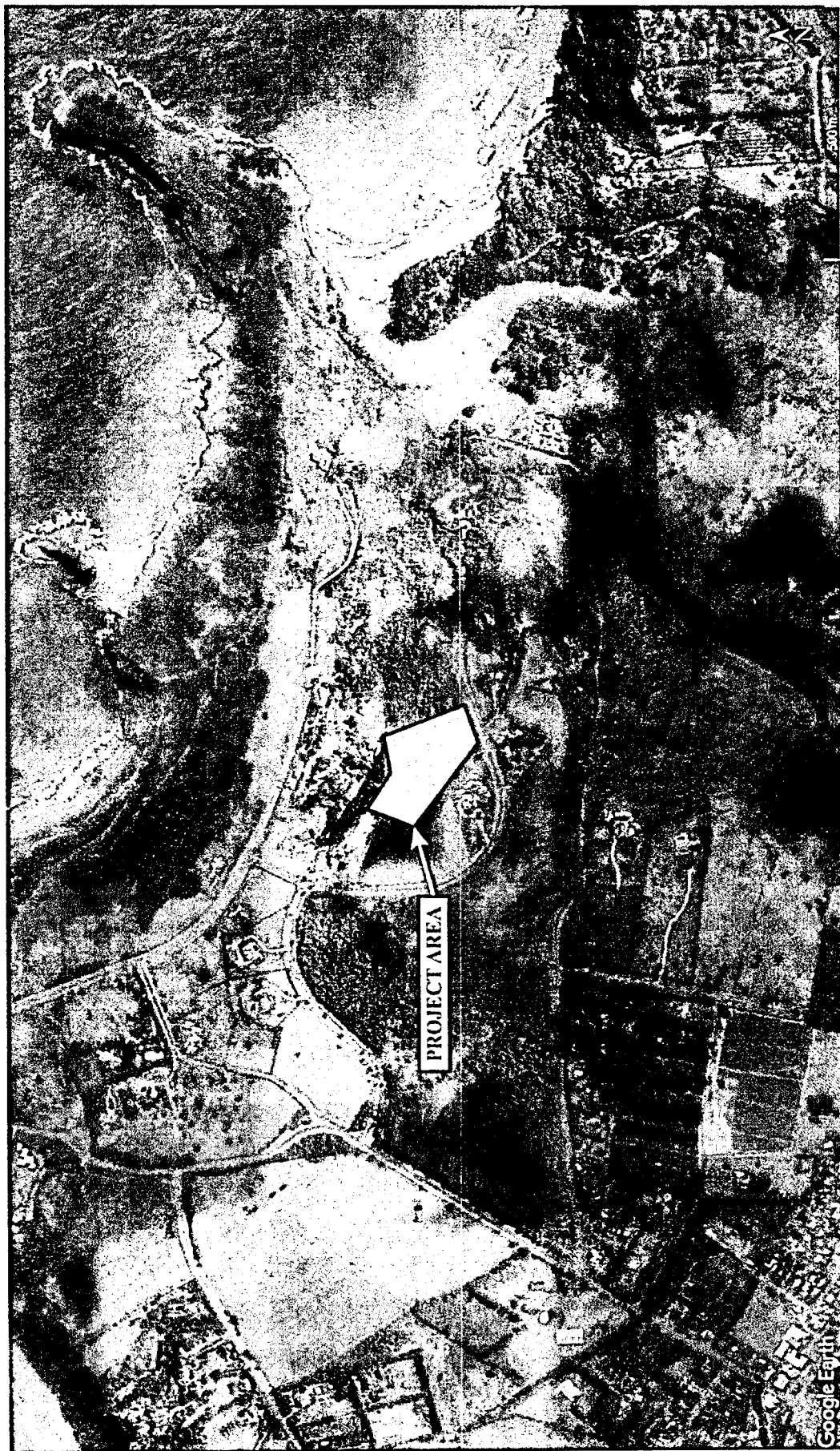


Figure 3: A Google Earth aerial photograph (imagery date: 12/16/2013) showing the location of the project area

## **ENVIRONMENTAL SETTING**

### **LOCATION**

The field inspection occurred within a project area consisting of TMK parcel (4) 5-2-004:093, which encompasses 6.851 acres divided between two Condominium Property Regime (CPR) units, with the northern CPR (Unit 1) comprising 3.216 acres, while the southern (Unit 2) is 3.635 acres. This parcel is Lot 20A of the Seacliff Plantation gated community, and is surrounded on all sides by other lots within Seacliff Plantation. The project area is bordered by Pali Moana Place on the south. Seacliff Plantation is bordered by Kīlauea Point National Wildlife Refuge on the north, while other notable places nearby include Kīlauea Agricultural Park across Pali Moana Place to the west, and the mouth of Kīlauea Stream not far east (the stream is approximately 665 m east from the project area). This location would colloquially be referred to as being located in Kīlauea, after the Census Designated Place (CDP) of Kīlauea, since addresses in the State of Hawai‘i are typically given using CDP in place of city or county.

The project area falls within contemporary Kīlauea Ahupua‘a, which is part of Hanalei District (Hawaii State Office of Planning 2021). Hanalei is one of the five judicial districts dividing Kaua‘i County and occupies most of the north coast of Kaua‘i Island and a rough pie-wedge inland from the coast.

### **GEOLOGY AND TOPOGRAPHY**

Kaua‘i is the oldest and fourth largest of the eight main Hawaiian Islands. It was formed from a single great shield volcano (Macdonald et al. 1983:453). At one time that volcano was the largest caldera in the islands, extending 15 to 20 kilometers across. Mount Wai‘ale‘ale, which forms the central hub of the island, rises 1,598 meters above mean sea level (amsl). Topographically, Kaua‘i is a product of heavy erosion as it features broad, deep valleys and large alluvial plains. Its land area is approximately 1,432 square kilometers.

The elevation of the project area ranges from approximately 60 to 80 m above mean sea level (amsl). It is located in a region of relatively flat terrain between the coast and Kīlauea Stream.

### **CLIMATE AND HYDROLOGY**

The project area is located near the northern shore of Kaua‘i, facing the northeastern trade winds that bring precipitation. However, the near-coastal location means it does not much benefit from orographic lift effects from those trade winds hitting Mount Wai‘ale‘ale. Therefore, the project area still sees moderate rainfall, higher than leeward lowlands but lower than other windward locales further upland.

Mean annual rainfall over the project area is 1460 mm (57.5 in). Rainfall is higher in winter and spring, with a peak of 185 mm (7.3 in) in November, and a low in June of 76 mm (3.0 in) (Giambelluca et al. 2013).

Average annual air temperature in the project area is 22.9 °C (73.2 °F). August is the hottest month with an average of 24.7 °C (76.4 °F), while February is the coolest with an average at 21.1 °C (69.9 °F) (Giambelluca et al. 2014).

Kīlauea Stream to the east is the nearest major water feature (see Figure 1). The stream runs on a roughly southwest to northeast axis, with its mouth emptying into Kīlauea bay. The *Hawaii Stream Assessment* (Hawaii Cooperative Park Service Unit 1990:36) classifies it as a perennial stream. Kīlauea Stream is sometimes also referred to as Kīlauea River.

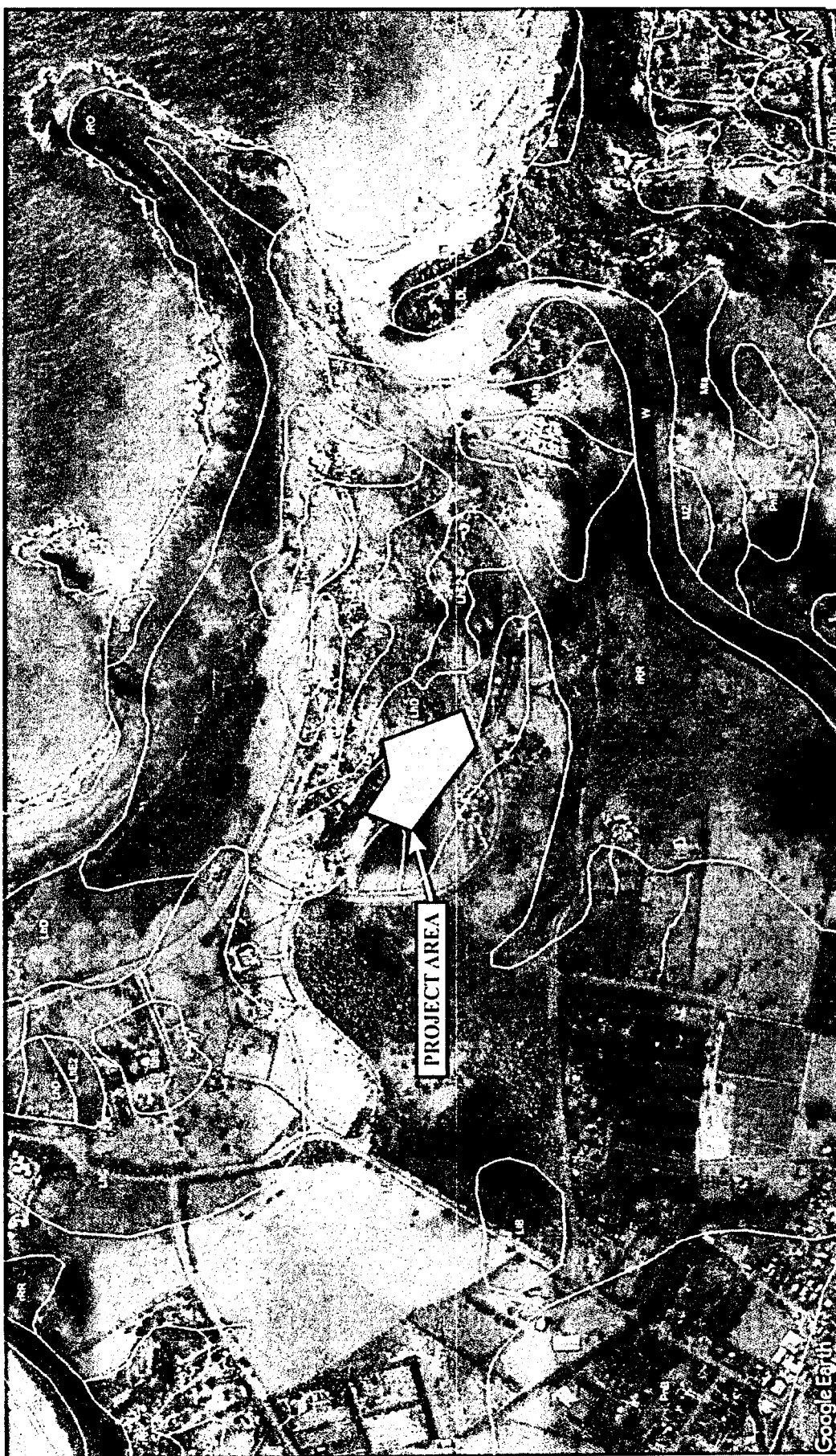
## SOILS

According to Foote et al. (1972: Sheet 25) and the U. S. Department of Agriculture Natural Resource Conservation Service, and University of California, Davis California Soil Resource Lab (2017), the project area topsoils are of the Lihue series, primarily Lihue silty clay, 25 to 40 percent slopes, eroded (LhE2), with a region of Lihue silty clay, 15 to 25 percent slopes (LhD) in the southeast, and a slight sliver of Lihue silty clay, 0 to 8 percent slopes (LhB) on the northwest. Figure 5 is a soil map of the vicinity of the project area, and Table 1 summarizes the soil types.

The Lihue series “consists of well-drained soils on uplands” and are “developed in material weathered from basic igneous rock” (Foote et al. 1972:82). LhB has slow runoff and slight erosion hazard, and is “used for sugarcane, pineapple, pasture, truck crops, orchards, wildlife habitat, and homesites” (Foote et al. 1972:82-83). LhD has medium runoff and moderate erosion hazard, and is “used for sugarcane, pineapple, pasture, wildlife habitat, and woodland” (Foote et al. 1972:83). LhE2 has rapid runoff and severe erosion hazard, and is “used for pasture, woodland, and wildlife habitat,” with “small areas are used for pineapple and sugarcane” (Foote et al. 1972:83).

## VEGETATION

According to Sonia and James Juvik (1998:122, 127) before human settlement the native ecosystem of the area would have been ‘lowland dry and mesic forest, woodland, and shrubland.’ Indigenous flora that may persist in this environment include ‘a‘ali‘i (hopbush, *Dodonaea viscosa*), ‘ākia (*Wikstroemia* sp.), ēlama (*Diospyros hillebrandii*), kāwelu (variable lovegrass *Eragrostis variabilis*) koa (*Acacia koa*), ko‘oko‘olau (*Bidens* sp.) ‘ohi‘a (*Metrosideros macropus*), pili (black speargrass, *Heteropogon contortus*), ‘ūlei (Hawaiian hawthorn *Osteomeles anthyllidifolia*), and wiliwili (*Erythrina sandwicensis*).



**Figure 4: Google Earth aerial photograph showing the soil series in the project area and in its vicinity (U. S. Department of Agriculture Natural Resource Conservation Service, and University of California, Davis California Soil Resource Lab 2017)**

**Table 1: Soil types represented on Figure 5.**

Abbrev.	Full (Soil) Name	Abbrev.	Full (Soil) Name
BS	Beaches	Mr	Mokuleia fine sandy loam
DL	Dune land	Mta	Mokuleia clay loam, poorly drained variant
IoB	Ioleau silty clay loam, 2 to 6 percent slopes	MZ	Marsh
IoC	Ioleau silty clay loam, 6 to 12 percent slopes	PnC	Puhi silty clay loam, 8 to 15 percent slopes
IoE2	Ioleau silty clay loam, 20 to 30 percent slopes, eroded	PnE	Puhi silty clay loam, 25 to 40 percent slopes
LhB	Lihue silty clay, 0 to 8 percent slopes	QU	Quarry
LhC	Lihue silty clay, 8 to 15 percent slopes	rRO	Rock outcrop
LhD	Lihue silty clay, 15 to 25 percent slopes	rRR	Rough broken land

## **TRADITIONAL BACKGROUND**

Archaeological data indicate that initial settlement of the Hawaiian Islands occurred on the windward shoreline areas around 10th century C.E. (Kirch 2011:22), with populations eventually settling into drier leeward areas at later periods (Kirch 1985:103). In the next few centuries coastal settlement was still dominant, while populations were beginning to expand to upland *kula* (pasture) zones from the 12th to the 16th century C.E. (Kirch 1985:103). Large scale or intensive agricultural endeavors were implemented in association with habitation. Settlers preferred coastal lands, but cultivated taro both near the shores and in the uplands.

## **TRADITIONAL LAND DIVISIONS**

The islands of Hawai'i were traditionally divided into *moku* (districts) and *ahupua'a* (subdistricts). On Kauai this occurred during the reign of Manokalanipō (Wichman 1998:102). These divisions were meant to incorporate all of the natural and cultural resources necessary for subsistence, stretching from the ocean to the mountain peaks and providing access to ecosystems at various elevations (Lyons 1875:111). The *moku* were likely consolidated approximately 600 years ago, when the native population had expanded to a point where large political districts could be formed (Lyons 1875:29, Kamakau 1961:54, 55; Moffat and Fitzpatrick 1995:28). Kaua'i traditionally consisted of six *moku* (Kona, Puna, Ko'olau, Halele'a, Napali, and Waimea), each comprised of constituent *ahupua'a*. The etymology of the word *ahupua'a* may be traced to the practice of marking the boundary with a heap (*ahu*) of stones surmounted by an image of a pig (*pua'a*) or of laying a pig on an altar as a tax to the chief (Native Hawaiian Library n.d.).



These ancient land divisions are still commonly used to locate and refer to geographical features of the islands, and the State of Hawai‘i still uses *ahupua‘a* as administrative land divisions, although their modern boundaries may differ from the traditional ones. *Ahupua‘a* were often subdivided into smaller land divisions called *‘ili*, administered by *ali‘i* (chiefs), but unlike the larger units *‘ili* were not meant to encompass a broad selection of resource areas (Lucas 1995:40). The land holding of a *hoa‘āina* (tenant) under an *ali‘i* was called a *kuleana* (right, privilege), a term that eventually came to mean “property” or “land title” as well (Lucas 1995:61).

## PLACE NAMES

Kamehameha Schools’ (n.d.) *Aloha ‘Āina Project* indicates that Kīlauea Ahupua‘a (where the project area is located) was traditionally a part of Ko‘olau Moku, and suggest boundaries similar to the modern demarcation. Kīlauea means “spewing” or “mush spreading”, in reference to the movement of lava during volcanic eruptions, and on Kaua‘i may refer to a tuff cone (not to be confused with the active volcano on Hawai‘i island). Ko‘olau means “windward,” appropriate to the *moku*’s location on the north shore of Kaua‘i, facing the prevailing trade winds.

A number of notable geographic features occur in the vicinity of the project area. Kīlauea stream, which flows from the south of the project area to the west before emptying into the ocean, strongly influences not only the natural landscape but human settlement on and use of it. The stream serves as the boundary between Kīlauea Ahupua‘a and Kāhili Ahupua‘a, and (surviving) terraces for traditional-style agriculture often follow its curve. Kāhili means “feather standard” (carried by attendants to herald royalty). The name Mōkōlea (or Mōkōlea Point) refers to a promontory north of the mouth of Kīlauea stream, and means “plover island (*mō* here being short for *moku*)” as it is a key seabird nesting location (albeit not strictly an island). Another important nesting area for seabirds can be found north of Kīlauea Point, on a small island named Moku‘ae‘ae, which John Clark (2003) interprets as simply meaning “fine [i.e. small] island.” The name Nihokū is associated with Crater Hill, but there seems to be little if any historical usage of this name, so it is possible that it is a modern naming convention rather than a traditional Hawaiian name. North of Crater Hill and Kāhili Quarry Beach there is also a tied island called Makapili Rock that is connected to the shore by a tombolo (sandy isthmus). Makapili means “squinting eyes.”

## WAHI PANA

There are stories or traditions associated with some of the *wahi pana* (legendary places) in Kīlauea Ahupua‘a. Frederick Wichman (1998:104) relates a story of how the *Menhune* (legendary race of small people), upon discovering Moku‘ae‘ae, “tried to bridge the channel between this island and the mainland with rocks.” However, the Menhune were not able to completed this task due to its length and complexity. William Hyde Rice explains:

The Menehune were a small people, but they were broad and muscular and possess of great strength. Contrary to common belief they were not possessed of any supernatural powers, but it was solely on account of their tremendous strength and energy and their great numbers that they were able to accomplish the wonderful things they did....

One curious thing about the Menehune was that they never worked in daylight, as they never wanted to be seen. It was their rule that any enterprise they undertook had to be finished in a single night. If this could not be done, they never returned to that piece of work. [Rice 1923:34-35]

The Menehune's attempt to build a causeway between Moku'ae'ae and Kīlauea Point failed because "just as they were able to touch bottom with their paddles, daylight interrupted their task" (Wichman 1998:104), and it was therefore abandoned. Although this tale records the Menehune acting of their own accord, others speak of *ali'i* bargaining with the Menehune to apply their prowess to construct great works elsewhere on Kaua'i (Wichman 2003:9-11).

While Menehune are associated with the *makai* (oceanward) portion of Kīlauea's, not only as builders but as fishermen plying the waters offshore Kīlauea from a settlement at Hanalei bay to the west (Wichman 1985:36), the *mauka* (mountainward) portion of the *ahupua'a* is also home to a great work said to have been accomplished by non-human prowess. The celebrated chief Manokalanipō was said to have commanded a supernatural *mo'o* (lizard) to open up the *mauka* part of Kīlauea, where the land was good for planting but water was lacking, for agriculture. Three long irrigation ditches on slopes of Kīlauea *mauka* resembled the claw marks of a *mo'o*, and the ridge above Kīlauea stream was called Kamo'okoa, meaning "brave lizard" (Wichman 1998:102).

Wichman (1998:103) also relates a story that purports to explain the "volcanic cone open to the ocean" resulting in the "long beach unprotected by any reef" at the coast of Kīlauea Ahupua'a, as well as "three huge stones" that once stood atop the cone but "have since been moved, with great difficulty, to make room for sugarcane." These features were attributed to the actions of the volcano goddess Pele:

Pele had come to Kaua'i and fallen in love with Lohi'au, a chief of Hā'ena. She promised to find a home for the two of them, but when ever she struck her staff, she was met by water, for her sister Nā-maka-o-kaha'i, goddess of the sea, was her enemy. Pele caused an eruption here, but it was soon extinguished when the sea goddess broke down the walls of the crater, drowning the fire with the ocean. [Wichman 1998:103]

Already frustrated by her sister's sabotage, Pele is enraged when "three beautiful sisters" named "Kalama, Pua, and Lāhela" laughed at the failure of her efforts, and she promptly turns all three into stone, leaving them in place as an object lesson of why she should not be ridiculed.

## MO'OLELO

The *mo'olelo* (lit. stories; also: oral history) of Kaua'i include many legends and tales of great events, but few that occur in Kīlauea. It is also notable that these tales speak of the fruit-bearing trees of Kīlauea providing food, rather than a cultivated staple crop, which is consistent with the difficulties the terrain in Kīlauea Ahupua'a could present to flat field agriculture (see Lifestyle and Subsistence, below).

Kīlauea Ahupua'a is mentioned as part of the long journey of Hawai'i island chief Lonoikamakahiki to see for himself "the famous trunkless *koa* [*Acacia koa*] tree of Ka-hiki-kolo, a tree from which earlier warriors had fashioned war clubs" (Wichman 2003:67). This journey began with Lonoikamakahiki accompanied by "his favorites, his warriors as companions and also his servants" but this retinue soon abandoned him, and when he "happened to look back to see where the rest of his people were" he found "only a solitary man following him... a stranger with whom he had no acquaintance" (Fornander 1916-17, Vol 4:352). The stranger was Kapa'ihiahilina, a Kaua'i native who had heard that the Hawai'i *ali'i* had been deserted by his followers, and brought "a calabash of *poi* [a Hawaiian dish made from the fermented root of the taro which has been baked and pounded to a paste] with some 'o'opu [general name for fishes included in the families Eleotridae, Gobiidae, and Blennidae] fish" as provisions for Lonoikamakahiki (Wichman 2003:68). Lonoikamakahiki was determined to press on to his destination, and observing that Kapa'ihiahilina scrupulously observed the *kapu* (taboos, prohibitions) that were accorded to royalty, told his faithful companion that they would proceed as equals:

Lonoikamakahiki said to him: "do not hold me in sacredness because you are my own brother. I have nothing dearer than yourself, therefore, where I sleep there will you sleep also. Do not hold me aloof, because all that is good has passed and we are now travelling in the region of the gods." In consequences of this, the king's wishes were observed, and they sat down together.  
[Fornander 1916-17, Vol 4:352]

The food that Kapa'ihiahilina had brought ran out, but he foraged *hala* (screwpine. *Pandanus tectorius*) fruit for food, and also braided ferns into garments to replace the *malo* (male's loincloth) made of *tapa* (bark cloth) they wore, which had been damaged by rain. With the aid of this skilled friend, Lonoikamakahiki achieved his wish to see the trunkless *koa* tree, and returned safely home, where he made his new trusted confidante his prime minister.

The meteoric rise of this outsider [Wichman (2003:67) characterizes the Kaua‘i man as a chief himself, but Fornander (1916-17, Vol 4:352) does not give him any rank] led to jealousy from Lonoikamakahiki’s subordinate chiefs, who began plotting against Kapa‘ihiahilina. The plotters eventually convinced Lonoikamakahiki to bar his friend from his presence by spreading rumors that Kapa‘ihiahilina had slept with his wife. Kapa‘ihiahilina then composed a chant reminding Lonoikamakahiki of their friendship, and how they had faced adversity together in their passage through the wilderness of Kīlauea (and other parts of Kaua‘i), a part of which says:

We ate of the ripe pandanus in our  
wanderings,  
Thus were our days of hunger  
appeased, my companion,  
My companion of the tall pandanus,  
From Kīlauea to Kalihi;  
The pandanus that had been partly  
eaten,  
Of Pooku in Hanalei.

*Hala ia mao a ka ua ilaila, e ke hoa-  
e,  
Hele aku a ai i ka pua pala o ka hala  
Hala ia la pololi o ka ua ilaila, e ke  
hoa.  
He hoa i ka nahele la uhala loloa,  
Mai Kīlauea a Kalihi la;  
O ka hala i aina kepaia,  
O Pooku i Hanalei-la.  
[Fornander 1916-17, Vol 4:358-359]*

This chant reminded Lonoikamakahiki of his affection for his friend and all that Kapa‘ihiahilina had done for him, and he gave orders that his friend be restored to the prime minister position and the plotters be executed.

Kīlauea Ahupua‘a is also mentioned as the place where an *ali‘i* named Kāhili ruled, but the *mo‘olelo* that speaks of him actually takes place in Kīpū Ahupua‘a, near the Hulē‘ia River and Mount Hā‘upu. Kāhili arrives in Kīpū at the court of the *ali‘i nui* (high chief) Hina, famed for her beauty, just in time to become the subject of a rivalry between the Kaua‘i *ali‘i nui* and a rival beauty visiting from O‘ahu, Pele‘ula. Pele‘ula had heard that “Kaua‘i women were the most beautiful” while holding court at her home of Waialua, and proud of the splendor of her court and her own charms, had made up her mind to visit Kaua‘i to settle the question of where the greatest beauty lay (Wichman 1991:110). Hina welcomed the visiting Pele‘ula, and invited all her own subordinate *ali‘i* to present themselves, all the better to show off Kaua‘i. When Kāhili arrived, both Hina and Pele‘ula saw that he was exceptionally handsome, and agreed to make him the prize in a contest between them, initially ten rounds of *kilu* (a throwing game; *also*: the a small gourd or coconut shell, usually cut lengthwise, used to play the game of *kilu*). A game of *kilu* ordinarily featured many players who threw at targets placed in front of other participants to pick a partner for a kiss (or more), comparable in this respect to the contemporary game of spin-the-bottle. So enamoured were the two female *ali‘i nui*, however, that they instead asked Kāhili to be the sole target in a direct *kilu* contest between the two of them.

The handsome young *ali'i* was all too happy to be the center of attention, showing his value as stakes by performing a dance and chant in which he declared "Here are the bones of Ko'olau, / The 'ulu, breadfruit tree [*Artocarpus altilis*] and warrior of Kilauea" (Wichman 1991:114). The two women proved to be equally adroit at *kilu*, and instead decided to have a beauty contest, letting Kāhili pick which of them he found to show her charms to best advantage. Both women prepared themselves with their best adornments and present their own dances and chants before the court. Pele'ula showed off well, but Hina's performance evoked not only her own beauty but the natural wonder of Kaua'i. Even her rival had to admit that "the beauties of Kaua'i are beyond compare" (Wichman 1991:119). To commemorate this, a profile of Hina, called Hinaiuika, was carved on the face of Hā'upu.

## LIFESTYLE AND SUBSISTENCE

The Pre-Contact (e.g. prior to western contact, which is generally considered to begin with the arrival of Captain James Cook in 1778) Hawaiian economy was largely based on subsistence agriculture and aquaculture, supplemented by collection of natural resources, including marine and avifaunal organisms and undomesticated flora. Patrick Kirch notes that the economy was productive and diverse enough to support "considerable craft specialization... canoe-makers, adz-makers, bird-catchers, wood-carvers and tattooing experts" (Kirch 1985:3). The existence of specialized artisans and artists implied a sophisticated society with a bounty of both surplus food and spare labor to support many cultural practices and non-subsistence activities.

Settlements often concentrated in river valleys most amenable to wet *kalo* (taro, *Colocasia esculenta*) cultivation, incorporating *lo'i* (pond fields, irrigated terraces) and *'auwai* (ditches, irrigation canals). Areas with higher precipitation permitted cultivation of *kō* (sugar cane, *Saccharum officinarum*) and *mai'a* (banana, *Musa* spp.). However, dryland agriculture centering on *'uala* (sweet potato, *Ipomoea batatas*) as the staple crop was also prevalent, especially on drier, leeward areas of the islands, where they were cultivated along with dryland varieties of *kalo*.

Edward and Elizabeth Handy (1972) note that Kīlauea has long been a favorable location for agriculture, and naturally became a population center as well:

On the island of Kauai there were five areas where development of food resources produced concentration of population. One of the best deep-sea fishing areas was along the windward or Napali coast. Adjoining this to the southward were localities where irrigated taro was cultivated extensively in terraces, termed *lo'i*, at Ha'ena, Hanalei, and Kīlauea. [Handy and Handy 1972:269]

Handy and Handy (1972) also note that the tendency for relatively steep terrain in this region, especially upland, inhibited terracing for wet *kalo* agriculture. Agriculture was likely on *kula* (*lit.* plain, pasture, *in context*: dryland suitable for dry cultivation in contrast to wet cultivation in *lo 'i*) lands with *'uala* as the favored staple crop.

Kīlauea is watered by a small river whose headwaters take the flow of streams above Kalihiwai as well as those coming down sloping *kula* lands above Kīlauea. This is a peculiar terrain, with terraces along the north side of the river toward its seaward end belonging to Kīlauea and those on the south side to the small *ahupua 'a* named Kāhili. A mile upstream is a small terraced area, but beyond this there were no terraces, for the main stream flows in a narrow gulch, and so do other side streams which flow into the Kīlauea River. Hawaiians evidently never developed *lo 'i* here because the neighboring *kula* land is too high above the streams for irrigation. This *kula* would have been excellent sweet-potato land. On the whole, Kīlauea, despite a sizable river flowing through it, was a relatively small producer of taro because of the nature of its hinterland. [Handy and Handy 1972:421]

While the immediate vicinity of the project area has, in the current day, been rendered flat enough to be amenable to both agriculture and contemporary residential development, the soil map (see Figure 4 and Table 1) certainly shows that the terrain of this area varies greatly.

## WATER AND MARINE RESOURCES

The project area is part of what the State of Hawai'i Division of Aquatic Resources (Parham et al. 2008) categorizes as the Kīlauea, Kaua'i Watershed, which is supplied with water by the perennial Kīlauea Stream, as well as ample rain (see Climate and Hydrology, above).

As Handy and Handy (1972) note (see Lifestyle and Subsistence, above), the (often steep) terrain near the river made it difficult to harness that water for *lo 'i* agriculture. However, the ancient irrigation ditches attested by Wichman (1998) (see Wahi Pana, above) are evidence of substantial Pre-Contact agriculture, largely inland and *mauka* of the current project area.

Wichman's (1985:36) account of the Menehune favoring fishing grounds offshore of Kīlauea indicates that marine resources were ample, despite the lack of a reef in the collapsed cinder cone that shapes the beach. Mōkōlea and Moku'ae'ae are now part of a nature reserve (see Cultural Resources, below), but these seabird nesting sites were also a source of food. "In the interview of a local resident, Kwai Chew Lung (Chow) ... he recalls that the Hawaiians used to pick up baby chicks on Moku'ae'ae Rock... he also remembers going fishing there and hunting for eggs to eat" (Fredericksen and Fredericksen 1989:15).

## CULTURAL RESOURCES

Thomas Thrum (1907) recorded a single *heiau* named Pailio in Kīlauea Ahupua‘a, as well as another *heiau* named Kipapa in Kāhili Ahupua‘a, but based on later investigations, it would appear that both *heiau* have been destroyed by subsequent activity (see Previous Archaeology, below). There is considerable amount of remnant Pre-Contact Hawaiian terracing near Kīlauea Stream (on private lands), southwest of the current project area, especially where the terrain is steep and uninviting to Post-Contact development.

In some cases (see Previous Archaeology, below), Post-Contact agricultural and habitation features have been found built over or reusing the Pre-Contact terracing. While the native Hawaiian population decreased in the 19<sup>th</sup> century, immigration brought in new settlement, including many Asian workers employed by the Kilauea Sugar Company plantation. Asian-style rice pond fields that were likely developed from remains of older native Hawaiian *lo ‘i* (to the south of the project area Clark and Rechtman 2010, Clark et al. 2011), and the presence of a Japanese Cemetery to the west (Cleghorn 2001, Spear 2014, Hulen and Barna 2021), speak to the historical demographic changes in Kīlauea Ahupua‘a.

In the present day, some cultural resources in Kīlauea Ahupua‘a are accessible through programs for preservation of historic locations and traditional culture. A number of structures have been placed on the National Register of Historic Places (NRHP). This includes several buildings associated with the Kīlauea plantation, as well as the Daniel K. Inouye Kilauea Point Lighthouse located within the Kilauea Point National Wildlife Refuge (KPNWR). A number of Hawaiian cultural organization partner with the KPNWR to provide access to the coastal region for traditional cultural practices (see Land Use in the Post-contact Period to the Present).

## HISTORICAL SETTING

### PRE-CONTACT POLITICAL HISTORY

Wichman (2003:55) writes that “the genealogy of Kaua‘i *ali‘i* was considered the most ancient and impeccable in all the Hawaiian islands” and that “*Ali‘i* from other islands were eager to introduce the Kaua‘i bloodline into their own” because of the prestige of the noble lineages of Kaua‘i. Yet despite the high regard in which Kaua‘i *ali‘i* were once held, significant portions of their history have been largely inaccessible to western historians due to limited written records and *mo‘olelo* that have been preserved (Abraham Fornander 1880, Vol 2:291). Nonetheless, folklore associated with Kaua‘i provides some context for Kauai’s Pre-Contact history.

Martha Beckwith (1970) chronicles the venerable bloodlines from which most Hawaiian *ali‘i* claimed descent, originating from the god Wākea and his wife Papahānaumoku:

From Ulu and Nana-ulu, sons of Ki'i, twelfth in succession from Wakea and Papa, all high chief families count descent. Hikapoloa, as well as the Waha-nui and Keikipaanea families of early legend, belong to the Nanaulu line. The important Maweke family is, according to Kamakau, the first of that line from whom men today trace ancestry. Their contemporaries are the Paumakua of Oahu, the Kuhiaailani of Hawaii, Puna of Kauai, Hua of Maui, and the Kamauaua of Molokai. To the Ulu line belongs the late migration of chiefs introduced by Paoa to the island of Hawaii from whom most families of that island trace descent. Both legends, that of Paoa and that of Maweke, are believed to have bearing upon early colonization of the Hawaiian group...

The coming of Maweke and his sons to the Hawaiian group is dated sometime between the eleventh and twelfth centuries. [Beckwith 1970:352]

Based on his being a contemporary of Māweke, whose reign is estimated to the 11th century C.E., Puna, the progenitor of Kaua'i's prestigious bloodlines, can be dated to roughly that time period. Perhaps the most famous descendants of Puna, as attested by the genealogies compiled by Samuel Kamakau (1992:448), are Kukona and his son Manokalanipō, respective the 7<sup>th</sup> and 8<sup>th</sup> *ali'i 'aimoku* (*lit.* chief who eats the land; *in context*: ruling chief of an island) of Kaua'i. Fornander (1980, Vol 2) highlights Kukona as being particular in his notability – he is a major figure in the legends where his forefathers are largely unmentioned:

Indigenous Kauai legends referring to this period have perished, and up to *Kukona's* time naught but the royal genealogy remains. But the war with the Hawaii chief, and the terrible defeat and capture of the latter, as well as *Kukona's* generous conduct towards the Oahu, Molokai, and Maui chiefs who fell into his hands after the battle, brought Kauai back into the family circle of the other islands, and with an *eclat* and superiority which it maintained to the last of its independence. [Fornander 1980, Vol 2:93]

The battle Fornander (1980, Vol 2:93) refers to also contributed to Kaua'i's prestige. In the early 15<sup>th</sup> century, Hawaii Island chief Kalaunuiohua launched an invasion of Kaua'i, accompanied by subordinate chiefs from other islands: Kaniauohua (Maui), Kahakuohna (Moloka'i), and Huakapouleilei (O'ahu). According to David Malo (1898:331-332), Kukona was able to win over these subordinate chiefs after defeating this invasion. Wichman (2003:55) characterizes the subsequent peaceful and prosperous times under Kukona's son Manokalanipō as a 'golden age':



Under Mano-ka-lani-pō, more and more land was opened for agriculture, and the population flourished. Warriors became more athletes than soldiers. So peaceful was this Golden Age that Palekaluhi, twin brother of Mano-ka-lani-pō, died in bed of old age. Such a passing was, after so many years of war, something to be noted. [Wichman 2003:55-56]

Although Manokalanipō led his father's warriors to war to capture the enemy chiefs Kukona was famous for winning over, he apparently had few worries about needing to fight during his own reign. Chiefs in this line of descent would subsequently rule Kaua'i for many generations.

### EARLY POST-CONTACT HISTORY

Captain James Cook made the first recorded contact with the Hawaiian Islands when he landed at Waimea on the southern coast of Kaua'i on January 20, 1778 (Beaglehole 1967; Daws 1974:1–2). After Cook's HMS *Resolution* and HMS *Discovery*, other ships began frequenting the islands to take on provisions and to partake in the sandalwood industry. Soon after, missionaries, visitors, and entrepreneurs also began arriving. Introduction of new technologies, religions, and political systems would play a major role in the eventual unification of the Hawaiian Islands.

A political consolidation of the Hawaiian Islands was already underway, but was accelerated by contact and the introduction of gunpower weapons. Maui chief Kahekili II (c. 1737–1794) was able to bring not only O'ahu, but also Lāna'i and Moloka'i under his rule in addition to his native Maui, and was engaged in warfare with his Hawai'i Island rival Kalani'ōpu'u at the time of contact. Kahekili also seems to have considered Kaua'i to be within his sphere of influence since his half brother Kaeokulani was married to Kaua'i's ruler, Kamakahahei. While Kahekili came closer to unifying the island chain than any before him, after his death at Waikīkī in 1794, his realm fell to conflicts between his heirs and invasion from his traditional rivals on Hawai'i.

According to Fornander (1880, Vol 2:262) Kahekili's son Kalanikūpule was his official heir, but his uncle Kaeokulani (who co-ruled Kaua'i) was in *de facto* control of the majority of his inheritance after the passing of Kahekili. Kalanikūpule was initially only able to secure direct control over O'ahu: "*Kalanikupule*, at his father's death, was recognised as the Moi [king] of Maui and its dependencies, Lanai, Molokai, and Oahu, yet the previous arrangement between *Kahekili* and *Kaeokulani* remained in force for some time, the latter governing Maui and the adjacent islands, while *Kalanikupule* ruled over Oahu." This was not a stable state of affairs, and nephew and uncle were soon at odds with each other. Kalanikūpule would strike a bargain with Captain William Brown for military assistance in this civil war with his uncle, and the firepower provided by Brown's ships proved decisive, delivering him victory over Kaeohulani.

However, Kalanikūpule subsequently tried to seize Brown's ships and firearms to use against Kamehameha, who was now the ruler of Hawai'i Island, the primary rival center of power. While this betrayal was initially successful, the surviving Western crew were able to retake their ships, and promptly replenished their supplies by selling the weapons Kalanikūpule coveted to his rival (Kamakau 1992:170–171). Having secured an invaluable military advantage, Kamehameha established his presence on Maui with an invasion of Lāhainā in February of 1795, his large fleet of war canoes covering the coast from Launiupoko to Mala (Kamakau 1961:171). Kalanikūpule fled to O'ahu, but Kamehameha's forces pursued, and ended the war with the battle of Nu'uuanu on O'ahu in 1795. This left Kaua'i as the only significant political force in the island chain unconquered, and Edward Joesting (1984:58) notes that at this time it was undergoing its own civil war between two of Kaeokulani's sons, Keawe and Kaumuali'i. However, Kamehameha's first invasion attempt in 1796 was foiled by bad weather while his fleet tried to cross the Kaieie Waho Channel between O'ahu and Kaua'i, with many canoes sunk (Joesting 1984:59).

Kamehameha was prevented from swiftly making a second attempt by the need to put down rebellions in his own territory, and while Keawe triumphed in the civil war on Kaua'i, he died soon after, and rulership defaulted back to Kaumuali'i. Kamehameha's second try at an invasion in 1804, gathered "an army consisting of about 7,000 Hawaiian men ... eight cannons. forty swivel guns. and six mortars," to be carried by not only canoes but "twenty-one armed schooners" (Joesting 1984:62). This invasion force was struck by an illness called *ma'i 'ōku'u* (*lit.* squatting sickness; possibly cholera). The loss to illness of many of his most "trusted counselors and chiefs. some of whom had served Kamehameha for twenty years or more" made the invasion impossible (Joesting 1984:62). Joesting (1984:62-63) states that the loss of loyal subordinates was so severe that Kamehameha worried about attempts to overthrow him. This may have motivated Kamehameha to shift towards negotiations, with an eventual agreement reached in 1810 for Kaumuali'i to become his vassal, officially completing the unification of the islands while allowing Kaumuali'i to continue to rule Kaua'i as a (largely autonomous) subordinate chief.

Christian missionaries had arrived on Kaua'i in 1820, some of them accompanying Humehume's return home after his father had earlier sent him to the United States (Mills 2002: 127). According to Robert Schmitt (1973:2-3), the missionaries organized Kaua'i's first censuses, beginning in 1831, and would provide the main source of population data until the first comprehensive government census in 1850. Kauai's population was recorded as 10,977 in 1832, thereafter declining to 8,934 in 1836 and 6,956 in 1850 (Schmitt 1973:8). A more detailed regional enumeration in 1835 counted 88 adults and 29 children for a total of 117 individuals in Kīlauea Ahupua'a (Schmitt 1973:25).

## THE MĀHELE

In the 1840s, during the reign of Kāiʻikeyouli, massive change in land tenure occurred, commonly referred to as the *Māhele* (division) because the *ʻāina* (land) was legally divided between owners (Daws 1974:128). The term may also refer to the idea of the Hawaiian *makaʻāinana* (commoners, residents; *lit.* on the land) being dispossessed of the *ʻāina*; separated from something that was once integral to their identity.

Formalizing land ownership had long been suggested by western advisors to the king and chiefs, but the five-month occupation of the islands by British naval officer George Paulet in 1843 may have added urgency to the issue, since privatization offered the hope that *aliʻi* might retain control over their lands as property even if national sovereignty were lost (Daws 1974:112-117). The Board of Commissioners to Quiet Land Titles (often shortened to “the Land Commission”) was established in 1845 to oversee land titles, and this Land Commission would hear claims during the *Māhele*.

The *Māhele* of 1848 divided Hawaiian lands between the king, the chiefs, and the *aupuni* (government). The parcels awarded by the Land Commission were called Land Commission Awards (LCAs). Initially, this only established crown lands owned by the king, *aupuni* lands owned by the government and private lands owned by the *aliʻi*, which were often referred to as *konohiki* (*ahupuaʻa* headman) lands after the title given to land agents or stewards that managed *ahupuaʻa* and *ʻili*. The subsequent Kuleana Act of 1850 allowed *makaʻāinana* to file claims for land parcels and house lots on which they had been living or cultivating.

In order to file claims, however, the *makaʻāinana* first had to be aware of the awarding of *kuleana* lands and LCAs, procedures that were largely foreign to them. Many of the *makaʻāinana* could not afford the costs associated with filing. People claiming urban house lots in Honolulu, Hilo, and Lāhainā were required to pay commutation to the government before obtaining a Royal Patent on their awards (Chinen 1961:16). Rural *kuleana* claims required a survey, which could be quite costly, assuming that the services of one of the few surveyors present in the islands at the time could be obtained (Moffat and Fitzpatrick 1995:50). Furthermore, awards of rural *kuleana* lands often only encompassed land under active cultivation, without including other locations necessary for traditional survival strategies, such as previously cultivated but presently fallow lands, or resource gathering areas such as *ʻokipuʻu* (swidden gardens) and stream fisheries (Kameʻeleihiwa 1992:295; Kirch and Sahlins 1992:23, 110). These factors may have contributed to the relatively low number and size of claims, as only 8421 *kuleana* awards were issued, totaling only 28,658 acres (Moffat and Fitzpatrick 1995:50).

Some contemporary scholars have disputed the notion that the Māhele was the chief instrument of dispossession of the *kanaka maoli* (native Hawaiians). Beamer and Tong (2016:130) point out that although the claims system appears to have awarded the *maka‘āinana* little, records show that they were able to purchase an estimated 167,290 acres of land between 1850 and 1893, often *aupuni* lands sold to them at relatively low cost. Beamer and Tong (2016:136) also argue that many *ali‘i* leased or sold land to *hui* (associations) of *kanaka*, keeping some semblance of the former *ali‘i - hoa‘āina* relationship. In these ways, land not awarded to *maka‘āinana* during the Māhele were still made available to them. Nonetheless, once foreigners were allowed to acquire land through the Alien Land Ownership Act of 1850, they quickly came to control much of it. By the end of the 19<sup>th</sup> century “white men owned four acres of land for every one owned by a native” (Daws 1975:125).

The *Indices of Awards Made by the Board of Commissioners to Quiet Land Titles in the Hawaiian Islands* (Land Commission 1929) do not list any LCAs in Kīlauea Ahupua‘a. Lloyd Soehren’s (2002-2019) *Hawaiian Place Names* database notes that Kīlauea Ahupua‘a was “returned by Kekauonohi, retained by *aupuni* at the Mahele.” The Office of Hawaiian Affairs (n.d.) *Kipuka Online Database* suggests a slightly more complex transaction in which Kīlauea Ahupua‘a was “relinquished by Mikahela Kekauonohi to Kamehemeha III” and “relinquished by Kamehemeha III to Government.” It should be noted that LCA No. 8559-B, the claim for the crown lands of Hawaii in the name of William C. Lunalilo, includes Kāhili and Kalihiwai Ahupua‘a, the *ahupua‘a* east and west of Kīlauea Ahupua‘a, whereas Nāmāhana Ahupua‘a to the northwest was claimed by Keahikuni Kekau‘ōnohi (also called Mikahela or Miriam) as part of LCA No. 11216. It makes geographic sense that the King, Kekau‘ōnohi, or both once had a claim on Kīlauea Ahupua‘a given their claims on adjacent *ahupua‘a*.

It is clear, however, that Kīlauea Ahupua‘a was declared *aupuni* lands during the Māhele, and that no *kuleana* awards are listed for the *ahupua‘a*. The *Indices* (Land Commission 1929) do list seven other LCAs in Kāhili Ahupua‘a and 28 other LCA in Kalihiwai Ahupua‘a aside from those of the Crown (LCA No. 8559-B; Lunalilo); these are presumably *kuleana* claims. The seven *kuleana* claims in Kāhili Ahupua‘a are the *kuleana* awards closest to the current project area, and cluster on the east bank of Kīlauea stream, mostly near the stream mouth. LCA No. 10333, claimed by Naaimeneo on behalf of her deceased husband Oopu, and confirmed by Royal Patent Grant No. 3370 in 1856, sits on the present border with Kīlauea Ahupua‘a (Waihona ‘Āina N. d.). The other six LCAs in Kāhili Ahupua‘a are LCA Numbers 9067, 10013, 10013-B, 10015, 10082, and 10083. These seven awards are shown on Figure 5, and records for Kāhili Ahupua‘a LCA (excerpted from Ida and Hammatt 1997) are also included in Appendix A.

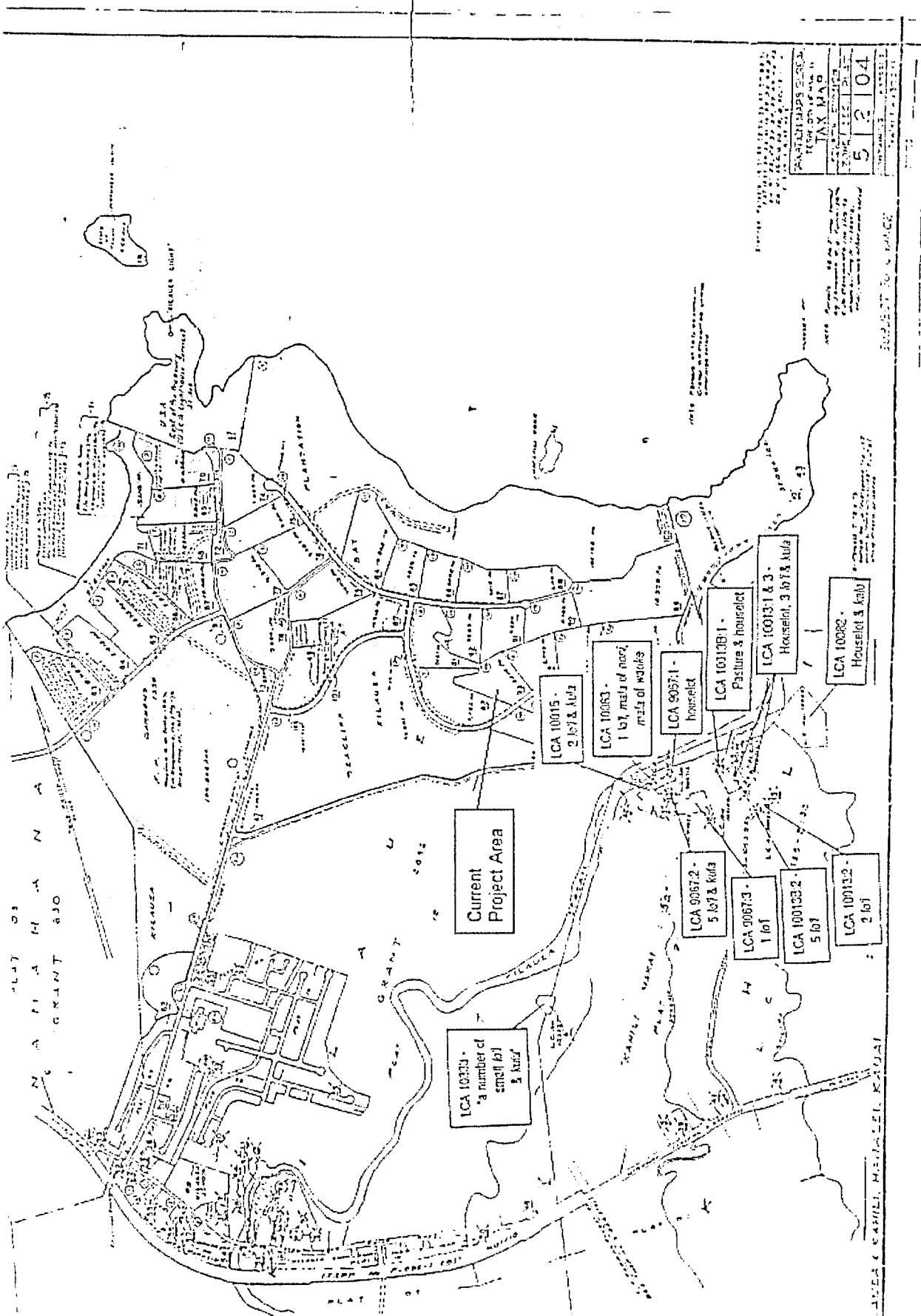


Figure 5: TMK map (zone 5, section 2, plat 004) with LCA parcels labeled; adapted from Ida and Hammatt 1997

Māhele records indicated that there were other claims made for lands in Kīlauea Ahupua‘a during the Māhele, but none were awarded. This includes a claim (No. 6529) by Holokukini, on the basis that he served as *konohiki* for Kīlauea Ahupua‘a under Aaron Keali‘iahonui (husband of Kekau‘ōnohi), and six other claims, all of which were rejected or abandoned. Among the *kuleana* claims was one (No. 9217) that gained some later notoriety for (the claimant) Kealawa‘a complaining that “I returned my claim to land of Kilauea to the Konohiki for the land is being filled with cattle & I have no desire to combat them [*sic*]” (Waihona ‘Āina 2005).

## LAND USE IN THE POST-CONTACT PERIOD TO THE PRESENT

Whaling declined in the late 19<sup>th</sup> century, and commercial agriculture and ranching came to the forefront of Hawaiian economy, in part because the Māhele had allowed the consolidation of lands into vast and now privately owned plantations and ranches. The Reciprocity Treaty of 1875 permitting duty-free trade of agricultural products between the Kingdom of Hawai‘i and the United States turned Hawaiian sugar into an immensely profitable commodity. Kuykendall (1967, Vol 3:46-48) credited the sugar industry with cementing commercial agriculture as the economic mainstay of the Hawaiian economy for the rest of the century and beyond.

Commercial sugar production on Kaua‘i began as early as 1835, when the firm Ladd and Company, affiliated with Christian missionaries, secured the first land lease in Hawaiian history, for 980 acres at Koloa for a sugar plantation (Joesting 1984:131). Joesting (1984:147) notes that “optimistic reports of progress in cultivating sugarcane at Koloa plantation raised interest in other agricultural crops,” such as a venture by Sherman Peck and Charles Titcomb to try to raise silkworms. While this plan failed, Titcomb would eventually go on to purchase the whole of Kīlauea Ahupua‘a in 1863 and start a plantation there. Jesse Condé and Gerald Best (1983:150) indicate the plantation was sold to Captain John Ross and Edward P. Adams in 1877.

According to the Kaua‘i Historical Society (N.d.), the plantation was subsequently incorporated as a company, Kilauea Sugar Company Limited, in 1880 and would remain in operation for over 90 years:

It became known as Kilauea Sugar Plantation Company after purchase by a California corporation in April 1899. Headquarters were in San Francisco, California, with local operations in Kīlauea, Kaua‘i, Hawai‘i. In 1955, C. Brewer and Company Ltd., the company’s Honolulu sugar factor (agent), purchased a majority of stock, and the company reverted to its original name, Kilauea Sugar Company Limited. All sugar operations were terminated on December 31, 1971. [Kaua‘i Historical Society N.d.:2]

William Dorrance and Francis Morgan (2000:32) note that “Kilauea Sugar Company was among the smallest in the Islands,” which, given that they indicate it reached “5,000 acres” suggests the economy of scale required for success during the heyday of commercial sugar in Hawai‘i. Carol Wilcox (1996:84) explains that the plantation “had to make the best of marginal conditions. Plagued by rocky terrain, small size, few water resources, and its remote, windward location, it never enjoyed the success of other, better situated plantations.” While the plantation was not as massive as some of its peers, it boasted its own railroad to haul sugar to the mill. The Kauai Plantation Railway (2008) website recorded that railroads on Kaua‘i island used unusually narrow gauge, but the railroad at Kilauea, the first on the island of Kaua‘i, was even narrower:

In late 1881 management of the Kilauea Plantation ordered rail equipment from the John Fowler Co, of Leeds, England. Rail, spikes, a locomotive and cars arrived on Kauai late in 1881 and by the end of 1882 the line was in operation. Track gauge was 2' and the tiny (likely 6 tons) 0-4-2 Fowler locomotive could move up to ten loaded cars of cut cane in one train.

While the original line at Kilauea Plantation remained at 2' gauge to the end, all the other lines on Kauai chose 30" gauge, the only Island in the Hawaiian Chain to run with this gauge.

Condé and Best (1983:150) report that “rail equipment for Kilauea was duly shipped to Kauai and by a curious twist was not only the first railroad built on that island, but it had its first spike driven by an [*sic*] Hawaiian Princess” on September 24, 1881. This dignitary was Princess Regnant Lydia Kamaka‘eha, who would in a decade be crowned as Queen Lili‘uokalani, the last monarch of the Kingdom of Hawai‘i. She was visiting Kaua‘i, and had not been aware of the railroad, but upon arriving at Kīlauea Village, she was greeted by employees of the Plantation:

...she was informed that at that moment the first piece of track for the first railway on Kauai was about to be laid, and it would be considered an honor if Her Royal Highness would drive the first spike, which she kindly consented to do. Proceeding to the plantation... a large crowd had collected, the Royal Standard having been hoisted on a temporary staff. Her Royal Highness... took great interest in all these particulars, and expressed her great satisfaction at being able to be present at the laying of the first railway on the Island of Kauai, and trusted it might soon gird the whole island and so develop its resources and promote the industry of its people. [Pacific Commercial Advertiser 1881 in Condé and Best 1983:151]

By November of 1881, the railroad at the Kilauea Sugar Company plantation was operational, with three miles of track laid. Both sugar operations and the railroad grew over the next several decades, and “in 1910, Kilauea’s railroad system was comprised of 12 ½ miles of permanent track, 5 miles of portable track, 200 cane cars, six sugar cars and four locomotives” (Soboleski 2017).

Much of the infrastructure built up for the Kilauea plantation did not survive to the current day. The railroad was phased out first: “Kahili Landing and its railroad track was abandoned beginning in 1928, when sugar from the mill was trucked to Ahukini Landing instead, and by the spring of 1942, trucks had replaced railroad locomotives and cane cars as the means of hauling sugarcane to the Kilauea mill” (Soboleski 2017). Wilcox (1996) states that the land continued to see some agricultural use after sugar operations ended in 1971, but there was no upkeep of the plantation irrigation system, and parts of it were destroyed while others were simply abandoned:

.. no mechanism was established to secure the easements or maintain the old system. Over the years the connections between reservoirs and delivery systems were destroyed by roads, pasture, development, neglect, and intent. The Hanalei Ditch was abandoned, its flumes and siphon no longer operable. The connection from the Kalihiwai Reservoir to Stone Dam was destroyed, as was that between Puu Ka Ele and Morita reservoirs. Puu Ka Ele and Koloko reservoirs' delivery systems were gone. C. Brewer established Kilauea Irrigation Company, a public utility, to administer the surviving sections that service its guava farming operation. By the mid-1990s, some reservoirs stood alone with little utilitarian purpose. [Wilcox 1996:85]

Several structures associated with the Kilauea plantation were nominated for the NRHP. This includes the Kilauea Plantation Head Bookkeeper's House, Kilauea Plantation Head Luna's House, Kilauea Plantation Manager's House, Kilauea School, and Kilauea Plantation Stone Buildings. According to the Historic Hawai‘i Foundation (2021), these NRHP properties are located in Kilauea Town, southwest of the current project area. Aside from plantation buildings, only one other NRHP site occurs within Kilauea Ahupua‘a: the Daniel K. Inouye Kilauea Point Lighthouse (see Previous Archaeology, below), a set of stone structures located within the present-day Kilauea Point National Wildlife Refuge (KPNWR).

KPNWR occupies Kilauea Point peninsula, Mōkōlea Point peninsula, Crater Hill, and the coastline north of the project area. The wildlife refuge was established in 1985 and expanded to its current extent in 1988. KPNWR is administered by the US Fish and Wild Life Service (FWS), and is open to visits (and thus serves as a tourist attraction).



The FWS maintains the refuge to protect and preserve not only flora and fauna, especially migratory seabirds and the endangered *nēnē* (Hawaiian goose, *Nesochen sandvicensis*), but also the Daniel K. Inouye Kīlauea Point Lighthouse and Light Station. The FWS also partners with local native Hawaiian organizations such as Kaipuwai Foundation and Na Kia‘i Nihoku, that “perform Native Hawaiian cultural practices and ceremonies at Nihoku summit on the summer and winter solstice and the spring and fall equinox” (Fish and Wild Life Service N.d.). Additionally, portions of KPNWR are open to fishing, and “native Hawaiian fishing at Kīlauea (East) Cove” is recognized as a cultural practice (Fish and Wild Life Service N.d.).

With the closure of the sugar plantation, some farming continued in Kīlauea, but much like the rest of Hawai‘i, the economy shifted toward tourism as the primary industry. The construction of Lihue Airport in 1948-49 had made Kaua‘i accessible for tourism, and “by 1955, the... airport was served by Hawaiian Airlines, Ltd. and Trans-Pacific Airlines, Ltd. on a scheduled basis” (Hawaii Department of Transportation 2022). Based on 2010 census data, the Cedar Lake Ventures, Inc. (2018) *Statistical Atlas* reports that 19.6% “of the civilian employed population aged 16 and older” on Kaua‘i is in the hospitality industry, making it the island’s largest sector of employment.

## **PREVIOUS ARCHAEOLOGY IN THE PROJECT AREA VICINITY**

There has been a significant amount of previous archaeological work in the region, although much of it has concentrated on the coast, or on the far bank of Kīlauea Stream (in Kāhili Ahupua‘a). Conversely, Kīlauea Town to the southwest and the Seacliff Plantation community where the project area is located do not seem to have seen much investigation. Figure 8 shows the location of archaeological work in the vicinity of the project area. Note that several project areas adjoin or overlap Kīlauea Stream (also called Kīlauea River; see Figure 1 above for its location). These previous studies are also summarized on Table 2. While some early work was conducted (based heavily on recording oral accounts and checking for the features described in those accounts), the bulk of archaeological work in the State of Hawai‘i occurred after the U.S. Congress passed the National Historic Preservation Act (NHPA) in 1966 (Kawelu 2015:30).

### **EARLY ARCHAEOLOGICAL STUDIES (THRUM 1907, BENNETT 1931)**

Thomas Thrum (1907) made an early attempt to list all of the *heiau* (*lit.* places of worship; *in context*: temples for native Hawaiian religious practice) in the Hawaiian Islands. The *heiau* he noted on Kaua‘i are described in an article in the 1907 edition of his *Hawaiian Annual* almanac. Thrum (1907:42) recorded one *heiau* named Pailio in Kīlauea Ahupua‘a, as well as one *heiau* named Kipapa in Kāhili Ahupua‘a.

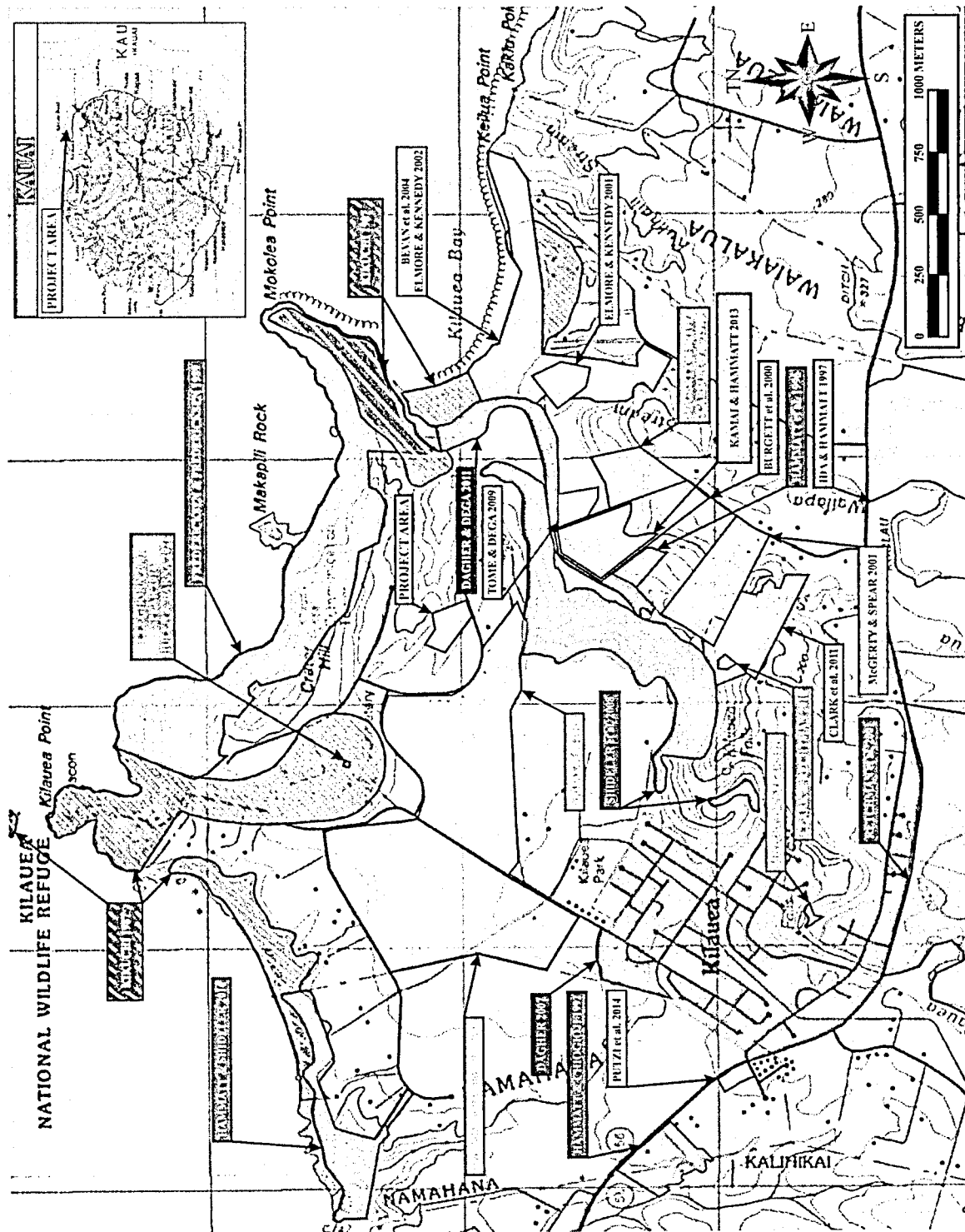


Table 2: Archaeological Studies in Nāmāhana, Kīlauea, and Kāhili Ahupua‘a

Author(s), Date	Research Type	Location	Results
Thrum 1907	Almanac Listing	Kaua‘i Island	Kipapa Heiau (SIHP Site 50-30-04-00132); Pailio Heiau (SIHP Site 50-30-04-00133)
Bennett 1931	Island-wide Survey	Kaua‘i Island	Kipapa Heiau (SIHP Site 50-30-04-00132); Pailio Heiau (SIHP Site 50-30-04-00133)
Kikuchi 1987	Archaeological Survey	Kīlauea Point [TMK: (4) 5-2-004:017]	Kīlauea Point Lighthouse (SIHP Site 50-30-04-00300)
Toenjes & Hammatt 1990	Archaeological Survey	[TMK: (4) 5-2-004:102]	no findings.
Hammatt & Chiogioji 1992	Archaeological Inventory Survey	[TMK: (4) 5-2-017:028]	no findings.
Hammatt et al. 1996	Archaeological Inventory Survey	[TMK: (4) 5-2-021:005]	agricultural complex (SIHP Site 50-30-04-00625); charcoal kiln, enclosure (SIHP Site 50-30-04-00998); cattle fence (SIHP Site 50-30-04-00999)
McGerty et al. 1997	Archaeological Inventory Survey	[TMK: (4) 5-2-021:007]	permanent habitation complex (SIHP Site 50-30-04-00974); garden area & burials (SIHP Site 50-30-04-00975); habitation site (SIHP Site 50-30-04-00976); agricultural area (SIHP Site 50-30-04-00977)
Carson et al. 1998	Data Recovery	[TMK: (4) 5-2-021:007]	confirmed assessment of Site -00974; no cultural material found at Site -00975
Ida & Hammatt 1997	Archaeological Inventory Survey	[TMK: (4) 5-1-005:052 & 102 through 113]	irrigation flume (SIHP Site 50-30-04-00640); Pu‘uka‘ele Ditch remnants (SIHP Site 50-30-04-00641); partially buried culvert (SIHP Site 50-30-04-00642); swale tunnel (SIHP Site 50-30-04-00643)
McGerty & Spear 1998	Archaeological Inventory Survey	[TMK: (4) 5-2-011:033]	agricultural complex (SIHP Site 50-30-04-00625)

<b>Author(s), Date</b>	<b>Research Type</b>	<b>Location</b>	<b>Results</b>
Burgett et al. 2000	Archaeological Inventory Survey	[TMK: (4) 5-2-021:006]	dryland agricultural site (SIHP Site 50-30-04-00632); unmarked grave (SIHP Site 50-30-04-00633); floodplain soil deposits (SIHP Site 50-30-04-01993 )
McGerty and Spear 2001	Archaeological Inventory Survey	[TMK: (4) 5-2-021:005]	additional features of Sites -00625, -00998, and -00999
Elmore and Kennedy 2001	Archaeological Inventory Survey	[TMK: (4) 5-1-005:005]	agricultural complex (SIHP Site 50-30-04-00515)
Cleghorn 2001	Archaeological Monitoring	Kilauea Japanese Cemetery [TMK: (4) 5- 2-004:049 por.] telecommunications installation	no findings.
Rechtman et al. 2001	Archaeological Inventory Survey	Hālaulani Property [ TMK: (4) 5-2-002:011]	dam on Kilauea Stream (SIHP Site 50-30-03-02060); dam on Pu'uka'ele Steam (SIHP Site 50-30-03-02062); ditch and flume remnants (SIHP Site 50-30-03-02063); irrigation tunnel and flume supports (SIHP Site 50-30-03-02064)
Elmore and Kennedy 2002	Archaeological Inventory Survey	[TMK: (4) 5-1-005:016]	additional features of Site -00515; unable to locate Kipapa Heiau (Site -00132)
Bevan et. al 2004	Archaeological Monitoring	[TMK: (4) 5-1-005:016]	additional feature of Site -00515
Dagher 2007	Field Inspection	[TMK: (4) 5-2-023:027 & 028]	no findings.
Shideler et al. 2008	Archaeological Inventory Survey	Kilauea Falls Ranch [TMK: (4) 5-2-012:035 por.]	agricultural terrace (SIHP Site 50-30-03-00579); agricultural complex (SIHP Site 50-30-03-00580); retaining wall, ramp, and trail (SIHP Site 50-30-03-00581); terraces (SIHP Site 50-30-03-00582); terraces (SIHP Site 50-30-03-00583)
Tome & Dega 2009	Archaeological Inventory Survey	[TMK: (4) 5-2-021:007]	agricultural site (SIHP Site 50-30-04-05028)

Author(s), Date	Research Type	Location	Results
Clark and Rechtman 2010	Archaeological Inventory Survey	[TMK: (4) 5-2-012:019]	terraced (rice) fields, SIHP Site 50-30-04-02011); Post-Contact (concrete) structure (SIHP Site 50-30-04-02011)
Sroat et al. 2010	Archaeological Inventory Survey	Kīlauea Agricultural Park [TMK (4) 5-2- 004:099]	Post-Contact habitation site (SIHP Site 50-30-03-02123); plantation-era structures (SIHP Site 50-30-03-02124); Pre- Contact agricultural terrace (SIHP Site 50-30-03-02125); plantation-era drainage (SIHP Site 50-30-03-02126)
Dagher and Dega 2011	Archaeological Monitoring	Kīlauea River Cleanup	insolated finds of human skeletal remains and Post-Contact artifacts; no sites identified
Clark et al. 2011	Archaeological Inventory Survey	[TMK: (4) 5-2-21:041, CPR 0001; (4) 5-2- 12:035 por.; and (4) 5-2- 021:004 por.]	expanded scope of Site -02011 to 4.5 acres; additional features of Site -02012
Kamai & Hammatt 2013	After-the-fact Assessment	[TMK: (4) 5-2-021:006]	no further damage found to Sites -00632 & -00633
Hammatt & Shideler 2014	Field Inspection	[TMK: (4) 5-2-005:036]	no findings.
Spear 2014	Field Inspection	telecommunications facility [TMK: (4) 5-2- 004:049 por.]	no findings.
Putzi et al. 2014	Archaeological Inventory Survey	LDS meetinghouse [TMK: (4) 5-2-019:004]	buried fire pit (SIHP Site 50-30-04-02237)
Hulen and Barna 2021	Archaeological Monitoring	telecommunications facility [TMK: (4) 5-2- 004:049 por.]	no findings.

Wendell Bennett's (1931) *Archaeology of Kauai* attempted to provide a comprehensive overview of archaeological sites on Kaua'i, based on both prior records and his own fieldwork in 1928-29; his site numbers were later converted to State Inventory of Historic Places (SIHP) site numbers. Bennett (1931:133) assigned Pailio Heiau as Site 133 (later SIHP Site Number 50-30-04-00133), and Kipapa Heiau as Site 132 (later SIHP Site No. 50-30-04-00132). He was not able to locate Pailio, noting "nothing remains of the heiau to-day," but attested that Kipapa stood "on the end of the first bluff east of Kilauea River in Kāhili" (Bennett 1931:133).

#### **KĪLAUEA POINT NATIONAL WILDLIFE REFUGE (KIKUCHI 1987, FREDERICKSEN AND FREDERICKSEN 1989)**

William Kikuchi (1987) conducted an archaeological survey of Kīlauea Point [TMK: (4) 5-2-004:017] (as well as several other nearby coastal regions) on behalf of the U.S. Fish and Wildlife Service, which was planning to construct a visitor center for the wildlife refuge. The survey, which included excavation of a test pit to gauge the likelihood of cultural layers being present, found "no sign of any [Pre-Contact] use of the Kilauea Point National Wildlife Refuge area by native Hawaiians" (Kikuchi 1987:3, 11). However, Kikuchi (1987:1) did note that the lighthouse on Kīlauea Point "was placed on the Hawai'i Register of Historic Sites on November 4, 1974, and on the National Register of Historic Sites on October 18, 1979" and "was officially given the State of Hawai'i site number 50-30-04-300 [*sic*, SIHP Site No. 50-30-04-00300]."

In 1988, Xamanek Researches, LLC (XRL) (Fredericksen and Fredericksen 1989) conducted an Archaeological Inventory Survey (AIS) of the approximately 96-acre Crater Hill parcel [TMK: (4) 5-2-004:103] and the approx. 38-acre Mōkōlea Point parcel [TMK: (4) 5-2-004:043], which had just been added to the Kīlauea Point National Wildlife Refuge (previously only approx. 33 acres). Fredericksen and Fredericksen (1989:20) conducted a pedestrian survey of the project area, reporting that "there were no features or artifacts discovered during the course of the survey from either the Hawaiian [Pre-Contact] or [Post-Contact] periods." However, they documented a number of (non-Hawaiian) historic properties that would latter be designated as sites: a radar installation site (later assigned SIHP Site No. 50-30-04-01810) a sugar-loading complex at Mōkōlea Point (SIHP Site No. 50-30-04-01811) the Kīlauea plantation railroad (the railroad build by the Kilauea Sugar Company connecting their plantation to the dock; SIHP Site No. 50-30-04-01812), and a old quarry on Mōkōlea Point (SIHP Site No. 50-30-04-01813).

### **TOENJES AND HAMMATT 1990**

In 1990, Cultural Surveys Hawai'i, Inc. (CSH) (Toenjes and Hammatt 1990), conducted an archaeological survey on 94 acres of former Kilauea Sugar Plantation Company land north of Kīlauea town [TMK: (4) 5-2-004:102]. The area was "checked for coral, lithic and bone and shell midden remains" that might indicate a cultural deposit, but although "two loci suggesting previous traditional Hawaiian activity were found and tested for subsurface deposits" Toenjes and Hammatt (1990:14) found only a few coral and basalt fragments. Toenjes and Hammatt (1990:1) reported "no structural remains or in situ deposits of historic or archaeological significance."

### **HAMMATT AND CHIOGIOJI 1992**

In 1992, CSH (Hammatt and Chiogioji 1992) conducted an AIS on a 15.17-acre property for a proposed subdivision on the border of Nāmāhana and Kalihiwai Ahupua'a [TMK: (4) 5-2-017:028]. In addition to the main project area, a proposed alternative well site "150 to 200 feet south of the south property boundary along the slope of a gully was surveyed" Hammatt and Chiogioji (1992:21). Hammatt and Chiogioji (1992:21) conducted a pedestrian survey of the parcel and excavated a test trench where "a thin scatter of marine sand, coral pebbles and fossil marine shell was observed." The subsurface testing found only the plow zone from former commercial agricultural use of the parcel, and the marine material was interpreted as originating from the "liming of fields with quarried marine sand deposits" during sugarcane cultivation, and no archaeological sites were reported (Hammatt and Chiogioji 1992:21).

### **HAMMATT ET AL. 1996**

In 1995, CSH (Hammatt et al. 1996) conducted an AIS on an approx. 5-acre portion of a 24.87-acre property parcel [TMK: (4) 5-2-021:005] where a single-family residence was proposed. Pedestrian survey and excavation of two test units and five shovel probes identified three archaeological sites. SIHP Site No. 50-30-04-00625 was an agricultural complex consisting of seven surface features (walls and terraces) and a subsurface cultural layer. Charcoal from the cultural layer was sent for radiocarbon analysis and returned a date range of 1410-1650 Common Era (C.E.) at 2-sigma (95% confidence). This charcoal was interpreted as originating from burning for land clearing purposes, suggesting that agricultural development in this region began around 1400 C.E. SIHP Site No. 50-30-04-00998 consisted of a charcoal kiln, as well as an adjacent terrace area and enclosure that may have been associated with the kiln. SIHP Site No. 50-30-04-00999 consist of two stacked boulder walls that were interpreted as a cattle fence. Hammatt et al. (1996) reported that "the owner of the property, has designed the access road and the location of his single-family residence to minimize impact to the archaeological sites," allowing preservation through avoidance.

**McGERTY ET AL. 1997, CARSON ET AL. 1998, TOME AND DEGA 2009**

In 1996, SCS (McGerty et al. 1997) conducted an AIS on a portion of a 26.19-acre parcel on the east bank of Kīlauea stream [TMK: (4) 5-2-021:007]. The survey focused on the flat bench (also called a 'natural terrace') portion of the property parcel, above the floodplain. Pedestrian survey and excavation of seven trenches and nine test units identified four archaeological sites with a total of 47 component features. SIHP Site No. 50-30-04-00974 was comprised of ten terraces, ten (rock) alignments, an enclosure, a wall, two fire pits, a hearth, and an *imu* (underground oven). Two charcoal samples from the subsurface features were sent for radiocarbon analysis and both returned date ranges (at 2-sigma) from the late 1600s C.E. to the mid 1900s C.E. Site -00974 was interpreted as a Late Pre-contact to Early Post-Contact permanent habitation complex. SIHP Site No. 50-30-04-00975 was located west of Site -00974, and was comprised of two small enclosures, four alignments, two terraces, a wall, and a pathway. The Site -00975 enclosures were interpreted as possible burials, and the rest of the site as a small garden area. SIHP Site No. 50-30-04-00976 was located south of Site -00975, and was comprised of three enclosures, three terraces, and a possible posthole. A charcoal sample from the posthole was sent for radiocarbon analysis and returned a date range (at 2-sigma) from 1400 C.E. to 1520 C.E. or 1600 C.E. to 1620 C.E. Site -00976 was interpreted as a Pre-Contact habitation site. SIHP Site No. 50-30-04-00977 was located to the west of Site -00975, and consisted of two terraces and an alignment. Site -00977 was interpreted as a probable extension of the agricultural area of Site -00975, separated due to 20<sup>th</sup> century grading and grubbing in the area between them. As the location of Site -00974 was planned for development, McGerty et al. (1997) recommended that data recovery be conducted.

Subsequently, SCS (Carson et al. 1998) conducted data recovery at SIHP Site Numbers 50-30-04-00974 and 50-30-04-00975. Subsurface testing consisted of four backhoe and one manually excavated trench. Testing at Site -00974 yielded total of 111 artifacts interpreted as traditional Hawaiian, compared to only five artifacts that were distinctly Post-Contact. No cultural material was recovered from Site -00975. Radiocarbon analysis of a charcoal sample produced results consistent with previous samples from Site -00974: late 17<sup>th</sup> century to 20<sup>th</sup> century. The results of this data recovery support the prior assessment of Site -00974 (Carson et al. 1998).

In 2009, SCS (Tome and Dega 2009) conducted an AIS on a 6.8-acre portion of the floodplain at TMK: (4) 5-2-021:007. Pedestrian survey and excavation of 12 trenches identified an agricultural site, consisting of a rock walled *lo'i* and a rock alignment, that was designated as SIHP Site No. 50-30-04-05028. Tome and Dega (2009) postulated that this agricultural site was associated with the habitation sites previous identified by McGerty et al. (1997).



### **BURGETT ET AL. 2000, KAMAI AND HAMMATT 2013**

In 1997, SCS (Burgett et al. 2000) conducted an AIS on a 27.56-acre parcel on the east bank of Kīlauea stream [TMK: (4) 5-2-021:006], immediately southwest of the parcel where a previous survey had been conducted by McGerty et al. (1997). Unlike the previous survey, this AIS included the floodplain as well as the leveled, upper portion (bench and slope) of the parcel. Pedestrian survey and subsurface testing via four trenches and four shovel probes identified three archaeological sites. SIHP Site No. 50-30-04-00632 consisted of 56 features on the slopes, including terraces, alignments, walls, and upright stones, as well as bedrock boulder overhangs and cupboards. Site -00632 was interpreted as a dryland, or *kula*, agricultural site. SIHP Site No. 50-30-04-00633 was an unmarked grave that a local informant, Kaipo Chandler, pointed out as the resting place of his uncle Thomas Goodman, who died in 1929. Site -00633 was located behind a house that Chandler helped build in the 1960s. SIHP Site No. 50-30-04-01993 consisted of soil deposits identified in the floodplain, which were associated with the construction of berms for *lo'i*. Sites -00632 and -01993 were assessed as representing Late Pre-contact to Early Post-Contact agricultural activity.

In 2012, CSH (Kamai and Hammatt 2013) conducted an after-the-fact assessment on a portion of the parcel [TMK: (4) 5-2-021:006] surveyed by Burgett et al. (2000), and submitted a letter report. The assessment was intended “to determine whether violations that occurred in November and December 2007 had an adverse effect to historic properties” Kamai and Hammatt (2013:2). This letter notes an earlier report regarding a previous violation in 2003, but that earlier report (McMahon 2003) was not on file at the State Historic Preservation Division (SHPD). Kamai and Hammatt (2013) concluded that there was no further damage to Sites -00632 and -00633 since 2003. As the earlier report is called a “damage assessment report,” it is presumed that these sites were indeed adversely affected during the 2003 violations (Kamai and Hammatt 2013:3).

### **IDA AND HAMMATT 1997**

In 1997, CSH (Ida and Hammatt 1997) conducted an AIS on an 89-acre parcel for a proposed subdivision in Kāhili Ahupua‘a [then TMK: (4) 5-1-005:052; now TMK: (4) 5-1-005:052 & 102 through 113]. Full pedestrian survey and limited subsurface testing did not find any archaeological sites associated with native Hawaiian cultural activity, but did identify four historic properties associated with the former Kilauea Sugar Plantation Company, all which consisted of water control features. SIHP Site No. 50-30-04-00640 was an irrigation flume across Wailapa stream gulch. SIHP Site No. 50-30-04-00641 consisted of an irrigation ditch and tunnel that were interpreted as remnants of Pu‘uka‘ele Ditch. SIHP Site No. 50-30-04-00642 was a partially buried culvert near a swale connected to Kulihā‘ili stream gulch. SIHP Site No. 50-30-04-00643 was a 16m long tunnel at the end of a swale of the same gulch (Ida and Hammatt 1997).

### **McGERTY AND SPEAR 1998**

In 1997, SCS (McGerty and Spear 1998) conducted an AIS on a proposed driveway corridor and associated buffer zones in Kīlauea town [TMK: (4) 5-2-011:033]. A single archaeological site was identified during survey. SIHP Site No. 50-30-04-00644 consisted of five terraces and a rock alignment, and was assessed as a Post-Contact agricultural complex (McGerty and Spear 1998).

### **McGERTY AND SPEAR 2001**

In 2000, SCS conducted an AIS (McGerty and Spear 2001) on a parcel at TMK: (4) 5-2-021:004, on the east bank of Kīlauea stream. This is the parcel immediately south of the one [TMK: (4) 5-2-021:005] where Hammatt et al. (1996) previously conducted an AIS. McGerty and Spear (2001:1) indicate a project area of approx. 6 acres, yet the acreage of TMK: (4) 5-2-021:004 is considerably greater, so the survey likely only encompassed a portion of the parcel, probably in the northwest. McGerty and Spear (2001:19) state that “site numbers previously established by the 1996 study... were applied to similar features within the present project area,” effectively extending the sites previously identified by Hammatt et al. (1996) in neighboring parcel 004 into parcel 005. Therefore, a second charcoal kiln was added to SIHP Site No. 50-30-04-00998, while a section of pavement was added to SIHP Site No. 50-30-04-00999. Almost 50 new features, mostly terraces, were added to the SIHP Site No. 50-30-04-00625 agricultural complex. A charcoal sample from Site -00625 returned a radiocarbon result of 1440 C.E. to 1690 C.E., consistent with the previous analysis (McGerty and Spear 2001).

### **ELMORE AND KENNEDY 2001**

In 2000-01, Archaeological Consultants of the Pacific, Inc. (ACP), conducted an AIS (Elmore and Kennedy 2001) on a 5.69-acre parcel [TMK: (4) 5-1-005:005] on the east bank of Kīlauea stream for the proposed construction of a private residence. Pedestrian survey and six shovel probes identified a single archaeological site. SIHP Site No. 50-30-04-00515 consisted of seven terraces along Wailapa stream, an *‘auwai* (ditch), the remnant foundation of a Post-Contact house, a stone alignment, and two stone mounds. Radiocarbon analysis of a sample from the terraces returned a date range (at 2-sigma) of 1660 C.E. to 1904 C.E. While no clear evidence of Pre-Contact activity at Site -00515 was found, Elmore and Kennedy (2001) considered it possible that initial agricultural use began Pre-Contact.

### **CLEGHORN 2001, SPEAR 2014, HULEN AND BARNA 2021**

In 2001, Pacific Legacy, Inc. conducted archaeological monitoring (Cleghorn 2001) for the installation of a telecommunications compound at Kilauea Japanese Cemetery [TMK: (4) 5-2-004:049 por.]. No cultural materials were identified during monitoring.

In 2014, SCS conducted a field survey (Spear 2014) of the same project area [TMK: (4) 5-2-004:049 por.] for the proposed Kilauea Relo AT&T Facility upgrade. No historic properties were identified, but Spear (2014) recommended archaeological monitoring due to the possibility of unmarked burials in the vicinity.

In 2021, ASM Affiliates, Inc. conducted archaeological monitoring (Hulen and Barna 2021) during upgrades to the telecommunications station (Verizon KILAUEA\_GRAVEYARD A) at [TMK: (4) 5-2-004:049 por.], the same facility previously monitored by Cleghorn (2001). No historic properties were identified during monitoring (Hulen and Barna 2021).

#### **RECHTMAN ET AL. 2001**

In 2001, Rechtman Consulting, LLC (RCL) conducted an AIS (Rechtman et al. 2001) of the Hālaulani Property, an approx. 1400-acre area inland of Kīlauea town [then TMK: (4) 5-2-002:011 & 012; now TMK: (4) 5-2-002:011]. Because of the very large project area, it was agreed in consultation with SHPD “that the margins of the streams and the Kamo‘okoa Ridge area would be surveyed at 100% intensive coverage and that the former and current sugarcane and orchard areas would be surveyed less intensively” (Rechtman et al. 2001:27). The survey identified four Post-Contact historic properties. SIHP Site No. 50-30-03-02060 was a basalt and concrete dam on Kīlauea Stream. Rechtman et al. (2001:30) noted that the site had been documented by an archaeological study in Kalihiwai Ahupua‘a to the east, as “majority of the ancillary dam features exist off property on the western bank,” but re-recorded it since it was partially within the project area. Based on a newspaper article about the opening of the reservoir formed by the dam, it was dated to 1881. SIHP Site No. 50-30-03-02062 was a dam complex on Pu‘uka‘ele Steam, also of basalt and concrete construction. SIHP Site No. 50-30-03-02063 was a water control complex extending from Pu‘uka‘ele Steam, consisting of a ditch and the remnant portions and scattered pieces of a flume. SIHP Site No. 50-30-03-02064 consist of an irrigation tunnel and two flume supports on Kīlauea Stream, approx. 150 m downstream from Site -02060. (Rechtman et al. 2001)

#### **ELMORE AND KENNEDY 2002, BEVAN ET AL. 2004**

In 2002, ACP conducted an AIS (Elmore and Kennedy 2002) of most of the property parcel at TMK: (4) 5-1-005:016 (excluding the northernmost thumb - shaped portion at the very mouth of Kīlauea stream). Elmore and Kennedy (2002:6) noted that “current TMK maps... depict Kipapa Heiau at the base of the bluff east of Kilauea River,” which would put Kipapa Heiau (SIHP Site No. 50-30-04-00132) within the project area. However, no sign of the heiau was found during the survey, and Elmore and Kennedy (2002:6) pointed out that the location indicated on the map was “a sandy location at which it is unlikely a commercially operated sugar cane field would be found.”

The survey did identify nineteen more features of SIHP Site No. 50-30-04-00515, which had previously been documented on an adjacent parcel [TMK: (4) 5-1-005:005] previously surveyed by Elmore and Kennedy (2001). A new sample sent for radiocarbon analysis from Site -00515 returned a date range (at 2-sigma) of 1475 C.E. to 1652 C.E., entirely predating the result from the earlier study. This may have been due to the sample being taken from a greater depth and different soil layer. Additionally, two new archaeological sites were identified. SIHP Site No. 50-30-04-01035 consisted of a terrace and a subsurface pit, and was interpreted as a habitation site. A sample from site -01035 returned a radiocarbon date range (at 2-sigma) of 1262 C.E. to 1523 C.E., which (if accurate) would make the site “one of the earliest occupations along the northern coast of Kauai” (Elmore and Kennedy 2002:44). SIHP Site No. 50-30-04-01036 was a stone wall that likely functioned as a boundary marker.

In 2003, ACP conducted archaeological monitoring (Bevan et. al 2004) at the same parcel [TMK: (4) 5-1-005:016] that had previously been surveyed by Elmore and Kennedy (2002). Monitoring was conducted during installation of utility lines and grading for driveways, and subsurface construction activities were kept a minimum of 25 ft away from any features if the previously identified Sites -00515 and -01035. During monitoring, “an isolated, previously unrecorded, non-irrigated terrace feature located on a steep slope below Rock Quarry Road” was identified, and due to similar context, added as yet another feature of SIHP Site No. 50-30-04-00515, but no sites were newly identified (Bevan et. al 2004:20).

#### **DAGHER 2007**

In 2007, SCS (Dagher 2007) conducted a Field Inspection (FI) of an approx. seven-acre property at the western end of Kilauea Town, on the border with Nāmāhana Ahupua‘a [TMK: (4) 5-2-023:027 & 028]. No historic properties were identified during the FI (Dagher 2007).

#### **SHIDELER ET AL. 2008**

In 2007, CSH conducted an AIS (Shideler et al. 2008) on a 74-acres portion of the Kilauea Falls Ranch property [TMK: (4) 5-2-012:035 por.], including land proposed for a private residence, an agroforestry area, and a region of tablelands suitable for development located near Kilauea town. The survey identified a total of 62 archaeologically significant features comprising five sites within the agroforestry area. SIHP Site No. 50-30-04-00579 was an isolated agricultural terrace near the eastern end of the project area. SIHP Site No. 50-30-04-00580 was a complex consisting of 53 agricultural terraces and 2 enclosures that may have served as field shelters (temporary habitation), located west of Site -00579 and northwest of a bend in Kilauea stream.

SIHP Site No. 50-30-04-00581 consisted of a retaining wall with a connected rock alignment that served as a ramp, a smaller second stone wall nearby, and a rock faced trail parallel to the retaining wall. Site -00581 is located near -00580, but is interpreted as a Post-Contact permanent habitation site, likely associated with Japanese occupants based on recovered artifacts. SIHP Site No. 50-30-04-00582 was a pair of terraces separate from, and located south of, the dense cluster of terraces comprising Site -00579. SIHP Site No. 50-30-04-00583 was another pair of terraces, located even further south from Site -00582. Unlike the *lo 'i* terraces on the east bank of Kīlauea stream identified in other studies, the agricultural terraces identified by Shideler et al. (2008) are distant from the stream rather than on the floodplain. Shideler et al. (2008:69) note that “the vagaries of hurricane, tsunami, and flood may have made such planting down by the stream precarious” and that “cultivation upon the steep slope may have been more secure.”

#### **CLARK AND RECHTMAN 2010, CLARK ET AL. 2011**

In 2009, RCL conducted an AIS (Clark and Rechtman 2010) of a 0.735-acre parcel along the southeast bank of Kīlauea stream [TMK: (4) 5-2-012:019]. This parcel is the same land awarded to Naiamaneo with LCA No. 10333 (see The Māhele, above); although this is the only nearby example, it is not unknown for contemporary TMK parcels to match the boundaries of a plot awarded in the Māhele. Pedestrian survey and excavation of three trenches identified two historic properties. SIHP Site No. 50-30-04-02011 consists of nine terraced fields, which collectively occupying the entire parcel. These were interpreted as pond fields for Post-Contact rice cultivation, built on previous *lo 'i* and *kula* land. SIHP Site No. 50-30-04-02012 is a partially-intact concrete slab along the southeast border of the parcel, interpreted as the foundation of a Post-Contact structure, likely a shed or other outbuilding (Clark and Rechtman 2010).

In 2011, RCL conducted an AIS (Clark et al. 2011) of a roughly 21-acre area comprising portions of several properties [TMK: (4) 5-2-21:041, CPR 0001; (4) 5-2-12:035 por.; and (4) 5-2-021:004 por.] surrounding the parcel previously surveyed by Clark and Rechtman (2010). Although Clark et al. (2011) identified new features, these were added as components of the two archaeological sites previously identified by Clark and Rechtman (2010). SIHP Site No. 50-30-04-02011 was expanded to cover approx. 4.5 acres and include a total of 69 discrete Post-Contact rice fields. In addition to the previously documented concrete slab, SIHP Site No. 50-30-04-02012 was revised to include a water retention pond, a cobble-lined trench for a water wheel, and four concrete basins with stone and concrete troughs (Clark et al. 2011).

### **SROAT ET AL. 2010**

In 2010, CSH conducted an AIS (Sroat et al. 2010) of 75 acres at TMK (4) 5-2-004:099 for the planned Kīlauea Agricultural Park, located to the east of Pali Moana Place. The survey identified four archaeological sites, all of which were located in the southeast portion of the project area, where the terrain is more sloped and uneven. SIHP Site No. 50-30-04-02123 was a terrace interpreted as a Post-Contact habitation site. SIHP Site No. 50-30-04-02124 consisted of two concrete wall structures, one linear and one U-shaped, of uncertain function but assessed as likely associated with plantation-era infrastructure. SIHP Site No. 50-30-04-02125 was a terrace interpreted as a likely Pre-Contact agricultural site. SIHP Site No. 50-30-04-02126 was a machine-excavated ditch that was interpreted as a drainage feature for flood control. Sroat et al. (2010) concluded that Sites -02124 and -02126 were associated with Kilauea Sugar Company.

### **DAGHER AND DEGA 2011**

In 2010-11, SCS conducted archaeological monitoring (Dagher and Dega 2011) of the Kīlauea River cleanup in 2010 to 2011, which was a follow up to the 2006 emergency cleanup after the Ka Loko Dam breach. During monitoring two separate isolated finds of human skeletal elements occurred, and a few Post-Contact artifacts were recovered, but no archaeological sites were identified (Dagher and Dega 2011).

### **HAMMATT AND SHIDELER 2014**

In 2010, CSH conducted an FI (Hammatt and Shideler 2014) of 23.8-acre coastal parcel in Nāmāhana Ahupua‘a [TMK: (4) 5-2-005:036]. The FI did not identify any historic properties, but Hammatt and Shideler (2014) noted that the presence of *kalo* plants growing on steep *pali* (cliff, steep hill or slope) likely originated from shoots washed over the cliff from pre-contact *kalo* cultivation efforts, suggesting that pre-contact agriculture occurred nearby.

### **PUTZI ET AL. 2014**

In 2014, SCS conducted an AIS (Putzi et al. 2014) on a approx. 5-acre parcel in Nāmāhana Ahupua‘a owned by The Church of Jesus Christ of Latter-Day Saints [TMK: (4) 5-2-019:004], ahead of the proposed construction of a meetinghouse for the Church. Full pedestrian survey and excavation of ten trenches identified a single archaeological site. SIHP Site No. 50-30-04-02237 consisted of a fire pit located 0.48 m below the surface. Charcoal recovered from Site -02237 was sent for radiocarbon analysis and returned a date range (at 2-sigma) of 1440 C.E. to 1530 C.E., establishing that the fire pit was Pre-Contact. Putzi et al. (2014) noted that although the parcel had once been owned by the Kīlauea Sugar Company, subsurface testing found no sign of a plow zone, suggesting it had been used for pasture instead of planting.

## **METHODOLOGY**

### **FIELD METHODOLOGY**

The archaeological field inspection was conducted on June 1, 2022, by SCS Archaeologist Jason Stolfer, M.A., under the supervision of primary investigator Michael F. Dega, Ph.D. Field methods consisted of a 100% pedestrian survey of the project area and documentation via digital photographs taken at various locations throughout the project area. Sites located were assigned a Temporary Site Number (TS#) as necessary, pending the assignment of a SIHP Site Number.

### **LABORATORY METHODOLOGY AND CURATION**

Since no artifacts were identified during this project, laboratory work consisted of cataloging field notes and photographs. All field notes and digital photographs have been curated and are now stored at the SCS laboratory in Honolulu. All measurements were recorded in the metric system.

## **RESULTS OF THE FIELD INSPECTION**

One archaeological site was identified during the field inspection on June 1. The site was designated as Temporary Site 1 (TS-1), and was comprised of two features: a railroad bridge culvert (Feature 1), and remnant section of railroad track (Feature 2) found nearby. The on-site archaeologist determined that the site was Post-Contact in nature recorded it with photographs and two GPS points taken at the center points of its two features. Figure 7 shows these GPS points superimposed on a client-provided construction map.

Feature 1 (Fe. 1; railroad bridge culvert) was built using basalt and mortar construction and is in good overall condition, protected by thick vegetation that surrounds it. Both ends of the culvert tunnel are exposed and the interior is passable. Feature 2 (Fe. 2; piece of old railroad track) was discovered approximately 12 m east of Fe. 1, by using a metal detector to allow detection through the dense vegetation. Figures 8 through 16 are photographs of the features, and Table 3 summarizes the location and condition of the features.

**Table 3: TS-1 component archaeological features**

Feature Number	UTM (converted) Zone 4Q	Lat Long +4 meters	Description	Status
Fe. 1	459316 E, 2457039 N	22°13'05.8 N, 159°23'41.1 W	culvert of a Plantation-era railroad bridge	Good condition
Fe. 2	459339 E, 2457048 N	22°13'06.0 N, 159°23'40.3 W	section of railroad track	Poor condition (rusted)

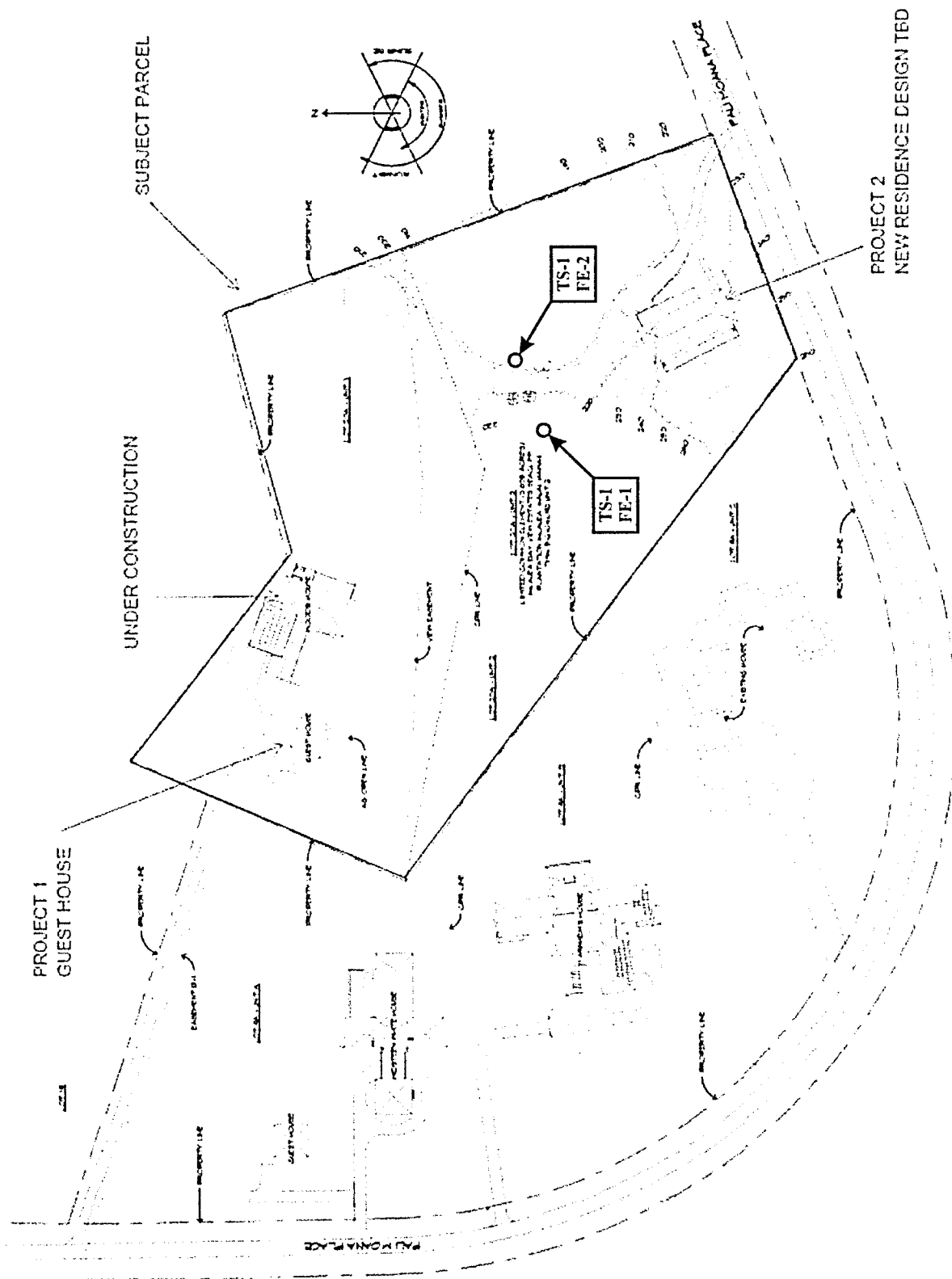


Figure 7: GPS points for the two features of TS-1 in the context of the project area parcel (purple border).



The southwest end (northeast view, Figures 8 through 10) of the railroad bridge culvert (Fe. 1) has an exposed face that measures 6.2 m long and varies in height from .4 m to 1.5 m.

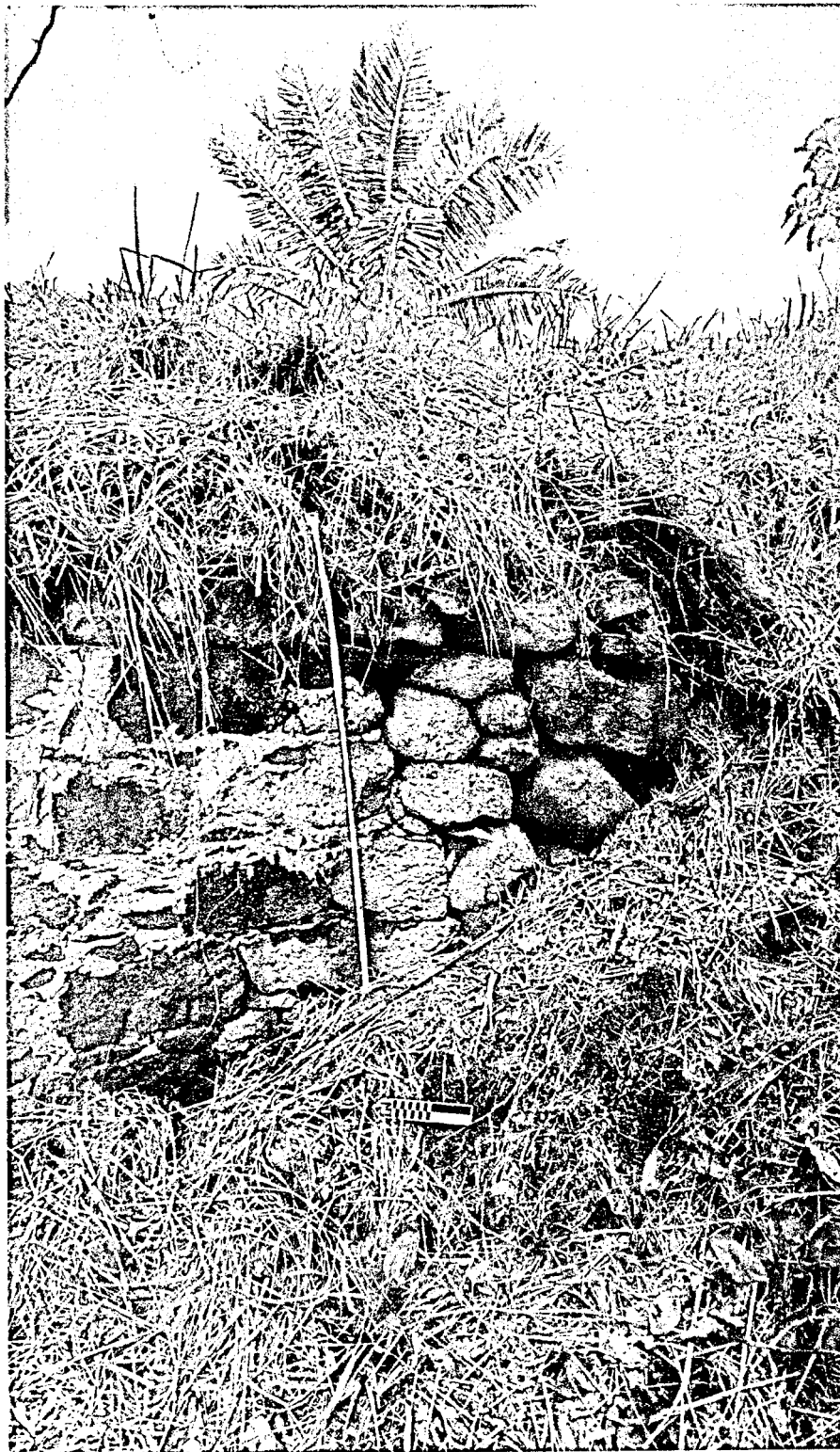
The railroad track (Fe. 2) is difficult to see amidst the vegetation, but is highlighted by the meter bar and tape measure in Figure 10. The railroad track was partially exposed and appears to extend further east (away from the project area) beneath the dense vegetation.

The interior of the railroad bridge culvert (Fe. 1) consists of a horseshoe shaped tunnel with dimensions of 1.45 m high, 1.5 m wide, and 23 m long (Figure 11). Like the exterior faces, the interior exhibits basalt and mortar construction.

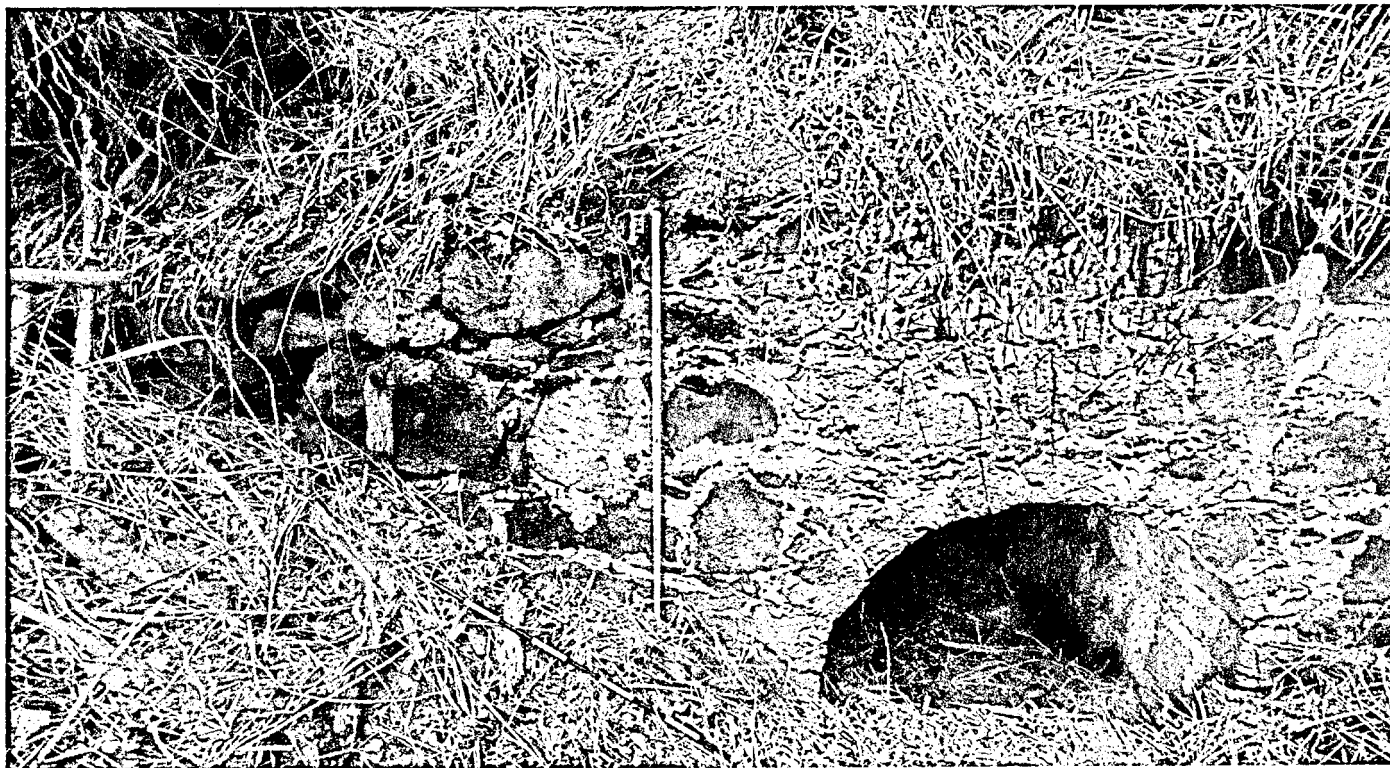
The northeast end (southwest view, Figures 12 through 15) of the culvert (Fe. 1) has guards on either side of the tunnel opening and extends out 1.3 m from the hillside that it is built into. The total height of the bridge culvert on this end is 2.3 m. The exposed portion of the culvert face extends sideways at least 2.5 m to northwest, but the stonework appears to extend further beneath the foliage. The culvert face is more visible from the south and extends sideways 10.5 m to the southeast before disappearing into the dense vegetation.



**Figure 8: TS-1 railroad bridge culvert - northeast view**



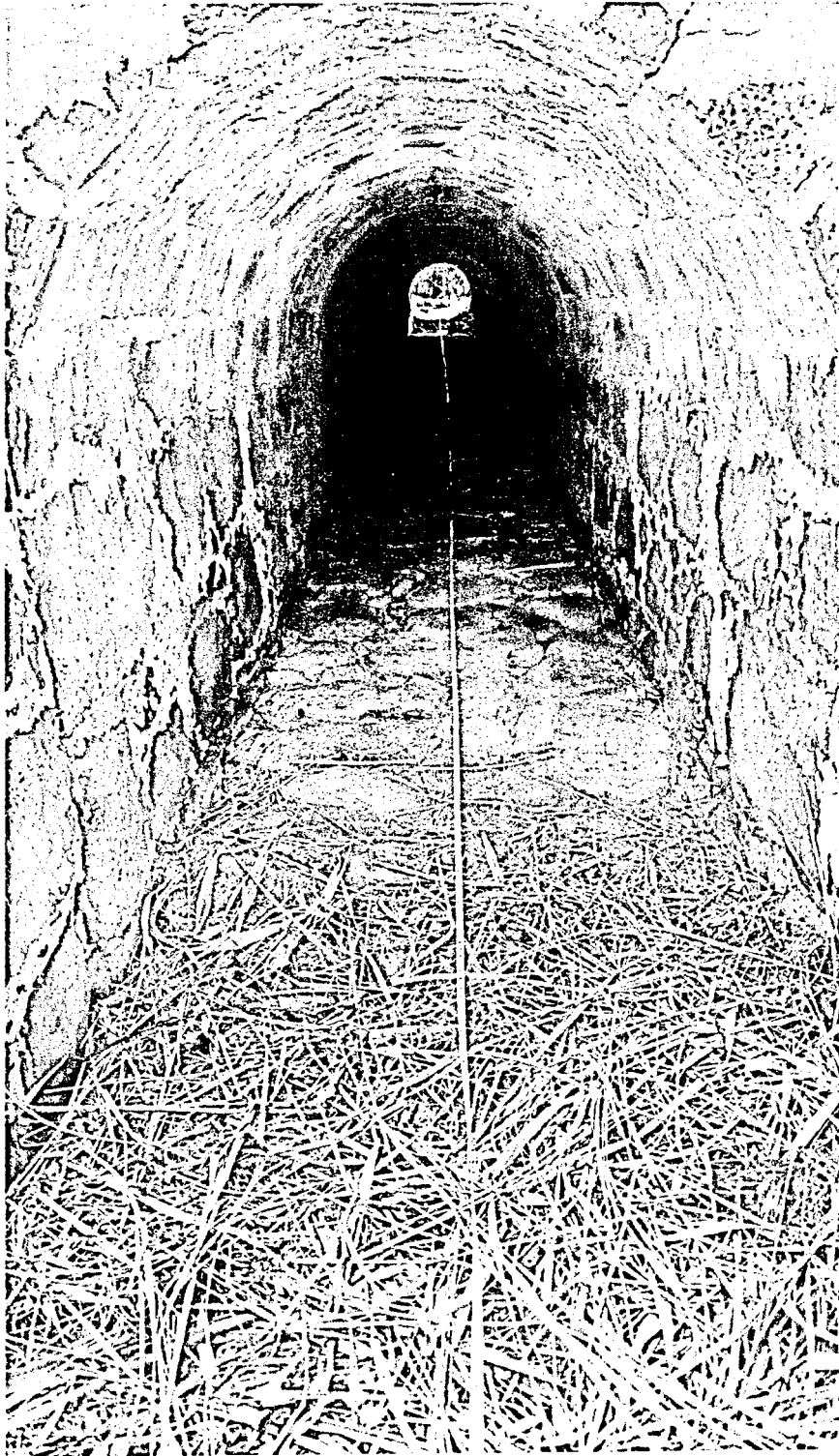
**Figure 9: TS-1 railroad bridge culvert – east view**



**Figure 10: TS-1 railroad bridge culvert - northeast view**



**Figure 11: TS-1 railroad track - northeast view**



**Figure 12: Tunnel underneath TS-1 railroad bridge - inside culvert view**



**Figure 13: TS-1 railroad bridge culvert - southwest view**





**Figure 14: TS-1 Railroad Bridge culvert view to the northwest**



**Figure 15: TS-1 railroad bridge culvert - south view**



**Figure 16: TS-1 railroad bridge culvert wall - northwest view**



This culvert and railroad bridge were likely constructed as a part of the railroad built to haul sugar for the plantation operated by the Kilauea Sugar Company (see Land Use in the Post-contact Period to the Present). A portion of this railroad located at Mōkōlea Point (approx. 800 m west northwest of the project area) was previously recorded as SIHP Site No. 50-30-04-01812. This railroad was the first to be built on the Island of Kaua‘i, and famously had its first spike ceremonially driven in by Princess Regnant Lydia Kamaka‘eha, (later Queen Lili‘uokalani) in 1881 (see Land Use in the Post-contact Period to the Present, above).

## **FINDINGS AND RECOMMENDATIONS**

The general pattern seen in the previous archaeological work in the vicinity (see Previous Archaeology, above) is one that is common to many regions of the Hawaiian Islands where commercial sugar or pineapple agriculture occurred. Remaining Pre-Contact sites are largely found within gullies or other areas of uneven ground, especially near water features. Relatively flat areas, such as tablelands have been subject to considerable ground disturbance for large scale commercial cultivation and Pre-Contact features that may (likely) have been present there have been removed or destroyed.

The sole feature of archaeological significance (TS-1) identified during the present field inspection consisted of a railroad bridge culvert and section of railroad track. These features were constructed as a part of the railroad built to haul sugar for the plantation operated by the Kilauea Sugar Company. Another portion of that railroad located to the northwest was previously designated as SIHP Site No. 50-30-04-01812. It is possible that other remnant portions of the railroad may be found under the foliage or even under the ground surface of other nearby property parcels. Since a historic property has been identified within the project area, SCS recommends that an AIS be conducted to fully document the historic property (TS-1) and determine its extent, age, function, and significance. SHPD should be consulted both in regards to the AIS and to determine if TS-1 should receive a new SIHP number or be recorded as an additional portion of Site -01812.

Based on the findings of this LRFI, only an historic-era cultural resource was identified. Note that portions of the project area were heavily overgrown and more intensive survey during AIS could lead to the identification of additional historical-era resources associated with the railway line. No excavations were conducted during this LRFI and thus, there remains the slight possibility that pre-Contact cultural resources such as habitation area could be documented in subsurface contexts below the plow zone. The same would hold true for *iwi kupuna* (ancestor bones): only a slight possibility that such exist on this plateau area. The majority of traditional burials in the area have been documented near the direct coastline and in sandy sediment.

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**APPENDIX A: NATIVE CLAIMS AND NATIVE AND FOREIGN  
TESTIMONY FOR THE AHUPUA‘A OF KĀHILI**

(excerpted from Ida and Hammatt 1997)

Kahili LCAs and Associated Claims with Kahili mentioned

No. 8559 C. Kanaina Honolulu, Feb. 14, 1848

N.R. 349v4

The Lands of William Lunalilo....

	<u>Name of the Land</u>	<u>Ahuopua'a</u>	<u>District</u>	<u>Island</u>
57.	Kahili	"	Koolau	Kauai
58.	Kumukumu	"	"	"
59.	Pilaa Waipouli	"	Kapaa, Puna	"
60.	Kamalamaloo	"	"	"
61.	Kalihiwai	"	"	"
62.	Manuahi 'Ili Hanapepe	"	Kona	"

.....

No. 8559B Lunalilo, Wm. C. Iliaina

(King Lunalilo) Manuahi Kona Kauai - 867 Ac. [Book 10, p. 490]

[8559B Kalihiwai R.P. 8173; Manuahi Hanapepe; Kahili R.P. 8323; Pilaa R.P. 7060; Waipouli R.P. 7373]

No. 9067 Keo

N.R. 403v9

The Land Commissioners, Greetings: I hereby state my claim for seven loti, two mala of wauke and the house lot.

Kahili, Kauai, January 17, 1848

KEO X

No. 9067 Keo Clt.

F.T. 165-166v12

Luakini sworn says I know Clt's lands in Kalihi. They are 7 Lois in three distinct pieces.

Kahili & a House Lot in Kilauea.

No. 1 Is House Lot in Kilauea

" 2 " 5 Lois & kula in Kanaele - Kahili

" 3 " 1 " "Uleulehu" [?] Makai

" " " " Mauka

No. 1 is bounded

M. by Govt kula

N. " Luahini's House Lot

M. " Govt kula

A. " " "

No. 2 is bounded

M. by Luakini's lois

N. " Kamalawai's "

M. " Hapahui's "

A. " Konohiki's kula

No. 3 is bounded

M. by Mamuaholono's [?] loi

N. " Kahili River

M. " Unclt lands

A. " Loko "Kaneio"

No. 4 is bounded

M. by my loko

N. " Konohiki's koele

M. " Apahu's loi

A. " My loko

These lands were given by the Konohiki to Clt. in the days of Kaumualii & have been held undisturbed till this time.

Inaole sworn says I know the lands of Kea & all that Luahini has testified is true.

No. 9067      Keo

N.T. 176-177v12

Kuakini sworn he has seen Keo's land in Kahili of seven lois and a house lot.

Section 1 - House lot

Mauka      Government pasture

Napali      Luakini's house lot

Makai      Government pasture

Anahola      Government pasture

Section 2 - Five lois and a pasture together

Mauka      Luakini's loi

Napali      Kanialauna's land

Makai      Hapakua's land

Anahola      Government pasture

Section 3 - One loi, Ulehulehu

Mauka      Mamuakalono's land

Napali      Kahili river

Makai      With weeds, land

Anahola      Kanaio, the konohiki's pond

Section 4 - One loi mauka of Ulehulehu

Mauka      Luakini's land (Pond)

Napali      Konohiki koele

Makai      Apahu's land

Anahola      Luakini's land

Land had been from Kaumualii I to Keo's parents and from them to Keo, all is peaceful to the present.

Inaole sworn he has seen Keo's land, the house lot, the five lois and the pasture. One loi is in section 3, in Ulehulehu and the other loi is mauka of Ulehulehu as section four.

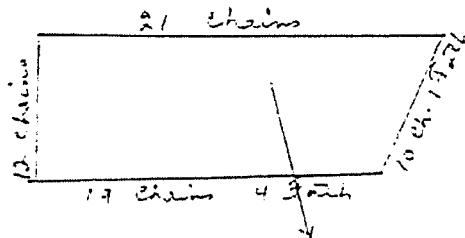
He has known in the same way as Luakini concerning Keo's land, the house lot and his lois. [Award 9067; R.P. 3486]

No. 10013      Leimanu      Koloa, Kauai, January 16, 1848

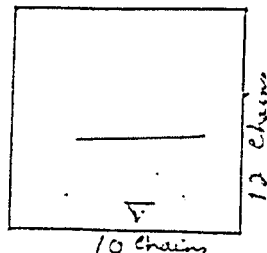
N.R. 251-252v9

The Land Commissioners, Greetings: We, Leimanu and Mokuhalii, are Hawaiian subjects living at Kahili on the Island of Kauai.

We hereby state our claims for land, some lois and a kula and a house claim. These are all within the diagram:



I Leimanu, a Hawaiian subject, hereby state my claim at Kahililalo, for a kula for planting wauke; its diagram is as follows:



Respectfully  
LEIMANU

I, Mokuhalii, hereby state my claim in another place, as follows: 5 chains on two sides, 9 chains on another side and 30 in another side /?sic/. I am respectfully,  
MOKUHALII

No. 10013 Leimanu Clt

F.T. 227-228v12

Mokukalii sworn says I know the lands of Leimanu in Kahili. They are in 3 pieces as follows:

No. 1 Is House Lot, 3 lois & kula in "Kaukahiwai"

" 2 " 2 Lois "

" 3 " kula in "Manohala"

No. 1 is Bounded

M. by Lucili's lois

H. " Daniela's "

M. " Koalaiki's "

A. " " "

No. 2 is Bounded

M. by My lois

H. " Kahili river

M. " Alaiki's lois

A. " Keokea's "

No. 3 is Bounded

M. by Hapakui's kula

H. " Kahili River

M. " Daniela's kula

A. " Konohiki's "

These lands have been held peaceably since 1840. Clt. had them from his brother in law. They had been held by the Parents of the brother in law from the days of Kaumualii.

Pupu sworn says I know Clt's lands in Kahili. I have heard all that Mokukalii has testified. It is all true.

No. 10013 Leimanu, B

N.T. 233-234v12

Kumokuhalii sworn he has seen claimants land in Kahili.

Section 1 - House lot and a pasture in Kaiaakahiuu

Mauka Two ili land

Halelea Daniela's land

Makai	Koalaiki's land
Anahola	Koalaiki's land

Section 2 - Two lois

Mauka	Mokuhalii's land
Halelea	Kahili river
Makai	Alaiki's land
Anahola	Keokea

Section 3 - Pasture at Namohala

Mauka	Land
Halelea	Kahili river
Makai	Daniela's pasture
Anahola	Konohiki pasture

Land from the konohiki to Leimanu's brother-in-law at the time of Kaumualii.

Leimanu received this land in 1844, no objections.

Kipu sworn verifies Mokuhalii's testimony is correct, he has known in the same way.

[Award 10013; R.P. 3879]

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No. 10013	Leimanu	Koloa, Kauai, January 16, 1848	N.R. 251-252v9
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..... [see above]  
[10013B]

I, Mokuhalii, hereby state my claim in another place, as follows: 5 chains on two sides, 9 chains on another side and 30 in another side /?sic/. I am respectfully,

MOKUHALII

No. 10013[B]	Mokuhalii Clt /no claim in Index/	F.T. 161-162v12
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Kauoha sworn says I know lands of Mokuhalii in Kahili in Ili "Hoopala" & some kula embracing a house Lot & an Orange Tree in "Kapunahoe" [?]

No. 1 Is House Lot & kula adj.

" 2 " 5 Lois in "Hoopala"

No. 1 is bounded

M. by Konohiki's kula

N. " Kalunaaina's loi

M. " Kahili River

K. " Kaleimanu's lois

No. 2 is bounded

M. by Kalunaaina's lois

N. " Kahili River

M. " Kaleimanu's lois

K. " Alaiki's lois

These lands have been held by Clt. & his parents from the days of Kaumualii. They came into the full possession of Clt. in 1844. No one has disputed his claim.

Kealawaa sworn says- I know clt's lands. I have hears the testimony of Kauoha. It is all true.

No. 10013 [B]	Mokuhalii	N.T. 170-171v12
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Kanoha sworn he has seen claimants land in the ili of Hapala, also the pasture in the koa growth.

Section 1 - Pasture and house lot

Mauka	Konohiki pasture
Napali	Landlord's lois
Makai	Kahili river
K.	Kaleimanu's lois

Section 2 - 5 lois in Hapala

Mauka	Landlord's land
Napali	Kahili river
Makai	Kaleimanu's lois
K.	Alaiki's lois

Land to Kumokuhalii from his parents at the time of Kaumualii 1.

Kumokuhalii as a son received it directly in 1844, title secured from parents.

Kealawaa sworn he has seen Kumokuhalii's land in Kahili of Hoopala ili land.

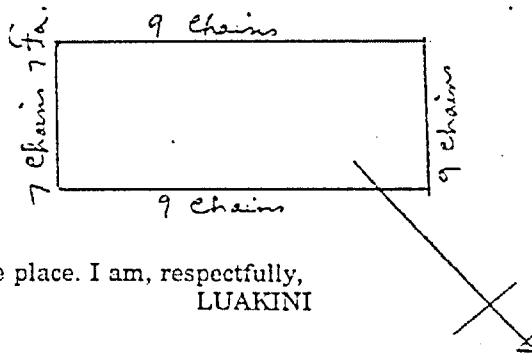
Verifies Kealawaa's statements as true and accurate, life has been peaceful.

[Award 10013B; R.P. 3880]

No. 10015 Luakini Koloa, Kauai, January 16, 1848

N.R. 253v9

The Land Commissioners, Greetings: I, Luakini, a Hawaiian subject living at Kahili on the Island of Kauai, hereby state my claim for land. The diagram follows:



My house is in a separate place. I am, respectfully,  
LUAKINI

No. 10015 Luakini Clt

F.T. 165v12

Inaole sworn says I know Clt's lands in Kahole & Kilauea. They are in two pieces.

No. 1 Is House Lot in Kilauea

" 2 " 2 Lois & kula with 2 Orange trees

No. 1 is bounded

M. by konohiki's kula

N. " " "

M. " " "

A. " " "

No. 2 is bounded

M. by Papai's kula

N. " Kahili River

M. " My Lois

A. " " Kula

These lands were given Clt. in the days of Kaumualii & have been held in peaceable possession till this time.

Holokuhine sworn says I know Clt's lands as above described and have heard the testimony of Inaole. It is all true.

No. 10015 Luakini

N.T. 175-176v12

Inaole sworn he has seen Luakini's land of two lois, a pasture and a house lot all in one area in Kilauea. Two orange trees also are on this land. This claim has been absolutely secured since the beginning to the present time.

Section 1 Mauka and all around is government pasture

Section 2 Mauka Papai's pasture

Napali Kahili river

Makai Inaole's land

Anahola Inaole's land

Land from the konohiki at the time of Kaumualii, the first and this has been secured since that time to the present.

Holokukini sworn he has seen Luakini's land, the pasture, the two orange trees and the house lot, he has known in the same way as Inaole.

[Award ; R.P. 10015]

No. 10082 Mamao

N.R. 262v9

The Land Commissioners, Greetings: I hereby state my claim for an 'ili named Makaihuwaa. The boundaries of this 'ili. \* All the rights in this 'ili are mine, and that is my claim which is stated to you.

I also have a claim in the 'ili of Kapuka, for two lo'i and some scattered lo'i, a total of six.

Kahili, Kauai, January 17, 1848

MAMAO

\*Not stated.

No. 10082 Mamao Clt

F.T. 229-230v12

Daniela sworn says I know the lands of Mamao in Kahili. It is an Ili called "Makaihuwaa."

This Ili was given by the Konohiki to Pipili at the close of the war of 1824. Pipili held it in peace till his death in 1837. His widow (Kupahu) then held the land in peaceable possession till 1847, when she gave it to her son the "Clt. who has held it in peace to the present time.

No one has disputed the claim:

Bounded as follows:

M. by Konohiki's kula

H. " "Kalama"

M. " Kahili River

A. " Pali of "Makaihuwaa"

Keo sworn says I know the lands of Mamao in Kahili. The Ili "Hokaihuwaa." It belongs to Mamao & to no one else.

Note: This claim embraces a whole Ili, but Clt relinquishes a larger part of the kula & takes that part that borders on his kalo land below the Pali.



No. 10082 Mamao

N.T. 233v12

Daniela sworn he has seen claimants land in Kahili of one section consisting of a whole ili and a house lot in Makaihuwaa.

Land from the konohiki to Pihili after the battle of Wahiawa, no objections.

Pihili died in 1837, land was given to Kupahu, the widow, no disputes. In 1847, the widow gave the ili land to her son Mamao.

Boundaries of that ili

Mauka	Konohiki pasture
Halelea	Kalama's land
Makai	Kahili river
Anahola	Konohiki pasture

Keo sworn he has seen Mamao's ili land and it is his (Mamao) own land just as Daniel, the witness has related. both Keo and Daniela have known in the same way.

[Award 10082; R.P. 4074]

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No. 10083 Mamuakalono Kahili, Kauai, 17 January 1848

N.R. 262v9

The Land Commissioners, Greetings: I hereby state my claims for one lo'i, a mala of noni, a mala of wauke and the house lot. MAMUAKALONO X

No. 10083 Mamuakalono Clt

F.T. 228v12

Keo sworn says I know Clt's land in Kahili. It is 1 Loi & I gave it to him previous to 1839 & it has been held in peaceable possession till now.

Bounded as follows

M. by Leiakunui's[?] loi  
H. by Kahili River  
M. " Keo's loi  
A. " Koele "

[no more testimony here]

No. 60083 Mamuaakalono

N.T. 232v12

[should be 10083]

Keo sworn he has seen claimants land in Kahili of one piece with a loi in Kahili.

Mauka	Luakini's land
Halelea	Kahili river
Makai	Keo's land
Anahola	Koele

Land from the konohiki in 1839, no disputes to the present.

[Award 10083; R.P. 7754]

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No. 10333 Naiamaneo Koloa, Kauai, 16 January 1848

N.R. 283v9

The Land Commissioners, Greetings: I, Naiamaneo, a subject of Hawaii living at Kahili, Island of Kauai, hereby state my claim: its diagram is as follows: The house is in another place. I am, respectfully,

NAIAMANEO

No. 10333 Naaيمانeo (w) Clt

F.T. 229v12

Leimanu sworn says I know the lands of Naaيمانeo in Kahili. They are a field of Kalo embracing a number of small lois & kula adj. in Ili "Kupa"

Bounded as follows

M. by Ahupuaa of Kilauea

H. " Kahili River

M. " Brook "Kilauea"

A. " Kahili River

These lands were given by the Konohiki to Clt's Husband, Oopu, in the days of Kamualii. Oopu died in 1847 & the lands fell to the widow (Clt). She has held them in peace till this time.

Mokuhalii sworn says I know Clt's lands in Kahili. I have heard the testimony of Leimanu. It is all true.

No. 10333 Naaimeneco

N.T. 232v12

Kaleimanu sworn he has seen Kaleimanu's (Naaimeneco) land in Kahili.

Mauka Kilauea ahupuaa

Halelea Kahili river

Makai Kilauea stream

Anahola Kahili river

Land from the konohiki to Opu at the time of Kaumualii I.

Opu died in 1847, the land was left to this wife Naaimeneco.

Kumokuohaliu sworn he has seen claimants land claim in Kahili. Kalaeimanu's statements were accurate and both have known in the same way. No disputes to the present time.

[Award 10333; R.P. 3370]

No. 10564 D. Oleloa

N.R. 294-295v9

To the Land Commissioners, Greetings: I hereby state my claims for land of Kauai. At Haiku Ahupua'a, at Huleia in the Puna District, here are the claims:

...

In the Ahupua'a of Kapaa in Puna there are these claims:

...

At Kahili Ahupua'a in Koolau are four taro lo'i, At Waioli ... At Wainiha. These land claims are on Kauai. These claims are of the same kind -- that is, the occupancy of them is under the people who dwell on the land. I request you to award the claims to me which I have described, in accordance with the law.

The witnesses to the claims are the people living on the land, who know of our cultivation and work. The witnesses of my occupation of konohiki are M. Kekuanaoa and M. Kekauonohi, the ones who appointed me. I am, respectfully,  
Honolulu, Oahu, 5 February 1848 D. OLELOA

No. 10564 Daniela Oleloa

F.T. 6-9v12

...

The further hearing of this claim was postponed until witnesses could be procured for Clt's lands is Kahili.

(See Page 80)

Waioli Mar. 11 1850  
No. 10564 Daniela Oleloa Clt finished (See page 64)

F.T. 80-81v12

...

Land from Kauonohi at the time of Kinau, no objections.  
The claim in Kahili is incomplete-postponed.

---

William Lunalilo (20, 22)

...  
Kahili                      Ahupua'a                      Koolau                      Kauai  
The Great Mahele 1848, 1989:104

Barrère, Dorothy B. compiler  
1994                      *The King's Mahele: The Awardees and Their Lands*, Honolulu, HI: p. 432-433.  
Willaim Charles Lunalilo, Alii Award LCA 8559B  
Mahele Book 17-18 (22-23) Received  
Probate 2413, 1414 (AH) Lunalilo died February 3, 1874 without issue.  
Left personal property to his father Kanaina, and his real estate for the founding of  
Lunalilo Home.

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[Kahili River]

No. 6529                      Holokukini

N.R. 193v9

To the Land Commissioners, Greetings: I hereby state my claim at Kilauea. I am the  
konohiki, under A. Keliiahonui. My claims are for all the rights and benefits pertaining to  
the konohiki, being the Po'alimas and the Po'ahas, the protected fish, and the protected trees.  
Those are my claims, under A. Keliiahonui ma. Respectfully,  
HOLOKUKINI

N.R. 193v9

The Land Commissioners, Greetings: I hereby tell you of my three lo'i and also a house lot -  
- those are my claims.

HOLOKUKINI

No. 6529                      Holokukini Clt

F.T. 162-163v12

Kanaina sworn says I know the lands of Holokukini in Pilaa & Kilauea. He has 4 Lois  
in "Puaa" Pilaa all in one piece.

Bounded as follows

M. by Konohiki's kula

N. " " "

M. " Sea Beach

A. " Kane's lois

These lois were given by the Konohiki in 1845 & have been held undisturbed till this  
time.

Clt. has also 6 Lois in Kilauea, Ili "Maluawai" & some kula adjoining a House Lot.

bounded as follows

M. by Kahili River

N. " Konohiki's kula

M. " Oleola's lois

A. " Kahili River

These lands in Kilauea were given by Kaluahonui in 1842 & have been held unmolested to this time.

Kolale sworn says I know the lands of Clt. in Pilaa & Kilauea. I have heard the testimony of Kanaina. It is all true.

No. 6529      Holokukini

N.T. 172-173v12

Kanaina sworn he has seen claimants land in Pilaa and Kilauea consisting of 4 lois, of which 3 are small lois and 2 is a large loi.

There are only four lois in the ili of Puaa

Mauka and Napali	Konohiki pasture\
Makai	From the beach sand
Anahola	Hane's lois

Upai lived under Holokukini.

Land from Opukea to Holokukini in 1845, no objections.

There are 6 lois in Kilauea belonging to Holokukini called Maluawai ili.

There is also a house lot, a pasture and 2 tenants. There are two houses and the men are living under Holokukini who owns the land and house lot.

Mauka	Kahili river
Napali	Konohiki's pasture
Makai	Opeka's lois
Anahola	Kahili river

Land from Kekiahonui in 1842, title clear since the beginning to the present.

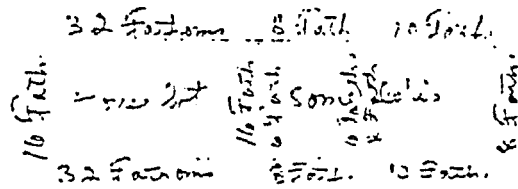
Kohale sworn he has seen Holokukini's land in Kalihi, also a house lot, the pasture and the four lois in Pilaa of the ili land of Puaa. He has known in the same ways as Kalaina.

[Award 6529]

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No. 9260 Kea

N.R. 440-441v9



These are the measurements of my taro lo'is and my house lot, as shown on the diagram. The right was from the time of Kaumualii until the present. It is for you, the Commissioners to quiet land titles, to award it. The Witnesses are Ehuiki and Kauaole. KEA

No. 9260 Kea Clt.

F.T. 235-236v12

Nakaikuahine sworn says I know the lands of Clt. in Kalihiwai as follows -

No. 1 Is House Lot

" 2 " 2 Lois in "Auwailalo"

" 3 " 1 " "

No. 1 is Bounded

M. by Konohiki's kula

N. " " "

M. " River

K. " "

No. 2 is Bounded

M. by Kunihihi's lois

N. " Kekaululu's "

M. " River

K. " My lois

No. 3 is Bounded

M. by Kunihihi's lois

N. " River

M. " Kea's lois

K. " My "

These lands were given Clt by the Konohiki in the days of Kamualii & have been held peaceably till now.

Makaimoku sworn says I know Clt's lands. I have heard all that Nakaikuahine has said. It is all true.

No. 9260 Kea

N.T. 240v12

Nakaikuahine sworn I know the kuleana lands of Kea in Kalihiwai.

section 1 - House lot

Section 2 - 2 lois

Section 3 - A single loi in Kaauaelale?

Those are his lands. They are quite settled.

Section 1

M. Konohiki's kula

N. Konohiki's kula

M. Kalihiwai river

K. Kalihiwai river

Section 2

M. Kunihihi's land

- N. Peke's loi
- M. Kalihiwai river
- K. Makaikuahiane's lois

Section 3

- M. Kunihihi's loi
- N. Kahili river
- M. Kea's loi
- K. Kea's loi

These lands of Kea's came from the konohiki down to Kea. During the time of Kaumualii they were secured. They have not been contested until today.

Makaimoku sworn I know these lands of Kea, I have heard Nakaikuahine's testimony. Both have known in the same way. There is no opposition.

[Award 9260; R.P. 5342]

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sole nō i nui na palapala pāi i pāa i ko fākou lima; no ka mea, e hōe a lakou mea pāi palapala, ma ia aia. Ua hōhiloia ka kauoha hou a pau a ko Akua i olelo Rarotona; a ua laweia 'hu ma Beritania. Malaila e pāia'i. Mamuli paha lako ko Rarotona, i ka buke kauoha hou a ko Akua.

I kuu lohe ana i keia mau mea, manao iho la au, he pomaikai ko lakou noho ana malaila. Nui no nō na mea e pilikia ai i loaia lakou i keia mau makahiki. Ua hāi aku au i kekahi mamua—o ka mai i ka makahiki 1830. A eia hou mai kekahi mea a'u e hāi aku nei. I ka wa mamua, o ka ulu ka lakou ai nui, a lako loa no lakou ia ai. Aka, i ka makahiki 1831, a me ka makahiki 1832, nōu mai la kahi makani ino, ma ia mau aia. Eha nōu ana mai o ua makani la, a pau loa no ka lakou laau ulu i ka hina ilalo; kakaikahi ka ulu i koe. Nōlaila, nolo loa hou aku ka lakou ai malaila; a lilo koke no lakou i ke kanu kalo a me ka uwala. Oia ka lakou ai, mai ia manawa mai. Hiki wawe no nāe ka laau ulu, ke kanuia malaila; a nōlaila, ua kokohe hua na ulu i kanuia mahope mai o ka pau ana o na laau kahiko. Kokohe lako hou lakou i ka ulu. Ua hōonuiia 'ku ko laila kanaka ma ka hātau maoli ana, a like me ka'u hoakaka ana mamua; ua hōonuiia lakaou iwaena kona o keia mau pilikia. Aole emiiki i ka wi—hōonuiia no. Pau keia manao i ko Rarotona.

Na'u NA BALUINA

## NO LONO,

KEKAHI ALII KAHIKO O KAUAI.

He aupuni maikai ko Lono, aole ona pepeli kanaka. He malama no ia alii i kanaka a puni ka moku o Kauai nei. Ina make keiki iloko o ka opu o ka makuwahine, minamina no ke alii ia keiki; a no ka nui loa o ka minamina o Lono i ke keiki, uku aku la oia i ka ukana no na makua. Pela no kona leo i kauoha aku ai i kona mau hoahana ma Kauai nei. Ue nui loa na kanaka o Kauai nei ia manawa, ma ia aia aku a ia aia aku. O Lono ma Kona—o Keaka o Kanaloa ma Wailua—o Luahiwa ma Koolau—o Hālanikikaupua ko Niho—o Kaubane ko Hanalei—o Kanihokawala ko Kalalau. O Konaalee ke keiki a Lono: o Kuluina ke kaikamahine a Lono: o Kaikilanea kekahi keiki kane a Lono, no Nihaia ia keiki. O Kolowahine kekahi kaikamahine a Lono. Holo o Lono i Oahu, a me kona mau hoahana. Kauoha o Lono i ka aia i kana mau keiki, "E malama pono olua i ka aia, a me na kanaka—e noho pono olua." Holo o Lono i ka makaiakai a Molakai, a Maui, a Hawaii. Holo no o Lono, aole i loaia ka hewa i kona aupuni a hoi mai no oia me ka maikai. Kauoha mai o Alipai, ke 'lii o Hawaii, "E hoi no oe a Kauai noho." Holo o Konanile, hookekeke i ka aia—hookahi kanaka kanaka ia ia loaia ka hewa. Alaila hoomakaukau iho la o Lono i na 'lii a me na kanaka; a holo aku la o Lono mahope, a loaia o Konaalee i Oahu, e lana ana no na wā

i hāi sole i pae iuka. Haawi mai la o ke alii i ka ai, i ka ia; oia ko alii o Oahu.

P.—

## O KEEKAHI MAU AINA NELE I KE KULA KAMALII.

O Kaunala kekahi, a me Waialea a me Pahipahielua a me Punaluulalo a me Kaa-wa, ua nele ia mau aia i na kula no na kamalii. Ma kekahi mau aia e ae, ua hema-hema wale no na kula; a kakaikahi wale no ka halawai ana o na kamalii e ao.

Malaila paha e kokua mai na alii e hooala i na kula ma keia mau aia, a e kokua mahope o kekahi poe kumu e like me ka Kaahumanu hana i keia wa mamua.

No kekahi kanaka ua lele i ka pali. Poakolu ua moe makou ma Kahana; a i ko makou manawa e puka aku ai malaila, ua loho au i kekahi kanaka, o Wahapulu kona inoa, a hina ia ma ka pali a lele ilalo loa, a aneane make. Ua pahu au i kona lima, a kokua aku ia ia ma kekahi laau. Ua manao na hoalauna ona e malama nui ia ia. Aole paha hāi kona iwi; aka ua eha loa kona poo, a me kona poohiwi. Ua ola paha ia, ua make paha, aole au i lohe. Ua pono i na kanaka e malama i ko lakou kapuai, ke hele lakou ma kahi pali.

Ka hoike ma Waialea. Ma ka poaha, hoi mai makou i Waialea, a malama i ko makou hoike no na kamalii ma ka poalima. Eia ka nui o na kamalii i hoikeia ma Waialea—144,—70 ka poe ike—74 ka poe ike i na hua heluhelu wale no. O kekahi poe, ua ike lakou i ka Helu kamalii a me na mokuna 10: ma ka Helunaua, a me ka Hoike Holoholona kekahi a me kekahi mau mea ma ka Olelo honua.

A pau ka hoike a na kamalii, ua hoike mai kekahi poe kumu, 30 o lakou. Ua pau ka Helunaua i kekahi poe o lakou; a kokohe pau kekahi. O kekahi poe e, ua lilo lakou i kela mea i keia mea o ke kino, nōlaila, aole holo wawe lakou.

Eia kekahi mea i olioli mai ai ia'u; ua ike hou mai ma keia hoike 22 mau keiki ike ole i kela hoike, 3 mau malama inamua aku nei; a o kekahi poe e ua kokohe ike lakou.

O na kamalii a pau i hoikeia 358  
O ka poe ike, 130  
O ka poe hui, ua loaia lakou ka ike, 34  
J. S. E.

LAHAINALUNA, Maraki 2, 1836.

Pehea la e mahuahua hou ai na kanaka o keia pae aia?

I ko'u noonoo ana i ka mea e mahuahua hou ai na kanaka o keia pae aia; Eia ka mua, e haalele i ka moe kolohe, a me ka hookamakama, a me ka inu rama, a me ke koka, a me ka moe malu i keia wa hou. Eia ka lua, o ka noho pono o ke kane me kana wahine, o ka malama i ka pono, a me ka haalele i na hewa iwaena o laua, o ke alakai hoi i na keiki ma ka pono. Eia kekahi, o ke ao ikaika o na kumu i na haumana i ko oukou hoi ana aku e malama pono i na kamalii, e kuhikuhi pono aku i na haumana

i ike kolohe; alaila hooma mai ia nei. Eia kekahi, o hoi mai na kanaka a pau i ka mihi, e pule aku i ke Akua, e poi aku i kona Uhane i pau ai ka haumia o keia pae aia. Aueha oukou, e na kumu a me na 'lii a me na haumana a me na makaaiana o keia pae aia, e noonoo oukou i ka mea e mahuahua hou ae ai na kanaka o keia mau aia; ina i loaia, e hoolaha koke aku i na aia a pau onci. Na'u na OWALAWAHIE.

KALUAHUA, Maraki 5, 1836.

Aueha oe, e ka hoahanau. Ua ku mai ia nei kahi moku. Ahiahi e holo ana ia i Honolulu. Nōlaila ka manao i loaia ia'u e palapala aku ia oe.

Aole nō i loaia ia'u na mea, hou ke hāi aku. He poe kuasina no makou ma Mōlokai nei. Aole i ea pinepine mai na mea hou, a me na mea kaulana ia nei. Aole he ulumoku. Aole i ku mai na moku manawa; aole hoi na kohola, aole hoi na moku kalepa. Aole he awa maanei e pono ai o ia mau moku. Nōlaila aole i pae pinepine ai na haole mai Kahiki mai e hāi ia makou i na mea hou.

Aka, aole e ohumu ino ana makou i ke Akua no kona hoonole ana ia makou ia mau mea. E ae ana makou i kana hana ana he maikai. Ke manao nei makou ua pomaikai makou i ke awa ole. No ka mea ua paleia kekahi mau mea ino e ka ino o ke awa. Aole e ku mai ia nei na moku kuai rama, aole hoi e hiki na malamamoku a me na luina hewa e naku ana i na wahine o makou e moekolohe pu me lakou. Nui na mea ino, a me na mea hihia i loaia ole ai ia makou no ka pilikia o ke awa kahi e lulu ai na moku nui.

Mai manao nō oe ea ua nele loa makou i na mea e lealea ai na maka, a me na pepeiao, e me na naau o makou, aole loa.

KEKAHI MEA LEALEA.

Eia kekahi mea lealea maikai a makou e ike ai i ka wa a makou i hoi mai ai mai Lahaina mai. Holo mai la makou i ke kaka-hiaka nui. He maikai ka moana, ua ke Akua i hoomalie mai i ka makani kokohe pohu. Me ka auwaa nui no hoi ko makou holo ana. O na hewa wale no ka makani. Pela makou i holo mai ai ma ka mouna a luhi na kanaka i ka hoo a wela i ka la, a pololi no hoi, a ane hoi hope ka waa; ia manawa no ea, e mai na mea he lau a he lau, a puni na waa ia lakou. Ua paapu ko lalo o ka waa, a me ko hope a me ko mua, ko ka akau a me ko ka hema; aole wahi kaa-wale. Ike aku la na kanaka, kahaha iho la, a o ka holo wawe mai la no ia. Hookahi wale no ko makou ala me ko na naia. Hoohikiwawe mai na kanaka i ka hoo; manao ae la, o ko makou poe hoaholo paha na naia a hiki i kahi papau alaila e hopuia paha kekahi i ai na lakou. Holo lealea pu mai la makou me na ia. Me he poe puua nui eleele la. Launa nui ae la na kanaka ia lakou. E ake e paa kekahi ia makou i mea ola no ke kino. Ua kaulci ka hoi ko makou naau—he make hewa no ko makou holo wawe ana; no ka mea i ka wa kokohe

**Proposed Findings of Fact**

**Related to the identifying and scope of valued cultural, historical, or natural resources on the subject property or within the vicinity of the property, including the extent to which traditional and customary Native Hawaiian rights are exercised on the property.**

1. Ahupua'a. The subject property is located within the Kilauea Ahupua'a.
2. Place Names. There are numerous notable places names in the vicinity of the project area, amongst them are Kilauea stream and Mokolea Point.
3. Wahi Pana. There are numerous wahi pana or legendary places within the Kilauea Ahupua'a, amongst them are the celebrated chief Manokalanipō who is said to have commanded a supernatural mo'o to open the mauka part of Kilauea, the ridge above the Kilauea stream was called Kamo'okoa, and the three huge stones along the coast of Kilauea Ahupua'a are said to be the three beautiful sisters named Kalama, Pua, and Lāhela that Pele turned into stones.
4. Mo'olelo. There are numerous mo'olelo or stories associated with the Kilauea Ahupua'a, amongst them is the mo'olelo of Chief Lonoikamakahiki's journey to the famous tree of Ka-hiki-kolo, and along his journey he was befriended by a stranger Kapa'ihiahilina, a Kaua'i native. There is also mo'olelo about the handsome ali'i Kāhili who travels through Kilauea and is the prize in the kilu contest between Hina and Pele'ula.
5. Lifestyle and subsistence. Kilauea was also a favored location for agriculture, including lo'i kalo as evidenced by the terracing and 'uala was also mentioned.
6. Cultural resources. In Kilauea Ahupua'a there is a single recorded heiau called Pailio and is associated with Chief Halanikikaupua of Nihoku. However, some cultural resources in Kilauea Ahupua'a are accessible through programs for preservation of historic locations and traditional culture, including the Daniel K. Inouye Kilauea Point Lighthouse located within the Kilauea Point National Wildlife Refuge (KPNWR) and Hawaiian cultural organizations such as Kaipuwai Foundation and Na Kia'i Nihoku, that perform Native Hawaiian cultural practices and ceremonies at Nihoku summit on the summer and winter solstice and the spring and fall equinox, that partner with KPNWR.
7. Mahele Awards and Kanaina Testimony. There were several claims for kuleana lands in Kilauea Ahupua'a, including Holokukini (No. 6529) and Kealawa'a (No. 9217), although no claims were awarded.
8. Kilauea Sugar Company and Kilauea Railroad system. Kilauea Sugar Plantation Company Limited began in 1863. The first spike of the Kilauea railroad was driven by Lydia Kamaka'eha Princess Regnant (later to become Queen Lili'uokalani) on September 24, 1881. One archaeological site was designated as Temporary Site 1 (TS-1) and was comprised of two features: a railroad bridge culvert (Feature 1), and remnant section of railroad track (Feature 2) was found on the subject property.
9. Hunting. There are numerous accounts of Kilauea, in particular Nihoku, being a place where seabirds nested, and pheasants favored the protected area and local residents would hunt for birds and eat their eggs. Local residents also hunted for pigs through Kilauea, including Nihoku.



10. Water and marine resources. The Kilauea Ahupua'a was also known for its offshore fishing grounds and fish at Makapili Rock and Point.
11. Kilauea Japanese Cemetery. Due to the immigrants working on the Kilauea Sugar Plantation, the cemetery was first established as a Chinese cemetery in 1870, then a Japanese cemetery, then Koreans were interred there, but more recently in 2000, a non-profit association has assumed ownership and accepted more burials.
12. Nihoku. Kama'aina testimony from Gary Smith describes Nihoku as a place of cultural significance based upon several historical sources from *ka poe Kahiko*, including *nupepa Ke Kumu Hawaii*, *Ka Mo'olelo no Hiiakaikapoliopole* by Hooulumahie, 1863 Royal Patent No 2896 Kamehameha IV to Charles Titcomb, in *Ka mo'olelo...kekahi Ali'i Kahiko o Kaua'i*. Dr. Mehana Blaich Vaughan, whose husband and children have ancestral ties to Kilauea Ahupua'a, indicates that Nihoku is considered culturally significant for its association with *mo'olelo*, *kilo* (celestial navigation), *hula & oli*, *visual landmark*, *fishing*, *hunting*, *Makahiki trail*, *cultural practices*, and is considered a cultural landscape.
13. Gullies. Dr. Vaughan indicated that the gully located on the subject parcel, *would have contained water, permitted agriculture and also bathing, or preparation for ceremony, either at Nihokū crest or at the Pailio heiau location thought to be nearby at the foot of Nihoku.*

#### **Proposed Findings of Fact**

#### **Related to the extent to which these resources, including traditional and customary Native Hawaiian rights will be affected or impaired by the proposed action**

14. Pre-contact features or sites. Based on the findings of the Archaeological Literature Review and Field Inspection, and onsite visit, a historic-era cultural resource was identified as a railroad bridge culvert and section of railroad track (TS-1) which could be impacted by the proposed action.
15. Gullies. Dr. Mehana Vaughan described the gully located on the subject property as a potential area that could contain culturally significant information or resources that could be impacted by the proposed action.
16. Although a majority of traditional burials within the vicinity have been discovered along the coastline and in sandy sediment, there remains the possibility that subsurface excavation could reveal iwi kupuna that could be impacted by the proposed action.
17. Although there is no current physical evidence on the subject property that an access trail or traditional and customary practices occurred on the subject property, there is an increasing sentiment by families who have lineal and cultural connections to the area and community members that while the proposed action may not individually impact traditional and customary practices, collectively the development within Seacliff Plantations has an impact on traditional and customary practices.

**Proposed feasible action of reasonable mitigation measures**  
**Related to the protection of Native Hawaiian rights and resources**

**1. Regarding the protection and preservation of the railroad bridge culvert and section of the railroad track (TS-1).**

- Further documentation of the historic property (TS-1) should be prepared to determine its extent, age, function, and significance.
- Until the extent of TS-1 is confirmed to not extend onto the subject property through further documentation, the Landowner agrees to coordinate with Cultural Descendants and knowledgeable community members on the protection and preservation of the railroad bridge culvert and sections of the railroad track located on the subject property. The following are specific recommendations by the Cultural Descendants:
  - The stone culvert floor at intake should be repaired and the stone head walls be cleared of vegetative growth. Loose rocks should be secured in place and cemented if formerly affixed in that manner;
  - The drain way, at least up to 15 feet on either side of the lowest point where the water naturally flows should remain as it is with the existing buffalo grass as a bulwark against erosion. Ultimately the invasive grass can be kept in check by weed whacking, encroachment of naupaka and the shaded canopy of the new dry land forest;
  - Development in this area should contain a large buffer from the gully, control for erosion and runoff, not allow for substantial movement that changes the slope and shape of the terrain and contain sediment so as to avoid filling the railway tunnel further, as is already observable;
  - The rail crossing/bridge/culvert built circa 1890, should be placed on the State of Hawai'i Historic Registry;
  - Although the rail bed appears to have been altered by fill and grading, it still sufficiently documents the original path of the railway system. It should also be included in the registry process. Any subsequent work along the bed which reveals the original tracks and elevation should be documented by photos, survey elevations and GPS info, and updated in the registry;
  - The Landowner should place a commemorative plaque at the site and inform the Seacliff Plantation Owner's Association of the significance of the structure. The Owner's Association should inform other owners along the rail path to take pride in its presence by preserving any evidence of its path through their properties as well;
  - The Seacliff Plantation Subdivision storm drain exit on the property above the crossing should never be altered or extended and that the drainage field remain continually grassed to avoid soil erosion;
  - Lastly, the Landowner should make genuine efforts to accommodate up to four (4) annual field trips from school groups or historical organizations and researchers.

## **2. Regarding the planting of native plants.**

- The Landowner shall consider the planting of native plants in gulch within the subject property. Native plants can include naupaka, Milo, Kukui, Noni and Kou to provide the basic canopy and ground cover. In addition, but not mandatory are plantings of Ohia and Koa which would be more challenging for the property owner to keep viable. Their inclusion and success would speak volumes to the Landowner's care and concern in the re-establishment of a true native dry land forest.

## **3. Regarding iwi kupuna.**

- There remains the slight possibility that pre-Contact cultural resources such as habitation area could be documented in subsurface contexts below the plow zone. The same would hold true for iwi kupuna: only a slight possibility that such exist on this plateau area. The majority of traditional burials in the area have been documented near the direct coastline and in sandy sediment. However, cultural informants have referred to burial sites in the areas, therefore, grading and development in the area should be minimized to avoid inadvertent discovery of iwi kupuna. Although no iwi kupuna have been discovered on the subject property, in the event iwi kupuna are discovered, all work in the immediate area shall cease and the Landowner shall contact SHPD, and any Cultural Descendants recognized by the Kaua'i Ni'ihau Island Burial Council for the area.

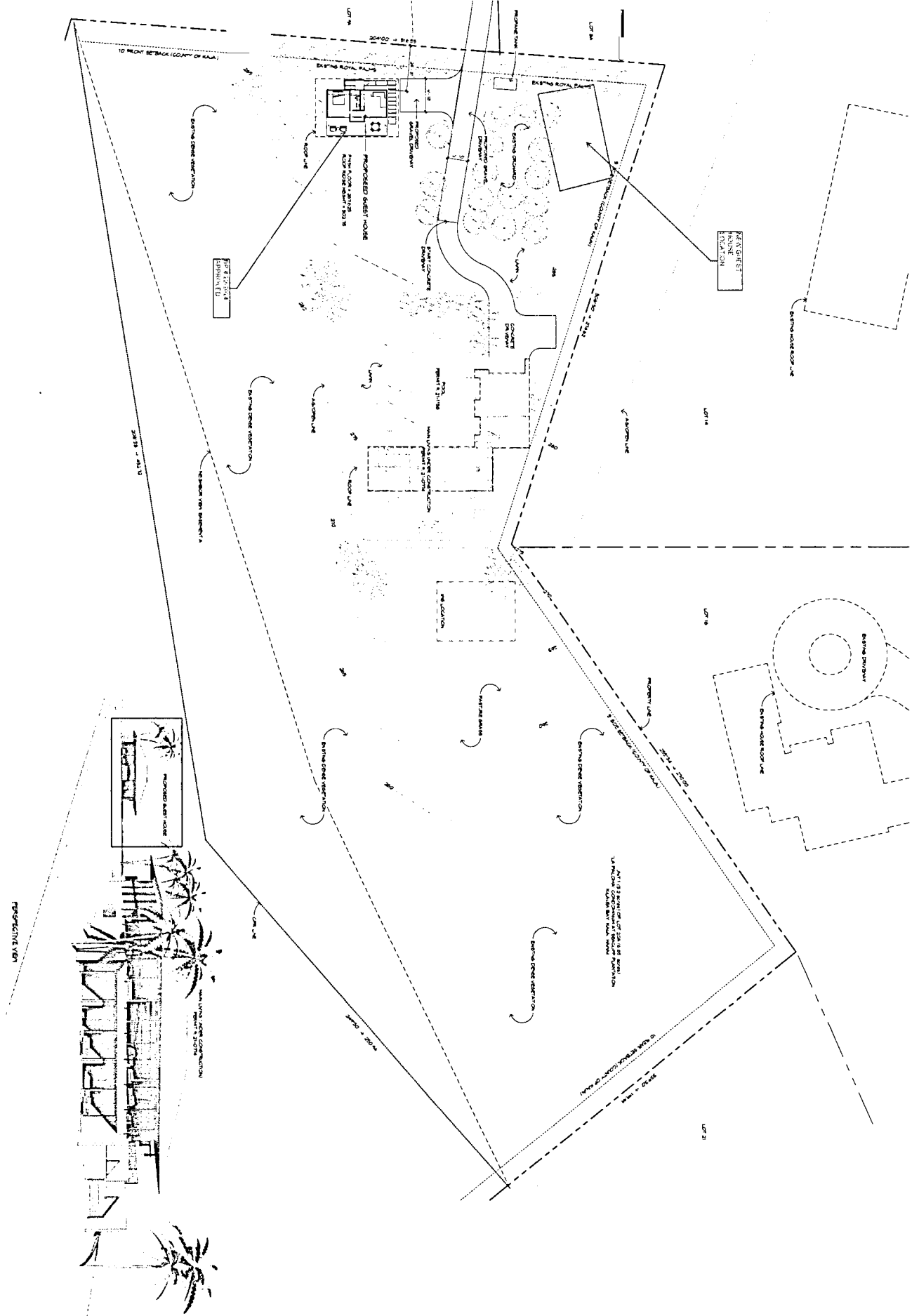
## **4. Regarding "reasonable" mitigation impacts to Nihoku as a cultural landscape**

- Cultural Descendants and members of the Kilauea community have raised concerns that although the Landowner's proposed project may not individually impact traditional and customary practices, the collective and cumulative impact from the past development and any proposed development, including the proposed project within Seacliff Plantation, has and will adversely impact the traditional and customary practices of Native Hawaiians' rights and resources associated with the cultural landscape of Nihoku and Kilauea. In the spirit of Article XII, Section 7 that seeks to find balance between preserving and protecting traditional and customary native Hawaiian rights and private landowners' right to develop, the Landowner agrees to request a meeting with the Seacliff Plantation Homeowner's Association to explore opportunities to engage, collaborate, and coordinate with the Cultural Descendants and Kilauea community to constructively address their concerns related to the adverse impacts of Seacliff Plantation's development on traditional and customary practices exercised by native Hawaiians rights and resources. These concerns include reasonable access to the ocean (especially for kupuna) to hunt pigs, fish, gather resources for subsistence and conduct education and ceremonies such as Makahiki, solstice and equinox observances and kilo events.

# EXHIBIT "C"

SITE PLAN

SP2



DESIGN CONCEPTS HAWAII LLC P(808) 828-0160 WWW.DCHAWAII.COM  
2484 KENEKE ST. #102 KILAUEA, HI 96754  
**WOODS GUEST HOUSE**

TWK: 14J5-2-004-093 0001



TLCF HAWAII STRUCTURAL INC.  
P.O. BOX 223262  
PRINCEVILLE, HAWAII 96722  
DORIS A. LUNA

EXHIBIT "C"

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ROOF PLAN 1, NET TO SECTIONS

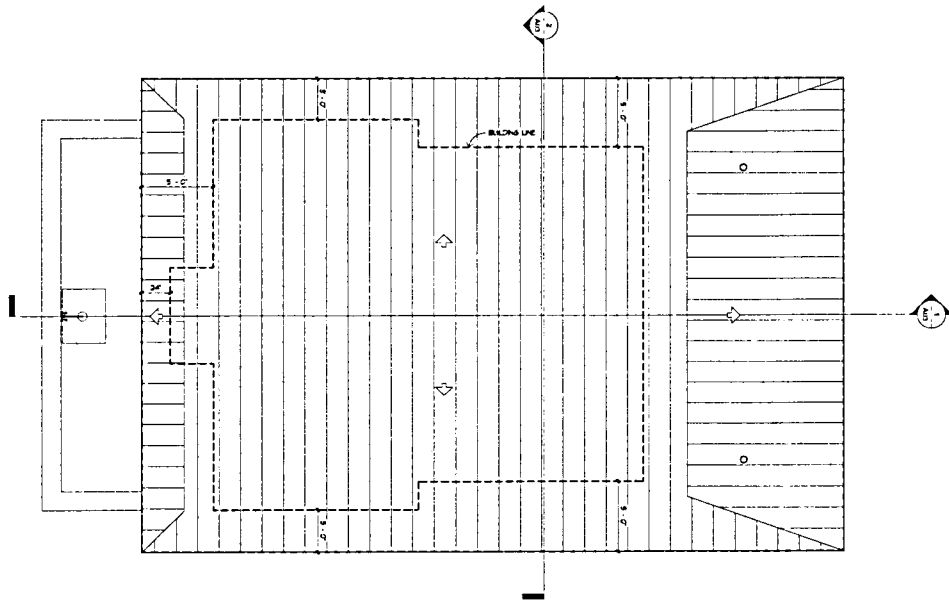
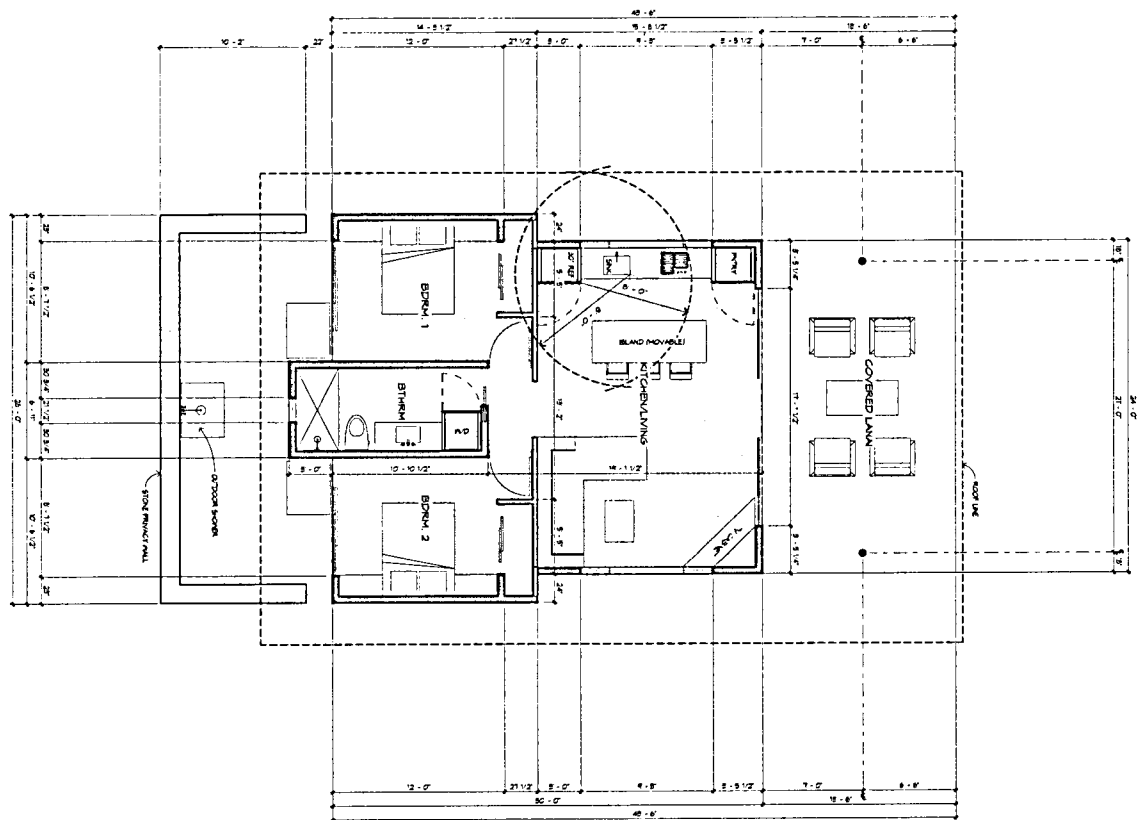
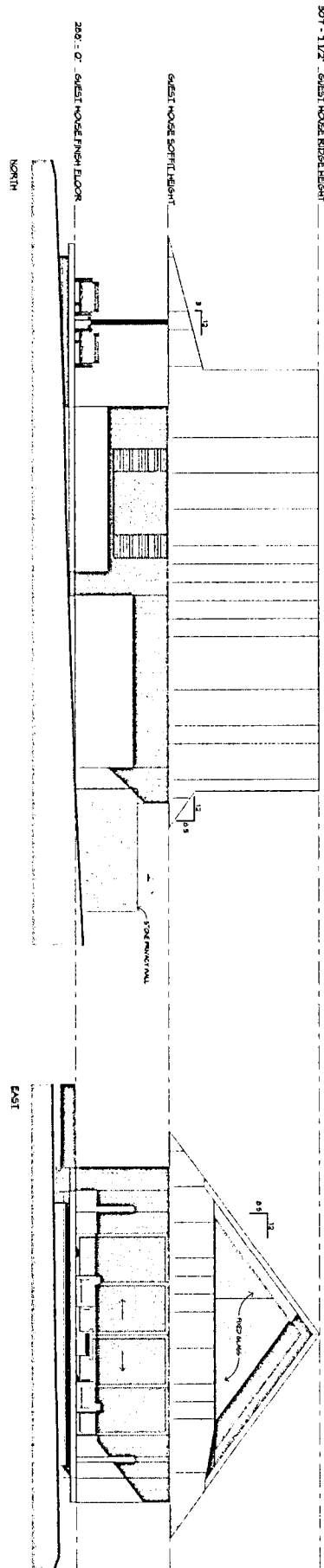


EXHIBIT "D"

FLOOR PLAN



FLOOR PLAN & ROOF PLAN



SECTION THROUGH  
 307 - 1 1/2" GUEST HOUSE RIDGE HEIGHT  
 288 - 0" GUEST HOUSE FINISH FLOOR  
 275 - 6" GUEST HOUSE SOFFIT HEIGHT  
 200 - 0" GUEST HOUSE FINISH FLOOR  
 SOUTH

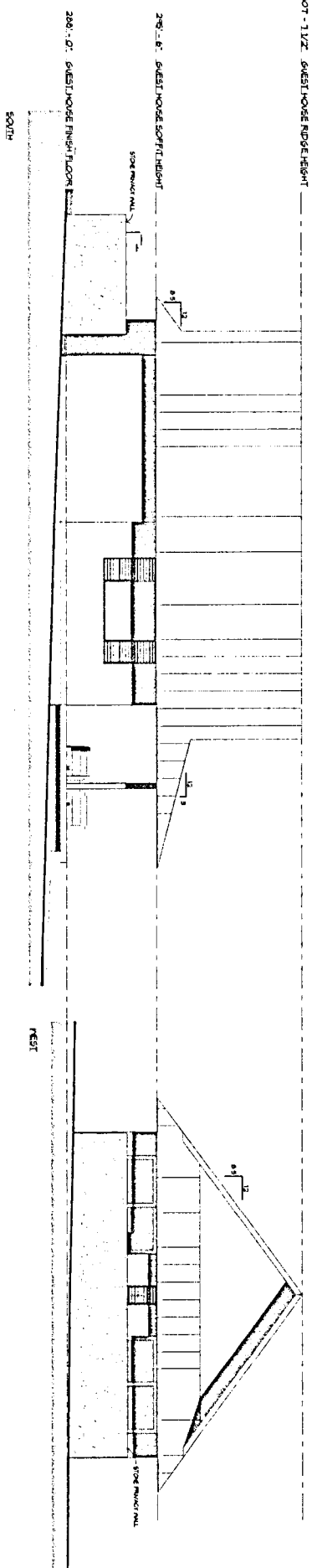
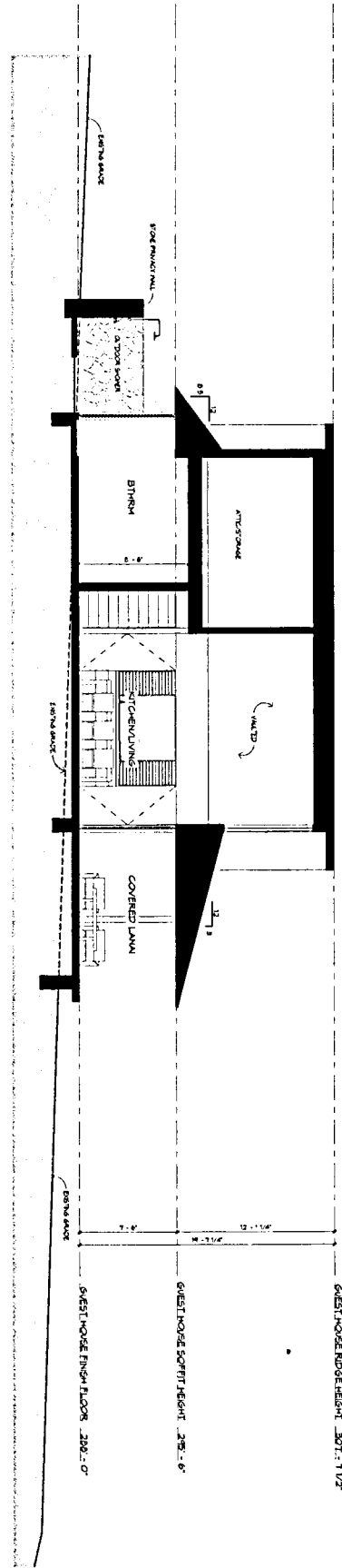


EXHIBIT "E"

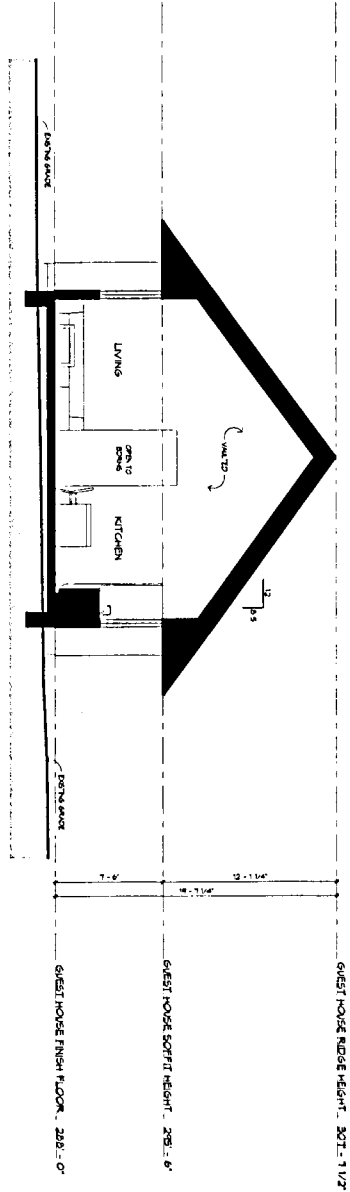
EXTERIOR ELEVATIONS  
 1/4" = 1'-0"



LONG SECTION  
1/4" = 1'-0"



SHORT SECTION  
1/4" = 1'-0"



## DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

### TRANSMITTAL OF AGENCY COMMENTS TO PLANNING COMMISSION

DATE: November 7, 2023

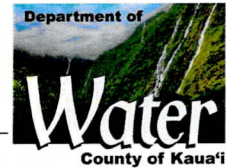
PERMIT NUMBER(S): SMA(U)-2024-4

APPLICANT(S): NATHANIEL CARDEN AND BETH WOODS

Attached for the Planning Commission's reference are agency comments for the permit referenced above.

**F.2.a.1**  
**L.1.a.**  
**NOV 14 2023**

**ENGINEERING DIVISION**  
DEPARTMENT OF WATER, COUNTY OF KAUAI  
MICHAEL K. HINAZUMI, P.E.



JOSEPH E. TAIT,  
MANAGER AND CHIEF ENGINEER

DATE: November 6, 2023

TO: Planning Department  
Kaaina Hull, Director ( Romio )

SUBJECT: Special Management Area Permit SMA(U)-2024-4, Guest House with Kitchen  
and Lanai, Tax Map Key: (4) 5-2-004:093 Unit 1, Nathaniel Carden & Beth  
Woods, Applicant

DOW COMMENTS:

The Department of Water has concerns regarding the increase in water demand associated with this Special Management Area Permit SMA(U)-2024-4 application for the proposed guest house with kitchen.

We recommend to the Planning Department that any approval of the proposed SMA(U)-2024-4 permit application be conditioned whereby the applicant shall be made aware that prior to the Department of Water recommending water meter service or building permit approval, the applicant will be required to:

1. The applicant is required to submit fire flow test data or calculations prepared and signed by your Engineer. The DOW's comments may change depending on the additional information provided.

Be made aware that domestic and fire flow water demands as recommended by the DOW's Water System Standards (WSS) may be inadequate for the proposed development. WSS Table 100-19A identifies fire flow requirements for Ag Zoning district designation as 250 gpm.

Requirements of Table 100-19A shall apply when County building permit approval is sought from the Department for any dwelling unit in excess of the second dwelling unit on a lot of record.

2. Submit a formal request for water service for the proposed guest house with a kitchen for DOW's review and approval.

Requests for additional water meters or an increase in water meter size will be dependent on the adequacy of the source, storage and transmission facilities existing at that time.

3. Pay the applicable charges in effect at the time of payment to DOW. Charges are based on the applicant's water service request.
4. The applicant shall be made aware that the applicant is required to have the backflow device tested annually by a certified tester and submit to the DOW a completed test report signed by the certified tester.

Regina Reyes-Flores  
Regina Reyes-Flores (Nov 6, 2023 11:44 HST)

Regina Reyes-Flores, P.E.  
Water Resources and Planning Section

Nov 6, 2023

Date

SMA(U)-2024-4, 5-2-004-093 Unit 1, 20231106, Nathaniel Carden & Beth Woods/RF:dlv

# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

## DIRECTOR'S REPORT

### I. SUMMARY

**Action Required by Planning Commission:** Consideration of a Special Management Area Use Permit for the construction of a guest house.

**Permit Application Nos.** Special Management Area Use Permit SMA(U)-2024-4

**Name of Applicant(s)** NATHANIEL CARDEN and BETH WOODS  
Laurel Loo of McCorriston Miller Mukai MacKinnon LLP, Authorized Agent

### II. PERMIT INFORMATION

PERMITS REQUIRED	
<input type="checkbox"/> Use Permit	
<input type="checkbox"/> Project Development Use Permit	
<input type="checkbox"/> Variance Permit	
<input type="checkbox"/> Special Permit	
<input type="checkbox"/> Zoning Permit Class <input type="checkbox"/> IV <input type="checkbox"/> III	
<input checked="" type="checkbox"/> Special Management Area Permit <input checked="" type="checkbox"/> Use <input type="checkbox"/> Minor	Pursuant to Section 205A of the Hawaii Revised Statutes (HRS) and the Special Management Area Rules and Regulations of the County of Kaua'i, and Act 229, Session Laws of Hawai'i 2023, a SMA Use permit is required as defined in Section 7.3(C) of the SMA Rules and Regulations where the Director finds that the proposal (1) is a "Development" and (5) may have significant adverse effect on the Special Management area.
AMENDMENTS	
<input type="checkbox"/> Zoning Amendment	
<input type="checkbox"/> General Plan Amendment	
<input type="checkbox"/> State Land Use District Amendment	

Date of Receipt of Completed Application: September 26, 2023

F.2.a.2./L.1.b.

NOV 14 2023

**Date of Director's Report:** October 19, 2023

**Date of Public Hearing:** November 14, 2023

**Deadline Date for PC to Take Action (60<sup>TH</sup> Day):** January 13, 2024

### III. PROJECT DATA

PROJECT INFORMATION			
<b>Parcel Location:</b>	The project site is located within the Sea Cliff Plantation Subdivision, 600 feet south of Iwalani Lane and Pali Moana Place intersection.		
<b>Tax Map Key(s):</b>	(4) 5-2-004:093	<b>Area:</b>	6.8510 acres
ZONING & DEVELOPMENT STANDARDS			
<b>Zoning:</b>	Agriculture (A)/ Open Special Treatment Resource (O/ST-R)		
<b>State Land Use District:</b>	Agricultural (A)		
<b>General Plan Designation:</b>	Agricultural (A)		
<b>Height Limit:</b>	Twenty-five (25) feet		
<b>Max. Land Coverage:</b>	(A) Sixty percent (60%) (O/ ST-R) 3,000 s.f. maximum or not to exceed 10% of the parcel or lot area		
<b>Front Setback:</b>	10'-0"		
<b>Rear Setback:</b>	Five (5) feet or ½ the wall plate height whichever is greater		
<b>Side Setback:</b>	Five (5) feet or ½ the wall plate height whichever is greater		
<b>Community Plan Area:</b>	North Shore Development Plan		
<b>Community Plan Land Use Designation:</b>	N/A		
<b>Deviations or Variances Requested:</b>	N/A		

### IV. LEGAL REQUIREMENTS

<b>Section 8.0, 9.0, and 10.0 of the Special Management Area Rules and Regulations:</b>	This report is being transmitted to the Applicant and Planning Commission in order to satisfy the requirements of Sections 8.0, 9.0, and 10.0 of the Special Management Area Rules and Regulations. The application was received on September 26, 2023 and the Applicant, through its
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	authorized agent, was notified accordingly of the Planning Department's intent to commence permit processing.
<b>Public Hearing Date:</b>	November 14, 2023

## **V. PROJECT DESCRIPTION AND USE**

The subject property is within the Sea Cliff Plantation, an existing subdivision approved under S-82-73. The property consists of an area of 6.8510 acres and is further identified as Tax Map Key Number 5-2-004:093. Additionally, it is part of a Condominium Property Regime (CPR) comprising of two (2) units, with the applicant holding ownership of CPR Unit 1.

Currently, the property has a farm dwelling unit and a swimming pool. In 2022, the applicant secured a Special Management Area Minor Permit SMA(M)-2023-10 for the construction of a 495 square foot guest house. The Kaua'i County Code (KCC), Comprehensive Zoning Ordinance (CZO) was amended on November 7<sup>th</sup>, 2022 allowing an increase in the square footage of guests houses. The applicant has decided to forgo the existing SMA Minor Permit and is now actively pursuing the construction of an 795 square foot guest house, complete with kitchen.

The proposed 795 square foot guest house has two (2) bedrooms, one (1) bath, a covered lānai, and an outdoor shower. The guest house displays a high pitched dutch gable roof lines with standing seam metal roof finish. Siding of the guest house is a vertical wood fascia to match the main dwelling and the outdoor shower is surrounded by a rock wall. Other site improvements is a proposed gravel driveway.

## **VI. APPLICANT'S REASONS/JUSTIFICATION**

(Refer to Application)

## **VII. ADDITIONAL FINDINGS**

1. The project site is in the Sea Cliff Plantation subdivision and entry to the property is through an access and utility easement on Parcel 82.
2. The State Land Use District (SLUD) designation for the subject parcel is "Agriculture," which allows for agricultural growth in a specific area. The Kaua'i County General Plan (GP) designation is "Agriculture". Agriculture lands are reserved for agriculture purposes with little residential development.
3. The property is situated within the North Shore Planning area and will be subjected to the objectives and goals of the North Shore Development Plan (NSDP), that includes the following:

Goal A: To preserve the unique natural beauty of the North Shore Planning Area.

Goal B: To preserve the special rural charm of the North Planning area.

- Goal C: To provide for the safety and welfare of the people, of their property of the North Shore Planning Area.
  - Goal D: To provide for economic development of the North Shore planning area.
  - Goal E: To preserve the wildlife and flora and the North Shore, recognizing man's dependence upon this preservation for his own health and welfare.
  - Goal F: To ensure the preservation of historic-archaeological sites in the North Shore Planning Area.
  - Goal G: To create a development for evolutionary growth that depends upon a planning process whereby conflicts can be resolved through the establishment of priorities and community participation.
  - Goal H: To provide for recreational opportunities that are compatible with the unique qualities and natural features of the North.
4. The proposed guest house is located within Zone "X" of Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map. FEMA had identified these areas to be outside of the 0.2% floodplain and is far enough inland to be vulnerable to coastal erosion or impact coastal waters.
  5. The subject site slopes down gradually from the northwestern edge of the property towards the southeastern section. However, the area where the existing farm dwelling and proposed guest house are situated is relatively flat. No grading is anticipated and all drainage run-off resulting from construction activities of the development will be managed on-site.
  6. CZO Development Standards  
The proposed development is subjected to standards prescribed in Sections 8-4.3, 8-4.5, 8-9.2, and 10-2.4:
    - a. Setback Requirements: Front property line setbacks are ten feet (10'-0") with a side and rear property line setback of five feet (5'-0") or half the distance of the wall plate height whichever is greater.
    - b. Setback between buildings: The distance between buildings shall be ten (10) feet minimum.
    - c. Parking Requirements: The applicant shall provide a minimum of one (1) off-street parking space for the guest house.

- d. Land/ Lot Coverage: The subject property has a dual county zoning designation of Agriculture (A) and Open Special Treatment Resource (O/ST-R). The proposed development is entirely within the County Agriculture zoning. The allowable land coverage should not exceed more than 60% of the parcel size within the respective zoning.
- e. Building Height: Pursuant to Section 10-2.4(e)(1) of the CZO, referred to as the NSDP. It allows structures to be no higher than twenty-five (25) feet.

## **VIII. AGENCY COMMENTS**

See Exhibit "A".

## **IX. PRELIMINARY EVALUATION**

In evaluating the Applicant's request to allow the construction of the proposed development, the following are being considered.

### **1. North Shore Development Plan Standards**

The proposed development is the construction of a 795 square foot guest house on CPR Unit 1. Prior to building permit application, the applicant shall work closely with the Planning Department to ensure the dwelling does not exceed the height limitations as outlined in the NSDP.

### **2. Native Hawaiian Traditional and Cultural Rights**

The applicant submitted a Ka Pa'akai analysis on October 17, 2022 in conjunction with SMA Minor Permit SMA(M)-2023-10 for the 495 s.f. guest house on CPR Unit 1. The analysis conducted interviews with cultural descendants and knowledgeable community members and examined archival research relying on prior archaeological records and recent inspections. The archaeological documentation revealed the presence of significant cultural, historical, and/or natural resources both within and outside the subject property (see Exhibit "B" section II).

The Ka Pa'akai identified resources, including traditional and customary Native Hawaiian rights that will be affected or impaired by the proposed action, including:

- Pre-contact features or sites- Pre contact sites are mostly situated in gullies or uneven terrain, particularly near water features, as flat areas like tablelands.
- Railroad bridge culvert and section of the railroad track- The Archaeological Literature Review and Field Inspection (LRFI) conducted on the property identified a railroad track (TS-1) as shown in Figure 7 of attachment "A", that may be affected by construction activities on the property. The railroad bridge culvert is not only a post-contact historic feature, but it also has cultural significance because of its association with Princess Lydia Kamaka'eha Princess Regnant, later to become Queen Lili'uokalani.



- Impacts to the cultural landscape of Nihoku, including the ability to exercise traditional and customary practices associated with Nihoku and Kīlauea- Members of the Kīlauea community, particularly Native Hawaiians with ancestral ties to the area, strongly believe that the Seacliff Plantation subdivision, as a whole, has had and will continue to have a negative impact on the cultural landscape of Nihoku.

The Ka Paʻakai analysis provides recommendations, feasible actions, and mitigation measures to reasonably protect Native Hawaiian rights and resources. This includes the following recommendations:

- The protection and preservation of the railroad bridge culvert and section of railroad tracks (see figure 7 of Attachment “A” of the LRFI).
- Planting of native plants.
- Minimal development and grading of the project area to avoid inadvertent findings of Iwi Kupuna.
- Reasonable mitigation impacts to Nihoku as a cultural landscape.

Please refer to Exhibit “B” Section III of the Ka Paʻakai for detailed implementation actions related to the recommendations stated above.

### 3. SMA Rules and Regulations

The COK SMA Rules and Regulations contain objectives, policies and guidelines designed to protect coastal resources. Within the SMA, special consideration is given to recreational opportunities, cultural and historic resources, scenic qualities and open space, coastal ecosystems, and coastal hazards. In evaluating the proposed development relative to the goals and objectives of the SMA Rules and Regulations, the following aspects are taken into consideration:

- Public Access and Coastal Recreation- The subject development has no public access on site. Public access to Kīlauea bay and Kahili Beach is approximately a half mile (1/2) mile southwest off Kīlauea road and another access approximately one (1) mile southeast off Wailapa Road.
- Cultural/ Historical Resources- Archeological Literature Review and Filed Inspection (LRFI) of Parcel 93 (Attachment A) prepared by Scientific Consultant Services, INC. identified a designated site as Temporary Site 1 (TS-1) and was comprised of two features: a railroad bridge culvert (Feature 1, FE-1), and a remnant section of railroad track (Feature 2, FE-2) found nearby. As shown in Figure 7 of the LRFI shows FE-1 and FE-2 located on CPR Unit 2. The proposed guest house is located on the northern portion CPR Unit 1 however the applicant has agreed to work with the owner of CPR Unit 2 to coordinate with Cultural Descendants and knowledgeable community

members on the protection and preservation of the railroad bridge culvert and sections of the railroad track located on the subject property.

The archaeological significance of the current field inspection lies in the identification of a railroad bridge culvert and a section of railroad track (TS-1), associated with the Kilauea Sugar Company's sugar cane transportation. Another part of this railroad nearby has already been designated as SIHP Site No. 50-30-04-0182. There is a possibility of discovering additional remnants of the railroad under foliage or even below the surface of nearby property parcels. Given the historic property identification, the consultant (Scientific Consultant Services, INC.) recommends conducting an Archaeological Inventory Survey (AIS) to thoroughly document TS-1, determining its extent, age, function, and significance. Additionally, consultation with SHPD is advised for both the AIS and to decide whether TS-1 should receive a new SIHP number or be recorded as an additional portion of Site-01812.

The LRFI identified only one historic-era cultural resource in the project area. However, due to overgrowth, more extensive surveys during the AIS could reveal additional historical-era resources linked to the railroad. The study did not involve excavations, leaving the possibility of undiscovered pre-Contact cultural resources, like habitation areas, beneath the plow zone. The likelihood of finding iwi kupuna on the plateau area is slight, with most traditional burials documented near the coastline and in sandy sediment.

- a. Scenic and Open Space Resources- The subject parcel is located approximately half a mile (1/2) east of the entry of Sea Cliff Plantation subdivision. The guest house is not visible from the Kilauea Town Center and will have minimal negative visual impacts, from Kahili Beach area.
  - b. Coastal Ecosystems- The project site is approximately a quarter (1/4) mile of the Kilauea Wildlife Refuge, U.S. Fish and Wildlife Service and located on a high cliff rocky bluff. The project site (CPR Unit 1) has been previously developed with a Farm dwelling and a swimming pool. As represented in the application according to the University of Hawai'i Rare Species database, there are no known or reported threatened and endangered species within or adjacent property.
  - c. Coastal Hazards- The project area/ site is not located within the extreme tsunami evacuation area. The project area/ site is located within Zone "X", as shown on Federal Insurance Rate Maps. (FIRM 150002-0060E) The project will not be impacted by any coastal hazards.
4. CZO Development Standards
- As proposed the project complies with the land coverage, setback, and off-street parking requirements for development within the Agriculture (A) zoning district, as specified in Sections 8-4.3 and 8-4.5 of the Comprehensive Zoning Ordinance (CZO).
- a. The subject is located within the North Shore Development Plan Area (NSDP)

Pursuant to Sec.10-2.4(e)(1) of the CZO, commonly referred to as the NSDP. Structures should be no higher than twenty-five (25) feet. The Applicant should work closely with the Planning Department to ensure that the proposed development is in compliance with the height limitations of the North Shore Development Plan (NSDP).

Finally, it is uncertain as to whether the Applicant has made provisions for night illumination with the project, based on the preliminary plans that have been submitted. If so, night illumination should be designed to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds. Night lighting should be shielded from above and directed downwards and shall be approved by the U.S. Dept. of the Interior Fish and Wildlife Service. If external lighting is to be used in connection with the proposed project, all external lighting should be only of the following type: *downward-facing shielded lights*. Spotlights aimed upward or spotlighting of structures is prohibited.

## **X. PRELIMINARY CONCLUSION**

Bases on the foregoing, it is concluded that through proper mitigative measures, the proposed development can be considered, and it complies with the policies and guidelines of the Special Management Area Rules and Regulations in that:

1. The development should not have any substantial adverse environmental or ecological effect.
2. The proposed development should not have any detrimental impact to the environment or the surrounding area and be in compliance with the criteria outlined for the granting of a Special Management Area Use Permit. The Applicant should institute the "Best Management Practices" to ensure that the operation of this facility does not generate impacts that may affect the health, safety, and welfare of those in the surrounding area of the proposal.

Furthermore, the proposal DOES NOT:

- involve dredging, filling, or otherwise altering any bay, estuary, salt march, river mouth, slough or lagoon;
- reduce the size of any beach or other area usable for public recreation;
- reduce or impose restrictions upon public access to tidal and submerged lands, beaches, rivers or streams within the special management area; and
- adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, estuarine sanctuaries or existing agricultural uses of land.

## **XI. PRELIMINARY RECOMMENDATION**

Based on the foregoing evaluation and conclusion, it is hereby recommended that the construction of the guest house under Special Management Area Use Permit SMA(U)-2024-4 be **approved** with the following conditions:

1. The proposed development shall be constructed as represented. Any changes to the operation of the respective structure shall be reviewed by the County of Kaua'i, Department of Planning to determine whether Planning Commission review and approval is required.
2. In order to ensure that the project is compatible with its surroundings and to minimize the visual impact of the structures, the external color of the proposed guest house shall be of moderate to dark earth-tone color. The proposed color and landscape plan should be submitted to the County of Kaua'i, Department of Planning for review and acceptance prior to building permit submittal.
3. The following feasible actions or mitigation measures should be taken to reasonably protect Native Hawaiian rights and resources:
  - a. Regarding the protection and preservation of the railroad bridge culvert and section of the railroad track (TS-1).
    1. The applicant shall consider preparing further documentation of the historic property (TS-1) to determine its extent, age, function, and significance.
    2. Until the extent of TS-1 is confirmed to not extend onto the subject property through further documentation, the applicant shall coordinate with Cultural Descendants and knowledgeable community members on the protection and preservation of the railroad bridge culvert and sections of the railroad track located on the subject property. Actions and specific recommendations by the Cultural Descendants that the applicant shall consider implementing include:
      - i. The stone culvert floor at intake should be repaired and the stone head walls be cleared of vegetative growth. Loose rocks should be secured in place and cemented if formerly affixed in that manner;
      - ii. The drain way, at least up to 15 feet on either side of the lowest point where the water naturally flows should remain as it is with the existing buffalo grass as a bulwark against erosion. Ultimately, the invasive grass shall be kept in check by weed whacking, encroachment of naupaka and the shaded canopy of the new dry land forest;
      - iii. A large buffer from the gully and control for erosion and runoff shall be kept; the applicant shall not allow for substantial movement that

changes the slope and shape of the terrain and contain sediment so as to avoid filling the railway tunnel further;

- iv. The applicant shall consider placing the rail crossing/bridge/culvert built circa 1890 on the State of Hawai'i Historic Registry;
- v. The applicant shall also consider including the rail bed (despite some of its alterations from fill and grading) and its original path of the railway system, as part of the registry process. If placed on the register, any subsequent work along the bed which reveals the original tracks and elevation should be documented by photos, survey elevations and GPS info, and updated in the registry;
- vi. The applicant should consider placing a commemorative plaque at the site and inform the Seacliff Plantation Owner's Association of the significance of the structure. The applicant should consider working with the Owner's Association to inform other owners along the rail path to take pride in its presence by preserving any evidence of its path through their properties as well;
- vii. The applicant should acknowledge that the Seacliff Plantation Subdivision storm drain exit on the property above the crossing should not be altered or extended and that the drainage field remain continually grassed to avoid soil erosion;
- viii. The applicant should make genuine effort to work with Cultural Descendants to accommodate up to four (4) annual field trips from school groups or historical organizations and researchers.

b. Regarding the planting of native plants.

- 1. The applicant shall consider the planting of native plants in gulch within the subject property. Native plants can include naupaka, Milo, Kukui, Noni and Kou to provide the basic canopy and ground cover. In addition, but not mandatory are plantings of Ohia and Koa.

c. Regarding iwi kupuna.

- 1. Because there remains the possibility that pre-Contact cultural resources such as habitation area could be documented in subsurface contexts below the plow zone. The same would hold true for iwi kupuna: a slight possibility that such exist on this plateau area. Thus, grading and development in the area should be minimized to avoid inadvertent discovery of iwi kupuna.

d. Regarding "reasonable" mitigation impacts to Nihokū as a cultural landscape


1. Applicant shall work with and meet with the Seacliff Plantation Homeowner's Association to explore opportunities to engage, collaborate, and coordinate with the Cultural Descendants and Kilauea community to constructively address their concerns related to the adverse impacts of Seacliff Plantation's development on traditional and customary practices exercised by native Hawaiians rights and resources. These concerns include reasonable access to the ocean (especially for kupuna) to hunt pigs, fish, gather resources for subsistence and conduct education and ceremonies such as Makahiki, solstice and equinox observances and kilo events.
4. The applicant is advised that should any archaeological or historical resources be discovered during ground disturbing/ construction work, all work in the area of the archaeological/ historical findings shall immediately cease and the applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the County of Kaua'i, Department of Planning to determine mitigation measures.
5. In order to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds, if external lighting is to be used in connection with the proposed project, all external lighting shall be only of the following types: downward facing, shielded lights, spotlights aimed upward or spotlighting of structures shall be prohibited.
6. The applicant shall develop and utilize Best Management Practices (B.M.P's) during all phases of development in order to minimize erosion, dust, and sedimentation impacts of the project to abutting properties.
7. The applicant shall resolve and comply with the applicable standards and requirements set forth by the State Health Department, State Historic Preservation Division-DLNR, Office of Hawaiian Affairs, and County Department of Public Works, Fire, Transportation, and Water.
8. To the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kauai contractors as long as they are qualified and reasonably competitive with other contractors and shall seek to employ residents of Kauai in temporary construction and permanent resort-related jobs. It is recognized that the Applicant may have to employ non-Kauai residents for particular skilled jobs where no qualified Kauai residents possesses such skills. For the purposes of this condition, the Commission shall relieve the Applicant of this requirement if the Applicant is subjected to anti-competitive restraints on trade or other monopolistic practices.
9. The Applicant shall implement to the extent possible sustainable building techniques and operational methods for the project, such as Leadership in Energy and Environmental Design (L.E.E.D.) standards or another comparable state-approved,

nationally recognized, and consensus-based guideline, standard, or system, and strategies, which may include but is not limited to recycling, natural lighting, extensive landscaping, solar panels, low-energy fixtures, low-energy lighting and other similar methods and techniques. All such proposals shall be reflected on the plans submitted for building permit review.

10. The Planning Commission reserves the right to revise, add or delete conditions of approval in order to address or mitigate unforeseen impacts the project may create, or to revoke the permits through the proper procedures should conditions of approval not be complied with or be violated.
11. Unless otherwise stated in the permit, once permit is issued, the applicant must make substantial progress, as determined by the Director, regrading the development or activity within two (2) years, or the permit shall be deemed to have lapsed and be no longer in effect.

The Planning Commission is further advised that this report does not represent the Planning Department's final recommendation in view of the forthcoming public hearing process scheduled for October 10, 2023 whereby the entire record should be considered prior to decision-making. The entire record should include but not be limited to:

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

By   
ROMIO IDICA  
Planner

Approved & Recommended to Commission:

By   
KA'AINA S. HULL  
Director of Planning

Date: 10/19/2023

# EXHIBIT “A”

(Agency comments)





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

OCT 9 '23 PM 1:39  
PLANNING DEPT

FROM: Kaaina S. Hull, Director

Planner: Romio Idica

RECEIVED

9/26/2023

SUBJECT: Special Mgt Area Permit SMA(U)-2024-4  
Tax Map Key: 520040930000  
Applicant: Nathaniel Carden & Beth Woods  
Guest House with Kitchen & Lanai

SEP 27 2023  
County of Kauai  
Transportation Agency

TO:

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| <input type="checkbox"/> State Department of Transportation - STP        | <input checked="" type="checkbox"/> County DPW - Engineering          |
| <input type="checkbox"/> State DOT - Highways, Kauai (info only)         | <input type="checkbox"/> County DPW - Wastewater                      |
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| <input type="checkbox"/> State Land Use Commission                       | <input checked="" type="checkbox"/> County Water Department           |
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| <input type="checkbox"/> State DLNR - Forestry & Wildlife                | <input type="checkbox"/> KIIPRC                                       |
| <input type="checkbox"/> State DLNR - Aquatic Resources                  | <input type="checkbox"/> U.S. Postal Department                       |
| <input type="checkbox"/> State DLNR - Conservation & Coastal Lands       | <input type="checkbox"/> UH Sea Grant                                 |
| <input type="checkbox"/> Office of Hawaiian Affairs                      | <input checked="" type="checkbox"/> Other: Office of Hawaiian Affairs |

FOR YOUR COMMENTS (pertaining to your department)

10/6/2023

CTA HAS NO FURTHER COMMENT ON THIS PROJECT.

MAHALO!

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 11/14/2023 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

FROM: Kaaina S. Hull, Director

Planner: Romio Idica

9/26/2023

SUBJECT: Special Mgt Area Permit SMA(U)-2024-4  
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FOR YOUR COMMENTS (pertaining to your department)

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**OCT 9 '23 PM1:39**  
**PLANNING DEPT**

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

**DATE:** October 6, 2023

**TO:** To whom it may concern

**FROM:** Ellis Jones  
District Environmental Health Program Chief

**SUBJECT:** RESPONSE\_Carden & Woods\_SMA(U)-2024-4

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 application. The existing wastewater system can serve the proposed project

By Revised Statute 11-62-31.1 If the parcel is less than 10,000sq feet, an individual onsite waste-water unit may not be possible for future construction. Please contact Sina Pruder at the DOH waste-water branch at 808-586-4288 for further information. For comments, please email the Wastewater Branch at [doh.wwb@doh.hawaii.gov](mailto: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



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

FROM: Kaaina S. Hull, Director

Planner: Romio Ilica

9/26/2023

SUBJECT: Special Mgt Area Permit SMA(U)-2024-4  
Tax Map Key: 520040930000  
Applicant: Nathaniel Carden & Beth Woods  
Guest House with Kitchen & Lanai

TO:

- |  |   |
|--|---|
| <input type="checkbox"/> State Department of Transportation - STP        | <input checked="" type="checkbox"/> County DPW - Engineering          |
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| <input type="checkbox"/> Office of Hawaiian Affairs                      | <input checked="" type="checkbox"/> Other: Office of Hawaiian Affairs |

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

We have completed our review and offer the following comments:

1. The applicant shall comply with all provisions of the "Sediment and Erosion Control Ordinance No. 808" to safeguard the public health, safety, and welfare, to protect property, and to control soil erosion and sedimentation. This shall include, but not be limited to, a grading and/or grubbing permit in compliance with the County's Sediment and Erosion Control Ordinance, which is required if any of the following conditions apply:
  - The work area exceeds one (1) acre.
  - Grading involving excavation or embankment, or combination thereof exceeds 100 cubic yards.
  - Grading exceeds five (5) feet in vertical height or depth at its deepest point.
  - The work area unreasonably alters the general drainage pattern to the detriment of abutting properties.
2. During construction, best management practices (BMPs) shall be incorporated to the maximum extent practicable to prevent damage by sedimentation, erosion, or dust to watercourses, natural areas, and other properties. The permittee and the property owner shall be responsible to ensure that BMPs are satisfactorily implemented at all times.

Sincerely,

Michael Moule, P.E.  
Chief, Engineering Division

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 11/14/2023 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 Kauai  
Planning Department  
4444 Rice St., Suite A473 Lihue, HI 96766  
(808) 241-4050

FROM: Kaaina S. Hull, Director

Planner: Romio Idica

9/26/2023

SUBJECT: Special Mgt Area Permit SMA(U)-2024-4  
Tax Map Key: 520040930000  
Applicant: Nathaniel Carden & Beth Woods  
Guest House with Kitchen & Lanai

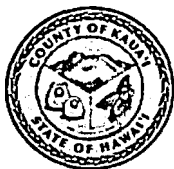
TO:

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| <input type="checkbox"/> Office of Hawaiian Affairs                      | <input checked="" type="checkbox"/> Other: Office of Hawaiian Affairs |

FOR YOUR COMMENTS (pertaining to your department)

2.5 Hydrants shown on maps  
need to ensure adequate water  
supply.

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OFFICE OF  
HAWAIIAN AFFAIRS  
2023 SEP 29 A 10:51

FOR YOUR COMMENTS (pertaining to your department)

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OFFICE OF  
HAWAIIAN AFFAIRS  
2023 SEP 29 A 10:51



## Romio Idica

---

**From:** Kamakana Ferreira <kamakanaf@oha.org>  
**Sent:** Wednesday, October 11, 2023 11:12 AM  
**To:** Romio Idica  
**Cc:** Jodi Higuchi Sayegusa  
**Subject:** OHA Comment Re: SMA U-2024-4 and 2024-5, 3839 Pali Moana Place  
**Attachments:** SMA 2024-4, Guest House with Kitchen and Lanai at 3839F Pali Moana Place, Kilauea, Kauai.pdf; SMA Use Permit, 2024-5, and Zoning Class IV Permit, Z-IV-2024-1, Single Family Residence with Pool at 3839 Pali Moana Place, Kilauea, Kauai.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 Romio,

The Office of Hawaiian Affairs (OHA) is in receipt of two Special Management Area (SMA) use permit applications, #s 2024-4 and 2024-5, for improvements at 3839 Pali Moana Place, Kilauea, Kauai. SMA U-2024-4, for Nathaniel Carden and Beth Woods, will add a new guest house with kitchen and pool at Unit 1. SMA U-2024-5, for Bryan Madani and Kiana Buckley, will develop a farm dwelling and a swimming pool at Unit 2. A Ka Pa'akai Analysis for Unit 2 was prepared by Dawn Chang of Ku'iwalu in December 2022 and was utilized in both SMA application packets. Similarly, an archaeological literature review prepared by SCS in 2022 for Units 1 and 2 was included in both SMA application packets as well.

In review of the archaeological literature review, we observe that only a single historic culvert was located during a field inspection. Informants from the Ka Pa'akai Analysis indicated a desire to preserve the historic railroad culvert, which the applicant appears to have committed to. It was suggested that other remnant portions of the railroad may be found under the foliage or even under the ground surface as vegetation was severely overgrown, which made ground visibility difficult. In this regard, a full archaeological inventory survey (AIS) was recommended to fully document the historic culvert. SCS did further concede that subsurface deposits could exist and that there could be benefit to doing an AIS in this regard. It was suggested that there is a slight possibility for pre-Contact cultural resources such as habitation areas to be documented in subsurface contexts below the plow zone.

SCS also states that the State Historic Preservation Division (SHPD) should be consulted. OHA agrees that SHPD should be provided with an opportunity to review and comment on these projects pursuant to Hawaii Revised Statutes (HRS) Chapter 6E-42. OHA would certainly not object to an AIS given that the parcels are overgrown with vegetation and given that there is a possibility of encountering subsurface deposits. If an AIS cannot be done, then monitoring should be pursued to address SCS's concerns. Should SHPD provide comment, please provide copies of them to OHA.

Mahalo for the opportunity to comment. We look forward to seeing our comments addressed and receiving any SHPD comments. Please let me know if you have any questions.

Mahalo,  
*Kamakana C. Ferreira, M.A.*  
Lead Compliance Specialist  
Office of Hawaiian Affairs  
560 N. Nimitz Hwy  
Honolulu, Hi. 96817

(808)594-0227

MCCORRISTON MILLER MUKAI MACKINNON LLP

LAUREL LOO 4806  
4463 Pahe'e Street, Suite 208  
Lihu'e, Kaua'i, Hawai'i 96766  
Telephone No.: (808) 632-2267  
Facsimile No.: (808) 524-8293

Attorney for Applicants  
BRYAN MADANI and KIANA BUCKLEY

BEFORE THE PLANNING COMMISSION

OF THE

COUNTY OF KAUA'I

In the Matter of the Application	) APPLICATION FOR SPECIAL
	) MANAGEMENT AREA PERMIT
	) SMA _____;
	) CLASS IV ZONING
	) PERMIT _____;
	) USE PERMIT _____;
	) EXHIBITS "A" – "D"
	)
OF	)
	)
BRYAN MADANI and KIANA BUCKLEY,	)
TRUSTEES OF THE MADANI	)
BUCKLEY TRUST DATED	)
MAY 29, 2019, affecting real property at	)
Kilauea, Island and County of Kaua'i,	)
State of Hawai'i, more particularly	)
Identified as Tax Map Key No.	)
(4) 5-2-004:093, Unit 2, containing an	)
Area of 3.6 acres, more or lee.	)
_____	)

APPLICATION FOR SPECIAL MANAGEMENT AREA USE PERMIT  
CLASS IV ZONING PERMIT AND USE PERMIT

## I. APPLICANTS AND OVERVIEW

A.. Applicants: The Applicants are BRYAN BUCKLEY and KIANA MADANI, TRUSTEES OF THE MADANI BUCKLEY TRUST DATED MAY 29, 2019, who have authorized Laurel Loo of McCorriston Miller Mukai MacKinnon, LLC, to file this Application.

B. Property: The Property is located at 3839 Pali Moana Place, Kilauea, Kauai, Hawaii, and is more particularly identified as Tax Map Key (4) 5-2-4:093, CPR Unit 2. A legal description of the Property is described in the Deed to the Property, attached hereto as Exhibit "A". An aerial view of the CPR unit is attached as Exhibit "B", with CPR Units 1 and 2 of this TMK enumerated in yellow.

C. Overview of Application: The Applicants are proposing to develop a farm dwelling and a swimming pool. The site plan, floor plans and elevations for the proposed structures are enclosed as Exhibit "C". Total lot coverage for this unit is 8,531 sq. square feet which includes the dwelling, pool, pool deck, driveway, entry and a water feature. The total lot coverage for the neighboring unit in the same parcel is 7,988 square feet. Therefore, total lot coverage for both units is 17,206 square feet, and on a lot size of 6.851 acres, equals 5.7% lot coverage. The Property will be landscaped with native plants.

## II. LAND USE DESIGNATIONS AND DESCRIPTIONS

A. SLUC: The State Land Use is designated Agricultural.

B. County zoning: County zoning is Agriculture and Open, and also contains a portion of Special Treatment/R ("OST/R") zoning.

C. The General Plan Designation: The General Plan designation is Agricultural.

D. Special Management Area: The Property is in the Special Management Area.

E. Flood: The Property is designated flood zone X, which zone corresponds to areas outside the one percent annual chance floodplain and areas protected from the one percent annual chance flood by levees. Flood insurance is not required in this zone.

### III. COMPREHENSIVE ZONING ORDINANCE

A. Agricultural. The purpose of this district, pursuant to Sec. 8-8.1 of the Comprehensive Zoning Ordinance is it:

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 .. (a) To protect the agriculture potential of lands within the County of Kaua'i to insure a resource base adequate to meet the needs and activities of the present and future. (b) To assure a reasonable relationship between the availability of agriculture lands for various agriculture uses and the feasibility of those uses. (c) To limit and control the dispersal of residential and urban use within agriculture lands.

B. Open. The Property is also designated as Open zoning. Pursuant to Section 8-9.1 of the CZO:

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 resources;
- (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.

(e) To provide for other areas which because of more detailed analysis, or because of changing settlement characteristics, are determined to be of significant value to the public.

C. Open-ST-R. The CZO at section 8-11.2 describes this special treatment as "Scenic/Ecologic Resources. . . 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.

#### IV. COASTAL ZONE MANAGEMENT ACT AND SPECIAL MANAGEMENT AREA RULES AND REGULATIONS

The Special Management Area Rules and Regulations of the County of Kaua'i state:

No development shall be approved unless the Director or the Planning Commission has found that:

1) 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, safety, and welfare, 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;

2) The development is consistent with the objectives and policies, as enumerated in HRS Chapter 205A and as referred to in Section 3.0 above, and the Special Management Area guidelines set forth in these Rules and Regulations; and

3) The development is consistent with the county general plan and zoning ordinances. Such a finding of consistency does not preclude concurrent processing where a general plan or zoning amendment may also be required.

Chapter 205A of the Hawai'i Revised Statutes lists as its objectives: recreational resources, historic resources, scenic and open space resources, coastal ecosystems, economic uses, coastal hazards, managing development, public participation, beach protection, marine resources, recreational resources, historic resources, scenic and open space resources, coastal ecosystems, economic uses, coastal hazards, managing development, public participation, beach protection and marine resources.

The total development on this unit – a farm dwelling, a swimming pool, and native landscaping -- is in keeping with the general characteristics of the surrounding neighborhood, as is evident in Exhibit B. The neighboring unit and many neighboring parcels include a dwelling and swimming pool.

Because of the foregoing, the development will not have any substantial or adverse environmental or ecological impact; and is in keeping with the surrounding neighborhood.

As such, the development is consistent with the objectives and policies of HRS Chapter 205A and the SMA guidelines adopted by the County.

V. NATIVE HAWAIIAN AND CULTURAL USES

The Kapa'akai analysis is attached hereto as Exhibit "D". It is a thorough description of the parcel and the region, and the Applicants have agreed to follow the recommendations of the consultant, including: 1) documentation, repair, and protection of the one historic cultural resource that was located, a railroad bridge culvert, and allowing educational and research tours of the site; 2) planning of native plants within the gulch; 3) minimizing grading and development to avoid inadvertent discovery of iwi kupuna; and 4) collaborating with the community to address the adverse impacts of general development at Seacliff Plantation.

VI. OTHER LAND FEATURES

A. Threatened and Endangered Species. According to the University of Hawaii Rare Species database, there are no known or reported threatened and endangered species within or adjacent to the Property.

B. Soils. The majority of the property is LhE2 (Lihue silty clay 25-40% slopes, eroded.) Approximately 10% of the unit is LdD (Lihue silty clay, 15-25% slopes). About 30 percent of the property is classified as LdD – Lihue silty clay, 15-35%, slopes.

C. Tsunami: The Property is not in the Tsunami Evacuation Zone.

VII. IMPACT OF THIS DEVELOPMENT/MEETING WITH THE COMMUNITY

As stated in sections IV and V above, there are no known negative historic or ecologic impacts this proposed use would bring. Traffic and noise may be impacted by

construction of the dwelling, but Applicants will be practicing Best Practices during construction.

The Applicant's agent Santo Giorgio presented the plans to the Kilauea Neighborhood Board at its regular meeting in January 2023. About 25 people from the community and board were present and no opposition was voiced.

#### VIII. CLASS IV PERMIT

Pursuant to Sec. 8-6.4 of the CZO, a Class IV Permit is required for development on a parcel one acre or more.

#### IX. USE PERMIT

Pursuant to Sec. 8-3.2 (e) of the CZO:

A Use Permit may be granted only if the Planning Commission finds that the establishment, maintenance, or operation of the construction, development, activity or use in the particular case is a compatible use and is not detrimental to health, safety, peace, morals, comfort and the general welfare of persons residing or working in the neighborhood of the proposed use, or detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the community, and will not cause any substantial harmful environmental consequences on the land of the applicant or on other lands or waters, and will not be inconsistent with the intent of this Chapter and the General Plan.

The Applicant's proposed use is compatible for the area and will not cause negative impacts on the lands or waters. It is similar to all uses previously granted in the same subdivision.

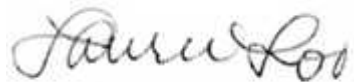


X. CONCLUSION

Applicant respectfully requests the granting of a SMA permit, Class IV zoning permit and Use Permit to allow the construction of a farm dwelling and swimming pool, as depicted in the attached exhibits.

DATED: Lihu'e, Kaua'i, Hawai'i, September 06, 2023.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Laurel Loo".

Laurel Loo

Attorney for Applicants  
BRYAN BUCKLEY AND KIANA MADANI,  
TRUSTEES OF THE MADANI BUCKLEY TRUST  
DATED MAY 29, 2019

LAND COURT SYSTEM	REGULAR SYSTEM
After Recordation, Return by: Mail ( ) Pickup ( )	
BRYAN BUCKLEY, TRUSTEE	TG: 202121508
KIANA MADANI, TRUSTEE	TGE: 2427322109126
237 WINDWARD AVE	Glenda Matsushima
VENICE CA 90291	

# APARTMENT DEED

GRANTOR: BERNARD CHRYSLER and SUSAN J. BATES, husband and wife

GRANTEE: BRYAN BUCKLEY and KIANA MADANI, Trustees of The Madani  
Buckley Trust dated May 29, 2019  
237 Windward Avenue  
Venice, California 90291

(4) 5-2-004-093 CPR No. 0002 Unit No. 2

## APARTMENT DEED

KNOW ALL PEOPLE BY THESE PRESENTS:

BERNARD CHRYSLER and SUSAN J. BATES, husband and wife, whose mailing address is 2500 Avenue Peirre Dupuy, Apt. 208, H3C 4L1 Canada, hereinafter called the "Grantor", in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to the Grantor paid by BRYAN BUCKLEY and KIANA MADANI, Trustees of The Madani Buckley Trust dated May 29, 2019, whose mailing address is 237 Windward Avenue, Venice, California 90291, hereinafter called the "Grantee", the receipt of which is hereby acknowledged, do hereby grant and convey unto the Grantee, their successors in trust and assigns, IN TRUST, for the uses and purposes and with all the powers contained in the aforesaid trust instrument, including without prejudice to the generality of the foregoing, full power and authority to sell, convey, exchange, partition, mortgage, lease, pledge or otherwise deal with and dispose of any of the lands or other property or interests of the trust estate according to the Grantee's sole judgment and discretion, the property described in Exhibit "A" attached hereto and incorporated herein by reference.

AND the reversions, remainders, rents, issues, and profits thereof, and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with the improvements thereon and all rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith, unto the Grantee, as Co-Trustees aforesaid, forever.

The Grantor hereby covenants with the Grantee that the Grantor is lawfully seised in fee simple of the premises described herein and has good right to sell and convey the same; that the same are free and clear of all encumbrances except as set forth herein and except for the lien of real property taxes not yet required by law to be paid; and that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

This conveyance and the respective covenants of the Grantor and the Grantee shall be binding on and inure to the benefit of the Grantor and the Grantee, respectively. The terms "Grantor" and "Grantee" as and when used herein, or any pronouns used in place thereof, shall mean and include the singular or plural number, individuals, partnerships, trustees and corporations, and each of their respective heirs, personal representatives, successors and assigns. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed herein.

The Grantee shall observe, perform, comply with and abide by the Declaration of Condominium Property Regime and the Bylaws described in Exhibit "A" hereto.

IN WITNESS WHEREOF, the Grantor has caused these presents to be duly executed on  
this 9<sup>th</sup> day of June, 20 21.

*(SIGNATURES CONTINUED ON NEXT PAGE)*

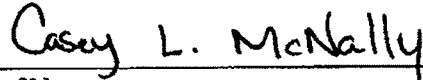
GRANTOR:



BERNARD CHRYSLER

STATE OF Vermont )  
 ) SS:  
COUNTY OF Franklin )

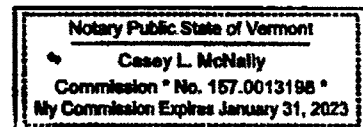
On this 9<sup>th</sup> day of June, 20 21, before me appeared BERNARD CHRYSLER, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing APARTMENT DEED dated 9<sup>th</sup> of June, 20 21, which document consists of 8 page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Name of Notary:

Notary Public, in and for said County and State.

My commission expires: \_\_\_\_\_



GRANTOR:

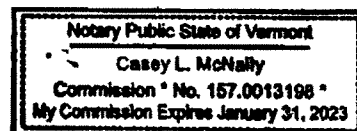
Susan J. Bates  
SUSAN J. BATES

STATE OF Vermont )  
COUNTY OF Franklin ) SS:

On this 9<sup>th</sup> day of June, 20 21, before me appeared SUSAN J. BATES, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing APARTMENT DEED dated 9<sup>th</sup> of June, 20 21, which document consists of 8 page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Casey L. McNally  
Name of Notary: )  
Notary Public, in and for said County and State.

My commission expires: \_\_\_\_\_



**EXHIBIT "A"**

**-FIRST:-**

Unit No. 2 of the Condominium Project known as "LA PALOMA CONDOMINIUM" as established by Declaration of Condominium Property Regime dated April 13, 2001, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-064463, and as shown on Condominium Map No. 3254 and any amendments thereto.

Together with appurtenant easements as follows:

Exclusive easements to use other limited common elements appurtenant thereto designated for its exclusive use by the Declaration, and the Condominium Map.

**-SECOND:-**

An undivided one-half (1/2) fractional interest appurtenant to the Apartment and in all common elements of said Project as described in the Declaration.

The land upon which said Condominium Project "LA PALOMA CONDOMINIUM" is located being more particularly described as follows:

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 2896 to C. Titcomb) situate, lying and being at Kilauea Bay, Kilauea, Island and County of Kauai, being LOT 20A, being a portion of the consolidation of Lots 8, 9 and 20, Seacliff Plantation at Kilauea Bay, containing an area of 6.851 acres, more or less.

Together with a nonexclusive easement appurtenant to said Lot to use Roadway Lots 27, 28 and 29 of the Seacliff Plantation at Kilauea Bay Community for ingress and egress purposes, Reserving However, unto Roberson/Larson Partners, and/or The Pali Moana Company, their successors and assigns, the right from time to time to convey said Roadway Lots 27, 28 and/or 29 to a community organization or such other entity for the care and maintenance of the same, or to convey said Roadway Lots 27, 28 and 29 to the County of Kauai as a public road in which latter event, the said easements shall be automatically extinguished.

Together with a nonexclusive easement for ingress and egress for beach access and parking of vehicles over and across Easement "Q-1", known as Kahili Quarry Road, containing an area of 1.818 acres, more or less, as granted by Easement Deed for Access and Parking dated March 1, 1988, recorded in Liber 21703 at Page 797.

Together with the right, as provided in the Declaration, to use Easement "ET-1" (being a 20 foot wide equestrian trail), Easement "PT-1" (being a 20 foot wide pedestrian trail), and Easement "PA-1" (being a picnic area), which easements are over and across the Remainder of Lot 9 of the Seacliff Plantation subdivision map prepared by Portugal and Associates, Inc., dated

July 15, 1988, for the Consolidation of A Portion of the Remainder of Lot 9 with Lot 11 into Lot 11-A and Remainder of Lot 9.

Together with access and utility easement over, under, through and across Easement "B-1" across Lot 9-A, in favor of Lot 20-A, containing an area of 0.222 acres, more or less, as granted by Substitution and Termination of Easement dated September 5, 1991, recorded as Document No. 91-132904.

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 2896 to C. Titcomb) situate, lying and being at Kilauea, Island and County of Kauai, State of Hawaii, being EASEMENT "B-1", containing an area of 0.222 acres, more or less.

Together also with a nonexclusive easement for pedestrian and vehicular purposes as a roadway over and across (a) a 30 foot wide road known as "KAHILI QUARRY ROAD", containing area of 4.589 acres, more or less, (b) a parcel containing an area of 1.665 acres, more or less, (c) a parcel containing an area of 0.538 acre, more or less, and (d) a parcel containing an area of 0.506 acres, more or less, as granted by instrument dated December 17, 2002, recorded as Document No. 2003-003808, and subject to the terms and provisions contained therein.

Said parcel(s) of land being more particularly described in Declaration of Condominium Property Regime dated April 13, 2001, recorded in said Bureau of Conveyances as Document No. 2001-064463.

Being the same premises conveyed to BERNARD CHRYSLER and SUSAN J. BATES, husband and wife, as Tenants by the Entirety, by APARTMENT DEED dated March 19, 2004, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2004-067050.

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature.
2. The terms and provisions contained in the DECLARATION OF COVENANT, CONDITIONS AND RESTRICTIONS OF THE SEACLIFF PLANTATION AT KILAUEA BAY COMMUNITY dated August 31, 1983, recorded in Liber 17405 at Page 411.

Said Declaration was amended by instrument dated --- (acknowledged March 1, 1988, March 2, 1988, March 3, 1988 and March 7, 1988), recorded in Liber 21704 at Page 1, dated September 9, 1988, recorded in Liber 22367 at Page 21, dated December 28, 1988, recorded in Liber 22766 at Page 559, and dated June 3, 2002, etc., recorded as Document No. 2002-105319.

3. The terms and provisions contained in the DECLARATION RE ELECTRICAL USE dated July 25, 1988, recorded in Liber 22226 at Page 340.



4. Each lot shall be subject to sheet flow surface waters to such lots from the roadways fronting the respective lot, as set forth in Amended Declaration of Covenants, Conditions and Restrictions of the Seacliff Plantation at Kilauea Bay Community dated September 9, 1988, and recorded in Liber 22367 at Page 21.

5. Grant of Viewplane Easement dated December 13, 1990, recorded as Document No. 90-195551, in favor of Lot 9, over and across Lot 20, referred to as Easement "A", being more particularly described therein.

6. Concrete swale along portion of boundary fronting Pali Moana Place, as shown on consolidation map prepared by Cesar C. Portugal, Registered Professional Land Surveyor, with Portugal & Associates, Inc., dated July 16, 1991, revised July 24, 1991.

7. The terms and provisions contained in the following:

DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR "LA PALOMA CONDOMINIUM" dated April 13, 2001, recorded as Document No. 2001-064463.

Condominium Map No. 3254 and any amendments thereto.

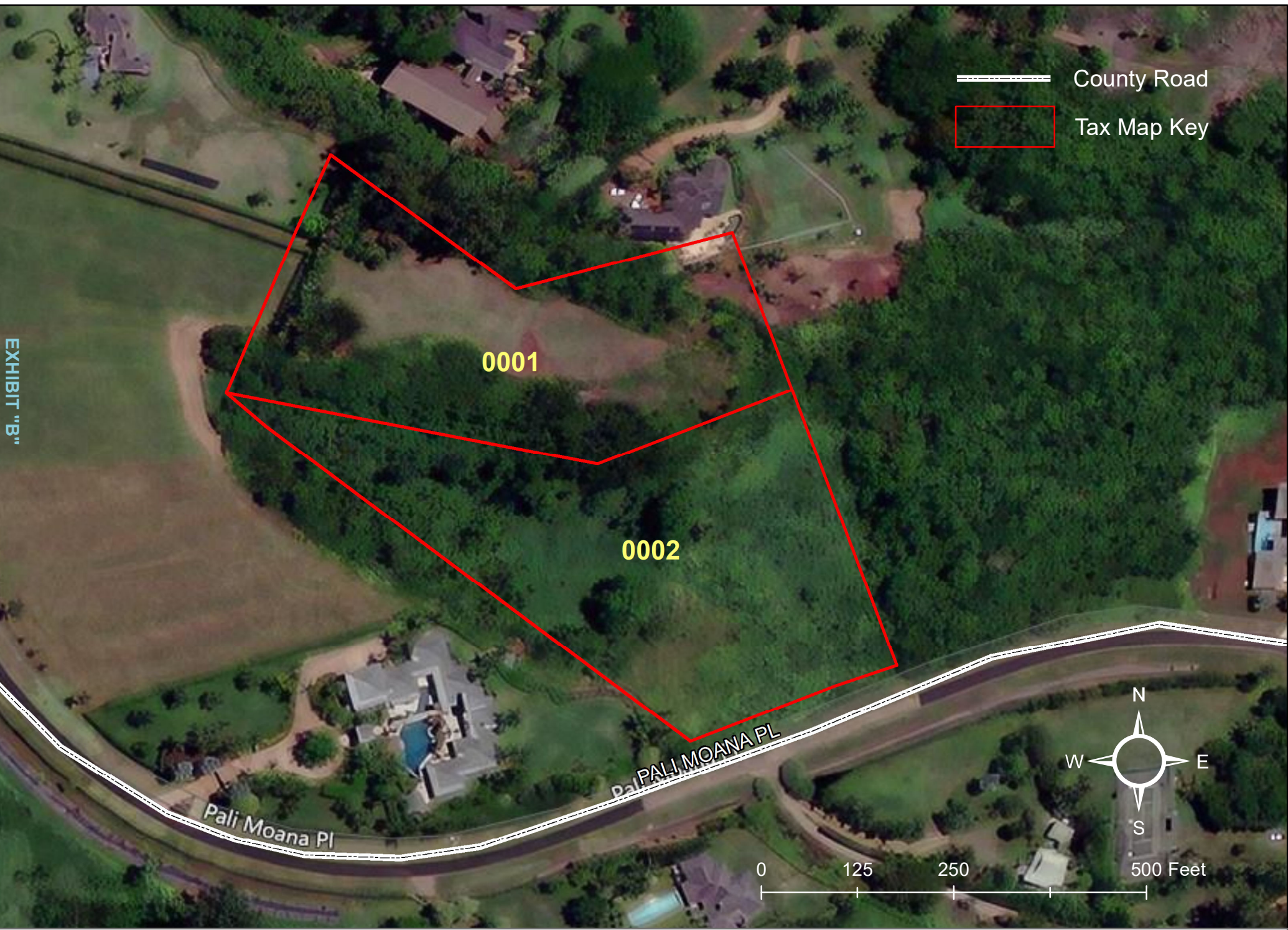
-Note:- Any recorded amendments to said Declaration affecting apartments other than the specific apartment described herein, are not shown.

8. The terms and provisions contained in the BY-LAWS OF THE ASSOCIATION OF UNIT OWNERS dated April 13, 2001, recorded as Document No. 2001-064464.

9. WAIVER AND RELEASE dated January 8, 2001, recorded as Document No. 2001-007874, by ROBERT J. CAMPBELL and CLARITA S. CAMPBELL with the BUILDING DIVISION OF THE DEPARTMENT OF PUBLIC WORKS OF THE COUNTY OF KAUAI, regarding indemnify and holds harmless the County of Kauai from any claim, action, suit, or demand of any kind which could or will arise out of the absence of county-supplied water.

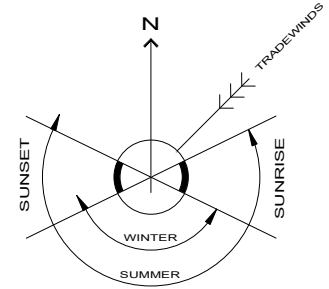
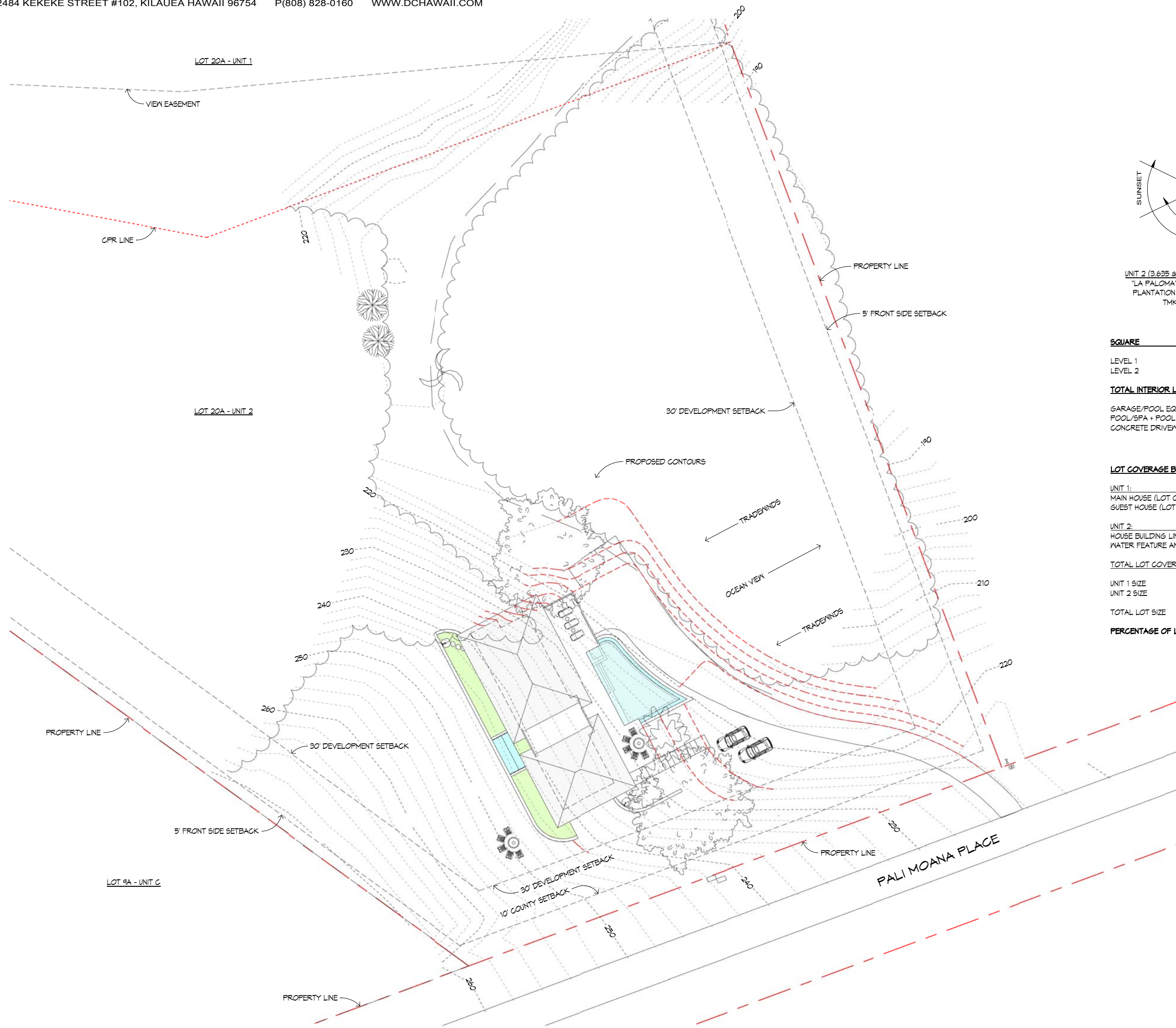
10. The terms and provisions contained in the LA PALOMA CONDOMINIUM DEED dated July 31, 2001, recorded as Document No. 2001-119787.

11. GRANT to PETER SOMERS, Trustee of the Peter J. Somers Revocable Trust dated August 31, 2001, with full powers to sell, mortgage, lease or otherwise deal with the land, dated December 17, 2002, recorded as Document No. 2003-003808, granting an easement for pedestrian and vehicular purposes.



Location of 4-5-2-004:093 CPRs 1 & 2, Kilauea, Kaua'i



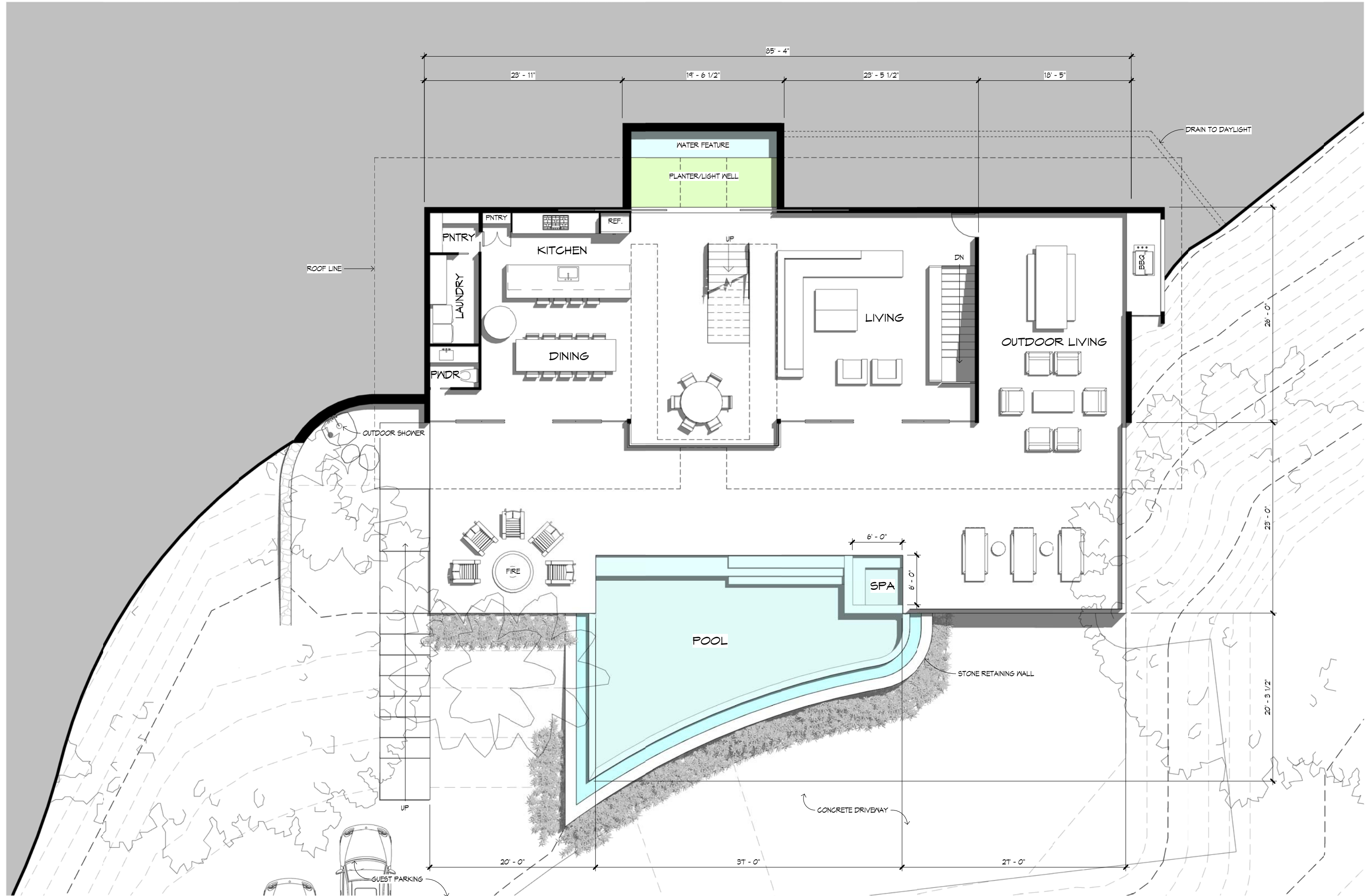


UNIT 2 (3.635 acres) OF LOT 20A (6.85 acres)  
"LA PALOMA" CONDOMINIUM AT SEACLIFF  
PLANTATION KILAUEA BAY, KAUAI, HAWAII  
TMK: 5-2-04-093 UNIT 2

SQUARE	FOOTAGE	BREAKDOWN
LEVEL 1		1,194 S.F.
LEVEL 2		2,341 S.F.
TOTAL INTERIOR LIVING SPACE		4,141 S.F.
GARAGE/POOL EQUIPMENT/STORAGE		1,050 S.F.
POOL/SPA + POOL DECK + OUTDOOR LIVING		3,056 S.F.
CONCRETE DRIVEWAY		3,536 S.F.

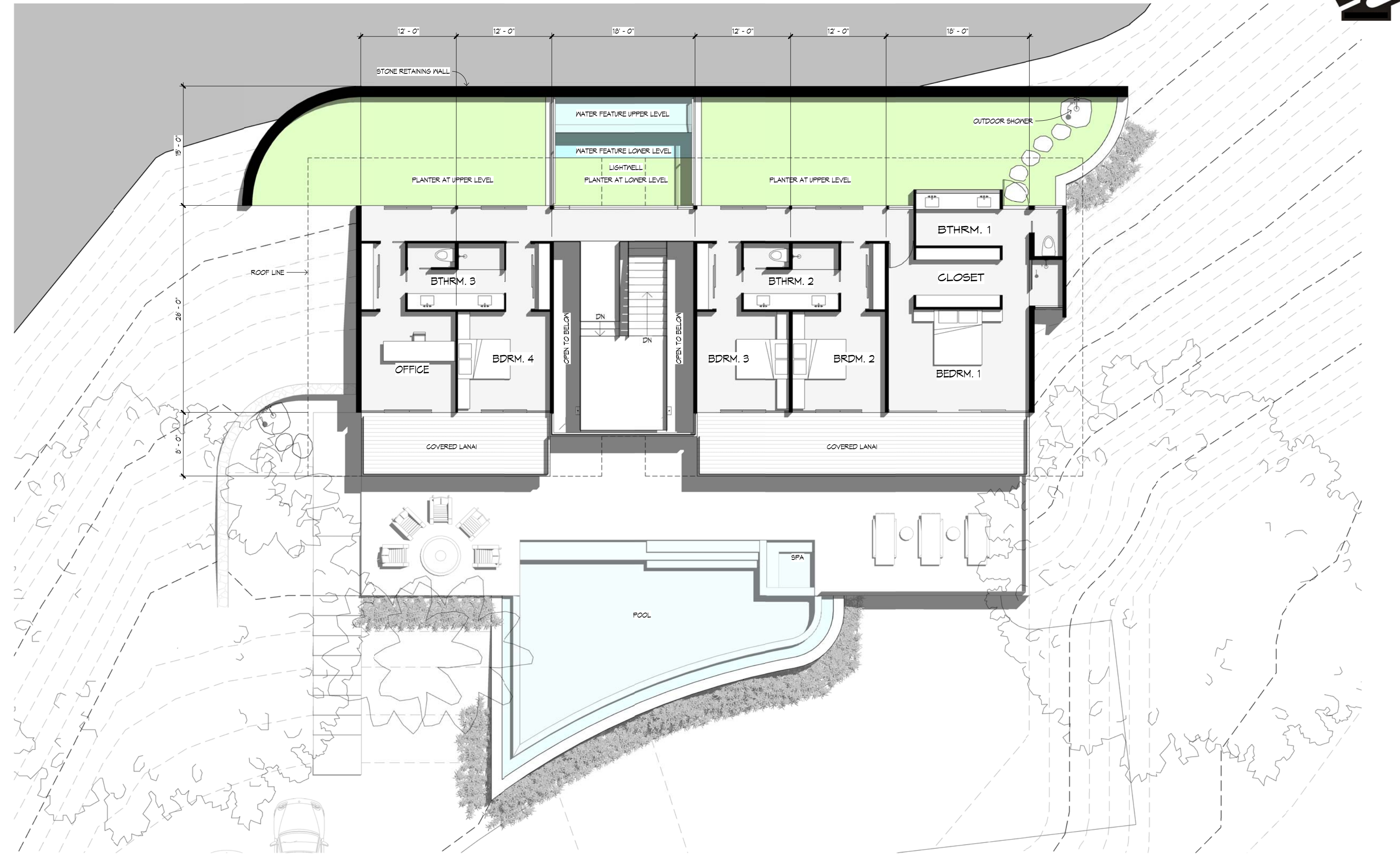
LOT COVERAGE BREAKDOWN:	
UNIT 1:	
MAIN HOUSE (LOT COVERAGE)	7,988 S.F.
GUEST HOUSE (LOT COVERAGE)	681 S.F.
UNIT 2:	
HOUSE BUILDING LINE, POOL, POOL DECK & DRIVEWAY, WATER FEATURE AND ENTRY STEPS (LOT COVERAGE)	8,531 S.F.
TOTAL LOT COVERAGE (UNIT 1 & 2)	
17,206 S.F.	
UNIT 1 SIZE	
3.216 ACRES (140,088 S.F.)	
UNIT 2 SIZE	
3.635 ACRES (158,340 S.F.)	
TOTAL LOT SIZE	
6.851 ACRES (298,429 S.F.)	
PERCENTAGE OF LOT COVERAGE	
5.7%	

EXHIBIT "C"



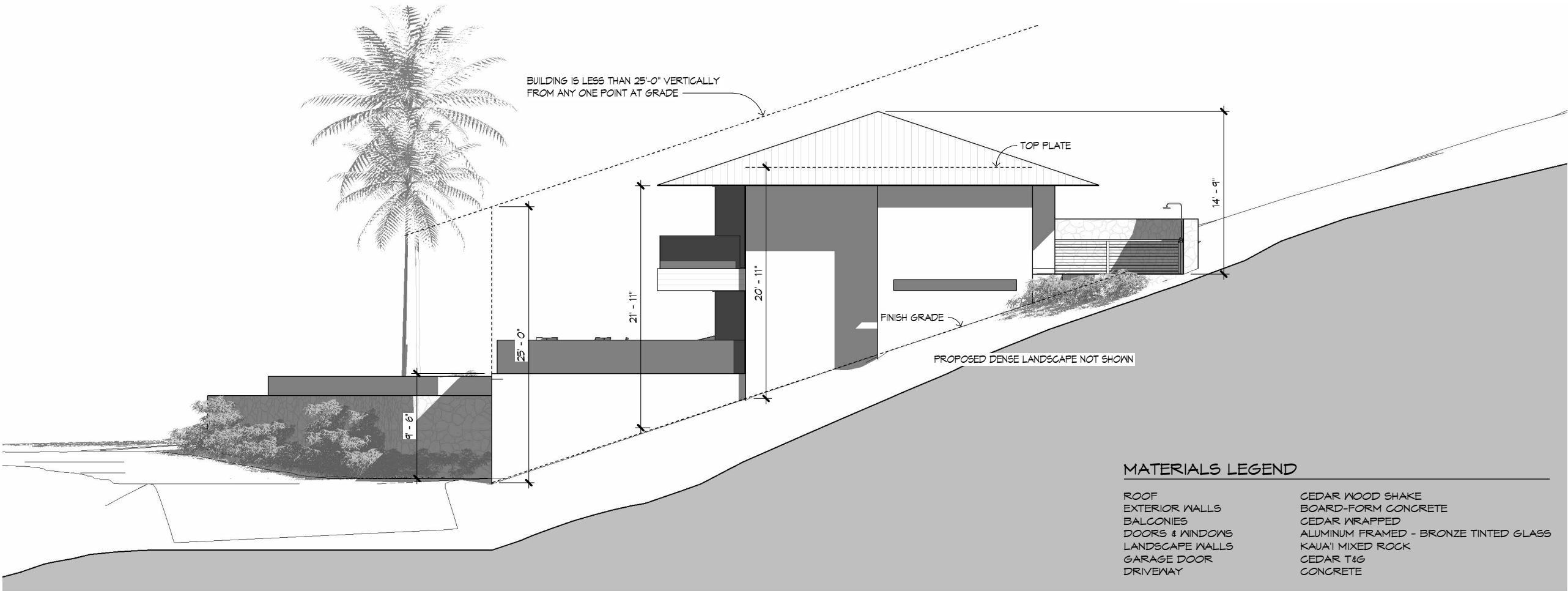
MAIN LEVEL FLOOR PLAN  
1" = 10'-0"







NOTE:  
IT IS OWNERS INTENTION TO HEAVILY PLANT THIS SIDE OF THE BUILDING FOR PRIVACY  
AND TO SCREEN BUILDING MASS FROM DISTANT NEIGHBORS AT CRATER HILL LOCATION

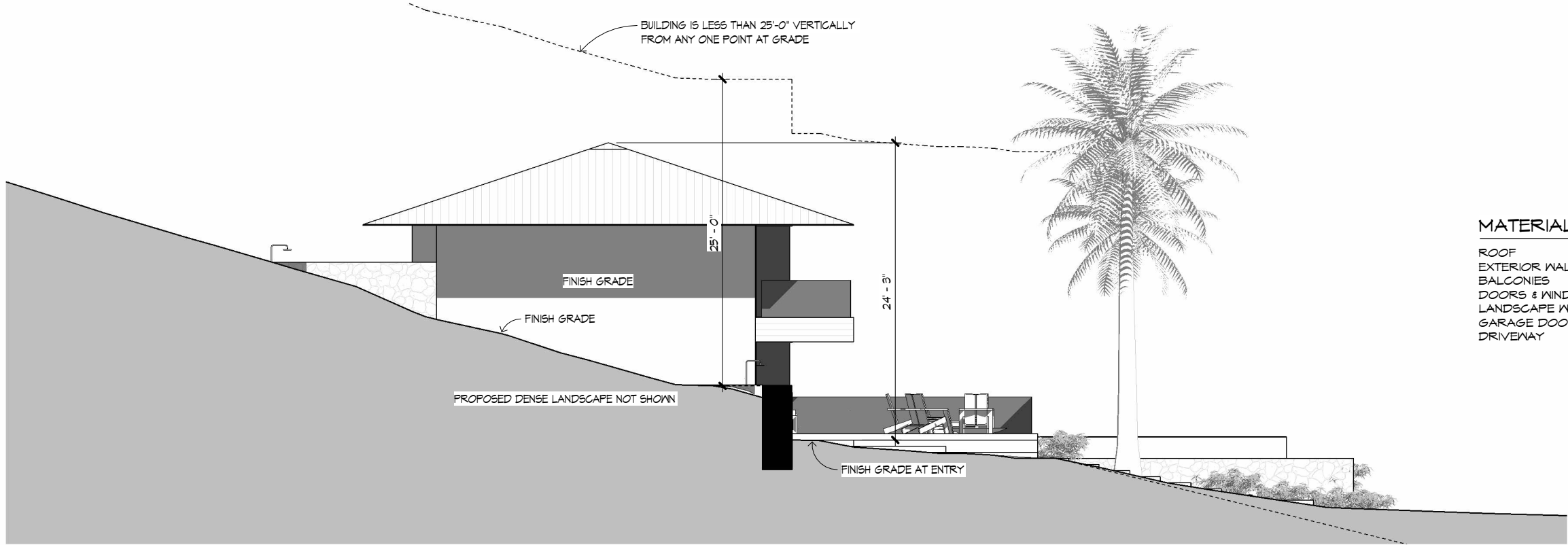


NORTH



EAST

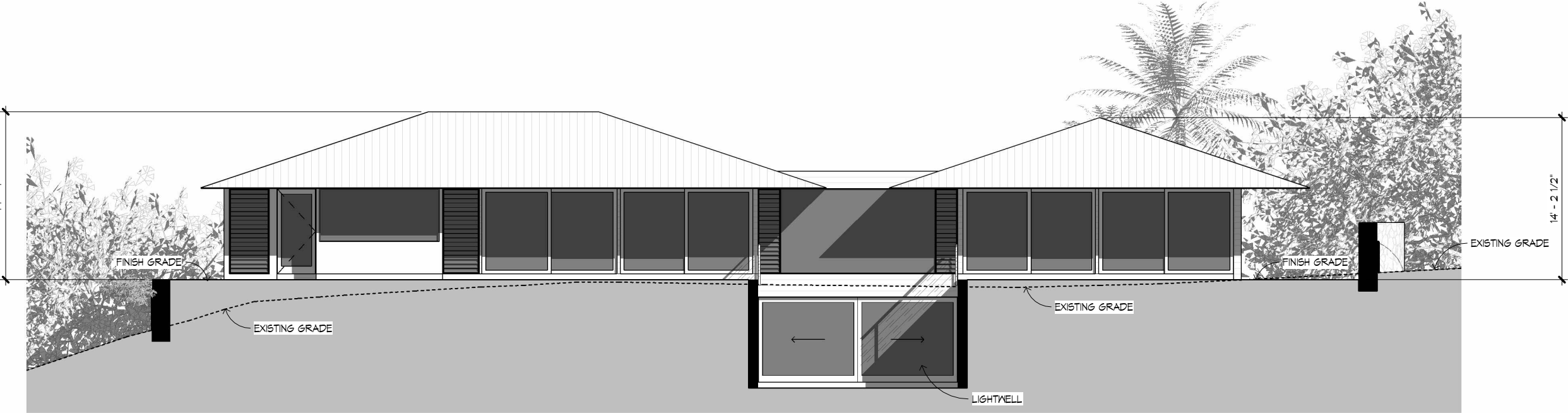




MATERIALS LEGEND

ROOF	CEDAR WOOD SHAKE
EXTERIOR WALLS	BOARD-FORM CONCRETE
BALCONIES	CEDAR WRAPPED
DOORS & WINDOWS	ALUMINUM FRAMED - BRONZE TINTED GLASS
LANDSCAPE WALLS	KAUAI MIXED ROCK
GARAGE DOOR	CEDAR T&G
DRIVEWAY	CONCRETE

SOUTH



WEST



***Ka Pa‘akai Assessment Related to  
Native Hawaiian Traditional and Customary Practices***

**TMK No: (4) 5-2-004:093 (Lot 20A, Unit 2), owned by Bryan Buckley**

**Prepared by Dawn N.S. Chang, Esq.  
December 2022**

**I. Introduction**

**A. Subject Property and Proposed Project**

**BUCKLEY** – Bryan Buckley (landowner) owns the real property identified as TMK: (4) 5-2-004:093 (Lot 20A, Unit 2) located within the Kilauea Ahupua‘a Hanalei District, Island and County of Kaua‘i, State of Hawai‘i (subject property). The subject property is located at 3839-F Pali Moana Place, Kilauea, Hawai‘i 96754, containing approximately 3.635 acres within the Seacliff Plantation Kilauea subdivision. The subject property is County zoned Agricultural Open Space and Special Treatment District. The Landowner is submitting a (permit) to the Kaua‘i County Planning Department (KCPD) for the construction of a single-family dwelling, pool, garage/pool equipment storage, and concrete driveway with a total lot coverage of 158,340 sq.ft. (proposed project). The subject property is adjacent to the property owned by Nathaniel Carden and Beth Woods.

The subject property is located within the Seacliff Plantation<sup>1</sup>, a gated community bordered by Kīlauea Point National Wildlife Refuge on the north, Kīlauea Agricultural Park across Pali Moana Place to the west, and the mouth of Kīlauea Stream not far east (the stream is approximately 665 m east from the subject property). The project area falls within the Kīlauea Ahupua‘a, which is part of Hanalei District.

**B. Kaua‘i County’s Constitutional Obligation**

The State and its agencies are obligated to preserve and protect the reasonable exercise of customarily and traditionally exercised rights of Native Hawaiians to the extent feasible. This

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<sup>1</sup>“At the base of extinct volcano Nihoku, the gated community of Plantation is one of the most desirable complexes of its kind in the area. Located partway between the town of Kilauea and the Kilauea Lighthouse, this master-planned community offers its residents an exceptional quality of living.” The Seacliff Plantation consists of 25 estates, many of which have been further divided via the Hawai‘i CPR process providing about twice the number of homesites. It is composed of 48 building sites, which range in size from 3 to 10 acres. Prior to the 1970s, the land where Seacliff Plantation is currently located was once part of the Kilauea Sugar Plantation. *Seacliff Plantation Realtor’s website*.



affirmative obligation is set forth in the Hawai‘i State Constitution (Article XII, section 7)<sup>2</sup>, State Laws (Hawai‘i Revised Statutes Sections 1-1 and 7-1), and judicial precedent. The Court has held that state agencies may not act without independently considering the effect of their actions on Hawaiian traditions and practices. Public Access Shoreline v. Hawai‘i County Planning Commission (PASH), 903 P.2d 1246, 79 Haw. 425 (1995).

To assist the state and its agencies in fulfilling its constitutional obligation as set forth in Article XII, section 7, the court has provided an analytical framework “to accommodate the competing interests of protecting native Hawaiian culture and rights, on the one hand, and economic development and security, on the other.” Ka Pa‘akai O Ka ‘Āina v. LUC (Ka Pa‘akai), 94 Haw. at 46, 7 P.3d at 1083 (2000). The analytical framework provides the following, (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. at 47, 7 P.3d at 2084.

### **C. Scope and Purpose of the *Ka Pa‘akai* Assessment**

The Landowner has requested that an expert consultant (Consultant) be engaged to conduct an assessment related to Native Hawaiian traditional and customary practices, if any, on the subject property. The assessment shall consist of archival research of existing historic preservation documentation, pedestrian field inspection by the archaeological consultant, and outreach to individuals and families who may have a lineal and cultural connection (hereinafter referred to as Cultural Descendants) to the subject property or vicinity of the subject property, Native Hawaiian cultural practitioners, or members of the community who may have knowledge of Native Hawaiian traditional and customary practices, on the subject property or in the vicinity, including areas *outside*<sup>3</sup> the subject property. The Consultant shall prepare a written assessment of the Ka Pa‘akai analytical framework for the subject property which shall supplement the Landowner’s Application to the Director of the Planning Department or to assist the Planning Commission with its Ka Pa‘akai analysis.

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<sup>2</sup> Article XII, section 7 of the State Constitution provides that the State reaffirms its obligation 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.

<sup>3</sup> The court in Ka Pa‘akai found that LUC erred in not considering resources *outside* the proposed project site. “Moreover, none of the LUC’s findings or conclusions addressed possible native Hawaiian rights or cultural resources *outside* of KD’s 235-acre RMP, such as Ka Pa‘akai’s members’ use of the mauka-makai trails to reach salt-gathering areas, the religious significance of the 1800-1801 lava flow, or the gathering of Pele’s Tears.” Ka Pa‘akai 7 P.3d at 1086, 94 Haw. at 49.

#### **D. Cultural Consultation**

On August 25, 2022, the Consultant extended an invitation to several Cultural Descendants and knowledgeable community members to visit the subject property, talk story, and be briefed by the architect, Santo Giorgio, on the proposed project. Gary Smith and Dr. Mehana Blaich Vaughan accepted the invitation and joined us at the subject property and shared their mana‘o. Gary describes himself as an “old timer” who has first-hand experience of many of the traditions of Kilauea. He was born on and worked on the plantation, and after graduating from college he returned to Kilauea. Gary’s father was the plantation manager. Many in the community describe “Uncle Gary” as the unofficial historian of Kilauea. Mehana lives in Kilauea and her husband and children have ancestral ties to the area. She is an Associate Professor at the University of Hawai‘i at Mānoa in the Department of Natural Resources and Environmental Management in the College of Tropical Agriculture and Human Resources, a Sea Grant College Program and Hui ‘Āina Momona appointee, and a graduate from Harvard University, the University of Hawai‘i at Mānoa, and Stanford University.

#### **E. Consultant’s Qualification**

My mother is Edna Kealohapauole Ho‘okano Shiroma, her father was Kamiko Ho‘okano, his father was Willy Ho‘okano, and his mother was Louisa Cooke Ho‘okano, and his father was ‘Iokewe Ho‘okano. Our ‘ohana come from the ahupua‘a of Kahalu‘u on Oahu and still own several kuleana parcels that were used for lo‘i kalo and residence. My Tutu and other members of our ‘ohana are buried on our kuleana lands in both marked (headstone) and unmarked (near a ti or pōhaku) burials. Our ‘ohana are lawai‘a (fishers) who practiced traditional fishing using ko‘a and continue to fish in an area traditionally known as Ka-waha-o-ka-manō (Kaneohe Bay).

I have a master’s degree in Social Work and was a community organizer for the Queen Lili‘uokalani’s Children’s Center in Waimanalo in the 1970’s. I graduated from the William S. Richardson School of Law in 1985. After graduating from law school, I clerked for Judge Walter Heen with the Intermediate Court of Appeals for several years before joining the State Attorney General’s (AG) Office. As a Deputy Attorney General, I served as counsel to various Boards and Commissions with the Department of Land and Natural Resources. During my tenure at the AG’s Office, I had the privilege of drafting the Hawai‘i State Burial Laws (HRS, Chapter 6E-42) and litigating numerous cases involving Native Hawaiians rights and issues, including State v. OHA (2009) involving the alienation of state ceded lands which was decided by the U.S. Supreme Court. Since 2001, I have been the principal and owner of Ho‘ākea LLC dba Ku‘iwalu, a consulting firm that specializes in facilitating culturally sensitive and contentious issues, including preparation of Ka Pa‘akai Assessments. Currently, I also sit on the Hawai‘i State Land Use Commission. In addition to my private consulting work, I offer training on Native Hawaiian Land Laws and Rights, including on Traditional and Customary Native Hawaiian Rights (Ka Pa‘akai Assessments), to private and government agencies.

## **II. Ka Pa‘akai Analysis**

### **A. The identity and scope of valued cultural, historical, or natural resources on the subject property or within the vicinity of the property, including the extent to which traditional and customary Native Hawaiian rights are exercised on the property.**

1. Review of archival research based upon previous archaeological documentation and recent field inspection.<sup>4</sup> The archaeological documentation<sup>5</sup> identified the following valued cultural, historical, or natural resources on or outside the subject property:

- **Place Names**

A number of notable geographic features occur in the vicinity of the project area. Kīlauea stream, which flows from the south of the project area to the west before emptying into the ocean, strongly influences not only the natural landscape but human settlement on and use of it. The stream serves as the boundary between Kīlauea Ahupua‘a and Kāhili Ahupua‘a, and (surviving) terraces for traditional-style agriculture often follow its curve. Kāhili means “feather standard” (carried by attendants to herald royalty). The name Mōkōlea (or Mōkōlea Point) refers to a promontory north of the mouth of Kīlauea stream and means “plover island (mō here being short for moku)” as it is a key seabird nesting location (albeit not strictly an island). Another important nesting area for seabirds can be found north of Kīlauea Point, on a small island named Moku‘ae‘ae, which John Clark (2003) interprets as simply meaning “fine [i.e., small] island.”<sup>6</sup>

- **Wahi Pana**

There are stories or traditions associated with some of the wahi pana (legendary places) in Kīlauea Ahupua‘a. While Menehune are associated with the makai (oceanward) portion of Kīlauea, not only as builders but as fishermen plying the waters offshore Kīlauea from a settlement at Hanalei Bay to the west (Wichman 1985:36), the mauka (mountainward) portion of the ahupua‘a is also home to a great work said to have been accomplished by non-human prowess. The celebrated chief Manokalanipō was said to have commanded a supernatural mo‘o (lizard) to open up the mauka part of Kīlauea, where the land was good for planting, but water

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<sup>4</sup> In 2022, Ku‘iwalu retained the services of Scientific Consultant Surveys (Archaeological Consultant) to prepare an Archaeological Literature Review and Field Inspection (LRFI) for a 6.851 acre parcel in Seacliff Plantation, Kilauea Ahupua‘a, Hanalei District, Island of Kaua‘i, Hawai‘i, TMK: (4) 5-2-004:093. The LRFI includes relevant information on Traditional background, Historic Setting, Previous Archaeology in the project area vicinity, and the results of the field inspection. Relevant excerpts of the LRFI will be referenced in the Ka Pa‘akai Assessment. Attachment A is a copy of the LRFI.

<sup>5</sup> The Consultant acknowledges that the archival research generally relies upon archaeological research and interpretations from sources that may not have a cultural connection to the place or interpretations that are not from primary source documents (i.e., Hawaiian language data and research). However, the information may provide a source of information that may be relevant in identifying valued cultural, historical, and natural resources in the area, including traditional and customary practices. For purposes of this Ka Pa‘akai Assessment, where the community and cultural informants may dispute or provide contrary information to the archival research, the archival information will not be included in the text of this Assessment but will remain as part of the LRFI.

<sup>6</sup> LRFI at page 9.

was lacking, for agriculture. Three long irrigation ditches on slopes of Kīlauea mauka resembled the claw marks of a mo‘o, and the ridge above Kīlauea stream was called Kamo‘okoa, meaning “brave lizard” (Wichman 1998:102).

Wichman (1998:103) also relates a story that purports to explain the “volcanic cone open to the ocean” resulting in the “long beach unprotected by any reef” at the coast of Kīlauea Ahupua‘a, as well as “three huge stones” that once stood atop the cone but “have since been moved, with great difficulty, to make room for sugarcane.” These features were attributed to the actions of the volcano goddess Pele: Pele had come to Kaua‘i and fallen in love with Lohi‘au, a chief of Hā‘ena. She promised to find a home for the two of them, but whenever she struck her staff, she was met by water, for her sister Nā-maka-o-kaha‘i, goddess of the sea, was her enemy. Pele caused an eruption here, but it was soon extinguished when the sea goddess broke down the walls of the crater, drowning the fire with the ocean. [Wichman 1998:103]. Already frustrated by her sister’s sabotage, Pele is enraged when “three beautiful sisters” named “Kalama, Pua, and Lāhela” laughed at the failure of her efforts, and she promptly turns all three into stone, leaving them in place as an object lesson of why she should not be ridiculed.<sup>7</sup>

- **Mo‘olelo**

Kīlauea Ahupua‘a is mentioned as part of the long journey of Hawai‘i island chief Lonoikamakahiki to see for himself “the famous trunkless koa [Acacia koa] tree of Ka-hiki-kolo, a tree from which earlier warriors had fashioned war clubs” (Wichman 2003:67). This journey began with Lonoikamakahiki accompanied by “his favorites, his warriors as companions and also his servants” but this retinue soon abandoned him, and when he “happened to look back to see where the rest of his people were” he found “only a solitary man following him... a stranger with whom he had no acquaintance” (Fornander 1916-17, Vol 4:352). The stranger was Kapa‘ihiahilina, a Kaua‘i native who had heard that the Hawai‘i ali‘i had been deserted by his followers, and brought “a calabash of poi [a Hawaiian dish made from the fermented root of the taro which has been baked and pounded to a paste] with some ‘o‘opu [general name for fishes included in the families Eleotridae, Gobiidae, and Blennidae] fish” as provisions for Lonoikamakahiki (Wichman 2003:68). Lonoikamakahiki was determined to press on to his destination and observing that Kapa‘ihiahilina scrupulously observed the kapu (taboos, prohibitions) that were accorded to royalty, told his faithful companion that they would proceed as equals: Lonoikamakahiki said to him: “do not hold me in sacredness because you are my own brother. I have nothing dearer than yourself, therefore, where I sleep there will you sleep also. Do not hold me aloof, because all that is good has passed and we are now travelling in the region of the gods.” In consequences of this, the king’s wishes were observed, and they sat down together. [Fornander 1916-17, Vol 4:352]. The food that Kapa‘ihiahilina had brought ran out, but he foraged hala (screw pine. Pandanus tectorius) fruit for food, and also braided ferns into garments to replace the malo (male’s loincloth) made of tapa (bark cloth) they wore, which had been damaged by rain. With the aid of this skilled friend, Lonoikamakahiki achieved his wish to see the trunkless koa tree, and returned safely home, where he made his new trusted confidante his prime minister. The meteoric rise of this outsider [Wichman (2003:67) characterizes the Kaua‘i man as a chief himself, but Fornander (1916-17, Vol 4:352) does not give him any rank] led to jealousy from Lonoikamakahiki’s subordinate chiefs, who began plotting against

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<sup>7</sup> Id. at page 9-10.

Kapa‘ihiahilina. The plotters eventually convinced Lonoikamakahiki to bar his friend from his presence by spreading rumors that Kapa‘ihiahilina had slept with his wife. Kapa‘ihiahilina then composed a chant reminding Lonoikamakahiki of their friendship, and how they had faced adversity together in their passage through the wilderness of Kīlauea (and other parts of Kaua‘i), a part of which says:

We ate of the ripe pandanus in our wanderings,  
Thus were our days of hunger appeased, my companion,  
My companion of the tall pandanus,  
From Kilauea to Kalihi;  
The pandanus that had been partly eaten,  
Of Pooku in Hanalei.

Hala ia mao a ka ua ilaila, e ke hoa-e,  
Hele aku a ai i ka pua pala o ka hala  
Hala ia la pololi o ka ua ilaila, e ke hoa.  
He hoa i ka nahele la uhala loloa,  
Mai Kilauea a Kalihi la;  
O ka hala i aina kepaia,  
O Pooku i Hanalei-la.  
[Fornander 1916-17, Vol 4:358-359]

This chant reminded Lonoikamakahiki of his affection for his friend and all that Kapa‘ihiahilina had done for him, and he gave orders that his friend be restored to the prime minister position and the plotters be executed.

Kīlauea Ahupua‘a is also mentioned as the place where an ali‘i named Kāhili ruled, but the mo‘olelo that speaks of him actually takes place in Kīpū Ahupua‘a, near the Hulē‘ia River and Mount Hā‘upu. Kāhili arrives in Kīpū at the court of the ali‘i nui (high chief) Hina, famed for her beauty, just in time to become the subject of a rivalry between the Kaua‘i ali‘i nui and a rival beauty visiting from O‘ahu, Pele‘ula. Pele‘ula had heard that “Kaua‘i women were the most beautiful” while holding court at her home of Waialua, and proud of the splendor of her court and her own charms, had made up her mind to visit Kaua‘i to settle the question of where the greatest beauty lay (Wichman 1991:110). Hina welcomed the visiting Pele‘ula and invited all her own subordinate ali‘i to present themselves, all the better to show off Kaua‘i. When Kāhili arrived, both Hina and Pele‘ula saw that he was exceptionally handsome and agreed to make him the prize in a contest between them, initially ten rounds of kilu (a throwing game; also: a small gourd or coconut shell, usually cut lengthwise, used to play the game of kilu). A game of kilu ordinarily featured many players who threw at targets placed in front of other participants to pick a partner for a kiss (or more), comparable in this respect to the contemporary game of spin-the-bottle. So enamored were the two female ali‘i nui, however, that they instead asked Kāhili to be the sole target in a direct kilu contest between the two of them. The handsome young ali‘i was all too happy to be the center of attention, showing his value as stakes by performing a dance and chant in which he declared “Here are the bones of Ko‘olau, / The ‘ulu, breadfruit tree [Artocarpus altilis] and warrior of Kilauea” (Wichman 1991:114). The two women proved to be equally adroit at kilu, and instead decided to have a beauty contest, letting Kāhili pick which of

them he found to show her charms to best advantage. Both women prepared themselves with their best adornments and present their own dances and chants before the court. Pele‘ula showed off well, but Hina’s performance evoked not only her own beauty but the natural wonder of Kaua‘i. Even her rival had to admit that “the beauties of Kaua‘i are beyond compare” (Wichman 1991:119). To commemorate this, a profile of Hina, called Hinaiuka, was carved on the face of Hā‘upu.<sup>8</sup>

- **Lifestyle and Subsistence**

Edward and Elizabeth Handy (1972) note that Kīlauea has long been a favorable location for agriculture, and naturally became a population center as well. On the island of Kauai there were five areas where development of food resources produced concentration of population. One of the best deep-sea fishing areas was along the windward or Napali coast. Adjoining this to the southward were localities where irrigated taro was cultivated extensively in terraces, termed lo‘i, at Hā‘ena, Hanalei, and Kīlauea. [Handy and Handy 1972:269]

Handy and Handy (1972) also note that the tendency for relatively steep terrain in this region, especially upland, inhibited terracing for wet kalo agriculture. Agriculture was likely on kula (lit. plain, pasture, in context: dryland suitable for dry cultivation in contrast to wet cultivation in lo‘i) lands with ‘uala as the favored staple crop.

Kīlauea is watered by a small river whose headwaters take the flow of streams above Kalihiwai as well as those coming down sloping kula lands above Kīlauea. This is a peculiar terrain, with terraces along the north side of the river toward its seaward end belonging to Kīlauea and those on the south side to the small ahupua‘a named Kāhili. A mile upstream is a small, terraced area, but beyond this there were no terraces, for the mainstream flows in a narrow gulch, and so do other side streams which flow into the Kīlauea River. [Handy and Handy 1972:421]<sup>9</sup>

- **Water and Marine Resources**

Wichman’s (1985:36) account of the Menehune favoring fishing grounds offshore of Kīlauea indicates that marine resources were ample, despite the lack of a reef in the collapsed cinder cone that shapes the beach. Mōkōlea and Moku‘ae‘ae are now part of a nature reserve (see Cultural Resources, below), but these seabird nesting sites were also a source of food. “In the interview of a local resident, Kwai Chew Lung (Chow) ... he recalls that the Hawaiians used to pick up baby chicks on Moku‘ae‘ae Rock... he also remembers going fishing there and hunting for eggs to eat” (Frederickson and Frederickson 1989:15).<sup>10</sup>

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<sup>8</sup> Id. at pages 12-13.

<sup>9</sup> Id. at pages 13-14.

<sup>10</sup> Id at page 14.

- **Cultural Resources**

Thomas Thrum (1907) recorded a single heiau named Pailio in Kīlauea Ahupua‘a, as well as another heiau named Kipapa in Kāhili Ahupua‘a, but based on later investigations, it would appear that both heiau have been destroyed by subsequent activity (see Previous Archaeology, below). There is considerable amount of remnant Pre-Contact Hawaiian terracing near Kīlauea Stream (on private lands), southwest of the current project area, especially where the terrain is steep and uninviting to post-Contact development.

In some cases (see Previous Archaeology, below), post-Contact agricultural and habitation features have been found built over or reusing the Pre-Contact terracing. While the native Hawaiian population decreased in the 19th century, immigration brought in new settlement, including many Asian workers employed by the Kilauea Sugar Company plantation. Asian-style rice pond fields that were likely developed from remains of older native Hawaiian lo‘i (to the south of the project area Clark and Rechtman 2010, Clark et al. 2011), and the presence of a Japanese Cemetery to the west (Cleghorn 2001, Spear 2014, Hulen and Barna 2021), speak to the historical demographic changes in Kīlauea Ahupua‘a.

In the present day, some cultural resources in Kīlauea Ahupua‘a are accessible through programs for preservation of historic locations and traditional culture. A number of structures have been placed on the National Register of Historic Places (NRHP). This includes several buildings associated with the Kīlauea plantation, as well as the Daniel K. Inouye Kilauea Point Lighthouse located within the Kilauea Point National Wildlife Refuge (KPNWR). A number of Hawaiian cultural organizations partner with the KPNWR to provide access to the coastal region for traditional cultural practices (see Land Use in the Post-Contact Period to the Present).<sup>11</sup>

- **Mahele Awards and Kanaina Testimony**

The Indices of Awards Made by the Board of Commissioners to Quiet Land Titles in the Hawaiian Islands (Land Commission 1929) do not list any Land Commission Awards (LCA) in Kīlauea Ahupua‘a. Lloyd Soehren’s (2002-2019) Hawaiian Place Names database notes that Kīlauea Ahupua‘a was “returned by Kekauonohi, retained by aupuni at the Mahele.” The Office of Hawaiian Affairs (n.d.) Kipuka Online Database suggests a slightly more complex transaction in which Kīlauea Ahupua‘a was “relinquished by Mikahela Kekauonohi to Kamehameha III” and “relinquished by Kamehameha III to Government.” It should be noted that LCA No. 8559-B, the claim for the crown lands of Hawaii in the name of William C. Lunailo, includes Kāhili and Kalihiwai Ahupua‘a, the ahupua‘a east and west of Kīlauea Ahupua‘a, whereas Nāmāhana Ahupua‘a to the northwest was claimed by Keahikuni Kekau‘ōnohi (also called Mikahela or Miriam) as part of LCA No. 11216. It makes geographic sense that the King, Kekau‘ōnohi, or both once had a claim on Kīlauea Ahupua‘a given their claims on adjacent ahupua‘a.

The Indices (Land Commission 1929) do list seven other LCAs in Kāhili Ahupua‘a and 28 other LCA in Kalihiwai Ahupua‘a aside from those of the Crown (LCA No. 8559-B; Lunailo); these are presumably kuleana claims. The seven kuleana claims in Kāhili Ahupua‘a are the kuleana awards closest to the current project area, and cluster on the east bank of Kīlauea stream, mostly

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<sup>11</sup> Id. at pages 14-15.

near the stream mouth. LCA No. 10333, claimed by Naiamane on behalf of her deceased husband Oopu, and confirmed by Royal Patent Grant No. 3370 in 1856, sits on the present border with Kīlauea Ahupua‘a (Waihona ‘Āina N. d.). The other six LCAs in Kāhili Ahupua‘a are LCA Numbers 9067, 10013, 10013-B, 10015, 10082, and 10083.

Māhele records indicated that there were other claims made for lands in Kīlauea Ahupua‘a during the Māhele, but none were awarded.<sup>12</sup> This includes a claim (No. 6529) by Holokukini,<sup>13</sup> on the basis that he served as konohiki for Kīlauea Ahupua‘a under Aaron Keali‘iahonui (husband of Kekau‘ōnohi), and six other claims, all of which were rejected or abandoned. Among the kuleana claims was one (No. 9217) that gained some later notoriety for (the claimant) Kealawa‘a complaining that “I returned my claim to land of Kilauea to the Konohiki for the land is being filled with cattle & I have no desire to combat them [sic]” (Waihona ‘Āina 2005).<sup>14</sup>

- **Kilauea Sugar Company and Kilauea Railroad system**

Charles Titcomb would eventually go on to purchase the whole of Kīlauea Ahupua‘a in 1863 and start a plantation there. Jesse Condé and Gerald Best (1983:150) indicate the plantation was sold to Captain John Ross and Edward P. Adams in 1877. According to the Kaua‘i Historical Society (N.d.), the plantation was subsequently incorporated as a company, Kilauea Sugar Company Limited, in 1880 and would remain in operation for over 90 years: It became known as Kilauea Sugar Plantation Company after purchase by a California corporation in April 1899.

Headquarters were in San Francisco, California, with local operations in Kīlauea, Kaua‘i, Hawai‘i. In 1955, C. Brewer and Company Ltd., the company’s Honolulu sugar factor (agent), purchased a majority of stock, and the company reverted to its original name, Kilauea Sugar Company Limited. All sugar operations were terminated on December 31, 1971. [Kaua‘i Historical Society N.d.:2]

William Dorrance and Francis Morgan (2000:32) note that “Kilauea Sugar Company was among the smallest in the Islands,” which, given that they indicate it reached “5,000 acres” suggests the economy of scale required for success during the heyday of commercial sugar in Hawai‘i. Carol Wilcox (1996:84) explains that the plantation “had to make the best of marginal conditions. Plagued by rocky terrain, small size, few water resources, and its remote, windward location, it never enjoyed the success of other, better situated plantations.” While the plantation was not as massive as some of its peers, it boasted its own railroad to haul sugar to the mill. The Kaua‘i Plantation Railway (2008) website recorded those railroads on Kaua‘i island used unusually narrow gauge, but the railroad at Kilauea, the first on the island of Kaua‘i, was even narrower.

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<sup>12</sup> While there were no Mahele claims that may have been actually awarded, the sworn Kanaina testimony indicates that there were native Hawaiian who lived in the area but abandoned their claims because they were unable to compete with the introduced cattle. (Attachment A of the LRFI)

<sup>13</sup> Although the Mahele records indicate that Claim No. 6529 was not awarded the Kanaina testimony to the claim references 4 lo‘is in the ili of Puua and 6 lo‘is in Kilauea belonging to Holokukini called Maluawai ili and a house lot, a pasture and 2 tenants. Id. LRFI at pages A10 -A11. Since the claim was not awarded there is no location of the lo‘i’s or house lot.

<sup>14</sup> Id. at pages 19 – 22.



In late 1881 management of the Kilauea Plantation ordered rail equipment from the John Fowler Co, of Leeds, England. Rail, spikes, locomotive and cars arrived on Kauai late in 1881 and by the end of 1882 the line was in operation. The track gauge was 2' and the tiny (likely 6 tons) 0-4-2 Fowler locomotive could move up to ten loaded cars of cut cane in one train. While the original line at Kilauea Plantation remained at 2' gauge to the end, all the other lines on Kauai chose 30" gauge, the only Island in the Hawaiian Chain to run with this gauge.

Condé and Best (1983:150) report that “rail equipment for Kilauea was duly shipped to Kauai and by a curious twist was not only the first railroad built on that island, but it had its first spike driven by an [sic] Hawaiian Princess” on September 24, 1881. This dignitary was Princess Regnant Lydia Kamaka‘eha, who would in a decade be crowned as Queen Lili‘uokalani, the last monarch of the Kingdom of Hawai‘i. She was visiting Kaua‘i, and had not been aware of the railroad, but upon arriving at Kilauea Village, she was greeted by employees of the Plantation: ...she was informed that at that moment the first piece of track for the first railway on Kauai was about to be laid, and it would be considered an honor if Her Royal Highness would drive the first spike, which she kindly consented to do. Proceeding to the plantation... a large crowd had collected; the Royal Standard having been hoisted on a temporary staff. Her Royal Highness... took great interest in all these particulars and expressed her great satisfaction at being able to be present at the laying of the first railway on the Island of Kauai and trusted it might soon gird the whole island and so develop its resources and promote the industry of its people. [Pacific Commercial Advertiser 1881 in Condé and Best 1983:151]

By November of 1881, the railroad at the Kilauea Sugar Company plantation was operational, with three miles of track laid. Both sugar operations and the railroad grew over the next several decades, and “in 1910, Kilauea’s railroad system was comprised of 12 ½ miles of permanent track, 5 miles of portable track, 200 cane cars, six sugar cars and four locomotives” (Soboleski 2017).

Much of the infrastructure built up for the Kilauea plantation did not survive to the current day. The railroad was phased out first: “Kahili Landing and its railroad track was abandoned beginning in 1928, when sugar from the mill was trucked to Ahukini Landing instead, and by the spring of 1942, trucks had replaced railroad locomotives and cane cars as the means of hauling sugarcane to the Kilauea mill” (Soboleski 2017). Wilcox (1996) states that the land continued to see some agricultural use after sugar operations ended in 1971, but there was no upkeep of the plantation irrigation system, and parts of it were destroyed while others were simply abandoned: ... no mechanism was established to secure the easements or maintain the old system. Over the years the connections between reservoirs and delivery systems were destroyed by roads, pasture, development, neglect, and intent. The Hanalei Ditch was abandoned, its flumes and siphon no longer operable. The connection from the Kalihiwai Reservoir to Stone Dam was destroyed, as was that between Puu Ka Ele and Morita reservoirs. Puu Ka Ele and Koloko reservoirs' delivery systems were gone. C. Brewer established Kilauea Irrigation Company, a public utility, to administer the surviving sections that service its guava farming operation. By the mid-1990s, some reservoirs stood alone with little utilitarian purpose. [Wilcox 1996:85]<sup>15</sup>

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<sup>15</sup> Id. at pages 22- 24.

One archaeological site was identified during the field inspection on June 1, 2022. The site was designated as Temporary Site 1 (TS-1) and was comprised of two features: a railroad bridge culvert (Feature 1), and remnant section of railroad track (Feature 2) was found on the subject property. The on-site archaeologist determined that the site was post-Contact in nature recorded it with photographs and two GPS points taken at the center points of its two features. Figure 7 shows these GPS points superimposed on a client-provided construction map.

Feature 1 (Fe. 1; railroad bridge culvert) was built using basalt and mortar construction and is in good overall condition, protected by thick vegetation that surrounds it. Both ends of the culvert tunnel are exposed and the interior is passable. Feature 2 (Fe. 2; piece of old railroad track) was discovered approximately 12 m east of Fe. 1, by using a metal detector to allow detection through the dense vegetation. Figures 8 through 16 are photographs of the features, and Table 3 summarizes the location and condition of the features. These features were constructed as a part of the railroad built to haul sugar for the plantation operated by the Kilauea Sugar Company. Another portion of that railroad located to the northwest was previously designated as SIHP Site No. 50-30-04-01812. It is possible that other remnant portions of the railroad may be found under the foliage or even under the ground surface of other nearby property parcels.<sup>16</sup>

- **Kilauea Point National Wildlife Refuge**

Kilauea Point National Wildlife Refuge (KPNWR) occupies Kīlauea Point peninsula, Mōkōlea Point peninsula, Crater Hill, and the coastline north of the project area. The wildlife refuge was established in 1985 and expanded to its current extent in 1988. KPNWR is administered by the US Fish and Wildlife Service (FWS) and is open to visits (and thus serves as a tourist attraction). The FWS maintains the refuge to protect and preserve not only flora and fauna, especially migratory seabirds and the endangered nēnē (Hawaiian goose, *Nesochen sandvicensis*), but also the Daniel K. Inouye Kīlauea Point Lighthouse and Light Station. The FWS also partners with local native Hawaiian organizations such as Kaipuwai Foundation and Na Kia'i Nihoku, that “perform Native Hawaiian cultural practices and ceremonies at Nihoku summit on the summer and winter solstice and the spring and fall equinox” (Fish and Wildlife Service N.d.).<sup>17</sup> Additionally, portions of KPNWR are open to fishing, and “native Hawaiian fishing at Kīlauea (East) Cove” is recognized as a cultural practice (Fish and Wildlife Service N.d.).<sup>18</sup>

2. *Information from Cultural Consultation that identified the following cultural, historical, and natural resources, including traditional and customary Native Hawaiian practices that may be related to or within the vicinity of the subject property:*<sup>19</sup>

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<sup>16</sup> Id. at page 39 – 49, Figures 8 to 16.

<sup>17</sup> In addition, Dr. Mehana Blaich Vaughan noted that “through these organizations, hālau visit the area to conduct ceremony and offer hula and oli, due to the site’s significance in Pele traditions and other hula practice. Kia’i Kāhili also works with FWS on their coastal lands.”

<sup>18</sup> Id. at page 24-25.

<sup>19</sup> Not all of the Cultural Descendants assert that they are ancestral descendants to the ahupua‘a tenant of the subject property. However, the court in PASH noted, “[t]he right of each ahupua‘a tenant to exercise traditional and

- **Bird Hunting**

*As a young man I often hunted the pasture lands of Nihoku for pheasants. At the time, the land all the way to the Kahili river was used by Gay and Robinson for cattle grazing. The road down to Kahili was fenced on both sides with 4 heavy gauge, single wire strands held up by Kiawe posts that due to their scarcity were strategically placed to best take advantage of their strength and longevity. These posts were brought in from the west side as they did not grow here. The fence spaces between the major posts were further supported by locally cut guava wood which also helped to keep the wire strands from sagging as the wire was u-nailed to many of these fill-in posts. No barbed wire was used so we could easily pass between the wire strands when moving from the makai pasture to the Nihoku pasture. Sometimes we would start our hunt on the plateau just above the project site. There the plantation's field road followed the iron wood lined valley edge and then as it reached the slopes of Nihoku there was a small seldom used road built during the war that led East into the Nihoku pasture where the Robinson's had a corral. This area was called Marine Camp since it was occupied during the war by Marines who guarded the pre-radar installation atop Nihoku. The remains of the old redwood train trestle bridge that traversed the valley were still visible in the 1960s.*

*For our hunting we would traverse the makai side of the valley taking a detour to cover the Northern slopes of Nihoku which are hidden from almost all southern vantage points. No seabirds frequented the area during those years. We continued down into Kahili, crossing over the fences on both sides of the quarry. Unlike the mauka pasture where the grass was as short as a lawn, the makai pasture was heavily overgrown so hunting was limited to the open areas. Once complete, we would walk back up the valley and pass the subject property before returning to our vehicle. Sometimes we would start our hunt at Kahili and do the trip in reverse. The valley floor and drainage area were covered in heavy growth of guava, cats' claw, and Christmas berry. The stream usually had some water in it which was seepage water that relied heavily on the fact that the plantation irrigated the field above it and Kilauea usually had ample rain to keep the seepage actively flowing. Pheasants favored this protected area where water was available during the heat of the day.<sup>20</sup> (Gary Smith)*

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customary practices remains intact, notwithstanding arguable abandonment of a particular site, although this right is potentially subject to regulation in the public interest.” PASH 903 P.2d at 1271, 79 Haw at 450. Thus, their comments are relevant to the Assessment even if they are not descendants of the ahupua‘a tenant.

<sup>20</sup> Portions of the talk story or information provided by Gary Smith and Dr. Mehana Blaich Vaughan are in *italics*. A copy of the Assessment was distributed to Gary Smith and Dr. Mehana Blaich Vaughan. The Assessment has been revised in accordance with Gary Smith’s comments. The Consultant also received comments from Dr. Mehana Blaich Vaughan and used her best efforts to revise the Assessment in accordance with her comments. Dr. Mehana Blaich Vaughan referenced the “extensive cultural consultation given by multiple different individuals on the cultural significance of Nihoku and traditional and customary practices which take place on the mountain and in surrounding areas.” She references the planning director’s reports and recommendations, and interview transcripts for the Green proposed development in Seacliff for lot 11-a throughout 2021 and 2022 in the public record. In the Consultant’s view, *Ka Pa ‘akai* rights are personal rights that require a determination of how the identified resources (step 1) will be affected or impaired by the proposed action (step 2), and then determine a feasible action to be taken to protect native Hawaiian traditional and customary rights. The Consultant’s difficulty with referencing other cultural consultation is the uncertainty of whether this proposed action (the construction of the subject property)

- **Fishing**

*Fishermen would also use this spot to park their car and walk to go fishing at Makapili Rock. The field road turned and continued westward along the base of Nihoku and met up with the Japanese cemetery road, known today as Mihi Rd. Here one could turn right and travel on that road up to the top of Nihoku. Fishermen going to Makapili Point would use this road as well. (Gary Smith)*

*Appreciate the reference to the importance of Nihoku for fishing. Not mentioned is its significance along with the lands above Kahili river as significant kilo sights for fishing, yet this activity is referred to frequently in kama'āina testimony as well as for hunting of pigs, not just pheasant. (Dr. Mehana Blaich Vaughan)*

- **Kilauea Japanese Cemetery**

*Known today as the Kilauea Japanese Cemetery it got its start as a Chinese cemetery circa 1870 and then Japanese Cemetery around 1900. By 1910 some Koreans were also interred as well. Today there is no evidence of Chinese or Korean graves. No other races were buried there until 2000 when a formal nonprofit association was created to assume ownership of the land from C. Brewer. I am currently its president. (Gary Smith)*

- **Pailio heiau**

*Pailio heiau may have been located above the subject property. The heiau is associated with Chief Halanikikaupua and is associated with Nihoku. There is an oli and hula that references ilio and is associated with Nihoku. (Gary Smith)*

- **Kilauea Sugar Plantation Company and Railway**

*The Kilauea Sugar Plantation Company has a long and rich history in Kilauea. It was the smallest plantation in the Hawaiian Islands and the most northern plantation on Kauai. The plantation began in 1863 by Mr. Titcomb who bought the Kilauea land from King Kamehameha IV. The Kilauea railroad was the first built on Kauai and the first spike was driven by Lydia Kamaka'eha Princess Regnant (later to become Queen Lili'uokalani) on September 24, 1881. The Kilauea railroad was three miles long. Due to the hauling of cane by trucks which substantially reduced the harvesting costs at Kilauea, the railroad was put out to "permanent pasture" in 1942. However, the rail crossing/bridge/culvert which was built circa 1890 still exists on the subject property. Although the rail bed appears to have been altered by fill and grading, it still sufficiently documents the original path of the railway system. (Gary Smith)*

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would have an effect on their traditional and customary practices. For this reason, the Consultant has not included the record of the extensive cultural consultation recommended by Dr. Mehana Blaich Vaughan in this Assessment.

- **Nihoku**

*Nihoku is referenced in the Hawaiian publication, Ke Kumu Hawaii dated March 30, 1836, in association to Lono's travels on Kauai. The article describes Lono's rule as benevolent and sites extraordinary examples of his kindness and compassion for the people of Kauai. He shares his sad news of the loss of his wife. It is Lono's mana and stature as the highest chief of Hawaii island and his presence in Nihoku that elevates Nihoku to a place of cultural significance.*

*The name Nihoku appears in several historical sources. One, Nihoku appears in the 3/30/1836 Vol. II, No. 7 nupepa Ke Kumu Hawaii by a contributor known only as "P" under the headline No Lon. Two, it also appears in Ka Mo'olelo no Hiiakaikapoliopole by Hooulumahie pg 19 where Nihoku is credited with its own wind name Aopoomuku. Three, it appears in the 1863 Royal Patent No 2896 Kamehameha IV to Charles Titcomb. Four, Nihoku also appears in Ka mo'olelo...kekahi Ali 'i Kahiko o Kaua 'i one of these chiefs mentioned is Halanikikaupua of Nihoku. Further, the order in which Pele puts Nihoku in her wind chant places it minimally between Kahili and Nāmāhana. This source of information is from the ka poe Kahiko. It is the entire hill itself that is Nihoku. (Gary Smith)*

*Other sources which are more valuable for this region, written in their original Hawaiian and translated by knowledgeable Hawaiian language speakers include the mo'olelo of A'ahoaka, a chant written for Puapualenalena including the Hala groves of Nihoku, and multiple nupepa articles including Kanikau written by 'ohana of the area published in the 19th century. Pele's wind chant offers another source as does Uncle Gary's place names map based on many of these sources. A few of these are included in the link below, but A'ahoaka and Pele are separate searches. Both are referenced in a document compiled by our community and shared by county in Green contested case hearing materials.*

<https://www.dropbox.com/s/0zj6fcx093zwwq4m/Kahili%20archival%20docs%20copy.pdf?dl=0>

*Nihoku is considered culturally significant for its association with mo'olelo, kilo (celestial navigation), hula & oli, visual landmark, fishing, hunting, Makahiki trail, and cultural practices. Climbing to the top of Nihoku as a youngster was considered a "rite of passage" for those who grew up in Kilauea. It was a visual landmark that could be seen from a distance, but you knew you were getting close to Kilauea if you could see Nihoku. For people who grew up in the area, the area where Seacliff Plantation subdivision is situated is considered part of the "cultural landscape" of Nihoku. (Dr. Mehana Blaich Vaughan)*

- **Gullies**

*Also, gullies which hold water are significant areas, whether or not sites can be found there. Considering the location of the subject parcel, at the foot of Nihoku, above the river and directly across from some of the most significant sites and settlements, it is likely that this aina was a*

*corridor between the top of the mountain and the river, and thus important. I believe this gully would have contained water, permitted agriculture and also bathing, or preparation for ceremony, either at Nihokū crest or at the Pailio heiau location thought to be nearby. So, despite sites other than the railway bridge not being found, the gully itself, what is planted there, and retaining access through that area seem important. (Dr. Mehana Blaich Vaughan)*

**B. The extent to which these resources, including traditional and customary Native Hawaiian rights will be affected or impaired by the proposed action**

1. Findings from the LRFI regarding impacts of the proposed project on historic properties.

- **Pre-contact features or sites**

The general pattern seen in the previous archaeological work in the vicinity is one that is common to many regions of the Hawaiian Islands where commercial sugar or pineapple agriculture occurred. Remaining Pre-Contact sites are largely found within gullies or other areas of uneven ground, especially near water features. Relatively flat areas, such as tablelands have been subject to considerable ground disturbance for large scale commercial cultivation and Pre-Contact features that may (likely) have been present there have been removed or destroyed.

Based on the findings of this LRFI, only an historic-era cultural resource was identified. Note that portions of the project area were heavily overgrown and more intensive survey during AIS could lead to the identification of additional historical-era resources associated with the railway line. No excavations were conducted during this LRFI and thus, there remains the slight possibility that Pre-Contact cultural resources such as habitation area could be documented in subsurface contexts below the plow zone. The same would hold true for iwi kupuna (ancestor bones): only a slight possibility that such exist on this plateau area. The majority of traditional burials in the area have been documented near the direct coastline and in sandy sediment.<sup>22</sup>

- **Railroad bridge culvert and section of the railroad track**

The LRFI identified within the subject property, a railroad bridge culvert and section of railroad track (TS-1) that could be impacted by activity within the subject property and should be preserved and protected.

2. *Specific comments from the Cultural Consultation related to the impacts of the proposed project to the valued resources, including traditional and customary Native Hawaiian rights and resources:*

- **Railroad bridge culvert**

*The culverted train crossing (railroad bridge culvert) is not only a post-contact historic feature, but it also has cultural significance because of its association with Princess Lydia Kamaka 'eha*

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<sup>22</sup> LRFI, at page 49.

*Princess Regnant (later to become Queen Lili‘uokalani). The overgrowth has probably protected it over the years since the railroad stopped operating, but it is in pristine condition and should be protected, preserved, and honored. (Gary Smith and Dr. Mehana Blaich Vaughan)*

- **Impacts to the cultural landscape of Nihoku, including the ability to exercise traditional and customary practices associated with Nihoku and Kilauea**

*For many of the Kilauea community, especially the Native Hawaiians who have ancestral connections to Kilauea, they feel strongly that the entire Seacliff Plantation subdivision, has and will adversely impact the cultural landscape of Nihoku, including their traditional and customary native Hawaiian rights. They believe that although the proposed project may not individually impact the cultural landscape, it is the collective impact of the entire Seacliff Plantation Subdivision that has adversely impacted their cultural practices, rights, and resources. The Cultural Descendants, especially kupuna, no longer have access to fishing, hunting birds, practicing kilo, visual corridor of Nihoku, climb Nihoku, and access to walk the annual Makahiki trail through Kilauea. (Gary Smith and Dr. Mehana Blaich Vaughan)*

### **III. RECOMMENDED CONDITIONS**

- A. Based upon the archival research, previous archaeological studies and relevant comments from the Cultural Consultation, the following feasible action or mitigation measures, should be taken to reasonably protect Native Hawaiian rights and resources, and are recommended conditions to the Planning Department or Planning Commission for consideration:<sup>23</sup>**

- **Regarding the protection and preservation of the railroad bridge culvert and section of the railroad track (TS-1).**
  1. Further documentation of the historic property (TS-1) should be prepared to determine its extent, age, function, and significance.
  2. Until the extent of TS-1 is confirmed to not extend onto the subject property through further documentation, the Landowner agrees to coordinate with Cultural Descendants and knowledgeable community members<sup>24</sup> on the protection and preservation of the railroad bridge culvert and sections of the railroad track located on the subject property. The following are specific recommendations by the Cultural Descendants:
    - The stone culvert floor at intake should be repaired and the stone head walls be cleared of vegetative growth. Loose rocks should be secured in place and cemented if formerly affixed in that manner;
    - The drain way, at least up to 15 feet on either side of the lowest point where the water naturally flows should remain as it is with the existing buffalo grass

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<sup>23</sup> These recommended conditions are in addition to any conditions proposed by the Kaua‘i County Planning Department.

<sup>24</sup> Including Gary Smith and Dr. Mehana Blaich Vaughan.

as a bulwark against erosion. Ultimately the invasive grass can be kept in check by weed whacking, encroachment of naupaka and the shaded canopy of the new dry land forest;

- Development in this area should contain a large buffer from the gully, control for erosion and runoff, not allow for substantial movement that changes the slope and shape of the terrain and contain sediment so as to avoid filling the railway tunnel further, as is already observable;
- The rail crossing/bridge/culvert built circa 1890, should be placed on the State of Hawai‘i Historic Registry;
- Although the rail bed appears to have been altered by fill and grading, it still sufficiently documents the original path of the railway system. It should also be included in the registry process. Any subsequent work along the bed which reveals the original tracks and elevation should be documented by photos, survey elevations and GPS info, and updated in the registry;
- The Landowner should place a commemorative plaque at the site and inform the Seacliff Plantation Owner's Association of the significance of the structure. The Owner's Association should inform other owners along the rail path to take pride in its presence by preserving any evidence of its path through their properties as well;
- The Seacliff Plantation Subdivision storm drain exit on the property above the crossing should never be altered or extended and that the drainage field remain continually grassed to avoid soil erosion;
- Lastly, the Landowner should make genuine efforts to accommodate up to four (4) annual field trips from school groups or historical organizations and researchers.

- **Regarding the planting of native plants.**

3. The Landowner shall consider the planting of native plants in gulch within the subject property. Native plants can include naupaka, Milo, Kukui, Noni and Kou to provide the basic canopy and ground cover. In addition, but not mandatory are plantings of Ohia and Koa which would be more challenging for the property owner to keep viable. Their inclusion and success would speak volumes to the Landowner's care and concern in the re-establishment of a true native dry land forest.

- **Regarding iwi kupuna.**

4. There remains the slight possibility that pre-Contact cultural resources such as habitation area could be documented in subsurface contexts below the plow zone. The same would hold true for iwi kupuna: only a slight possibility that such exist on this plateau area. The majority of traditional burials in the area have been documented near the direct coastline and in sandy sediment. However, cultural informants have referred to burial sites in the areas, therefore, grading and development in the area should be minimized to avoid inadvertent discovery of iwi kupuna. Although no iwi kupuna have been discovered on the subject property, in the event iwi kupuna are discovered, all work in the immediate area shall cease and the



Landowner shall contact SHPD, and any Cultural Descendants recognized by the Kaua‘i Ni‘ihau Island Burial Council for the area.

- **Regarding “reasonable”<sup>25</sup> mitigation impacts to Nihoku as a cultural landscape**
5. Cultural Descendants and members of the Kilauea community have raised concerns that although the Landowner’s proposed project may not individually impact traditional and customary practices, the collective and cumulative impact from the past development and any proposed development, including the proposed project within Seacliff Plantation, has and will adversely impact the traditional and customary practices of Native Hawaiians’ rights and resources associated with the cultural landscape of Nihoku and Kilauea. In the spirit of Article XII, Section 7 that seeks to find balance between preserving and protecting traditional and customary native Hawaiian rights and private landowners’ right to develop, the Landowner agrees to request a meeting with the Seacliff Plantation Homeowner’s Association to explore opportunities to engage, collaborate, and coordinate with the Cultural Descendants and Kilauea community to constructively address their concerns related to the adverse impacts of Seacliff Plantation’s development on traditional and customary practices exercised by native Hawaiians rights and resources. These concerns include reasonable access to the ocean (especially for kupuna) to hunt pigs, fish, gather resources for subsistence and conduct education and ceremonies such as Makahiki, solstice and equinox observances and kilo events.<sup>26</sup>

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<sup>25</sup> The court has held that any conditions placed on a permit should be deemed ‘reasonable’ and must bear an essential nexus to the legitimate State interests under Art. XII, section 7, and must be ‘roughly proportional’ to the impact of the proposed action. PASH v. HPC, 79 Haw. 425, 436 (1995).

<sup>26</sup> Haiku Plantations Association v. Lono, 618 P.2d 312 (1980). Haiku Plantations subdivisions is a gated community in Kaneohe and residents are members of the Haiku Plantation Association. The Association was required to provide vehicular right-of-way access to the mauka kuleana owner. The kuleana owner appealed the trial court’s determination that his access did not include the right to park. Although the Hawaii Appellate court did not expand the access easement to include parking it did uphold the right-of-way easement for ingress and egress granted pursuant to HRS §7-1.

**ARCHAEOLOGICAL LITERATURE REVIEW AND  
FIELD INSPECTION FOR A 6.851-ACRE PARCEL AT  
SEACLIFF PLANTATION, KĪLAUEA AHUPUA‘A,  
HANAIEI DISTRICT, ISLAND OF KAUA‘I, HAWAI‘I  
[TMK: (4) 5-2-004:093]  
LOT 20A UNITS 1 & 2**

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## **INTRODUCTION**

At the request of Ku‘iwalu Consulting, Scientific Consultant Services, Inc. (SCS) has conducted this archaeological Literature Review and Field Inspection (LRFI) for a 6.851-acre Parcel (Lot 20A, Units 1 & 2) in Seacliff Plantation, Kīlauea Ahupua‘a, Hanalei District, Island of Kaua‘i, Hawai‘i [tax map key (TMK) parcel: (4) 5-2-004:093]. The project area is shown on a portion of a United States Geological Survey (USGS) topographical map, a Tax Map Key (TMK) map, and a Google aerial photograph (Figures 1 through 3).

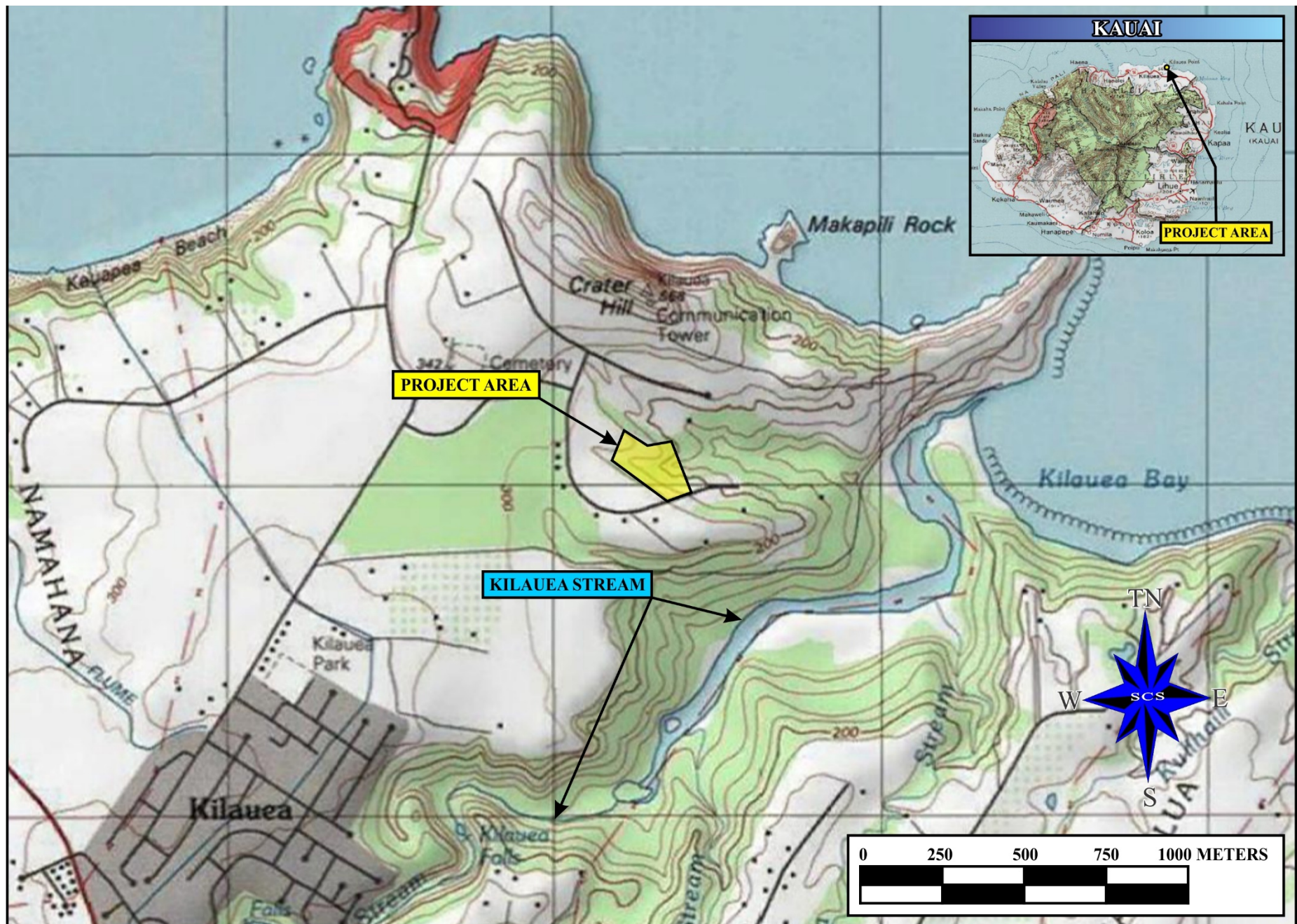
The field inspection was conducted on June 1, 2022, by SCS Archaeologist Jason Stolfer, M.A. under the supervision of the Principal Investigator Michael F. Dega, Ph.D, and consisted of a 100% pedestrian survey across the project area.

During survey, a single archaeological site, designated Temporary Site 1 (TS-1) was identified. This site was comprised of a railroad bridge culvert, as well as a nearby section of railroad track. It is likely that TS-1 was part of the railroad built to haul sugar for the plantation operated by the Kilauea Sugar Company, and that other portions of that railroad may still be present in the vicinity.

This report is not intended to meet HAR §13-276 requirements for an Archaeological Inventory Survey (AIS), but aims to identify potential cultural resources in the project area and its vicinity, and to provide in brief the history of relevant archaeological research within Kīlauea Ahupua‘a. Thus, the scope of work for the current investigation includes the following two aspects:

- Literature review consisting of a study of previous archaeological reports pertaining to the project area and its vicinity. This research is conducted in order to determine 1) known archaeological and cultural sites that have been recorded in the project area, 2) features, sites, or cultural resources that may be associated with the subject property adjacent to it, if any, to assist in the *Ka Pa‘akai* Assessment, and 3) support appropriate recommendations to State Historic Preservation Division (SHPD).
- Field inspection via pedestrian survey of the project area. This inspection is conducted in order (1) to identify any surface archaeological features and (2) to investigate and assess the potential for impact to such sites. This assessment will also identify any sensitive areas that may require further investigation or mitigation before work on the project proceeds.













**Figure 3: A Google Earth aerial photograph (imagery date: 12/16/2013) showing the location of the project area**



## **ENVIRONMENTAL SETTING**

### **LOCATION**

The field inspection occurred within a project area consisting of TMK parcel (4) 5-2-004:093, which encompasses 6.851 acres divided between two Condominium Property Regime (CPR) units, with the northern CPR (Unit 1) comprising 3.216 acres, while the southern (Unit 2) is 3.635 acres. This parcel is Lot 20A of the Seacliff Plantation gated community, and is surrounded on all sides by other lots within Seacliff Plantation. The project area is bordered by Pali Moana Place on the south. Seacliff Plantation is bordered by Kīlauea Point National Wildlife Refuge on the north, while other notable places nearby include Kīlauea Agricultural Park across Pali Moana Place to the west, and the mouth of Kīlauea Stream not far east (the stream is approximately 665 m east from the project area). This location would colloquially be referred to as being located in Kīlauea, after the Census Designated Place (CDP) of Kīlauea, since addresses in the State of Hawai‘i are typically given using CDP in place of city or county.

The project area falls within contemporary Kīlauea Ahupua‘a, which is part of Hanalei District (Hawaii State Office of Planning 2021). Hanalei is one of the five judicial districts dividing Kaua‘i County and occupies most of the north coast of Kaua‘i Island and a rough pie-wedge inland from the coast.

### **GEOLOGY AND TOPOGRAPHY**

Kaua‘i is the oldest and fourth largest of the eight main Hawaiian Islands. It was formed from a single great shield volcano (Macdonald et al. 1983:453). At one time that volcano was the largest caldera in the islands, extending 15 to 20 kilometers across. Mount Wai‘ale‘ale, which forms the central hub of the island, rises 1,598 meters above mean sea level (amsl). Topographically, Kaua‘i is a product of heavy erosion as it features broad, deep valleys and large alluvial plains. Its land area is approximately 1,432 square kilometers.

The elevation of the project area ranges from approximately 60 to 80 m above mean sea level (amsl). It is located in a region of relatively flat terrain between the coast and Kīlauea Stream.

### **CLIMATE AND HYDROLOGY**

The project area is located near the northern shore of Kaua‘i, facing the northeastern trade winds that bring precipitation. However, the near-coastal location means it does not much benefit from orographic lift effects from those trade winds hitting Mount Wai‘ale‘ale. Therefore, the project area still sees moderate rainfall, higher than leeward lowlands but lower than other windward locales further upland.

Mean annual rainfall over the project area is 1460 mm (57.5 in). Rainfall is higher in winter and spring, with a peak of 185 mm (7.3 in) in November, and a low in June of 76 mm (3.0 in) (Giambelluca et al. 2013).

Average annual air temperature in the project area is 22.9 °C (73.2 °F). August is the hottest month with an average of 24.7 °C (76.4 °F), while February is the coolest with an average at 21.1 °C (69.9 °F) (Giambelluca et al. 2014).

Kīlauea Stream to the east is the nearest major water feature (see Figure 1). The stream runs on a roughly southwest to northeast axis, with its mouth emptying into Kīlauea bay. The *Hawaii Stream Assessment* (Hawaii Cooperative Park Service Unit 1990:36) classifies it as a perennial stream. Kīlauea Stream is sometimes also referred to as Kīlauea River.

## SOILS

According to Foote et al. (1972: Sheet 25) and the U. S. Department of Agriculture Natural Resource Conservation Service, and University of California, Davis California Soil Resource Lab (2017), the project area topsoils are of the Lihue series, primarily Lihue silty clay, 25 to 40 percent slopes, eroded (LhE2), with a region of Lihue silty clay, 15 to 25 percent slopes (LhD) in the southeast, and a slight sliver of Lihue silty clay, 0 to 8 percent slopes (LhB) on the northwest. Figure 5 is a soil map of the vicinity of the project area, and Table 1 summarizes the soil types.

The Lihue series “consists of well-drained soils on uplands” and are “developed in material weathered from basic igneous rock” (Foote et al. 1972:82). LhB has slow runoff and slight erosion hazard, and is “used for sugarcane, pineapple, pasture, truck crops, orchards, wildlife habitat, and homesites” (Foote et al. 1972:82-83). LhD has medium runoff and moderate erosion hazard, and is “used for sugarcane, pineapple, pasture, wildlife habitat, and woodland” (Foote et al. 1972:83). LhE2 has rapid runoff and severe erosion hazard, and is “used for pasture, woodland, and wildlife habitat,” with “small areas are used for pineapple and sugarcane” (Foote et al. 1972:83).

## VEGETATION

According to Sonia and James Juvik (1998:122, 127) before human settlement the native ecosystem of the area would have been ‘lowland dry and mesic forest, woodland, and shrubland.’ Indigenous flora that may persist in this environment include ‘*a‘ali‘i* (hopbush, *Dodonaea viscosa*), ‘*ākia* (*Wikstroemia* sp.), ‘*elama* (*Diospyros hillebrandii*), *kāwelu* (variable lovegrass *Eragrostis variabilis*) *koa* (*Acacia koa*), *ko‘oko‘olau* (*Bidens* sp.) ‘*ohi‘a* (*Metrosideros macropus*), *pili* (black speargrass, *Heteropogon contortus*), ‘*ūlei* (Hawaiian hawthorn *Osteomeles anthyllidifolia*), and *wiliwili* (*Erythrina sandwicensis*).



**Figure 4: Google Earth aerial photograph showing the soil series in the project area and in its vicinity (U. S. Department of Agriculture Natural Resource Conservation Service, and University of California, Davis California Soil Resource Lab 2017)**

**Table 1: Soil types represented on Figure 5.**

Abbrev.	Full (Soil) Name	Abbrev.	Full (Soil) Name
BS	Beaches	Mr	Mokuleia fine sandy loam
DL	Dune land	Mta	Mokuleia clay loam, poorly drained variant
IoB	Ioleau silty clay loam, 2 to 6 percent slopes	MZ	Marsh
IoC	Ioleau silty clay loam, 6 to 12 percent slopes	PnC	Puhi silty clay loam, 8 to 15 percent slopes
IoE2	Ioleau silty clay loam, 20 to 30 percent slopes, eroded	PnE	Puhi silty clay loam, 25 to 40 percent slopes
LhB	Lihue silty clay, 0 to 8 percent slopes	QU	Quarry
LhC	Lihue silty clay, 8 to 15 percent slopes	rRO	Rock outcrop
LhD	Lihue silty clay, 15 to 25 percent slopes	rRR	Rough broken land

## **TRADITIONAL BACKGROUND**

Archaeological data indicate that initial settlement of the Hawaiian Islands occurred on the windward shoreline areas around 10th century C.E. (Kirch 2011:22), with populations eventually settling into drier leeward areas at later periods (Kirch 1985:103). In the next few centuries coastal settlement was still dominant, while populations were beginning to expand to upland *kula* (pasture) zones from the 12th to the 16th century C.E. (Kirch 1985:103). Large scale or intensive agricultural endeavors were implemented in association with habitation. Settlers preferred coastal lands, but cultivated taro both near the shores and in the uplands.

## **TRADITIONAL LAND DIVISIONS**

The islands of Hawai‘i were traditionally divided into *moku* (districts) and *ahupua‘a* (subdistricts). On Kauai this occurred during the reign of Manokalanipō (Wichman 1998:102). These divisions were meant to incorporate all of the natural and cultural resources necessary for subsistence, stretching from the ocean to the mountain peaks and providing access to ecosystems at various elevations (Lyons 1875:111). The *moku* were likely consolidated approximately 600 years ago, when the native population had expanded to a point where large political districts could be formed (Lyons 1875:29, Kamakau 1961:54, 55; Moffat and Fitzpatrick 1995:28). Kaua‘i traditionally consisted of six *moku* (Kona, Puna, Ko‘olau, Halele‘a, Napali, and Waimea), each comprised of constituent *ahupua‘a*. The etymology of the word *ahupua‘a* may be traced to the practice of marking the boundary with a heap (*ahu*) of stones surmounted by an image of a pig (*pua‘a*) or of laying a pig on an altar as a tax to the chief (Native Hawaiian Library n.d.).

These ancient land divisions are still commonly used to locate and refer to geographical features of the islands, and the State of Hawai‘i still uses *ahupua‘a* as administrative land divisions, although their modern boundaries may differ from the traditional ones. *Ahupua‘a* were often subdivided into smaller land divisions called *‘ili*, administered by *ali‘i* (chiefs), but unlike the larger units *‘ili* were not meant to encompass a broad selection of resource areas (Lucas 1995:40). The land holding of a *hoa‘āina* (tenant) under an *ali‘i* was called a *kuleana* (right, privilege), a term that eventually came to mean “property” or “land title” as well (Lucas 1995:61).

## PLACE NAMES

Kamehameha Schools’ (n.d.) *Aloha ‘Āina Project* indicates that Kīlauea Ahupua‘a (where the project area is located) was traditionally a part of Ko‘olau Moku, and suggest boundaries similar to the modern demarcation. Kīlauea means “spewing” or “mush spreading”, in reference to the movement of lava during volcanic eruptions, and on Kaua‘i may refer to a tuff cone (not to be confused with the active volcano on Hawai‘i island). Ko‘olau means “windward,” appropriate to the *moku*’s location on the north shore of Kaua‘i, facing the prevailing trade winds.

A number of notable geographic features occur in the vicinity of the project area. Kīlauea stream, which flows from the south of the project area to the west before emptying into the ocean, strongly influences not only the natural landscape but human settlement on and use of it. The stream serves as the boundary between Kīlauea Ahupua‘a and Kāhili Ahupua‘a, and (surviving) terraces for traditional-style agriculture often follow its curve. Kāhili means “feather standard” (carried by attendants to herald royalty). The name Mōkōlea (or Mōkōlea Point) refers to a promontory north of the mouth of Kīlauea stream, and means “plover island (*mō* here being short for *moku*)” as it is a key seabird nesting location (albeit not strictly an island). Another important nesting area for seabirds can be found north of Kīlauea Point, on a small island named Moku‘ae‘ae, which John Clark (2003) interprets as simply meaning “fine [i.e. small] island.” The name Nihokū is associated with Crater Hill, but there seems to be little if any historical usage of this name, so it is possible that it is a modern naming convention rather than a traditional Hawaiian name. North of Crater Hill and Kāhili Quarry Beach there is also a tied island called Makapili Rock that is connected to the shore by a tombolo (sandy isthmus). Makapili means “squinting eyes.”

## WAHI PANA

There are stories or traditions associated with some of the *wahi pana* (legendary places) in Kīlauea Ahupua‘a. Frederick Wichman (1998:104) relates a story of how the *Menehune* (legendary race of small people), upon discovering Moku‘ae‘ae, “tried to bridge the channel between this island and the mainland with rocks.” However, the Menehune were not able to completed this task due to its length and complexity. William Hyde Rice explains:



The Menehune were a small people, but they were broad and muscular and possess of great strength. Contrary to common belief they were not possessed of any supernatural powers, but it was solely on account of their tremendous strength and energy and their great numbers that they were able to accomplish the wonderful things they did....

One curious thing about the Menehune was that they never worked in daylight, as they never wanted to be seen. It was their rule that any enterprise they undertook had to be finished in a single night. If this could not be done, they never returned to that piece of work. [Rice 1923:34-35]

The Menehune's attempt to build a causeway between Moku'ae'ae and Kīlauea Point failed because "just as they were able to touch bottom with their paddles, daylight interrupted their task" (Wichman 1998:104), and it was therefore abandoned. Although this tale records the Menehune acting of their own accord, others speak of *ali'i* bargaining with the Menehune to apply their prowess to construct great works elsewhere on Kaua'i (Wichman 2003:9-11).

While Menehune are associated with the *makai* (oceanward) portion of Kīlauea's, not only as builders but as fishermen plying the waters offshore Kīlauea from a settlement at Hanalei bay to the west (Wichman 1985:36), the *mauka* (mountainward) portion of the *ahupua'a* is also home to a great work said to have been accomplished by non-human prowess. The celebrated chief Manokalanipō was said to have commanded a supernatural *mo'o* (lizard) to open up the *mauka* part of Kīlauea, where the land was good for planting but water was lacking, for agriculture. Three long irrigation ditches on slopes of Kīlauea *mauka* resembled the claw marks of a *mo'o*, and the ridge above Kīlauea stream was called Kamo'okoa, meaning "brave lizard" (Wichman 1998:102).

Wichman (1998:103) also relates a story that purports to explain the "volcanic cone open to the ocean" resulting in the "long beach unprotected by any reef" at the coast of Kīlauea Ahupua'a, as well as "three huge stones" that once stood atop the cone but "have since been moved, with great difficulty, to make room for sugarcane." These features were attributed to the actions of the volcano goddess Pele:

Pele had come to Kaua'i and fallen in love with Lohi'au, a chief of Hā'ena. She promised to find a home for the two of them, but when ever she struck her staff, she was met by water, for her sister Nā-maka-o-kaha'i, goddess of the sea, was her enemy. Pele caused an eruption here, but it was soon extinguished when the sea goddess broke down the walls of the crater, drowning the fire with the ocean. [Wichman 1998:103]

Already frustrated by her sister's sabotage, Pele is enraged when "three beautiful sisters" named "Kalama, Pua, and Lāhela" laughed at the failure of her efforts, and she promptly turns all three into stone, leaving them in place as an object lesson of why she should not be ridiculed.

## MO'OLELO

The *mo'olelo* (lit. stories; also: oral history) of Kaua'i include many legends and tales of great events, but few that occur in Kīlauea. It is also notable that these tales speak of the fruit-bearing trees of Kīlauea providing food, rather than a cultivated staple crop, which is consistent with the difficulties the terrain in Kīlauea Ahupua'a could present to flat field agriculture (see Lifestyle and Subsistence, below).

Kīlauea Ahupua'a is mentioned as part of the long journey of Hawai'i island chief Lonoikamakahiki to see for himself "the famous trunkless *koa* [*Acacia koa*] tree of Ka-hiki-kolo, a tree from which earlier warriors had fashioned war clubs" (Wichman 2003:67). This journey began with Lonoikamakahiki accompanied by "his favorites, his warriors as companions and also his servants" but this retinue soon abandoned him, and when he "happened to look back to see where the rest of his people were" he found "only a solitary man following him... a stranger with whom he had no acquaintance" (Fornander 1916-17, Vol 4:352). The stranger was Kapa'ihiahilina, a Kaua'i native who had heard that the Hawai'i *ali'i* had been deserted by his followers, and brought "a calabash of *poi* [a Hawaiian dish made from the fermented root of the taro which has been baked and pounded to a paste] with some 'o'opu [general name for fishes included in the families Eleotridae, Gobiidae, and Blennidae] fish" as provisions for Lonoikamakahiki (Wichman 2003:68). Lonoikamakahiki was determined to press on to his destination, and observing that Kapa'ihiahilina scrupulously observed the *kapu* (taboos, prohibitions) that were accorded to royalty, told his faithful companion that they would proceed as equals:

Lonoikamakahiki said to him: "do not hold me in sacredness because you are my own brother. I have nothing dearer than yourself, therefore, where I sleep there will you sleep also. Do not hold me aloof, because all that is good has passed and we are now travelling in the region of the gods." In consequence of this, the king's wishes were observed, and they sat down together.  
[Fornander 1916-17, Vol 4:352]

The food that Kapa'ihiahilina had brought ran out, but he foraged *hala* (screw pine, *Pandanus tectorius*) fruit for food, and also braided ferns into garments to replace the *malo* (male's loincloth) made of *tapa* (bark cloth) they wore, which had been damaged by rain. With the aid of this skilled friend, Lonoikamakahiki achieved his wish to see the trunkless *koa* tree, and returned safely home, where he made his new trusted confidante his prime minister.

The meteoric rise of this outsider [Wichman (2003:67) characterizes the Kaua‘i man as a chief himself, but Fornander (1916-17, Vol 4:352) does not give him any rank] led to jealousy from Lonoikamakahiki’s subordinate chiefs, who began plotting against Kapa‘ihiahilina. The plotters eventually convinced Lonoikamakahiki to bar his friend from his presence by spreading rumors that Kapa‘ihiahilina had slept with his wife. Kapa‘ihiahilina then composed a chant reminding Lonoikamakahiki of their friendship, and how they had faced adversity together in their passage through the wilderness of Kīlauea (and other parts of Kaua‘i), a part of which says:

We ate of the ripe pandanus in our  
wanderings,  
Thus were our days of hunger  
appeased, my companion,  
My companion of the tall pandanus,  
From Kilauea to Kalihi;  
The pandanus that had been partly  
eaten,  
Of Pooku in Hanalei.

*Hala ia mao a ka ua ilaila, e ke hoae,  
Hele aku a ai i ka pua pala o ka hala  
Hala ia la pololi o ka ua ilaila, e ke  
hoa.  
He hoa i ka nahele la uhala loloa,  
Mai Kilauea a Kalihi la;  
O ka hala i aina kepaia,  
O Pooku i Hanalei-la.*  
[Fornander 1916-17, Vol 4:358-359]

This chant reminded Lonoikamakahiki of his affection for his friend and all that Kapa‘ihiahilina had done for him, and he gave orders that his friend be restored to the prime minister position and the plotters be executed.

Kīlauea Ahupua‘a is also mentioned as the place where an *ali‘i* named Kāhili ruled, but the *mo‘olelo* that speaks of him actually takes place in Kīpū Ahupua‘a, near the Hulē‘ia River and Mount Hā‘upu. Kahili arrives in Kīpū at the court of the *ali‘i nui* (high chief) Hina, famed for her beauty, just in time to become the subject of a rivalry between the Kaua‘i *ali‘i nui* and a rival beauty visiting from O‘ahu, Pele‘ula. Pele‘ula had heard that “Kaua‘i women were the most beautiful” while holding court at her home of Waialua, and proud of the splendor of her court and her own charms, had made up her mind to visit Kaua‘i to settle the question of where the greatest beauty lay (Wichman 1991:110). Hina welcomed the visiting Pele‘ula, and invited all her own subordinate *ali‘i* to present themselves, all the better to show off Kaua‘i. When Kāhili arrived, both Hina and Pele‘ula saw that he was exceptionally handsome, and agreed to make him the prize in a contest between them, initially ten rounds of *kilu* (a throwing game; *also*: the a small gourd or coconut shell, usually cut lengthwise, used to play the game of *kilu*). A game of *kilu* ordinarily featured many players who threw at targets placed in front of other participants to pick a partner for a kiss (or more), comparable in this respect to the contemporary game of spin-the-bottle. So enamoured were the two female *ali‘i nui*, however, that they instead asked Kāhili to be the sole target in a direct *kilu* contest between the two of them.



The handsome young *ali* 'i was all too happy to be the center of attention, showing his value as stakes by performing a dance and chant in which he declared “Here are the bones of Ko‘olau, / The ‘ulu, breadfruit tree [*Artocarpus altilis*] and warrior of Kilauea” (Wichman 1991:114). The two women proved to be equally adroit at *kilu*, and instead decided to have a beauty contest, letting Kāhili pick which of them he found to show her charms to best advantage. Both women prepared themselves with their best adornments and present their own dances and chants before the court. Pele‘ula showed off well, but Hina’s performance evoked not only her own beauty but the natural wonder of Kaua‘i. Even her rival had to admit that “the beauties of Kaua‘i are beyond compare” (Wichman 1991:119). To commemorate this, a profile of Hina, called Hinaiuika, was carved on the face of Hā‘upu.

## LIFESTYLE AND SUBSISTENCE

The Pre-Contact (e.g. prior to western contact, which is generally considered to begin with the arrival of Captain James Cook in 1778) Hawaiian economy was largely based on subsistence agriculture and aquaculture, supplemented by collection of natural resources, including marine and avifaunal organisms and undomesticated flora. Patrick Kirch notes that the economy was productive and diverse enough to support “considerable craft specialization... canoe-makers, adz-makers, bird-catchers, wood-carvers and tattooing experts” (Kirch 1985:3). The existence of specialized artisans and artists implied a sophisticated society with a bounty of both surplus food and spare labor to support many cultural practices and non-subsistence activities.

Settlements often concentrated in river valleys most amenable to wet *kalo* (taro, *Colocasia esculenta*) cultivation, incorporating *lo* 'i (pond fields, irrigated terraces) and *auwai* (ditches, irrigation canals). Areas with higher precipitation permitted cultivation of *kō* (sugar cane, *Saccharum officinarum*) and *mai* 'a (banana, *Musa* spp.). However, dryland agriculture centering on *u*ala (sweet potato, *Ipomoea batatas*) as the staple crop was also prevalent, especially on drier, leeward areas of the islands, where they were cultivated along with dryland varieties of *kalo*.

Edward and Elizabeth Handy (1972) note that Kīlauea has long been a favorable location for agriculture, and naturally became a population center as well:

On the island of Kauai there were five areas where development of food resources produced concentration of population. One of the best deep-sea fishing areas was along the windward or Napali coast. Adjoining this to the southward were localities where irrigated taro was cultivated extensively in terraces, termed *lo* 'i, at Ha'ena, Hanalei, and Kīlauea. [Handy and Handy 1972:269]

Handy and Handy (1972) also note that the tendency for relatively steep terrain in this region, especially upland, inhibited terracing for wet *kalo* agriculture. Agriculture was likely on *kula* (*lit.* plain, pasture, *in context*: dryland suitable for dry cultivation in contrast to wet cultivation in *lo‘i*) lands with *‘uala* as the favored staple crop.

Kīlauea is watered by a small river whose headwaters take the flow of streams above Kalihiwai as well as those coming down sloping *kula* lands above Kīlauea. This is a peculiar terrain, with terraces along the north side of the river toward its seaward end belonging to Kīlauea and those on the south side to the small *ahupua‘a* named Kāhili. A mile upstream is a small terraced area, but beyond this there were no terraces, for the main stream flows in a narrow gulch, and so do other side streams which flow into the Kīlauea River. Hawaiians evidently never developed *lo‘i* here because the neighboring *kula* land is too high above the streams for irrigation. This *kula* would have been excellent sweet-potato land. On the whole, Kīlauea, despite a sizable river flowing through it, was a relatively small producer of taro because of the nature of its hinterland. [Handy and Handy 1972:421]

While the immediate vicinity of the project area has, in the current day, been rendered flat enough to be amenable to both agriculture and contemporary residential development, the soil map (see Figure 4 and Table 1) certainly shows that the terrain of this area varies greatly.

## **WATER AND MARINE RESOURCES**

The project area is part of what the State of Hawai‘i Division of Aquatic Resources (Parham et al. 2008) categorizes as the Kīlauea, Kaua‘i Watershed, which is supplied with water by the perennial Kīlauea Stream, as well as ample rain (see Climate and Hydrology, above).

As Handy and Handy (1972) note (see Lifestyle and Subsistence, above), the (often steep) terrain near the river made it difficult to harness that water for *lo‘i* agriculture. However, the ancient irrigation ditches attested by Wichman (1998) (see Wahi Pana, above) are evidence of substantial Pre-Contact agriculture, largely inland and *mauka* of the current project area.

Wichman’s (1985:36) account of the Menehune favoring fishing grounds offshore of Kīlauea indicates that marine resources were ample, despite the lack of a reef in the collapsed cinder cone that shapes the beach. Mōkōlea and Moku‘ae‘ae are now part of a nature reserve (see Cultural Resources, below), but these seabird nesting sites were also a source of food. “In the interview of a local resident, Kwai Chew Lung (Chow) ... he recalls that the Hawaiians used to pick up baby chicks on Mokuāeae Rock... he also remembers going fishing there and hunting for eggs to eat” (Fredericksen and Fredericksen 1989:15).

## **CULTURAL RESOURCES**

Thomas Thrum (1907) recorded a single *heiau* named Pailio in Kīlauea Ahupua‘a, as well as another *heiau* named Kipapa in Kāhili Ahupua‘a, but based on later investigations, it would appear that both *heiau* have been destroyed by subsequent activity (see Previous Archaeology, below). There is considerable amount of remnant Pre-Contact Hawaiian terracing near Kīlauea Stream (on private lands), southwest of the current project area, especially where the terrain is steep and uninviting to Post-Contact development.

In some cases (see Previous Archaeology, below), Post-Contact agricultural and habitation features have been found built over or reusing the Pre-Contact terracing. While the native Hawaiian population decreased in the 19<sup>th</sup> century, immigration brought in new settlement, including many Asian workers employed by the Kilauea Sugar Company plantation. Asian-style rice pond fields that were likely developed from remains of older native Hawaiian *lo‘i* (to the south of the project area Clark and Rechtman 2010, Clark et al. 2011), and the presence of a Japanese Cemetery to the west (Cleghorn 2001, Spear 2014, Hulen and Barna 2021), speak to the historical demographic changes in Kīlauea Ahupua‘a.

In the present day, some cultural resources in Kīlauea Ahupua‘a are accessible through programs for preservation of historic locations and traditional culture. A number of structures have been placed on the National Register of Historic Places (NRHP). This includes several buildings associated with the Kīlauea plantation, as well as the Daniel K. Inouye Kilauea Point Lighthouse located within the Kilauea Point National Wildlife Refuge (KPNWR). A number of Hawaiian cultural organization partner with the KPNWR to provide access to the coastal region for traditional cultural practices (see Land Use in the Post-contact Period to the Present).

## **HISTORICAL SETTING**

### **PRE-CONTACT POLITICAL HISTORY**

Wichman (2003:55) writes that “the genealogy of Kaua‘i *ali‘i* was considered the most ancient and impeccable in all the Hawaiian islands” and that “*Ali‘i* from other islands were eager to introduce the Kaua‘i bloodline into their own” because of the prestige of the noble lineages of Kaua‘i. Yet despite the high regard in which Kaua‘i *ali‘i* were once held, significant portions of their history have been largely inaccessible to western historians due to limited written records and *mo‘olelo* that have been preserved (Abraham Fornander 1880, Vol 2:291). Nonetheless, folklore associated with Kaua‘i provides some context for Kauai’s Pre-Contact history.

Martha Beckwith (1970) chronicles the venerable bloodlines from which most Hawaiian *ali‘i* claimed descent, originating from the god Wākea and his wife Papahānaumoku:

From Ulu and Nana-ulu, sons of Ki'i, twelfth in succession from Wakea and Papa, all high chief families count descent. Hikapoloa, as well as the Waha-nui and Keikipaanea families of early legend, belong to the Nanaulu line. The important Maweke family is, according to Kamakau, the first of that line from whom men today trace ancestry. Their contemporaries are the Paumakua of Oahu, the Kuhailani of Hawaii, Puna of Kauai, Hua of Maui, and the Kamauaua of Molokai. To the Ulu line belongs the late migration of chiefs introduced by Paa to the island of Hawaii from whom most families of that island trace descent. Both legends, that of Paa and that of Maweke, are believed to have bearing upon early colonization of the Hawaiian group...

The coming of Maweke and his sons to the Hawaiian group is dated sometime between the eleventh and twelfth centuries. [Beckwith 1970:352]

Based on his being a contemporary of Māweke, whose reign is estimated to the 11th century C.E., Puna, the progenitor of Kaua'i's prestigious bloodlines, can be dated to roughly that time period. Perhaps the most famous descendants of Puna, as attested by the genealogies compiled by Samuel Kamakau (1992:448), are Kukona and his son Manokalanipō, respective the 7<sup>th</sup> and 8<sup>th</sup> *ali'i* 'aimoku (*lit.* chief who eats the land; *in context:* ruling chief of an island) of Kaua'i. Fornander (1980, Vol 2) highlights Kukona as being particular in his notability – he is a major figure in the legends where his forefathers are largely unmentioned:

Indigenous Kauai legends referring to this period have perished, and up to *Kukona's* time naught but the royal genealogy remains. But the war with the Hawaii chief, and the terrible defeat and capture of the latter, as well as *Kukona's* generous conduct towards the Oahu, Molokai, and Maui chiefs who fell into his hands after the battle, brought Kauai back into the family circle of the other islands, and with an *eclat* and superiority which it maintained to the last of its independence. [Fornander 1980, Vol 2:93]

The battle Fornander (1980, Vol 2:93) refers to also contributed to Kaua'i's prestige. In the early 15<sup>th</sup> century, Hawaii Island chief Kalaunuiohua launched an invasion of Kaua'i, accompanied by subordinate chiefs from other islands: Kanialuohua (Maui), Kahakuohna (Moloka'i), and Huakapouleilei (O'ahu). According to David Malo (1898:331-332), Kukona was able to win over these subordinate chiefs after defeating this invasion. Wichman (2003:55) characterizes the subsequent peaceful and prosperous times under Kukona's son Manokalanipō as a 'golden age':

Under Mano-ka-lani-pō, more and more land was opened for agriculture, and the population flourished. Warriors became more athletes than soldiers. So peaceful was this Golden Age that Palekaluhi, twin brother of Mano-ka-lani-pō, died in bed of old age. Such a passing was, after so many years of war, something to be noted. [Wichman 2003:55-56]

Although Manokalanipō led his father's warriors to war to capture the enemy chiefs Kukona was famous for winning over, he apparently had few worries about needing to fight during his own reign. Chiefs in this line of descent would subsequently rule Kaua'i for many generations.

## EARLY POST-CONTACT HISTORY

Captain James Cook made the first recorded contact with the Hawaiian Islands when he landed at Waimea on the southern coast of Kaua'i on January 20, 1778 (Beaglehole 1967; Daws 1974:1–2). After Cook's HMS *Resolution* and HMS *Discovery*, other ships began frequenting the islands to take on provisions and to partake in the sandalwood industry. Soon after, missionaries, visitors, and entrepreneurs also began arriving. Introduction of new technologies, religions, and political systems would play a major role in the eventual unification of the Hawaiian Islands.

A political consolidation of the Hawaiian Islands was already underway, but was accelerated by contact and the introduction of gunpower weapons. Maui chief Kahekili II (c. 1737–1794) was able to bring not only O'ahu, but also Lāna'i and Moloka'i under his rule in addition to his native Maui, and was engaged in warfare with his Hawai'i Island rival Kalani'ōpu'u at the time of contact. Kahekili also seems to have considered Kaua'i to be within his sphere of influence since his half brother Kaeokulani was married to Kaua'i's ruler, Kamakahelei. While Kahekili came closer to unifying the island chain than any before him, after his death at Waikīkī in 1794, his realm fell to conflicts between his heirs and invasion from his traditional rivals on Hawai'i.

According to Fornander (1880, Vol 2:262) Kahekili's son Kalanikūpule was his official heir, but his uncle Kaeokulani (who co-ruled Kaua'i) was in *de facto* control of the majority of his inheritance after the passing of Kahekili. Kalanikūpule was initially only able to secure direct control over O'ahu: "*Kalanikupule*, at his father's death, was recognised as the Moi [king] of Maui and its dependencies, Lanai, Molokai, and Oahu, yet the previous arrangement between *Kahekili* and *Kaeokulani* remained in force for some time, the latter governing Maui and the adjacent islands, while *Kalanikupule* ruled over Oahu." This was not a stable state of affairs, and nephew and uncle were soon at odds with each other. Kalanikūpule would strike a bargain with Captain William Brown for military assistance in this civil war with his uncle, and the firepower provided by Brown's ships proved decisive, delivering him victory over Kaeohulani.

However, Kalanikūpule subsequently tried to seize Brown's ships and firearms to use against Kamehameha, who was now the ruler of Hawai'i Island, the primary rival center of power. While this betrayal was initially successful, the surviving Western crew were able to retake their ships, and promptly replenished their supplies by selling the weapons Kalanikūpule coveted to his rival (Kamakau 1992:170–171). Having secured an invaluable military advantage, Kamehameha established his presence on Maui with an invasion of Lāhainā in February of 1795, his large fleet of war canoes covering the coast from Launiupoko to Mala (Kamakau 1961:171). Kalanikūpule fled to O'ahu, but Kamehameha's forces pursued, and ended the war with the battle of Nu'uuanu on O'ahu in 1795. This left Kaua'i as the only significant political force in the island chain unconquered, and Edward Joesting (1984:58) notes that at this time it was undergoing its own civil war between two of Kaekulani's sons, Keawe and Kaumuali'i. However, Kamehameha's first invasion attempt in 1796 was foiled by bad weather while his fleet tried to cross the Kaieie Waho Channel between O'ahu and Kaua'i, with many canoes sunk (Joesting 1984:59).

Kamehameha was prevented from swiftly making a second attempt by the need to put down rebellions in his own territory, and while Keawe triumphed in the civil war on Kaua'i, he died soon after, and rulership defaulted back to Kaumuali'i. Kamehameha's second try at an invasion in 1804, gathered "an army consisting of about 7,000 Hawaiian men ... eight cannons. forty swivel guns. and six mortars," to be carried by not only canoes but "twenty-one armed schooners" (Joesting 1984:62). This invasion force was struck by an illness called *ma'i 'ōku'u* (*lit.* squatting sickness; possibly cholera). The loss to illness of many of his most "trusted counselors and chiefs. some of whom had served Kamehameha for twenty years or more" made the invasion impossible (Joesting 1984:62). Joesting (1984:62-63) states that the loss of loyal subordinates was so severe that Kamehameha worried about attempts to overthrow him. This may have motivated Kamehameha to shift towards negotiations, with an eventual agreement reached in 1810 for Kaumuali'i to become his vassal, officially completing the unification of the islands while allowing Kaumuali'i to continue to rule Kaua'i as a (largely autonomous) subordinate chief.

Christian missionaries had arrived on Kaua'i in 1820, some of them accompanying Humehume's return home after his father had earlier sent him to the United States (Mills 2002: 127). According to Robert Schmitt (1973:2-3), the missionaries organized Kaua'i's first censuses, beginning in 1831, and would provide the main source of population data until the first comprehensive government census in 1850. Kauai's population was recorded as 10,977 in 1832, thereafter declining to 8,934 in 1836 and 6,956 in 1850 (Schmitt 1973:8). A more detailed regional enumeration in 1835 counted 88 adults and 29 children for a total of 117 individuals in Kīlauea Ahupua'a (Schmitt 1973:25).

## THE MĀHELE

In the 1840s, during the reign of Kāiʻikeyaouli, massive change in land tenure occurred, commonly referred to as the *Māhele* (division) because the *ʻāina* (land) was legally divided between owners (Daws 1974:128). The term may also refer to the idea of the Hawaiian *makaʻāinana* (commoners, residents; *lit.* on the land) being dispossessed of the *ʻāina*; separated from something that was once integral to their identity.

Formalizing land ownership had long been suggested by western advisors to the king and chiefs, but the five-month occupation of the islands by British naval officer George Paulet in 1843 may have added urgency to the issue, since privatization offered the hope that *aliʻi* might retain control over their lands as property even if national sovereignty were lost (Daws 1974:112-117). The Board of Commissioners to Quiet Land Titles (often shortened to “the Land Commission”) was established in 1845 to oversee land titles, and this Land Commission would hear claims during the *Māhele*.

The *Māhele* of 1848 divided Hawaiian lands between the king, the chiefs, and the *aupuni* (government). The parcels awarded by the Land Commission were called Land Commission Awards (LCAs). Initially, this only established crown lands owned by the king, *aupuni* lands owned by the government and private lands owned by the *aliʻi*, which were often referred to as *konohiki* (*ahupuaʻa* headman) lands after the title given to land agents or stewards that managed *ahupuaʻa* and *ʻili*. The subsequent Kuleana Act of 1850 allowed *makaʻāinana* to file claims for land parcels and house lots on which they had been living or cultivating.

In order to file claims, however, the *makaʻāinana* first had to be aware of the awarding of *kuleana* lands and LCAs, procedures that were largely foreign to them. Many of the *makaʻāinana* could not afford the costs associated with filing. People claiming urban house lots in Honolulu, Hilo, and Lāhainā were required to pay commutation to the government before obtaining a Royal Patent on their awards (Chinen 1961:16). Rural *kuleana* claims required a survey, which could be quite costly, assuming that the services of one of the few surveyors present in the islands at the time could be obtained (Moffat and Fitzpatrick 1995:50). Furthermore, awards of rural *kuleana* lands often only encompassed land under active cultivation, without including other locations necessary for traditional survival strategies, such as previously cultivated but presently fallow lands, or resource gathering areas such as *ʻokipuʻu* (swidden gardens) and stream fisheries (Kameʻeleihiwa 1992:295; Kirch and Sahlins 1992:23, 110). These factors may have contributed to the relatively low number and size of claims, as only 8421 *kuleana* awards were issued, totaling only 28,658 acres (Moffat and Fitzpatrick 1995:50).

Some contemporary scholars have disputed the notion that the Māhele was the chief instrument of dispossession of the *kanaka maoli* (native Hawaiians). Beamer and Tong (2016:130) point out that although the claims system appears to have awarded the *maka ‘āinana* little, records show that they were able to purchase an estimated 167,290 acres of land between 1850 and 1893, often *aupuni* lands sold to them at relatively low cost. Beamer and Tong (2016:136) also argue that many *ali ‘i* leased or sold land to *hui* (associations) of *kanaka*, keeping some semblance of the former *ali ‘i* - *hoa ‘āina* relationship. In these ways, land not awarded to *maka ‘āinana* during the Māhele were still made available to them. Nonetheless, once foreigners were allowed to acquire land through the Alien Land Ownership Act of 1850, they quickly came to control much of it. By the end of the 19<sup>th</sup> century “white men owned four acres of land for every one owned by a native” (Daws 1975:125).

The *Indices of Awards Made by the Board of Commissioners to Quiet Land Titles in the Hawaiian Islands* (Land Commission 1929) do not list any LCAs in Kīlauea Ahupua‘a. Lloyd Soehren’s (2002-2019) *Hawaiian Place Names* database notes that Kīlauea Ahupua‘a was “returned by Kekauonohi, retained by *aupuni* at the Mahele.” The Office of Hawaiian Affairs (n.d.) *Kipuka Online Database* suggests a slightly more complex transaction in which Kīlauea Ahupua‘a was “relinquished by Mikahela Kekauonohi to Kamehemeha III” and “relinquished by Kamehemeha III to Government.” It should be noted that LCA No. 8559-B, the claim for the crown lands of Hawaii in the name of William C. Lunalilo, includes Kāhili and Kalihiwai Ahupua‘a, the *ahupua‘a* east and west of Kīlauea Ahupua‘a, whereas Nāmāhana Ahupua‘a to the northwest was claimed by Keahikuni Kekau‘ōnohi (also called Mikahela or Miriam) as part of LCA No. 11216. It makes geographic sense that the King, Kekau‘ōnohi, or both once had a claim on Kīlauea Ahupua‘a given their claims on adjacent *ahupua‘a*.

It is clear, however, that Kīlauea Ahupua‘a was declared *aupuni* lands during the Māhele, and that no *kuleana* awards are listed for the *ahupua‘a*. The *Indices* (Land Commission 1929) do list seven other LCAs in Kāhili Ahupua‘a and 28 other LCA in Kalihiwai Ahupua‘a aside from those of the Crown (LCA No. 8559-B; Lunalilo); these are presumably *kuleana* claims. The seven *kuleana* claims in Kāhili Ahupua‘a are the *kuleana* awards closest to the current project area, and cluster on the east bank of Kīlauea stream, mostly near the stream mouth. LCA No. 10333, claimed by Naaimeneo on behalf of her deceased husband Oopu, and confirmed by Royal Patent Grant No. 3370 in 1856, sits on the present border with Kīlauea Ahupua‘a (Waihona ‘Āina N. d.). The other six LCAs in Kāhili Ahupua‘a are LCA Numbers 9067, 10013, 10013-B, 10015, 10082, and 10083. These seven awards are shown on Figure 5, and records for Kāhili Ahupua‘a LCA (excerpted from Ida and Hammatt 1997) are also included in Appendix A.





Māhele records indicated that there were other claims made for lands in Kīlauea Ahupua‘a during the Māhele, but none were awarded. This includes a claim (No. 6529) by Holokukini, on the basis that he served as *konohiki* for Kīlauea Ahupua‘a under Aaron Keali‘iahonui (husband of Kekau‘ōnohi), and six other claims, all of which were rejected or abandoned. Among the *kuleana* claims was one (No. 9217) that gained some later notoriety for (the claimant) Kealawa‘a complaining that “I returned my claim to land of Kilauea to the Konohiki for the land is being filled with cattle & I have no desire to combat them [*sic*]” (Waihona ‘Āina 2005).

## **LAND USE IN THE POST-CONTACT PERIOD TO THE PRESENT**

Whaling declined in the late 19<sup>th</sup> century, and commercial agriculture and ranching came to the forefront of Hawaiian economy, in part because the Māhele had allowed the consolidation of lands into vast and now privately owned plantations and ranches. The Reciprocity Treaty of 1875 permitting duty-free trade of agricultural products between the Kingdom of Hawai‘i and the United States turned Hawaiian sugar into an immensely profitable commodity. Kuykendall (1967, Vol 3:46-48) credited the sugar industry with cementing commercial agriculture as the economic mainstay of the Hawaiian economy for the rest of the century and beyond.

Commercial sugar production on Kaua‘i began as early as 1835, when the firm Ladd and Company, affiliated with Christian missionaries, secured the first land lease in Hawaiian history, for 980 acres at Koloa for a sugar plantation (Joesting 1984:131). Joesting (1984:147) notes that “optimistic reports of progress in cultivating sugarcane at Koloa plantation raised interest in other agricultural crops,” such as a venture by Sherman Peck and Charles Titcomb to try to raise silkworms. While this plan failed, Titcomb would eventually go on to purchase the whole of Kīlauea Ahupua‘a in 1863 and start a plantation there. Jesse Condé and Gerald Best (1983:150) indicate the plantation was sold to Captain John Ross and Edward P. Adams in 1877.

According to the Kaua‘i Historical Society (N.d.), the plantation was subsequently incorporated as a company, Kilauea Sugar Company Limited, in 1880 and would remain in operation for over 90 years:

It became known as Kilauea Sugar Plantation Company after purchase by a California corporation in April 1899. Headquarters were in San Francisco, California, with local operations in Kīlauea, Kaua‘i, Hawai‘i. In 1955, C. Brewer and Company Ltd., the company’s Honolulu sugar factor (agent), purchased a majority of stock, and the company reverted to its original name, Kilauea Sugar Company Limited. All sugar operations were terminated on December 31, 1971. [Kaua‘i Historical Society N.d.:2]

William Dorrance and Francis Morgan (2000:32) note that “Kilauea Sugar Company was among the smallest in the Islands,” which, given that they indicate it reached “5,000 acres” suggests the economy of scale required for success during the heyday of commercial sugar in Hawai‘i. Carol Wilcox (1996:84) explains that the plantation “had to make the best of marginal conditions. Plagued by rocky terrain, small size, few water resources, and its remote, windward location, it never enjoyed the success of other, better situated plantations.” While the plantation was not as massive as some of its peers, it boasted its own railroad to haul sugar to the mill. The Kauai Plantation Railway (2008) website recorded that railroads on Kaua‘i island used unusually narrow gauge, but the railroad at Kilauea, the first on the island of Kaua‘i, was even narrower:

In late 1881 management of the Kilauea Plantation ordered rail equipment from the John Fowler Co, of Leeds, England. Rail, spikes, a locomotive and cars arrived on Kauai late in 1881 and by the end of 1882 the line was in operation. Track gauge was 2' and the tiny (likely 6 tons) 0-4-2 Fowler locomotive could move up to ten loaded cars of cut cane in one train.

While the original line at Kilauea Plantation remained at 2' gauge to the end, all the other lines on Kauai chose 30" gauge, the only Island in the Hawaiian Chain to run with this gauge.

Condé and Best (1983:150) report that “rail equipment for Kilauea was duly shipped to Kauai and by a curious twist was not only the first railroad built on that island, but it had its first spike driven by an [*sic*] Hawaiian Princess” on September 24, 1881. This dignitary was Princess Regnant Lydia Kamaka‘eha, who would in a decade be crowned as Queen Lili‘uokalani, the last monarch of the Kingdom of Hawai‘i. She was visiting Kaua‘i, and had not been aware of the railroad, but upon arriving at Kilauea Village, she was greeted by employees of the Plantation:

...she was informed that at that moment the first piece of track for the first railway on Kauai was about to be laid, and it would be considered an honor if Her Royal Highness would drive the first spike, which she kindly consented to do. Proceeding to the plantation... a large crowd had collected, the Royal Standard having been hoisted on a temporary staff. Her Royal Highness... took great interest in all these particulars, and expressed her great satisfaction at being able to be present at the laying of the first railway on the Island of Kauai, and trusted it might soon gird the whole island and so develop its resources and promote the industry of its people. [Pacific Commercial Advertiser 1881 *in* Condé and Best 1983:151]

By November of 1881, the railroad at the Kilauea Sugar Company plantation was operational, with three miles of track laid. Both sugar operations and the railroad grew over the next several decades, and “in 1910, Kilauea’s railroad system was comprised of 12 ½ miles of permanent track, 5 miles of portable track, 200 cane cars, six sugar cars and four locomotives” (Soboleski 2017).

Much of the infrastructure built up for the Kīlauea plantation did not survive to the current day. The railroad was phased out first: “Kahili Landing and its railroad track was abandoned beginning in 1928, when sugar from the mill was trucked to Ahukini Landing instead, and by the spring of 1942, trucks had replaced railroad locomotives and cane cars as the means of hauling sugarcane to the Kilauea mill” (Soboleski 2017). Wilcox (1996) states that the land continued to see some agricultural use after sugar operations ended in 1971, but there was no upkeep of the plantation irrigation system, and parts of it were destroyed while others were simply abandoned:

.. no mechanism was established to secure the easements or maintain the old system. Over the years the connections between reservoirs and delivery systems were destroyed by roads, pasture, development, neglect, and intent. The Hanalei Ditch was abandoned, its flumes and siphon no longer operable. The connection from the Kalihiwai Reservoir to Stone Dam was destroyed, as was that between Puu Ka Ele and Morita reservoirs. Puu Ka Ele and Koloko reservoirs' delivery systems were gone. C. Brewer established Kīlauea Irrigation Company, a public utility, to administer the surviving sections that service its guava farming operation. By the mid-1990s, some reservoirs stood alone with little utilitarian purpose. [Wilcox 1996:85]

Several structures associated with the Kīlauea plantation were nominated for the NRHP. This includes the Kilauea Plantation Head Bookkeeper's House, Kilauea Plantation Head Luna's House, Kilauea Plantation Manager's House, Kilauea School, and Kilauea Plantation Stone Buildings. According to the Historic Hawai‘i Foundation (2021), these NRHP properties are located in Kīlauea Town, southwest of the current project area. Aside from plantation buildings, only one other NRHP site occurs within Kīlauea Ahupua‘a: the Daniel K. Inouye Kilauea Point Lighthouse (see Previous Archaeology, below), a set of stone structures located within the present-day Kilauea Point National Wildlife Refuge (KPNWR).

KPNWR occupies Kīlauea Point peninsula, Mōkōlea Point peninsula, Crater Hill, and the coastline north of the project area. The wildlife refuge was established in 1985 and expanded to its current extent in 1988. KPNWR is administered by the US Fish and Wild Life Service (FWS), and is open to visits (and thus serves as a tourist attraction).

The FWS maintains the refuge to protect and preserve not only flora and fauna, especially migratory seabirds and the endangered *nēnē* (Hawaiian goose, *Nesochen sandvicensis*), but also the Daniel K. Inouye Kīlauea Point Lighthouse and Light Station. The FWS also partners with local native Hawaiian organizations such as Kaipuwai Foundation and Na Kia‘i Nihoku, that “perform Native Hawaiian cultural practices and ceremonies at Nihoku summit on the summer and winter solstice and the spring and fall equinox” (Fish and Wild Life Service N.d.). Additionally, portions of KPNWR are open to fishing, and “native Hawaiian fishing at Kīlauea (East) Cove” is recognized as a cultural practice (Fish and Wild Life Service N.d.).

With the closure of the sugar plantation, some farming continued in Kīlauea, but much like the rest of Hawai‘i, the economy shifted toward tourism as the primary industry. The construction of Lihue Airport in 1948-49 had made Kaua‘i accessible for tourism, and “by 1955, the... airport was served by Hawaiian Airlines, Ltd. and Trans-Pacific Airlines, Ltd. on a scheduled basis” (Hawaii Department of Transportation 2022). Based on 2010 census data, the Cedar Lake Ventures, Inc. (2018) *Statistical Atlas* reports that 19.6% “of the civilian employed population aged 16 and older” on Kaua‘i is in the hospitality industry, making it the island’s largest sector of employment.

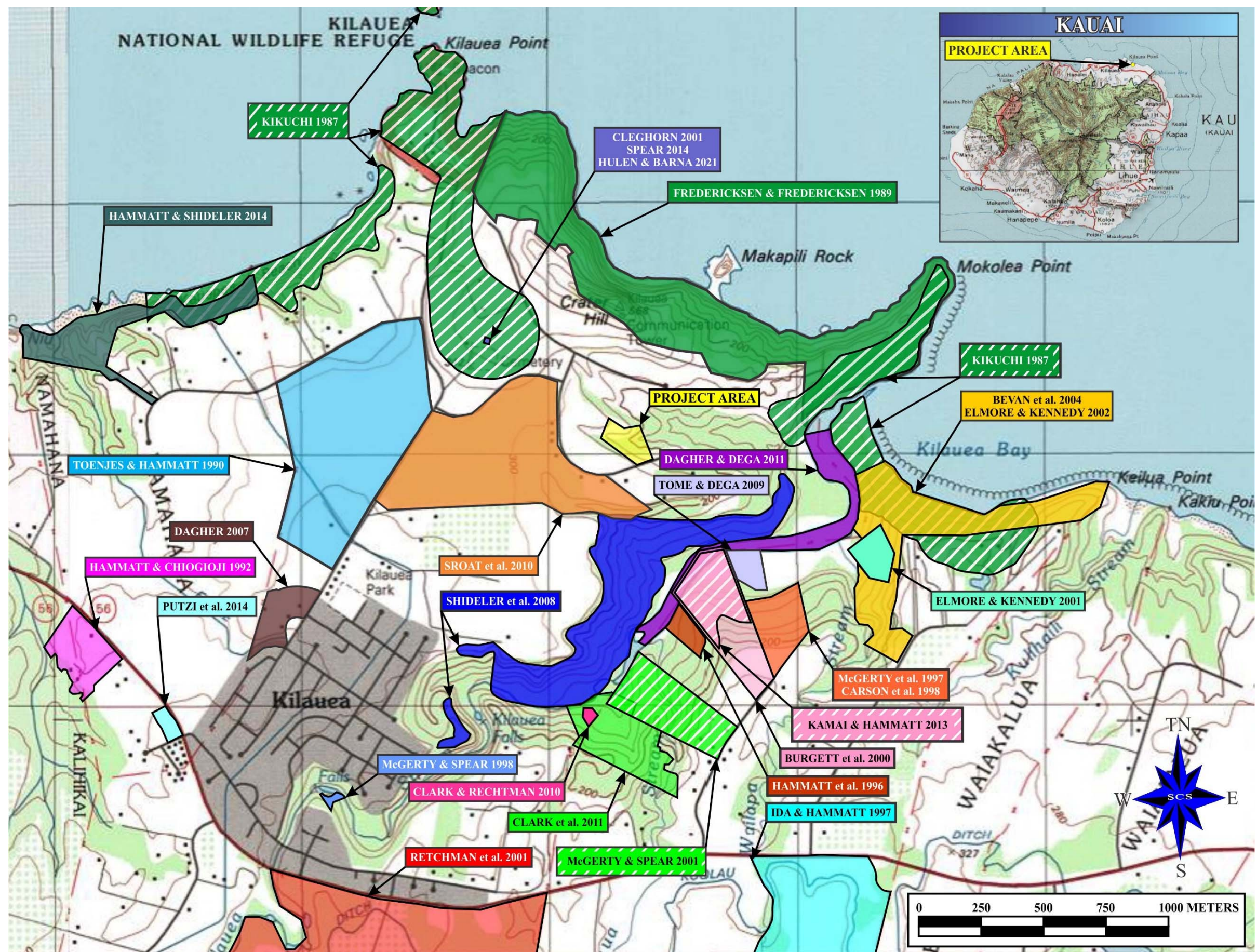
## **PREVIOUS ARCHAEOLOGY IN THE PROJECT AREA VICINITY**

There has been a significant amount of previous archaeological work in the region, although much of it has concentrated on the coast, or on the far bank of Kīlauea Stream (in Kāhili Ahupua‘a). Conversely, Kīlauea Town to the southwest and the Seacliff Plantation community where the project area is located do not seem to have seen much investigation. Figure 8 shows the location of archaeological work in the vicinity of the project area. Note that several project areas adjoin or overlap Kīlauea Stream (also called Kīlauea River; see Figure 1 above for its location). These previous studies are also summarized on Table 2. While some early work was conducted (based heavily on recording oral accounts and checking for the features described in those accounts), the bulk of archaeological work in the State of Hawai‘i occurred after the U.S. Congress passed the National Historic Preservation Act (NHPA) in 1966 (Kawelu 2015:30).

## **EARLY ARCHAEOLOGICAL STUDIES (THRUM 1907, BENNETT 1931)**

Thomas Thrum (1907) made an early attempt to list all of the *heiau* (*lit.* places of worship; *in context*: temples for native Hawaiian religious practice) in the Hawaiian Islands. The *heiau* he noted on Kaua‘i are described in an article in the 1907 edition of his *Hawaiian Annual* almanac. Thrum (1907:42) recorded one *heiau* named Pailio in Kīlauea Ahupua‘a, as well as one *heiau* named Kipapa in Kāhili Ahupua‘a.





**Figure 6: A portion of a 1998 USGS topographic map (Honolulu and Kaneohe, HI quadrangles; 1:25,000 scale) showing previous archaeology in the vicinity of the project area**



**Table 2: Archaeological Studies in Nāmāhana, Kīlauea, and Kāhili Ahupua‘a**

<b>Author(s), Date</b>	<b>Research Type</b>	<b>Location</b>	<b>Results</b>
Thrum 1907	Almanac Listing	Kaua‘i Island	Kipapa Heiau (SIHP Site 50-30-04-00132); Pailio Heiau (SIHP Site 50-30-04-00133)
Bennett 1931	Island-wide Survey	Kaua‘i Island	Kipapa Heiau (SIHP Site 50-30-04-00132); Pailio Heiau (SIHP Site 50-30-04-00133)
Kikuchi 1987	Archaeological Survey	Kīlauea Point [TMK: (4) 5-2-004:017]	Kīlauea Point Lighthouse (SIHP Site 50-30-04-00300)
Toenjes & Hammatt 1990	Archaeological Survey	[TMK: (4) 5-2-004:102]	no findings.
Hammatt & Chiogioji 1992	Archaeological Inventory Survey	[TMK: (4) 5-2-017:028]	no findings.
Hammatt et al. 1996	Archaeological Inventory Survey	[TMK: (4) 5-2-021:005]	agricultural complex (SIHP Site 50-30-04-00625); charcoal kiln, enclosure (SIHP Site 50-30-04-00998); cattle fence (SIHP Site 50-30-04-00999)
McGerty et al. 1997	Archaeological Inventory Survey	[TMK: (4) 5-2-021:007]	permanent habitation complex (SIHP Site 50-30-04-00974); garden area & burials (SIHP Site 50-30-04-00975); habitation site (SIHP Site 50-30-04-00976); agricultural area (SIHP Site 50-30-04-00977)
Carson et al. 1998	Data Recovery	[TMK: (4) 5-2-021:007]	confirmed assessment of Site -00974; no cultural material found at Site -00975
Ida & Hammatt 1997	Archaeological Inventory Survey	[TMK: (4) 5-1-005:052 & 102 through 113]	irrigation flume (SIHP Site 50-30-04-00640); Pu‘uka‘ele Ditch remnants (SIHP Site 50-30-04-00641); partially buried culvert (SIHP Site 50-30-04-00642); swale tunnel (SIHP Site 50-30-04-00643)
McGerty & Spear 1998	Archaeological Inventory Survey	[TMK: (4) 5-2-011:033]	agricultural complex (SIHP Site 50-30-04-00625)

Author(s), Date	Research Type	Location	Results
Burgett et al. 2000	Archaeological Inventory Survey	[TMK: (4) 5-2-021:006]	dryland agricultural site (SIHP Site 50-30-04-00632); unmarked grave (SIHP Site 50-30-04-00633); floodplain soil deposits (SIHP Site 50-30-04-01993 )
McGerty and Spear 2001	Archaeological Inventory Survey	[TMK: (4) 5-2-021:005]	additional features of Sites -00625, -00998, and -00999
Elmore and Kennedy 2001	Archaeological Inventory Survey	[TMK: (4) 5-1-005:005]	agricultural complex (SIHP Site 50-30-04-00515)
Cleghorn 2001	Archaeological Monitoring	Kilauea Japanese Cemetery [TMK: (4) 5- 2-004:049 por.] telecommunications installation	no findings.
Rechtman et al. 2001	Archaeological Inventory Survey	Hālaulani Property [ TMK: (4) 5-2-002:011]	dam on Kīlauea Stream (SIHP Site 50-30-03-02060); dam on Pu‘uka‘ele Steam (SIHP Site 50-30-03-02062); ditch and flume remnants (SIHP Site 50-30-03-02063); irrigation tunnel and flume supports (SIHP Site 50-30-03-02064)
Elmore and Kennedy 2002	Archaeological Inventory Survey	[TMK: (4) 5-1-005:016]	additional features of Site -00515; unable to locate Kipapa Heiau (Site -00132)
Bevan et. al 2004	Archaeological Monitoring	[TMK: (4) 5-1-005:016]	additional feature of Site -00515
Dagher 2007	Field Inspection	[TMK: (4) 5-2-023:027 & 028]	no findings.
Shideler et al. 2008	Archaeological Inventory Survey	Kilauea Falls Ranch [TMK: (4) 5-2-012:035 por.]	agricultural terrace (SIHP Site 50-30-03-00579); agricultural complex (SIHP Site 50-30-03-00580); retaining wall, ramp, and trail (SIHP Site 50-30-03-00581); terraces (SIHP Site 50-30-03-00582); terraces (SIHP Site 50-30-03-00583)
Tome & Dega 2009	Archaeological Inventory Survey	[TMK: (4) 5-2-021:007]	agricultural site (SIHP Site 50-30-04-05028)



<b>Author(s), Date</b>	<b>Research Type</b>	<b>Location</b>	<b>Results</b>
Clark and Rechtman 2010	Archaeological Inventory Survey	[TMK: (4) 5-2-012:019]	terraced (rice) fields, SIHP Site 50-30-04-02011); Post-Contact (concrete) structure (SIHP Site 50-30-04-02011)
Sroat et al. 2010	Archaeological Inventory Survey	Kīlauea Agricultural Park [TMK (4) 5-2- 004:099]	Post-Contact habitation site (SIHP Site 50-30-03-02123); plantation-era structures (SIHP Site 50-30-03-02124); Pre- Contact agricultural terrace (SIHP Site 50-30-03-02125); plantation-era drainage (SIHP Site 50-30-03-02126)
Dagher and Dega 2011	Archaeological Monitoring	Kīlauea River Cleanup	insolated finds of human skeletal remains and Post-Contact artifacts; no sites identified
Clark et al. 2011	Archaeological Inventory Survey	[TMK: (4) 5-2-21:041, CPR 0001; (4) 5-2- 12:035 por.; and (4) 5-2- 021:004 por.]	expanded scope of Site -02011 to 4.5 acres; additional features of Site -02012
Kamai & Hammatt 2013	After-the-fact Assessment	[TMK: (4) 5-2-021:006]	no further damage found to Sites -00632 & -00633
Hammatt & Shideler 2014	Field Inspection	[TMK: (4) 5-2-005:036]	no findings.
Spear 2014	Field Inspection	telecommunications facility [TMK: (4) 5-2- 004:049 por.]	no findings.
Putzi et al. 2014	Archaeological Inventory Survey	LDS meetinghouse [TMK: (4) 5-2-019:004]	buried fire pit (SIHP Site 50-30-04-02237)
Hulen and Barna 2021	Archaeological Monitoring	telecommunications facility [TMK: (4) 5-2- 004:049 por.]	no findings.

Wendell Bennett's (1931) *Archaeology of Kauai* attempted to provide a comprehensive overview of archaeological sites on Kaua'i, based on both prior records and his own fieldwork in 1928-29; his site numbers were later converted to State Inventory of Historic Places (SIHP) site numbers. Bennett (1931:133) assigned Pailio Heiau as Site 133 (later SIHP Site Number 50-30-04-00133), and Kipapa Heiau as Site 132 (later SIHP Site No. 50-30-04-00132). He was not able to locate Pailio, noting "nothing remains of the heiau to-day," but attested that Kipapa stood "on the end of the first bluff east of Kilauea River in Kāhili" (Bennett 1931:133).

#### **KĪLAUEA POINT NATIONAL WILDLIFE REFUGE (KIKUCHI 1987, FREDERICKSEN AND FREDERICKSEN 1989)**

William Kikuchi (1987) conducted an archaeological survey of Kīlauea Point [TMK: (4) 5-2-004:017] (as well as several other nearby coastal regions) on behalf of the U.S. Fish and Wildlife Service, which was planning to construct a visitor center for the wildlife refuge. The survey, which included excavation of a test pit to gauge the likelihood of cultural layers being present, found "no sign of any [Pre-Contact] use of the Kilauea Point National Wildlife Refuge area by native Hawaiians" (Kikuchi 1987:3, 11). However, Kikuchi (1987:1) did note that the lighthouse on Kīlauea Point "was placed on the Hawai'i Register of Historic Sites on November 4, 1974, and on the National Register of Historic Sites on October 18, 1979" and "was officially given the State of Hawai'i site number 50-30-04-300 [*sic*, SIHP Site No. 50-30-04-00300]."

In 1988, Xamanek Researches, LLC (XRL) (Fredericksen and Fredericksen 1989) conducted an Archaeological Inventory Survey (AIS) of the approximately 96-acre Crater Hill parcel [TMK: (4) 5-2-004:103] and the approx. 38-acre Mōkōlea Point parcel [TMK: (4) 5-2-004:043], which had just been added to the Kīlauea Point National Wildlife Refuge (previously only approx. 33 acres). Fredericksen and Fredericksen (1989:20) conducted a pedestrian survey of the project area, reporting that "there were no features or artifacts discovered during the course of the survey from either the Hawaiian [Pre-Contact] or [Post-Contact] periods." However, they documented a number of (non-Hawaiian) historic properties that would latter be designated as sites: a radar installation site (later assigned SIHP Site No. 50-30-04-01810) a sugar-loading complex at Mōkōlea Point (SIHP Site No. 50-30-04-01811) the Kīlauea plantation railroad (the railroad build by the Kilauea Sugar Company connecting their plantation to the dock; SIHP Site No. 50-30-04-01812), and a old quarry on Mōkōlea Point (SIHP Site No. 50-30-04-01813).

### **TOENJES AND HAMMATT 1990**

In 1990, Cultural Surveys Hawai‘i, Inc. (CSH) (Toenjes and Hammatt 1990), conducted an archaeological survey on 94 acres of former Kilauea Sugar Plantation Company land north of Kīlauea town [TMK: (4) 5-2-004:102]. The area was “checked for coral, lithic and bone and shell midden remains” that might indicate a cultural deposit, but although “two loci suggesting previous traditional Hawaiian activity were found and tested for subsurface deposits” Toenjes and Hammatt (1990:14) found only a few coral and basalt fragments. Toenjes and Hammatt (1990:1) reported “no structural remains or in situ deposits of historic or archaeological significance.”

### **HAMMATT AND CHIOGIOJI 1992**

In 1992, CSH (Hammatt and Chiogioji 1992) conducted an AIS on a 15.17-acre property for a proposed subdivision on the border of Nāmāhana and Kalihiwai Ahupua‘a [TMK: (4) 5-2-017:028]. In addition to the main project area, a proposed alternative well site “150 to 200 feet south of the south property boundary along the slope of a gully was surveyed” Hammatt and Chiogioji (1992:21). Hammatt and Chiogioji (1992:21) conducted a pedestrian survey of the parcel and excavated a test trench where “a thin scatter of marine sand, coral pebbles and fossil marine shell was observed.” The subsurface testing found only the plow zone from former commercial agricultural use of the parcel, and the marine material was interpreted as originating from the “liming of fields with quarried marine sand deposits” during sugarcane cultivation, and no archaeological sites were reported (Hammatt and Chiogioji 1992:21).

### **HAMMATT ET AL. 1996**

In 1995, CSH (Hammatt et al. 1996) conducted an AIS on an approx. 5-acre portion of a 24.87-acre property parcel [TMK: (4) 5-2-021:005] where a single-family residence was proposed. Pedestrian survey and excavation of two test units and five shovel probes identified three archaeological sites. SIHP Site No. 50-30-04-00625 was an agricultural complex consisting of seven surface features (walls and terraces) and a subsurface cultural layer. Charcoal from the cultural layer was sent for radiocarbon analysis and returned a date range of 1410-1650 Common Era (C.E.) at 2-sigma (95% confidence). This charcoal was interpreted as originating from burning for land clearing purposes, suggesting that agricultural development in this region began around 1400 C.E. SIHP Site No. 50-30-04-00998 consisted of a charcoal kiln, as well as an adjacent terrace area and enclosure that may have been associated with the kiln. SIHP Site No. 50-30-04-00999 consist of two stacked boulder walls that were interpreted as a cattle fence. Hammatt et al. (1996) reported that “the owner of the property, has designed the access road and the location of his single-family residence to minimize impact to the archaeological sites,” allowing preservation through avoidance.

## **McGERTY ET AL. 1997, CARSON ET AL. 1998, TOME AND DEGA 2009**

In 1996, SCS (McGerty et al. 1997) conducted an AIS on a portion of a 26.19-acre parcel on the east bank of Kīlauea stream [TMK: (4) 5-2-021:007]. The survey focused on the flat bench (also called a ‘natural terrace’) portion of the property parcel, above the floodplain. Pedestrian survey and excavation of seven trenches and nine test units identified four archaeological sites with a total of 47 component features. SIHP Site No. 50-30-04-00974 was comprised of ten terraces, ten (rock) alignments, an enclosure, a wall, two fire pits, a hearth, and an *imu* (underground oven). Two charcoal samples from the subsurface features were sent for radiocarbon analysis and both returned date ranges (at 2-sigma) from the late 1600s C.E. to the mid 1900s C.E. Site -00974 was interpreted as a Late Pre-contact to Early Post-Contact permanent habitation complex. SIHP Site No. 50-30-04-00975 was located west of Site -00974, and was comprised of two small enclosures, four alignments, two terraces, a wall, and a pathway. The Site -00975 enclosures were interpreted as possible burials, and the rest of the site as a small garden area. SIHP Site No. 50-30-04-00976 was located south of Site -00975, and was comprised of three enclosures, three terraces, and a possible posthole. A charcoal sample from the posthole was sent for radiocarbon analysis and returned a date range (at 2-sigma) from 1400 C.E. to 1520 C.E. or 1600 C.E. to 1620 C.E. Site -00976 was interpreted as a Pre-Contact habitation site. SIHP Site No. 50-30-04-00977 was located to the west of Site -00975, and consisted of two terraces and an alignment. Site -00977 was interpreted as a probable extension of the agricultural area of Site -00975, separated due to 20<sup>th</sup> century grading and grubbing in the area between them. As the location of Site -00974 was planned for development, McGerty et al. (1997) recommended that data recovery be conducted.

Subsequently, SCS (Carson et al. 1998) conducted data recovery at SIHP Site Numbers 50-30-04-00974 and 50-30-04-00975. Subsurface testing consisted of four backhoe and one manually excavated trench. Testing at Site -00974 yielded total of 111 artifacts interpreted as traditional Hawaiian, compared to only five artifacts that were distinctly Post-Contact. No cultural material was recovered from Site -00975. Radiocarbon analysis of a charcoal sample produced results consistent with previous samples from Site -00974: late 17<sup>th</sup> century to 20<sup>th</sup> century. The results of this data recovery support the prior assessment of Site -00974 (Carson et al. 1998).

In 2009, SCS (Tome and Dega 2009) conducted an AIS on a 6.8-acre portion of the floodplain at TMK: (4) 5-2-021:007. Pedestrian survey and excavation of 12 trenches identified an agricultural site, consisting of a rock walled *lo ‘i* and a rock alignment, that was designated as SIHP Site No. 50-30-04-05028. Tome and Dega (2009) postulated that this agricultural site was associated with the habitation sites previous identified by McGerty et al. (1997).

### **BURGETT ET AL. 2000, KAMAI AND HAMMATT 2013**

In 1997, SCS (Burgett et al. 2000) conducted an AIS on a 27.56-acre parcel on the east bank of Kīlauea stream [TMK: (4) 5-2-021:006], immediately southwest of the parcel where a previous survey had been conducted by McGerty et al. (1997). Unlike the previous survey, this AIS included the floodplain as well as the leveled, upper portion (bench and slope) of the parcel. Pedestrian survey and subsurface testing via four trenches and four shovel probes identified three archaeological sites. SIHP Site No. 50-30-04-00632 consisted of 56 features on the slopes, including terraces, alignments, walls, and upright stones, as well as bedrock boulder overhangs and cupboards. Site -00632 was interpreted as a dryland, or *kula*, agricultural site. SIHP Site No. 50-30-04-00633 was an unmarked grave that a local informant, Kaipo Chandler, pointed out as the resting place of his uncle Thomas Goodman, who died in 1929. Site -00633 was located behind a house that Chandler helped build in the 1960s. SIHP Site No. 50-30-04-01993 consisted of soil deposits identified in the floodplain, which were associated with the construction of berms for *lo 'i*. Sites -00632 and -01993 were assessed as representing Late Pre-contact to Early Post-Contact agricultural activity.

In 2012, CSH (Kamai and Hammatt 2013) conducted an after-the-fact assessment on a portion of the parcel [TMK: (4) 5-2-021:006] surveyed by Burgett et al. (2000), and submitted a letter report. The assessment was intended “to determine whether violations that occurred in November and December 2007 had an adverse effect to historic properties” Kamai and Hammatt (2013:2). This letter notes an earlier report regarding a previous violation in 2003, but that earlier report (McMahon 2003) was not on file at the State Historic Preservation Division (SHPD). Kamai and Hammatt (2013) concluded that there was no further damage to Sites -00632 and -00633 since 2003. As the earlier report is called a “damage assessment report,” it is presumed that these sites were indeed adversely affected during the 2003 violations (Kamai and Hammatt 2013:3).

### **IDA AND HAMMATT 1997**

In 1997, CSH (Ida and Hammatt 1997) conducted an AIS on an 89-acre parcel for a proposed subdivision in Kāhili Ahupua‘a [then TMK: (4) 5-1-005:052; now TMK: (4) 5-1-005:052 & 102 through 113]. Full pedestrian survey and limited subsurface testing did not find any archaeological sites associated with native Hawaiian cultural activity, but did identify four historic properties associated with the former Kilauea Sugar Plantation Company, all which consisted of water control features. SIHP Site No. 50-30-04-00640 was an irrigation flume across Wailapa stream gulch. SIHP Site No. 50-30-04-00641 consisted of an irrigation ditch and tunnel that were interpreted as remnants of Pu‘uka‘ele Ditch. SIHP Site No. 50-30-04-00642 was a partially buried culvert near a swale connected to Kulihā‘ili stream gulch. SIHP Site No. 50-30-04-00643 was a 16m long tunnel at the end of a swale of the same gulch (Ida and Hammatt 1997).

### **McGERTY AND SPEAR 1998**

In 1997, SCS (McGerty and Spear 1998) conducted an AIS on a proposed driveway corridor and associated buffer zones in Kīlauea town [TMK: (4) 5-2-011:033]. A single archaeological site was identified during survey. SIHP Site No. 50-30-04-00644 consisted of five terraces and a rock alignment, and was assessed as a Post-Contact agricultural complex (McGerty and Spear 1998).

### **McGERTY AND SPEAR 2001**

In 2000, SCS conducted an AIS (McGerty and Spear 2001) on a parcel at TMK: (4) 5-2-021:004, on the east bank of Kīlauea stream. This is the parcel immediately south of the one [TMK: (4) 5-2-021:005] where Hammatt et al. (1996) previously conducted an AIS. McGerty and Spear (2001:1) indicate a project area of approx. 6 acres, yet the acreage of TMK: (4) 5-2-021:004 is considerably greater, so the survey likely only encompassed a portion of the parcel, probably in the northwest. McGerty and Spear (2001:19) state that “site numbers previously established by the 1996 study... were applied to similar features within the present project area,” effectively extending the sites previously identified by Hammatt et al. (1996) in neighboring parcel 004 into parcel 005. Therefore, a second charcoal kiln was added to SIHP Site No. 50-30-04-00998, while a section of pavement was added to SIHP Site No. 50-30-04-00999. Almost 50 new features, mostly terraces, were added to the SIHP Site No. 50-30-04-00625 agricultural complex. A charcoal sample from Site -00625 returned a radiocarbon result of 1440 C.E. to 1690 C.E., consistent with the previous analysis (McGerty and Spear 2001).

### **ELMORE AND KENNEDY 2001**

In 2000-01, Archaeological Consultants of the Pacific, Inc. (ACP), conducted an AIS (Elmore and Kennedy 2001) on a 5.69-acre parcel [TMK: (4) 5-1-005:005] on the east bank of Kīlauea stream for the proposed construction of a private residence. Pedestrian survey and six shovel probes identified a single archaeological site. SIHP Site No. 50-30-04-00515 consisted of seven terraces along Wailapa stream, an *‘auwai* (ditch), the remnant foundation of a Post-Contact house, a stone alignment, and two stone mounds. Radiocarbon analysis of a sample from the terraces returned a date range (at 2-sigma) of 1660 C.E. to 1904 C.E. While no clear evidence of Pre-Contact activity at Site -00515 was found, Elmore and Kennedy (2001) considered it possible that initial agricultural use began Pre-Contact.

### **CLEGHORN 2001, SPEAR 2014, HULEN AND BARNA 2021**

In 2001, Pacific Legacy, Inc. conducted archaeological monitoring (Cleghorn 2001) for the installation of a telecommunications compound at Kilauea Japanese Cemetery [TMK: (4) 5-2-004:049 por.]. No cultural materials were identified during monitoring.

In 2014, SCS conducted a field survey (Spear 2014) of the same project area [TMK: (4) 5-2-004:049 por.] for the proposed Kilauea Relo AT&T Facility upgrade. No historic properties were identified, but Spear (2014) recommended archaeological monitoring due to the possibility of unmarked burials in the vicinity.

In 2021, ASM Affiliates, Inc. conducted archaeological monitoring (Hulen and Barna 2021) during upgrades to the telecommunications station (Verizon KILAUEA\_GRAVEYARD A) at [TMK: (4) 5-2-004:049 por.], the same facility previously monitored by Cleghorn (2001). No historic properties were identified during monitoring (Hulen and Barna 2021).

#### **RECHTMAN ET AL. 2001**

In 2001, Rechtman Consulting, LLC (RCL) conducted an AIS (Rechtman et al. 2001) of the Hālaulani Property, an approx. 1400-acre area inland of Kīlauea town [then TMK: (4) 5-2-002:011 & 012; now TMK: (4) 5-2-002:011]. Because of the very large project area, it was agreed in consultation with SHPD “that the margins of the streams and the Kamo‘okoa Ridge area would be surveyed at 100% intensive coverage and that the former and current sugarcane and orchard areas would be surveyed less intensively” (Rechtman et al. 2001:27). The survey identified four Post-Contact historic properties. SIHP Site No. 50-30-03-02060 was a basalt and concrete dam on Kīlauea Stream. Rechtman et al. (2001:30) noted that the site had been documented by an archaeological study in Kalihiwai Ahupua‘a to the east, as “majority of the ancillary dam features exist off property on the western bank,” but re-recorded it since it was partially within the project area. Based on a newspaper article about the opening of the reservoir formed by the dam, it was dated to 1881. SIHP Site No. 50-30-03-02062 was a dam complex on Pu‘uka‘ele Stream, also of basalt and concrete construction. SIHP Site No. 50-30-03-02063 was a water control complex extending from Pu‘uka‘ele Stream, consisting of a ditch and the remnant portions and scattered pieces of a flume. SIHP Site No. 50-30-03-02064 consist of an irrigation tunnel and two flume supports on Kīlauea Stream, approx. 150 m downstream from Site -02060. (Rechtman et al. 2001)

#### **ELMORE AND KENNEDY 2002, BEVAN ET AL. 2004**

In 2002, ACP conducted an AIS (Elmore and Kennedy 2002) of most of the property parcel at TMK: (4) 5-1-005:016 (excluding the northernmost thumb - shaped portion at the very mouth of Kīlauea stream). Elmore and Kennedy (2002:6) noted that “current TMK maps... depict Kipapa Heiau at the base of the bluff east of Kilauea River,” which would put Kipapa Heiau (SIHP Site No. 50-30-04-00132) within the project area. However, no sign of the heiau was found during the survey, and Elmore and Kennedy (2002:6) pointed out that the location indicated on the map was “a sandy location at which it is unlikely a commercially operated sugar cane field would be found.”

The survey did identify nineteen more features of SIHP Site No. 50-30-04-00515, which had previously been documented on an adjacent parcel [TMK: (4) 5-1-005:005] previously surveyed by Elmore and Kennedy (2001). A new sample sent for radiocarbon analysis from Site -00515 returned a date range (at 2-sigma) of 1475 C.E. to 1652 C.E., entirely predating the result from the earlier study. This may have been due to the sample being taken from a greater depth and different soil layer. Additionally, two new archaeological sites were identified. SIHP Site No. 50-30-04-01035 consisted of a terrace and a subsurface pit, and was interpreted as a habitation site. A sample from site -01035 returned a radiocarbon date range (at 2-sigma) of 1262 C.E. to 1523 C.E., which (if accurate) would make the site “one of the earliest occupations along the northern coast of Kauai” (Elmore and Kennedy 2002:44). SIHP Site No. 50-30-04-01036 was a stone wall that likely functioned as a boundary marker.

In 2003, ACP conducted archaeological monitoring (Bevan et. al 2004) at the same parcel [TMK: (4) 5-1-005:016] that had previously been surveyed by Elmore and Kennedy (2002). Monitoring was conducted during installation of utility lines and grading for driveways, and subsurface construction activities were kept a minimum of 25 ft away from any features if the previously identified Sites -00515 and -01035. During monitoring, “an isolated, previously unrecorded, non-irrigated terrace feature located on a steep slope below Rock Quarry Road” was identified, and due to similar context, added as yet another feature of SIHP Site No. 50-30-04-00515, but no sites were newly identified (Bevan et. al 2004:20).

#### **DAGHER 2007**

In 2007, SCS (Dagher 2007) conducted a Field Inspection (FI) of an approx. seven-acre property at the western end of Kilauea Town, on the border with Nāmāhana Ahupua‘a [TMK: (4) 5-2-023:027 & 028]. No historic properties were identified during the FI (Dagher 2007).

#### **SHIDELER ET AL. 2008**

In 2007, CSH conducted an AIS (Shideler et al. 2008) on a 74-acres portion of the Kilauea Falls Ranch property [TMK: (4) 5-2-012:035 por.], including land proposed for a private residence, an agroforestry area, and a region of tablelands suitable for development located near Kīlauea town. The survey identified a total of 62 archaeologically significant features comprising five sites within the agroforestry area. SIHP Site No. 50-30-04-00579 was an isolated agricultural terrace near the eastern end of the project area. SIHP Site No. 50-30-04-00580 was a complex consisting of 53 agricultural terraces and 2 enclosures that may have served as field shelters (temporary habitation), located west of Site -00579 and northwest of a bend in Kīlauea stream.



SIHP Site No. 50-30-04-00581 consisted of a retaining wall with a connected rock alignment that served as a ramp, a smaller second stone wall nearby, and a rock faced trail parallel to the retaining wall. Site -00581 is located near -00580, but is interpreted as a Post-Contact permanent habitation site, likely associated with Japanese occupants based on recovered artifacts. SIHP Site No. 50-30-04-00582 was a pair of terraces separate from, and located south of, the dense cluster of terraces comprising Site -00579. SIHP Site No. 50-30-04-00583 was another pair of terraces, located even further south from Site -00582. Unlike the *lo‘i* terraces on the east bank of Kīlauea stream identified in other studies, the agricultural terraces identified by Shideler et al. (2008) are distant from the stream rather than on the floodplain. Shideler et al. (2008:69) note that “the vagaries of hurricane, tsunami, and flood may have made such planting down by the stream precarious” and that “cultivation upon the steep slope may have been more secure.”

#### **CLARK AND RECHTMAN 2010, CLARK ET AL. 2011**

In 2009, RCL conducted an AIS (Clark and Rechtman 2010) of a 0.735-acre parcel along the southeast bank of Kīlauea stream [TMK: (4) 5-2-012:019]. This parcel is the same land awarded to Naiamaneo with LCA No. 10333 (see The Māhele, above); although this is the only nearby example, it is not unknown for contemporary TMK parcels to match the boundaries of a plot awarded in the Māhele. Pedestrian survey and excavation of three trenches identified two historic properties. SIHP Site No. 50-30-04-02011 consists of nine terraced fields, which collectively occupying the entire parcel. These were interpreted as pond fields for Post-Contact rice cultivation, built on previous *lo‘i* and *kula* land. SIHP Site No. 50-30-04-02012 is a partially-intact concrete slab along the southeast border of the parcel, interpreted as the foundation of a Post-Contact structure, likely a shed or other outbuilding (Clark and Rechtman 2010).

In 2011, RCL conducted an AIS (Clark et al. 2011) of a roughly 21-acre area comprising portions of several properties [TMK: (4) 5-2-21:041, CPR 0001; (4) 5-2-12:035 por.; and (4) 5-2-021:004 por.] surrounding the parcel previously surveyed by Clark and Rechtman (2010). Although Clark et al. (2011) identified new features, these were added as components of the two archaeological sites previously identified by Clark and Rechtman (2010). SIHP Site No. 50-30-04-02011 was expanded to cover approx. 4.5 acres and include a total of 69 discrete Post-Contact rice fields. In addition to the previously documented concrete slab, SIHP Site No. 50-30-04-02012 was revised to include a water retention pond, a cobble-lined trench for a water wheel, and four concrete basins with stone and concrete troughs (Clark et al. 2011).

### **SROAT ET AL. 2010**

In 2010, CSH conducted an AIS (Sroat et al. 2010) of 75 acres at TMK (4) 5-2-004:099 for the planned Kīlauea Agricultural Park, located to the east of Pali Moana Place. The survey identified four archaeological sites, all of which were located in the southeast portion of the project area, where the terrain is more sloped and uneven. SIHP Site No. 50-30-04-02123 was a terrace interpreted as a Post-Contact habitation site. SIHP Site No. 50-30-04-02124 consisted of two concrete wall structures, one linear and one U-shaped, of uncertain function but assessed as likely associated with plantation-era infrastructure. SIHP Site No. 50-30-04-02125 was a terrace interpreted as a likely Pre-Contact agricultural site. SIHP Site No. 50-30-04-02126 was a machine-excavated ditch that was interpreted as a drainage feature for flood control. Sroat et al. (2010) concluded that Sites -02124 and -02126 were associated with Kilauea Sugar Company.

### **DAGHER AND DEGA 2011**

In 2010-11, SCS conducted archaeological monitoring (Dagher and Dega 2011) of the Kīlauea River cleanup in 2010 to 2011, which was a follow up to the 2006 emergency cleanup after the Ka Loko Dam breach. During monitoring two separate isolated finds of human skeletal elements occurred, and a few Post-Contact artifacts were recovered, but no archaeological sites were identified (Dagher and Dega 2011).

### **HAMMATT AND SHIDELER 2014**

In 2010, CSH conducted an FI (Hammatt and Shideler 2014) of 23.8-acre coastal parcel in Nāmāhana Ahupua‘a [TMK: (4) 5-2-005:036]. The FI did not identify any historic properties, but Hammatt and Shideler (2014) noted that the presence of *kalo* plants growing on steep *pali* (cliff, steep hill or slope) likely originated from shoots washed over the cliff from pre-contact *kalo* cultivation efforts, suggesting that pre-contact agriculture occurred nearby.

### **PUTZI ET AL. 2014**

In 2014, SCS conducted an AIS (Putzi et al. 2014) on a approx. 5-acre parcel in Nāmāhana Ahupua‘a owned by The Church of Jesus Christ of Latter-Day Saints [TMK: (4) 5-2-019:004], ahead of the proposed construction of a meetinghouse for the Church. Full pedestrian survey and excavation of ten trenches identified a single archaeological site. SIHP Site No. 50-30-04-02237 consisted of a fire pit located 0.48 m below the surface. Charcoal recovered from Site -02237 was sent for radiocarbon analysis and returned a date range (at 2-sigma) of 1440 C.E. to 1530 C.E., establishing that the fire pit was Pre-Contact. Putzi et al. (2014) noted that although the parcel had once been owned by the Kīlauea Sugar Company, subsurface testing found no sign of a plow zone, suggesting it had been used for pasture instead of planting.

## **METHODOLOGY**

### **FIELD METHODOLOGY**

The archaeological field inspection was conducted on June 1, 2022, by SCS Archaeologist Jason Stolfer, M.A., under the supervision of primary investigator Michael F. Dega, Ph.D. Field methods consisted of a 100% pedestrian survey of the project area and documentation via digital photographs taken at various locations throughout the project area. Sites located were assigned a Temporary Site Number (TS#) as necessary, pending the assignment of a SIHP Site Number.

### **LABORATORY METHODOLOGY AND CURATION**

Since no artifacts were identified during this project, laboratory work consisted of cataloging field notes and photographs. All field notes and digital photographs have been curated and are now stored at the SCS laboratory in Honolulu. All measurements were recorded in the metric system.

## **RESULTS OF THE FIELD INSPECTION**

One archaeological site was identified during the field inspection on June 1. The site was designated as Temporary Site 1 (TS-1), and was comprised of two features: a railroad bridge culvert (Feature 1), and remnant section of railroad track (Feature 2) found nearby. The on-site archaeologist determined that the site was Post-Contact in nature recorded it with photographs and two GPS points taken at the center points of its two features. Figure 7 shows these GPS points superimposed on a client-provided construction map.

Feature 1 (Fe. 1; railroad bridge culvert) was built using basalt and mortar construction and is in good overall condition, protected by thick vegetation that surrounds it. Both ends of the culvert tunnel are exposed and the interior is passable. Feature 2 (Fe. 2; piece of old railroad track) was discovered approximately 12 m east of Fe. 1, by using a metal detector to allow detection through the dense vegetation. Figures 8 through 16 are photographs of the features, and Table 3 summarizes the location and condition of the features.

**Table 3: TS-1 component archaeological features**

Feature Number	UTM (converted) Zone 4Q	Lat Long +4 meters	Description	Status
Fe. 1	459316 E, 2457039 N	22°13'05.8 N, 159°23'41.1 W	culvert of a Plantation-era railroad bridge	Good condition
Fe. 2	459339 E, 2457048 N	22°13'06.0 N, 159°23'40.3 W	section of railroad track	Poor condition (rusty)





The southwest end (northeast view, Figures 8 through 10) of the railroad bridge culvert (Fe. 1) has an exposed face that measures 6.2 m long and varies in height from .4 m to 1.5 m.

The railroad track (Fe. 2) is difficult to see amidst the vegetation, but is highlighted by the meter bar and tape measure in Figure 10. The railroad track was partially exposed and appears to extend further east (away from the project area) beneath the dense vegetation.

The interior of the railroad bridge culvert (Fe. 1) consists of a horseshoe shaped tunnel with dimensions of 1.45 m high, 1.5 m wide, and 23 m long (Figure 11). Like the exterior faces, the interior exhibits basalt and mortar construction.

The northeast end (southwest view, Figures 12 through 15) of the culvert (Fe. 1) has guards on either side of the tunnel opening and extends out 1.3 m from the hillside that it is built into. The total height of the bridge culvert on this end is 2.3 m. The exposed portion of the culvert face extends sideways at least 2.5 m to northwest, but the stonework appears to extend further beneath the foliage. The culvert face is more visible from the south and extends sideways 10.5 m to the southeast before disappearing into the dense vegetation.



**Figure 8: TS-1 railroad bridge culvert - northeast view**





**Figure 9: TS-1 railroad bridge culvert – east view**





**Figure 10: TS-1 railroad bridge culvert - northeast view**



**Figure 11: TS-1 railroad track - northeast view**





**Figure 12: Tunnel underneath TS-1 railroad bridge - inside culvert view**





**Figure 13: TS-1 railroad bridge culvert - southwest view**





**Figure 14: TS-1 Railroad Bridge culvert view to the northwest**





**Figure 15: TS-1 railroad bridge culvert - south view**





**Figure 16: TS-1 railroad bridge culvert wall - northwest view**

This culvert and railroad bridge were likely constructed as a part of the railroad built to haul sugar for the plantation operated by the Kilauea Sugar Company (see Land Use in the Post-contact Period to the Present). A portion of this railroad located at Mōkōlea Point (approx. 800 m west northwest of the project area) was previously recorded as SIHP Site No. 50-30-04-01812. This railroad was the first to be built on the Island of Kaua‘i, and famously had it’s first spike ceremonially driven in by Princess Regnant Lydia Kamaka‘eha, (later Queen Lili‘uokalani) in 1881 (see Land Use in the Post-contact Period to the Present, above).

## **FINDINGS AND RECOMMENDATIONS**

The general pattern seen in the previous archaeological work in the vicinity (see Previous Archaeology, above) is one that is common to many regions of the Hawaiian Islands where commercial sugar or pineapple agriculture occurred. Remaining Pre-Contact sites are largely found within gullies or other areas of uneven ground, especially near water features. Relatively flat areas, such as tablelands have been subject to considerable ground disturbance for large scale commercial cultivation and Pre-Contact features that may (likely) have been present there have been removed or destroyed.

The sole feature of archaeological significance (TS-1) identified during the present field inspection consisted of a railroad bridge culvert and section of railroad track. These features were constructed as a part of the railroad built to haul sugar for the plantation operated by the Kilauea Sugar Company. Another portion of that railroad located to the northwest was previously designated as SIHP Site No. 50-30-04-01812. It is possible that other remnant portions of the railroad may be found under the foliage or even under the ground surface of other nearby property parcels. Since a historic property has been identified within the project area, SCS recommends that an AIS be conducted to fully document the historic property (TS-1) and determined its extent, age, function, and significance. SHPD should be consulted both in regards to the AIS and to determine if TS-1 should receive a new SIHP number or be recorded as an additional portion of Site -01812.

Based on the findings of this LRFI, only an historic-era cultural resource was identified. Note that portions of the project area were heavily overgrown and more intensive survey during AIS could lead to the identification of additional historical-era resources associated with the railway line. No excavations were conducted during this LRFI and thus, there remains the slight possibility that pre-Contact cultural resources such as habitation area could be documented in subsurface contexts below the plow zone. The same would hold true for *iwi kupuna* (ancestor bones): only a slight possibility that such exist on this plateau area. The majority of traditional burials in the area have been documented near the direct coastline and in sandy sediment.

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**APPENDIX A: NATIVE CLAIMS AND NATIVE AND FOREIGN  
TESTIMONY FOR THE AHUPUA‘A OF KĀHILI**

(excerpted from Ida and Hammatt 1997)

Kahili LCAs and Associated Claims with Kahili mentioned

No. 8559 C. Kanaina Honolulu, Feb. 14, 1848

N.R. 349v4

The Lands of William Lunalilo....

Name of the Land	Ahupua'a	District	Island
57. Kahili	"	Koolau	Kauai
58. Kumukumu	"	"	"
59. Pilaa Waipouli	"	Kapaa, Puna	"
60. Kamalamaloo	"	"	"
61. Kalihiwai	"	"	"
62. Manuahi 'Ili Hanapepe	"	Kona	"

.....

No. 8559B Lunalilo, Wm. C. Iliaina  
(King Lunalilo) Manuahi Kona Kauai - 867 Ac. [Book 10, p. 490]

[8559B Kalihiwai R.P. 8173; Manuahi Hanapepe; Kahili R.P. 8323; Pilaa R.P. 7060; Waipouli R.P. 7373]

No. 9067 Keo

N.R. 403v9

The Land Commissioners, Greetings: I hereby state my claim for seven lo'i, two mala of wauke and the house lot.

Kahili, Kauai, January 17, 1848

KEO X

No. 9067 Keo Clt.

F.T. 165-166v12

Luakini sworn says I know Clt's lands in Kalihi. They are 7 Lois in three distinct pieces.

Kahili & a House Lot in Kilauea.

No. 1 Is House Lot in Kilauea

" 2 " 5 Lois & kula in Kanaele - Kahili

" 3 " 1 " "Uleulehu" (?) Makai

" " " " Mauka

No. 1 is bounded

M. by Govt kula

N. " Luahini's House Lot

M. " Govt kula

A. " " "

No. 2 is bounded

M. by Luakini's lois

N. " Kamalawai's "

M. " Hapahui's "

A. " Konohiki's kula

No. 3 is bounded

M. by Mamuaholono's (?) loi

N. " Kahili River

M. " Unclt lands

A. " Loko "Kaneio"

No. 4 is bounded

M. by my loko

N. " Konohiki's koele

M. " Apahu's loi

A. " My loko

These lands were given by the Konohiki to Clt. in the days of Kaumualii & have been held undisturbed till this time.

Inaole sworn says I know the lands of Kea & all that Luahini has testified is true.

No. 9067      Keo

N.T. 176-177v12

Kuakini sworn he has seen Keo's land in Kahili of seven lois and a house lot.

Section 1 - House lot

Mauka      Government pasture

Napali      Luakini's house lot

Makai      Government pasture

Anahola      Government pasture

Section 2 - Five lois and a pasture together

Mauka      Luakini's loi

Napali      Kaniaalauna's land

Makai      Hapakua's land

Anahola      Government pasture

Section 3 - One loi, Ulehulehu

Mauka      Mamuakalono's land

Napali      Kahili river

Makai      With weeds, land

Anahola      Kanaio, the konohiki's pond

Section 4 - One loi mauka of Ulehulehu

Mauka      Luakini's land (Pond)

Napali      Konohiki koele

Makai      Apahu's land

Anahola      Luakini's land

Land had been from Kaumualii I to Keo's parents and from them to Keo, all is peaceful to the present.

Inaole sworn he has seen Keo's land, the house lot, the five lois and the pasture. One loi is in section 3, in Ulehulehu and the other lois is mauka of Ulehulehu as section four.

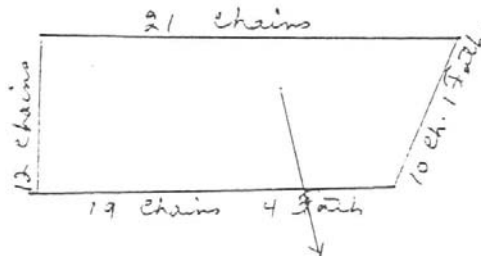
He has known in the same way as Luakini concerning Keo's land, the house lot and his lois. [Award 9067; R.P. 3486]

No. 10013      Leimanu      Koloa, Kauai, January 16, 1848

N.R. 251-252v9

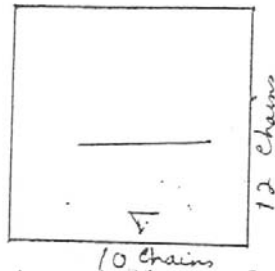
The Land Commissioners, Greetings: We, Leimanu and Mokuhalii, are Hawaiian subjects living at Kahili on the Island of Kauai.

We hereby state our claims for land, some lo'is and a kula and a house claim. These are all within the diagram:





I Leimanu, a Hawaiian subject, hereby state my claim at Kahililalo, for a kula for planting wauke; its diagram is as follows:



Respectfully  
LEIMANU

I, Mokuhalii, hereby state my claim in another place, as follows: 5 chains on two sides, 9 chains on another side and 30 in another side /?sic/. I am respectfully,  
MOKUHALII

No. 10013 Leimanu Clt

F.T. 227-228v12

Mokukalii sworn says I know the lands of Leimanu in Kahili. They are in 3 pieces as follows:

No. 1 Is House Lot, 3 lois & kula in "Kaukahiwai"

" 2 " 2 Lois "

" 3 " kula in "Manohala"

No. 1 is Bounded

M. by Lueili's lois

H. " Daniela's "

M. " Koalaiki's "

A. " " "

No. 2 is Bounded

M. by My lois

H. " Kahili river

M. " Alaiki's lois

A. " Keokea's "

No. 3 is Bounded

M. by Hapakui's kula

H. " Kahili River

M. " Daniela's kula

A. " Konohiki's "

These lands have been held peaceably since 1840. Clt. had them from his brother in law. They had been held by the Parents of the brother in law from the days of Kaumualii.

Pupu sworn says I know Clt's lands in Kahili. I have heard all that Mokukalii has testified. It is all true.

No. 10013 Leimanu, B

N.T. 233-234v12

Kumokuhalii sworn he has seen claimants land in Kahili.

Section 1 - House lot and a pasture in Kaiaakahiuu

Mauka Two ili land

Halelea Daniela's land

Makai	Koalaiki's land
Anahola	Koalaiki's land

Section 2 - Two lois

Mauka	Mokuhalii's land
Halelea	Kahili river
Makai	Alaiki's land
Anahola	Keokea

Section 3 - Pasture at Namohala

Mauka	Land
Halelea	Kahili river
Makai	Daniela's pasture
Anahola	Konohiki pasture

Land from the konohiki to Leimanu's brother-in-law at the time of Kaumualii.

Leimanu received this land in 1844, no objections.

Kipu sworn verifies Mokuhalii's testimony is correct, he has known in the same way.

[Award 10013; R.P. 3879]

No. 10013	Leimanu	Koloa, Kauai, January 16, 1848	N.R. 251-252v9
..... [see above]			
[10013B]			

I, Mokuhalii, hereby state my claim in another place, as follows: 5 chains on two sides, 9 chains on another side and 30 in another side /?sic/. I am respectfully,

MOKUHALII

No. 10013[B]	Mokuhalii Clt /no claim in Index/	F.T. 161-162v12
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Kauoha sworn says I know lands of Mokuhalii in Kahili in Ili "Hoopala" & some kula embracing a house Lot & an Orange Tree in "Kapunahoe" [?]

No. 1 Is House Lot & kula adj.

" 2 " 5 Lois in "Hoopala"

No. 1 is bounded

M. by Konohiki's kula

N. " Kalunaaina's loi

M. " Kahili River

K. " Kaleimanu's lois

No. 2 is bounded

M. by Kalunaaina's lois

N. " Kahili River

M. " Kaleimanu's lois

K. " Alaiki's lois

These lands have been held by Clt. & his parents from the days of Kaumualii. They came into the full possession of Clt. in 1844. No one has disputed his claim.

Kealawaa sworn says- I know clt's lands. I have hears the testimony of Kauoha. It is all true.

No. 10013 [B]	Mokuhalii	N.T. 170-171v12
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Kanoha sworn he has seen claimants land in the ili of Hapala, also the pasture in the koa growth.

Section 1 - Pasture and house lot

Mauka	Konohiki pasture
Napali	Landlord's lois
Makai	Kahili river
K.	Kaleimanu's lois

Section 2 - 5 lois in Hapala

Mauka	Landlord's land
Napali	Kahili river
Makai	Kaleimanu's lois
K.	Alaiki's lois

Land to Kumokuhalii from his parents at the time of Kaumualii 1.

Kumokuhalii as a son received it directly in 1844, title secured from parents.

Kealawaa sworn he has seen Kumokuhalii's land in Kahili of Hoopala ili land.

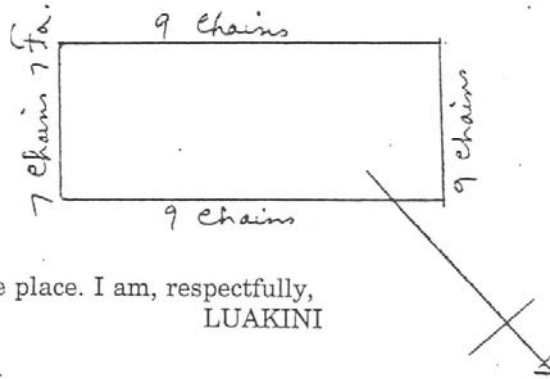
Verifies Kealawaa's statements as true and accurate, life has been peaceful.

[Award 10013B; R.P. 3880]

No. 10015 Luakini Koloa, Kauai, January 16, 1848

N.R. 253v9

The Land Commissioners, Greetings: I, Luakini, a Hawaiian subject living at Kahili on the Island of Kauai, hereby state my claim for land. The diagram follows:



My house is in a separate place. I am, respectfully,  
LUAKINI

No. 10015 Luakini Clt

F.T. 165v12

Inaole sworn says I know Clt's lands in Kahole & Kilauea. They are in two pieces.

No. 1 Is House Lot in Kilauea

" 2 " 2 Lois & kula with 2 Orange trees

No. 1 is bounded

M. by konohiki's kula

N. " " "

M. " " "

A. " " "

No. 2 is bounded

M. by Papai's kula

N. " Kahili River

M. " My Lois

A. " " Kula

These lands were given Clt. in the days of Kaumualii & have been held in peaceable possession till this time.

Holokuhine sworn says I know Clt's lands as above described and have heard the testimony of Inaole. It is all true.

No. 10015 Luakini

N.T. 175-176v12

Inaole sworn he has seen Luakini's land of two lo's, a pasture and a house lot all in one area in Kilauea. Two orange trees also are on this land. This claim has been absolutely secured since the beginning to the present time.

Section 1 Mauka and all around is government pasture

Section 2 Mauka Papai's pasture

Napali Kahili river

Makai Inaole's land

Anahola Inaole's land

Land from the konohiki at the time of Kaumualii, the first and this has been secured since that time to the present.

Holokukini sworn he has seen Luakini's land, the pasture, the two orange trees and the house lot, he has known in the same way as Inaole.

[Award ; R.P. 10015]

No. 10082 Mamao

N.R. 262v9

The Land Commissioners, Greetings: I hereby state my claim for an 'ili named Makaihuwaa. The boundaries of this 'ili.\* All the rights in this 'ili are mine, and that is my claim which is stated to you.

I also have a claim in the 'ili of Kapuka, for two lo'i and some scattered lo'i, a total of six.

Kahili, Kauai, January 17, 1848

MAMAO

\*Not stated.

No. 10082 Mamao Clt

F.T. 229-230v12

Daniela sworn says I know the lands of Mamao in Kahili. It is an Ili called "Makaihuwaa."

This Ili was given by the Konohiki to Pipili at the close of the war of 1824. Pipili held it in peace till his death in 1837. His widow (Kupahu) then held the land in peaceable possession till 1847, when she gave it to her son the "Clt. who has held it in peace to the present time.

No one has disputed the claim:

Bounded as follows:

M. by Konohiki's kula

H. " "Kalama"

M. " Kahili River

A. " Pali of "Makaihuwaa"

Keo sworn says I know the lands of Mamao in Kahili. The Ili "Hokaihuwaa." It belongs to Mamao & to no one else.

Note: This claim embraces a whole Ili, but Clt relinquishes a larger part of the kula & takes that part that borders on his kalo land below the Pali.



No. 10082 Mamao

N.T. 233v12

Daniela sworn he has seen claimants land in Kahili of one section consisting of a whole ili and a house lot in Makaihuwaa.

Land from the konohiki to Pihili after the battle of Wahiawa, no objections.

Pihili died in 1837, land was given to Kupahu, the widow, no disputes. In 1847, the widow gave the ili land to her son Mamao.

Boundaries of that ili

Mauka	Konohiki pasture
Halelea	Kalama's land
Makai	Kahili river
Anahola	Konohiki pasture

Keo sworn he has seen Mamao's ili land and it is his (Mamao) own land just as Daniel, the witness has related. both Keo and Daniela have known in the same way.

[Award 10082; R.P. 4074]

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No. 10083 Mamuakalono Kahili, Kauai, 17 January 1848

N.R. 262v9

The Land Commissioners, Greetings: I hereby state my claims for one lo'i, a mala of noni, a mala of wauke and the house lot. MAMUAKALONO X

No. 10083 Mamuakalono Clt

F.T. 228v12

Keo sworn says I know Clt's land in Kahili. It is 1 Loi & I gave it to him previous to 1839 & it has been held in peaceable possession till now.

Bounded as follows

M. by Leiakunui's[?] loi

H. by Kahili River

M. " Keo's loi

A. " Koele "

[no more testimony here]

Nc. 60083 Mamuaakalono

N.T. 232v12

[should be 10083]

Keo sworn he has seen claimants land in Kahili of one piece with a loi in Kahili.

Mauka	Luakini's land
Halelea	Kahili river
Makai	Keo's land
Anahola	Koele

Land from the konohiki in 1839, no disputes to the present.

[Award 10083; R.P. 7754]

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No. 10333 Naiamaneo Koloa, Kauai, 16 January 1848

N.R. 283v9

The Land Commissioners, Greetings: I, Naiamaneo, a subject of Hawaii living at Kahili, Island of Kauai, hereby state my claim: its diagram is as follows: The house is in another place. I am, respectfully,

NAIAMANEO

No. 10333 Naaimaneo (w) Clt

F.T. 229v12

Leimanu sworn says I know the lands of Naaimaneo in Kahili. They are a field of Kalo embracing a number of small lois & kula adj. in Ili "Kupa"

Bounded as follows

M. by Ahupuaa of Kilauea

H. " Kahili River

M. " Brook "Kilauea"

A. " Kahili River

These lands were given by the Konohiki to Clt's Husband, Oopu, in the days of Kamualii. Oopu died in 1847 & the lands fell to the widow (Clt). She has held them in peace till this time.

Mokuhalii sworn says I know Clt's lands in Kahili. I have heard the testimony of Leimanu. It is all true.

No. 10333 Naaimeneo

N.T. 232v12

Kaleimanu sworn he has seen Kaleimanu's (Naaimeneo) land in Kahili.

Mauka Kilauea ahupuaa

Halelea Kahili river

Makai Kilauea stream

Anahola Kahili river

Land from the konohiki to Opu at the time of Kaumualii I.

Opu died in 1847, the land was left to this wife Naaimeneo.

Kumokuohalii sworn he has seen claimants land claim in Kahili. Kaleimanu's statements were accurate and both have known in the same way. No disputes to the present time.

[Award 10333; R.P. 3370]

No. 10564 D. Oleloa

N.R. 294-295v9

To the Land Commissioners, Greetings: I hereby state my claims for land of Kauai. At Haiku Ahupua'a, at Huleia in the Puna District, here are the claims:

...

In the Ahupua'a of Kapaa in Puna there are these claims:

...

At Kahili Ahupua'a in Koolau are four taro lo'i, At Waioli ... At Wainiha. These land claims are on Kauai. These claims are of the same kind -- that is, the occupancy of them is under the people who dwell on the land. I request you to award the claims to me which I have described, in accordance with the law.

The witnesses to the claims are the people living on the land, who know of our cultivation and work. The witnesses of my occupation of konohiki are M. Kekuanaoa and M. Kekauonohi, the ones who appointed me. I am, respectfully,

Honolulu, Oahu, 5 February 1848 D. OLELOA

No. 10564 Daniela Oleloa

F.T. 6-9v12

...

The further hearing of this claim was postponed until witnesses could be procured for Clt's lands is Kahili.

(See Page 80)

No. 10564 Daniela Oleloa Clt finished (See page 64)

F.T. 80-81v12

...

Land from Kauonohi at the time of Kinau, no objections.  
The claim in Kahili is incomplete-postponed.

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**William Lunalilo (20, 22)**

Kahili Ahupua'a Koolau Kauai  
The Great Mahele 1848, 1989:104

Barrère, Dorothy B. compiler  
1994 *The King's Mahele: The Awardees and Their Lands*, Honolulu, HI: p. 432-433.  
Willaim Charles Lunalilo, Alii Award LCA 8559B  
Mahele Book 17-18 (22-23) Received  
Probate 2413, 1414 (AH) Lunalilo died February 3, 1874 without issue.

Left personal property to his father Kanaina, and his real estate for the founding of  
Lunalilo Home.

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[Kahili River]

No. 6529 Holokukini

N.R. 193v9

To the Land Commissioners, Greetings: I hereby state my claim at Kilauea. I am the  
konohiki, under A. Keliiiahonui. My claims are for all the rights and benefits pertaining to  
the konohiki, being the Po'alimas and the Po'ahas, the protected fish, and the protected trees.  
Those are my claims, under A. Keliiiahonui ma. Respectfully,  
HOLOKUKINI

N.R. 193v9

The Land Commissioners, Greetings: I hereby tell you of my three lo'i and also a house lot -  
- those are my claims.

HOLOKUKINI

No. 6529 Holokukini Clt

F.T. 162-163v12

Kanaina sworn says I know the lands of Holokukini in Pilaa & Kilauea. He has 4 Lois  
in "Puaa" Pilaa all in one piece.

Bounded as follows

M. by Konohiki's kula

N. " " "

M. " Sea Beach

A. " Kane's lois

These lois were given by the Konohiki in 1845 & have been held undisturbed till this  
time.

Clt. has also 6 Lois in Kilauea, Ili "Maluawai" & some kula adjoining a House Lot.

bounded as follows

M. by Kahili River

N. " Konohiki's kula

M. " Oleola's lois

A. " Kahili River

These lands in Kilauea were given by Kaluahonui in 1842 & have been held unmolested to this time.

Kolale sworn says I know the lands of Clt. in Pilaa & Kilauea. I have heard the testimony of Kanaina. It is all true.

No. 6529      Holokukini

N.T. 172-173v12

Kanaina sworn he has seen claimants land in Pilaa and Kilauea consisting of 4 lois, of which 3 are small lois and 2 is a large loi.

There are only four lois in the ili of Puua

Mauka and Napali      Konohiki pasture\

Makai                      From the beach sand

Anahola                    Hane's lois

Upai lived under Holokukini.

Land from Opukea to Holokukini in 1845, no objections.

There are 6 lois in Kilauea belonging to Holokukini called Maluawai ili.

There is also a house lot, a pasture and 2 tenants. There are two houses and the men are living under Holokukini who owns the land and house lot.

Mauka                      Kahili river

Napali                      Konohiki's pasture

Makai                      Opeka's lois

Anahola                    Kahili river

Land from Kekiahonui in 1842, title clear since the beginning to the present.

Kohale sworn he has seen Holokukini's land in Kalihi, also a house lot, the pasture and the four lois in Pilaa of the ili land of Puua. He has known in the same ways as Kalaina.

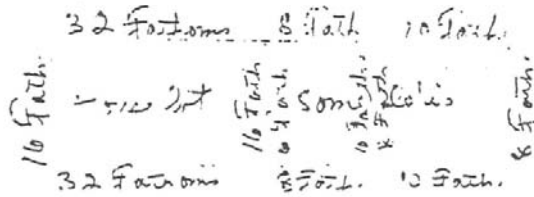
[Award 6529]

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No. 9260      Kea

N.R. 440-441v9



These are the measurements of my taro lois and my house lot, as shown on the diagram. The right was from the time of Kaumualii until the present. It is for you, the Commissioners to quiet land titles, to award it. The Witnesses are Ehuiki and Kauaole.      KEA

No. 9260      Kea Clt.

F.T. 235-236v12

Nakaikuahine sworn says I know the lands of Clt. in Kalihiwai as follows -

No. 1 Is House Lot

" 2 " 2 Lois in "Auwailalo"

" 3 " 1 " "

No. 1 is Bounded

M. by Konohiki's kula

N. " " "

M. " River

K. " "

No. 2 is Bounded

M. by Kunihihi's lois

N. " Kekaululu's "

M. " River

K. " My lois

No. 3 is Bounded

M. by Kunihihi's lois

N. " River

M. " Kea's lois

K. " My "

These lands were given Clt by the Konohiki in the days of Kamualii & have been held peaceably till now.

Makaimoku sworn says I know Clt's lands. I have heard all that Nakaikuahine has said. It is all true.

No. 9260      Kea

N.T. 240v12

Nakaikuahine sworn I know the kuleana lands of Kea in Kalihiwai.

section 1 - House lot

Section 2 - 2 lois

Section 3 - A single loi in Kaauaelale?

Those are his lands. They are quite settled.

Section 1

M. Konohiki's kula

N. Konohiki's kula

M. Kalihiwai river

K. Kalihiwai river

Section 2

M. Kunihihi's land

- N. Peke's loi
- M. Kalihiwai river
- K. Makaikuahiane's lois

Section 3

- M. Kunihihi's loi
- N. Kahili river
- M. Kea's loi
- K. Kea's loi

These lands of Kea's came from the konohiki down to Kea. During the time of Kaumualii they were secured. They have not been contested until today.

Makaimoku sworn I know these lands of Kea, I have heard Nakaikuahine's testimony. Both have known in the same way. There is no opposition.

[Award 9260; R.P. 5342]

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sole nae i nui na palapala pai i pae i ko lakou lima; no ka mea, sohe a lakou mea pai palapala, ma ia aina. Ua hooliloia ka kauoha hou a pau a ke Akua i olelo Rarotona; a ua laweia'ku ma Beritania. Malaila e paila'i. Mamuli paha lako ko Rarotona, i ka buke kauoha hou a ke Akua.

I kuu lohe ana i keia mau mea, manao iho la au, he pomaiikai ko lakou noho ana malaila. Nui no nae na mea e pilikia ai i loa ia lakou i keia mau makahiki. Ua hai aku au i kekahi mamua—o ka mai i ka makahiki 1830. A eia hou mai kekahi mea a'u e hai aku nei. I ka wa mamua, o ka ulu ka lakou ai nui, a lako loa no lakou ia ai. Aka, i ka makahiki 1831, a me ka makahiki 1832, nou mai la kahi makani ino, ma ia mea aina. Eha nou ana mai o ua makani la, a pau loa no ka lakou laau ulu i ka hina ilalo; kakaikahi ka ulu i koe. Nolaila, nolo loa hou aku ka lakou ai malaila; a lilo koke no lakou i ke kanu kolo a me ka uwala. Oia ka lakou ai, mai ia manawa mai. Hiki wawe no nae ka laau ulu, ke kanuia malaila; a nolaila, ua kokoke hua na ulu i kanuia mahope mai o ka pau ana o na laau kahiko. Kokoke lako hou lakou i ka ulu. Ua hoonuia 'ku ko laila kanaka ma ka hafa'u maoli ana, a like me ka'u hoakaka ana mamua; ua hoonuia lakaou iwaena kona o keia mau pilikia. Aole emi iki i ka wi—hoonuiia no. Pau keia manao i ko Rarotona.

Na'u NA BALUINA

## NO LONO,

KEKAHI ALII KAHIKO O KAUAI.

He aupuni maikai ko Lono, aole ona pepehi kanaka. He malama no ia alii i kanaka a puni ka moku o Kauai nei. Ina make keiki iloko o ka opu o ka makuwahine, minamina no ke alii ia keiki; a no ka nui loa o ka minamina o Lono i ke keiki, uku aku la oia i ka ukana no na makua. Pela no kona leo i kauoha aku ai i kona mau hoahanau ma Kauai nei. Ue nui loa na kanaka o Kauai nei ia manawa, ma ia aina aku a ia aina aku. O Lono ma Kona—o Keaka o Kanaloa ma Wailua—o Luahiwa ma Koolau—o Halanikikaupua ko Nihoku—o Kaubane ko Hanalei—o Kanihokawala ko Kalalau. O Konaalee ke keiki a Lono: o Kuluiwa ke kaikamahine a Lono: o Kaikilanea kekahi keiki kane a Lono, no Niihau ia keiki. O Kolowahine kekahi kaikamahine a Lono. Holo o Lono i Oahu, a me kona mau hoahanau. Kauoha o Lono i ka aina i kana mau keiki, "E malama pono olua i ka aina, a me na kanaka—e noho pono olua." Holo o Lono i ka makaiakai a Molakai, a Maui, a Hawaii. Holo no o Lono, aole i loa ka hewa i kona aupuni a hoi mai no oia me ka maikai. Kauoha mai o Alapai, ke 'lii o Hawaii, "E hoi no oe a Kauai noho." Holo o Konaalee, hookekeke i ka aina—hookahi kanaka kanaka ia ia loa ka hewa. Alaila hoomakaukau iho la o Lono i na 'lii a me na kanaka; a holo aku la o Lono mahope, a loa o Konaalee i Oahu, e lana ana no na waa

i hai aole i pae iuka. Haawi mai la o ke alii i ka ai, i ka ia; oia ke alii o Oahu.

P.—

## O KEKAHI MAU AINA NELE I KE KULA KAMALII.

O Kaunala kekahi, a me Waialea a me Pahipahielua a me Punaluulalo a me Kawa, ua nele ia mau aina i na kula no na kamalii. Ma kekahi mau aina e ae, ua hema hema wale no na kula; a kakaikahi wale no ka halawai ana o na kamalii e ao.

Malaila paha e kokua mai na alii e hooala i na kula ma keia mau aina, a e kokua mahope o kekahi poe kumu e like me ka Kaahumanu hana i kela wa mamua.

No kekahi kanaka ua tele i ka pali. Poakolu ua moe makou ma Kahana; a i ko makou manawa e puka aku ai malaila, ua lohe au i kekahi kanaka, o Wahapulu kona inoa, a hina ia ma ka pali a lele ilalo loa, a aneane make. Ua pahu au i kona lima, a kokua aku ia ia ma kekahi laau. Ua manao na hoalauna ona e malama nui ia ia. Aole paha hai kona iwi; aka ua eha loa kona poo, a me kona poohiwi. Ua ola paha ia, ua make paha, aole au i lohe. Ua pono i na kanaka e malama i ko lakou kapuai, ke hele lakou ma kahi pali.

Ka hoike ma Waialua. Ma ka poaha, hoi mai makou i Waialua, a malama i ko makou hoike no na kamalii ma ka poalima. Eia ka nui o na kamalii i hoikeia ma Waialua—144,—70 ka poe ike—74 ka poe ike i na hua heluhelu wale no. O kekahi poe, ua ike lakou i ka Helu kamalii a me na mokuna 10: ma ka Helunaau, a me ka Hoike Holoholona kekahi a me kekahi mau mea ma ka Olelo honua.

A pau ka hoike a na kamalii, ua hoike mai kekahi poe kumu, 30 o lakou. Ua pau ka Helunaau i kekahi poe o lakou; a kokoke pau i kekahi. O kekahi poe e, ua lilo lakou i kela mea i keia mea o ke kino, nolaila, aole holo wawe lakou.

Eia kekahi mea i olioli mai ai ia'u; ua ike hou mai ma keia hoike 22 mau keiki ike ole i kela hoike, 3 mau malama mamua aku nei; a o kekahi poe e ua kokoke ike lakou.

O na kamalii a pau i hoikeia 358  
O ka poe ike, 130  
O ka poe hou, ua loa ia lakou ka ike, 34  
J. S. E.

LAHAINALUNA, Maraki 2, 1836.

Pehea la e mahuahua hou ai na kanaka o keia pae aina?

I ko'u noonoo ana i ka mea e mahuahua hou ai na kanaka o keia pae aina; Eia ka mua, e haalele i ka moe kolohe, a me ka hookamakama, a me ka inu rama, a me ke koka, a me ka moe malu i keia wa hou. Eia ka lua, o ka noho pono o ke kane me kana wahine, o ka malama i ka pono, a me ka haalele i na hewa iwaena o laua, o ke alakaikai hoi i na keiki ma ka pono. Eia kekahi, o ke ao ikaika o na kumu i na haumana i ko oukou hoi ana aku e malama pono i na kamalii, e kuhikuhi pono aku i na haumana

i ike koke; alaila hoonu mai ia nei. Eia kekahi, e hoi mai na kanaka a pau i ka mihi, e pule aku i ke Akua, e noi aku i kona Uhane i pau ai ka haumia o keia pae aina. Auhea oukou, e na kumu a me na 'lii a me na haumana a me na makaaianana o keia pae aina, e noonoo oukou i ka mea e mahuahua hou ae ai na kanaka o keia mau aina; ina i loa, e hoolaha koke aku i na aina a pau onci. Na'u na OWALAWAHIE.

KALUAHANA, Maraki 5, 1836.

Auhea oe, e ka hoahanau. Ua ku mai ia nei kahi moku. Ahiahi e holo ana ia i Honolulu. Nolaila ka manao i loa ia'u e palapala aku ia oe.

Aole nae i loa ia'u na mea hou ke hai aku. He poe kuaaina no makou ma Molokai nei. Aole i ea pinepine mai na mea hou, a me na mea kaulana ia nei. Aole he ulumoku. Aole i ku mai na moku manawa; aole hoi na kohola, aole hoi na moku kalepa. Aole he awa maanei e pono ai o ia mau moku. Nolaila aole i pae pinepine ai na haole mai Kahiki mai e hai ia makou i na mea hou.

Aka, aole e ohumu ino ana makou i ke Akua no kona hoonu ana ia makou ia mau mea. E ae ana makou i kana hana ana he maikai. Ke manao nei makou ua pomaiikai makou i ke awa ole. No ka mea ua paleia kekahi mau mea ino e ka ino o ke awa. Aole e ku mai ia nei na moku kuai rama, aole hoi e hiki na malamamoku a me na luina hewa e naku ana i na wahine o makou e moekolohe pu me lakou. Nui no na mea ino, a me na mea hibia i loa ole ai ia makou no ka pilikia o ke awa kahi e lulu ai na moku nui.

Mai manao nze oe ea ua nele loa makou i na mea e lealea ai na maka, a me na pepeiao, e me na naau o makou, aole loa.

KEKAHI MEA LEALEA.

Eia kekahi mea lealea maikai a makou e ike ai i ka wa a makou i hoi mai ai mai Lahaina mai. Holo mai la makou i ke kakaikahi nui. He maikai ka moana, a ke Akua i hoomalie mai i ka makani a kokoke pou. Me ka auwaa nui no hoi ko makou holo ana. O na hoe wale no ka makani. Pela makou i holo mai ai ma ka mouna a luh i na kanaka i ka hoe a wela i ka la, a pololi no hoi, a ake hoi hope ka waa; ia manawa no ea, ea mai na nana he lau a he lau, a puni na waa ia lakou. Ua paapu ko lalo o ka waa, a me ko hope a me ko mua, ko ka akau a me ko ka hema; aole wahi kaa-wale. Ike aku la na kanaka, kahaha iho la, a o ka holo wawe mai la no ia. Hookahi wale no ko makou ala me ko na naia. Hooikiwawe mai na kanaka i ka hoe; manao ae la, o ko makou poe hoaholo paha na naia a hiki i kahi papau alaila e hopuia paha kekahi i ai na lakou. Holo lealea pu mai la makou me na ia. Me he poe puua nui eleele la. Launa nui ae la na kanaka ia lakou. E ake e paa kekahi ia makou i mea ola no ke kino. Ua kauli ka hoi ko makou naau—he make hewa no ko makou holo wawe ana; no ka mea i ka wa kokoke



**Proposed Findings of Fact**

**Related to the identifying and scope of valued cultural, historical, or natural resources on the subject property or within the vicinity of the property, including the extent to which traditional and customary Native Hawaiian rights are exercised on the property.**

1. Ahupua'a. The subject property is located within the Kilauea Ahupua'a.
2. Place Names. There are numerous notable places names in the vicinity of the project area, amongst them are Kilauea stream and Mokolea Point.
3. Wahi Pana. There are numerous wahi pana or legendary places within the Kilauea Ahupua'a, amongst them are the celebrated chief Manokalanipō who is said to have commanded a supernatural mo'o to open the mauka part of Kilauea, the ridge above the Kilauea stream was called Kamo'okoa, and the three huge stones along the coast of Kilauea Ahupua'a are said to be the three beautiful sisters named Kalama, Pua, and Lāhela that Pele turned into stones.
4. Mo'olelo. There are numerous mo'olelo or stories associated with the Kilauea Ahupua'a, amongst them is the mo'olelo of Chief Lonoikamakahiki's journey to the famous tree of Kahiki-kolo, and along his journey he was befriended by a stranger Kapa'ihiahilina, a Kaua'i native. There is also mo'olelo about the handsome ali'i Kāhili who travels through Kilauea and is the prize in the kilu contest between Hina and Pele'ula.
5. Lifestyle and subsistence. Kilauea was also a favored location for agriculture, including lo'i kalo as evidenced by the terracing and 'uala was also mentioned.
6. Cultural resources. In Kilauea Ahupua'a there is a single recorded heiau called Pailio and is associated with Chief Halanikikaupua of Nihoku. However, some cultural resources in Kilauea Ahupua'a are accessible through programs for preservation of historic locations and traditional culture, including the Daniel K. Inouye Kilauea Point Lighthouse located within the Kilauea Point National Wildlife Refuge (KPNWR) and Hawaiian cultural organizations such as Kaipuwai Foundation and Na Kia'i Nihoku, that perform Native Hawaiian cultural practices and ceremonies at Nihoku summit on the summer and winter solstice and the spring and fall equinox, that partner with KPNWR.
7. Mahele Awards and Kanaina Testimony. There were several claims for kuleana lands in Kilauea Ahupua'a, including Holokukini (No. 6529) and Kealawa'a (No. 9217), although no claims were awarded.
8. Kilauea Sugar Company and Kilauea Railroad system. Kilauea Sugar Plantation Company Limited began in 1863. The first spike of the Kilauea railroad was driven by Lydia Kamaka'eha Princess Regnant (later to become Queen Lili'uokalani) on September 24, 1881. One archaeological site was designated as Temporary Site 1 (TS-1) and was comprised of two features: a railroad bridge culvert (Feature 1), and remnant section of railroad track (Feature 2) was found on the subject property.
9. Hunting. There are numerous accounts of Kilauea, in particular Nihoku, being a place where seabirds nested, and pheasants favored the protected area and local residents would hunt for birds and eat their eggs. Local residents also hunted for pigs through Kilauea, including Nihoku.

10. Water and marine resources. The Kilauea Ahupua‘a was also known for its offshore fishing grounds and fish at Makapili Rock and Point.
11. Kilauea Japanese Cemetery. Due to the immigrants working on the Kilauea Sugar Plantation, the cemetery was first established as a Chinese cemetery in 1870, then a Japanese cemetery, then Koreans were interred there, but more recently in 2000, a non-profit association has assumed ownership and accepted more burials.
12. Nihoku. Kama‘aina testimony from Gary Smith describes Nihoku as a place of cultural significance based upon several historical sources from *ka poe Kahiko*, including *nupepa Ke Kumu Hawaii*, *Ka Mo‘olelo no Hiiakaikapoliopole* by Hooulumahie, 1863 Royal Patent No 2896 Kamehameha IV to Charles Titcomb, in *Ka mo‘olelo...kekahi Ali‘i Kahiko o Kaua‘i*. Dr. Mehana Blaich Vaughan, whose husband and children have ancestral ties to Kilauea Ahupua‘a, indicates that Nihoku is considered culturally significant for its association with *mo‘olelo*, *kilo (celestial navigation)*, *hula & oli*, *visual landmark*, *fishing*, *hunting*, *Makahiki trail*, *cultural practices*, and is considered a cultural landscape.
13. Gullies. Dr. Vaughan indicated that the gully located on the subject parcel, *would have contained water, permitted agriculture and also bathing, or preparation for ceremony, either at Nihokū crest or at the Pailio heiau location thought to be nearby at the foot of Nihoku.*

#### **Proposed Findings of Fact**

#### **Related to the extent to which these resources, including traditional and customary Native Hawaiian rights will be affected or impaired by the proposed action**

14. Pre-contact features or sites. Based on the findings of the Archaeological Literature Review and Field Inspection, and onsite visit, a historic-era cultural resource was identified as a railroad bridge culvert and section of railroad track (TS-1) which could be impacted by the proposed action.
15. Gullies. Dr. Mehana Vaughan described the gully located on the subject property as a potential area that could contain culturally significant information or resources that could be impacted by the proposed action.
16. Although a majority of traditional burials within the vicinity have been discovered along the coastline and in sandy sediment, there remains the possibility that subsurface excavation could reveal iwi kupuna that could be impacted by the proposed action.
17. Although there is no current physical evidence on the subject property that an access trail or traditional and customary practices occurred on the subject property, there is an increasing sentiment by families who have lineal and cultural connections to the area and community members that while the proposed action may not individually impact traditional and customary practices, collectively the development within Seacliff Plantations has an impact on traditional and customary practices.

**Proposed feasible action of reasonable mitigation measures**  
**Related to the protection of Native Hawaiian rights and resources**

**1. Regarding the protection and preservation of the railroad bridge culvert and section of the railroad track (TS-1).**

- Further documentation of the historic property (TS-1) should be prepared to determine its extent, age, function, and significance.
- Until the extent of TS-1 is confirmed to not extend onto the subject property through further documentation, the Landowner agrees to coordinate with Cultural Descendants and knowledgeable community members on the protection and preservation of the railroad bridge culvert and sections of the railroad track located on the subject property. The following are specific recommendations by the Cultural Descendants:
  - The stone culvert floor at intake should be repaired and the stone head walls be cleared of vegetative growth. Loose rocks should be secured in place and cemented if formerly affixed in that manner;
  - The drain way, at least up to 15 feet on either side of the lowest point where the water naturally flows should remain as it is with the existing buffalo grass as a bulwark against erosion. Ultimately the invasive grass can be kept in check by weed whacking, encroachment of naupaka and the shaded canopy of the new dry land forest;
  - Development in this area should contain a large buffer from the gully, control for erosion and runoff, not allow for substantial movement that changes the slope and shape of the terrain and contain sediment so as to avoid filling the railway tunnel further, as is already observable;
  - The rail crossing/bridge/culvert built circa 1890, should be placed on the State of Hawai'i Historic Registry;
  - Although the rail bed appears to have been altered by fill and grading, it still sufficiently documents the original path of the railway system. It should also be included in the registry process. Any subsequent work along the bed which reveals the original tracks and elevation should be documented by photos, survey elevations and GPS info, and updated in the registry;
  - The Landowner should place a commemorative plaque at the site and inform the Seacliff Plantation Owner's Association of the significance of the structure. The Owner's Association should inform other owners along the rail path to take pride in its presence by preserving any evidence of its path through their properties as well;
  - The Seacliff Plantation Subdivision storm drain exit on the property above the crossing should never be altered or extended and that the drainage field remain continually grassed to avoid soil erosion;
  - Lastly, the Landowner should make genuine efforts to accommodate up to four (4) annual field trips from school groups or historical organizations and researchers.

## **2. Regarding the planting of native plants.**

- The Landowner shall consider the planting of native plants in gulch within the subject property. Native plants can include naupaka, Milo, Kukui, Noni and Kou to provide the basic canopy and ground cover. In addition, but not mandatory are plantings of Ohia and Koa which would be more challenging for the property owner to keep viable. Their inclusion and success would speak volumes to the Landowner's care and concern in the re-establishment of a true native dry land forest.

## **3. Regarding iwi kupuna.**

- There remains the slight possibility that pre-Contact cultural resources such as habitation area could be documented in subsurface contexts below the plow zone. The same would hold true for iwi kupuna: only a slight possibility that such exist on this plateau area. The majority of traditional burials in the area have been documented near the direct coastline and in sandy sediment. However, cultural informants have referred to burial sites in the areas, therefore, grading and development in the area should be minimized to avoid inadvertent discovery of iwi kupuna. Although no iwi kupuna have been discovered on the subject property, in the event iwi kupuna are discovered, all work in the immediate area shall cease and the Landowner shall contact SHPD, and any Cultural Descendants recognized by the Kaua'i Ni'ihau Island Burial Council for the area.

## **4. Regarding “reasonable” mitigation impacts to Nihoku as a cultural landscape**

- Cultural Descendants and members of the Kilauea community have raised concerns that although the Landowner's proposed project may not individually impact traditional and customary practices, the collective and cumulative impact from the past development and any proposed development, including the proposed project within Seacliff Plantation, has and will adversely impact the traditional and customary practices of Native Hawaiians' rights and resources associated with the cultural landscape of Nihoku and Kilauea. In the spirit of Article XII, Section 7 that seeks to find balance between preserving and protecting traditional and customary native Hawaiian rights and private landowners' right to develop, the Landowner agrees to request a meeting with the Seacliff Plantation Homeowner's Association to explore opportunities to engage, collaborate, and coordinate with the Cultural Descendants and Kilauea community to constructively address their concerns related to the adverse impacts of Seacliff Plantation's development on traditional and customary practices exercised by native Hawaiians rights and resources. These concerns include reasonable access to the ocean (especially for kupuna) to hunt pigs, fish, gather resources for subsistence and conduct education and ceremonies such as Makahiki, solstice and equinox observances and kilo events.

**ARCHAEOLOGICAL LITERATURE REVIEW AND  
FIELD INSPECTION FOR A 6.851-ACRE PARCEL AT  
SEACLIFF PLANTATION, KĪLAUEA AHUPUA‘A,  
HANAIEI DISTRICT, ISLAND OF KAUA‘I, HAWAI‘I  
[TMK: (4) 5-2-004:093]  
LOT 20A UNITS 1 & 2**

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## **INTRODUCTION**

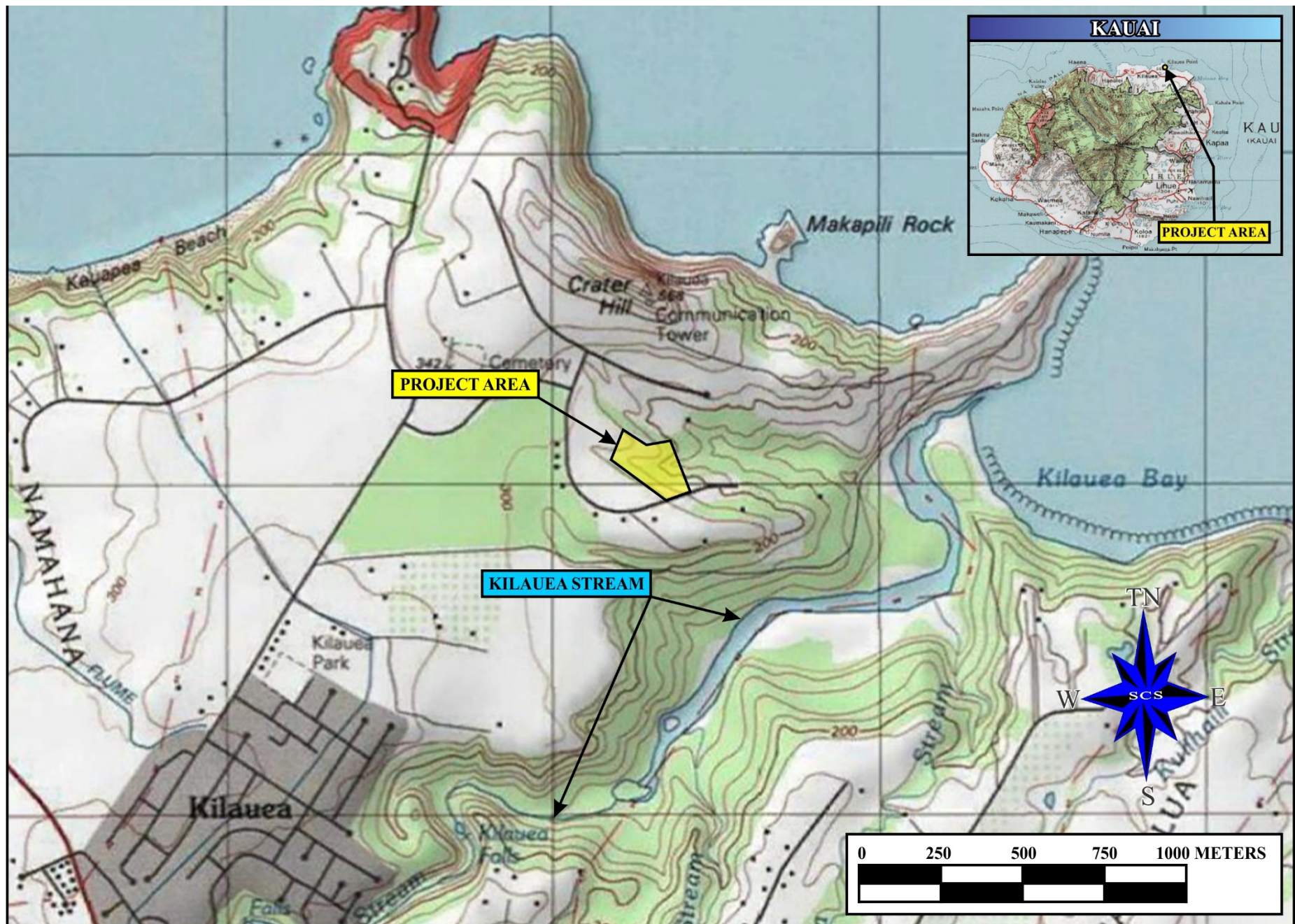
At the request of Ku‘iwalu Consulting, Scientific Consultant Services, Inc. (SCS) has conducted this archaeological Literature Review and Field Inspection (LRFI) for a 6.851-acre Parcel (Lot 20A, Units 1 & 2) in Seacliff Plantation, Kīlauea Ahupua‘a, Hanalei District, Island of Kaua‘i, Hawai‘i [tax map key (TMK) parcel: (4) 5-2-004:093]. The project area is shown on a portion of a United States Geological Survey (USGS) topographical map, a Tax Map Key (TMK) map, and a Google aerial photograph (Figures 1 through 3).

The field inspection was conducted on June 1, 2022, by SCS Archaeologist Jason Stolfer, M.A. under the supervision of the Principal Investigator Michael F. Dega, Ph.D, and consisted of a 100% pedestrian survey across the project area.

During survey, a single archaeological site, designated Temporary Site 1 (TS-1) was identified. This site was comprised of a railroad bridge culvert, as well as a nearby section of railroad track. It is likely that TS-1 was part of the railroad built to haul sugar for the plantation operated by the Kilauea Sugar Company, and that other portions of that railroad may still be present in the vicinity.

This report is not intended to meet HAR §13-276 requirements for an Archaeological Inventory Survey (AIS), but aims to identify potential cultural resources in the project area and its vicinity, and to provide in brief the history of relevant archaeological research within Kīlauea Ahupua‘a. Thus, the scope of work for the current investigation includes the following two aspects:

- Literature review consisting of a study of previous archaeological reports pertaining to the project area and its vicinity. This research is conducted in order to determine 1) known archaeological and cultural sites that have been recorded in the project area, 2) features, sites, or cultural resources that may be associated with the subject property adjacent to it, if any, to assist in the *Ka Pa‘akai* Assessment, and 3) support appropriate recommendations to State Historic Preservation Division (SHPD).
- Field inspection via pedestrian survey of the project area. This inspection is conducted in order (1) to identify any surface archaeological features and (2) to investigate and assess the potential for impact to such sites. This assessment will also identify any sensitive areas that may require further investigation or mitigation before work on the project proceeds.











**Figure 3: A Google Earth aerial photograph (imagery date: 12/16/2013) showing the location of the project area**

## **ENVIRONMENTAL SETTING**

### **LOCATION**

The field inspection occurred within a project area consisting of TMK parcel (4) 5-2-004:093, which encompasses 6.851 acres divided between two Condominium Property Regime (CPR) units, with the northern CPR (Unit 1) comprising 3.216 acres, while the southern (Unit 2) is 3.635 acres. This parcel is Lot 20A of the Seacliff Plantation gated community, and is surrounded on all sides by other lots within Seacliff Plantation. The project area is bordered by Pali Moana Place on the south. Seacliff Plantation is bordered by Kīlauea Point National Wildlife Refuge on the north, while other notable places nearby include Kīlauea Agricultural Park across Pali Moana Place to the west, and the mouth of Kīlauea Stream not far east (the stream is approximately 665 m east from the project area). This location would colloquially be referred to as being located in Kīlauea, after the Census Designated Place (CDP) of Kīlauea, since addresses in the State of Hawai‘i are typically given using CDP in place of city or county.

The project area falls within contemporary Kīlauea Ahupua‘a, which is part of Hanalei District (Hawaii State Office of Planning 2021). Hanalei is one of the five judicial districts dividing Kaua‘i County and occupies most of the north coast of Kaua‘i Island and a rough pie-wedge inland from the coast.

### **GEOLOGY AND TOPOGRAPHY**

Kaua‘i is the oldest and fourth largest of the eight main Hawaiian Islands. It was formed from a single great shield volcano (Macdonald et al. 1983:453). At one time that volcano was the largest caldera in the islands, extending 15 to 20 kilometers across. Mount Wai‘ale‘ale, which forms the central hub of the island, rises 1,598 meters above mean sea level (amsl). Topographically, Kaua‘i is a product of heavy erosion as it features broad, deep valleys and large alluvial plains. Its land area is approximately 1,432 square kilometers.

The elevation of the project area ranges from approximately 60 to 80 m above mean sea level (amsl). It is located in a region of relatively flat terrain between the coast and Kīlauea Stream.

### **CLIMATE AND HYDROLOGY**

The project area is located near the northern shore of Kaua‘i, facing the northeastern trade winds that bring precipitation. However, the near-coastal location means it does not much benefit from orographic lift effects from those trade winds hitting Mount Wai‘ale‘ale. Therefore, the project area still sees moderate rainfall, higher than leeward lowlands but lower than other windward locales further upland.

Mean annual rainfall over the project area is 1460 mm (57.5 in). Rainfall is higher in winter and spring, with a peak of 185 mm (7.3 in) in November, and a low in June of 76 mm (3.0 in) (Giambelluca et al. 2013).

Average annual air temperature in the project area is 22.9 °C (73.2 °F). August is the hottest month with an average of 24.7 °C (76.4 °F), while February is the coolest with an average at 21.1 °C (69.9 °F) (Giambelluca et al. 2014).

Kīlauea Stream to the east is the nearest major water feature (see Figure 1). The stream runs on a roughly southwest to northeast axis, with its mouth emptying into Kīlauea bay. The *Hawaii Stream Assessment* (Hawaii Cooperative Park Service Unit 1990:36) classifies it as a perennial stream. Kīlauea Stream is sometimes also referred to as Kīlauea River.

## SOILS

According to Foote et al. (1972: Sheet 25) and the U. S. Department of Agriculture Natural Resource Conservation Service, and University of California, Davis California Soil Resource Lab (2017), the project area topsoils are of the Lihue series, primarily Lihue silty clay, 25 to 40 percent slopes, eroded (LhE2), with a region of Lihue silty clay, 15 to 25 percent slopes (LhD) in the southeast, and a slight sliver of Lihue silty clay, 0 to 8 percent slopes (LhB) on the northwest. Figure 5 is a soil map of the vicinity of the project area, and Table 1 summarizes the soil types.

The Lihue series “consists of well-drained soils on uplands” and are “developed in material weathered from basic igneous rock” (Foote et al. 1972:82). LhB has slow runoff and slight erosion hazard, and is “used for sugarcane, pineapple, pasture, truck crops, orchards, wildlife habitat, and homesites” (Foote et al. 1972:82-83). LhD has medium runoff and moderate erosion hazard, and is “used for sugarcane, pineapple, pasture, wildlife habitat, and woodland” (Foote et al. 1972:83). LhE2 has rapid runoff and severe erosion hazard, and is “used for pasture, woodland, and wildlife habitat,” with “small areas are used for pineapple and sugarcane” (Foote et al. 1972:83).

## VEGETATION

According to Sonia and James Juvik (1998:122, 127) before human settlement the native ecosystem of the area would have been ‘lowland dry and mesic forest, woodland, and shrubland.’ Indigenous flora that may persist in this environment include ‘*a‘ali‘i* (hopbush, *Dodonaea viscosa*), ‘*ākia* (*Wikstroemia* sp.), ‘*elama* (*Diospyros hillebrandii*), *kāwelu* (variable lovegrass *Eragrostis variabilis*) *koa* (*Acacia koa*), *ko‘oko‘olau* (*Bidens* sp.) ‘*ohi‘a* (*Metrosideros macropus*), *pili* (black speargrass, *Heteropogon contortus*), ‘*ūlei* (Hawaiian hawthorn *Osteomeles anthyllidifolia*), and *wiliwili* (*Erythrina sandwicensis*).





**Figure 4: Google Earth aerial photograph showing the soil series in the project area and in its vicinity (U. S. Department of Agriculture Natural Resource Conservation Service, and University of California, Davis California Soil Resource Lab 2017)**

**Table 1: Soil types represented on Figure 5.**

Abbrev.	Full (Soil) Name	Abbrev.	Full (Soil) Name
BS	Beaches	Mr	Mokuleia fine sandy loam
DL	Dune land	Mta	Mokuleia clay loam, poorly drained variant
IoB	Ioleau silty clay loam, 2 to 6 percent slopes	MZ	Marsh
IoC	Ioleau silty clay loam, 6 to 12 percent slopes	PnC	Puhi silty clay loam, 8 to 15 percent slopes
IoE2	Ioleau silty clay loam, 20 to 30 percent slopes, eroded	PnE	Puhi silty clay loam, 25 to 40 percent slopes
LhB	Lihue silty clay, 0 to 8 percent slopes	QU	Quarry
LhC	Lihue silty clay, 8 to 15 percent slopes	rRO	Rock outcrop
LhD	Lihue silty clay, 15 to 25 percent slopes	rRR	Rough broken land

## **TRADITIONAL BACKGROUND**

Archaeological data indicate that initial settlement of the Hawaiian Islands occurred on the windward shoreline areas around 10th century C.E. (Kirch 2011:22), with populations eventually settling into drier leeward areas at later periods (Kirch 1985:103). In the next few centuries coastal settlement was still dominant, while populations were beginning to expand to upland *kula* (pasture) zones from the 12th to the 16th century C.E. (Kirch 1985:103). Large scale or intensive agricultural endeavors were implemented in association with habitation. Settlers preferred coastal lands, but cultivated taro both near the shores and in the uplands.

### **TRADITIONAL LAND DIVISIONS**

The islands of Hawai‘i were traditionally divided into *moku* (districts) and *ahupua‘a* (subdistricts). On Kauai this occurred during the reign of Manokalanipō (Wichman 1998:102). These divisions were meant to incorporate all of the natural and cultural resources necessary for subsistence, stretching from the ocean to the mountain peaks and providing access to ecosystems at various elevations (Lyons 1875:111). The *moku* were likely consolidated approximately 600 years ago, when the native population had expanded to a point where large political districts could be formed (Lyons 1875:29, Kamakau 1961:54, 55; Moffat and Fitzpatrick 1995:28). Kaua‘i traditionally consisted of six *moku* (Kona, Puna, Ko‘olau, Halele‘a, Napali, and Waimea), each comprised of constituent *ahupua‘a*. The etymology of the word *ahupua‘a* may be traced to the practice of marking the boundary with a heap (*ahu*) of stones surmounted by an image of a pig (*pua‘a*) or of laying a pig on an altar as a tax to the chief (Native Hawaiian Library n.d.).

These ancient land divisions are still commonly used to locate and refer to geographical features of the islands, and the State of Hawai‘i still uses *ahupua‘a* as administrative land divisions, although their modern boundaries may differ from the traditional ones. *Ahupua‘a* were often subdivided into smaller land divisions called *‘ili*, administered by *ali‘i* (chiefs), but unlike the larger units *‘ili* were not meant to encompass a broad selection of resource areas (Lucas 1995:40). The land holding of a *hoa‘āina* (tenant) under an *ali‘i* was called a *kuleana* (right, privilege), a term that eventually came to mean “property” or “land title” as well (Lucas 1995:61).

## PLACE NAMES

Kamehameha Schools’ (n.d.) *Aloha ‘Āina Project* indicates that Kīlauea Ahupua‘a (where the project area is located) was traditionally a part of Ko‘olau Moku, and suggest boundaries similar to the modern demarcation. Kīlauea means “spewing” or “mush spreading”, in reference to the movement of lava during volcanic eruptions, and on Kaua‘i may refer to a tuff cone (not to be confused with the active volcano on Hawai‘i island). Ko‘olau means “windward,” appropriate to the *moku*’s location on the north shore of Kaua‘i, facing the prevailing trade winds.

A number of notable geographic features occur in the vicinity of the project area. Kīlauea stream, which flows from the south of the project area to the west before emptying into the ocean, strongly influences not only the natural landscape but human settlement on and use of it. The stream serves as the boundary between Kīlauea Ahupua‘a and Kāhili Ahupua‘a, and (surviving) terraces for traditional-style agriculture often follow its curve. Kāhili means “feather standard” (carried by attendants to herald royalty). The name Mōkōlea (or Mōkōlea Point) refers to a promontory north of the mouth of Kīlauea stream, and means “plover island (*mō* here being short for *moku*)” as it is a key seabird nesting location (albeit not strictly an island). Another important nesting area for seabirds can be found north of Kīlauea Point, on a small island named Moku‘ae‘ae, which John Clark (2003) interprets as simply meaning “fine [i.e. small] island.” The name Nihokū is associated with Crater Hill, but there seems to be little if any historical usage of this name, so it is possible that it is a modern naming convention rather than a traditional Hawaiian name. North of Crater Hill and Kāhili Quarry Beach there is also a tied island called Makapili Rock that is connected to the shore by a tombolo (sandy isthmus). Makapili means “squinting eyes.”

## WAHI PANA

There are stories or traditions associated with some of the *wahi pana* (legendary places) in Kīlauea Ahupua‘a. Frederick Wichman (1998:104) relates a story of how the *Menehune* (legendary race of small people), upon discovering Moku‘ae‘ae, “tried to bridge the channel between this island and the mainland with rocks.” However, the Menehune were not able to completed this task due to its length and complexity. William Hyde Rice explains:

The Menehune were a small people, but they were broad and muscular and possess of great strength. Contrary to common belief they were not possessed of any supernatural powers, but it was solely on account of their tremendous strength and energy and their great numbers that they were able to accomplish the wonderful things they did....

One curious thing about the Menehune was that they never worked in daylight, as they never wanted to be seen. It was their rule that any enterprise they undertook had to be finished in a single night. If this could not be done, they never returned to that piece of work. [Rice 1923:34-35]

The Menehune's attempt to build a causeway between Moku'ae'ae and Kīlauea Point failed because "just as they were able to touch bottom with their paddles, daylight interrupted their task" (Wichman 1998:104), and it was therefore abandoned. Although this tale records the Menehune acting of their own accord, others speak of *ali'i* bargaining with the Menehune to apply their prowess to construct great works elsewhere on Kaua'i (Wichman 2003:9-11).

While Menehune are associated with the *makai* (oceanward) portion of Kīlauea's, not only as builders but as fishermen plying the waters offshore Kīlauea from a settlement at Hanalei bay to the west (Wichman 1985:36), the *mauka* (mountainward) portion of the *ahupua'a* is also home to a great work said to have been accomplished by non-human prowess. The celebrated chief Manokalanipō was said to have commanded a supernatural *mo'o* (lizard) to open up the *mauka* part of Kīlauea, where the land was good for planting but water was lacking, for agriculture. Three long irrigation ditches on slopes of Kīlauea *mauka* resembled the claw marks of a *mo'o*, and the ridge above Kīlauea stream was called Kamo'okoa, meaning "brave lizard" (Wichman 1998:102).

Wichman (1998:103) also relates a story that purports to explain the "volcanic cone open to the ocean" resulting in the "long beach unprotected by any reef" at the coast of Kīlauea Ahupua'a, as well as "three huge stones" that once stood atop the cone but "have since been moved, with great difficulty, to make room for sugarcane." These features were attributed to the actions of the volcano goddess Pele:

Pele had come to Kaua'i and fallen in love with Lohi'au, a chief of Hā'ena. She promised to find a home for the two of them, but when ever she struck her staff, she was met by water, for her sister Nā-maka-o-kaha'i, goddess of the sea, was her enemy. Pele caused an eruption here, but it was soon extinguished when the sea goddess broke down the walls of the crater, drowning the fire with the ocean. [Wichman 1998:103]

Already frustrated by her sister's sabotage, Pele is enraged when "three beautiful sisters" named "Kalama, Pua, and Lāhela" laughed at the failure of her efforts, and she promptly turns all three into stone, leaving them in place as an object lesson of why she should not be ridiculed.

## MO'OLELO

The *mo'olelo* (lit. stories; also: oral history) of Kaua'i include many legends and tales of great events, but few that occur in Kīlauea. It is also notable that these tales speak of the fruit-bearing trees of Kīlauea providing food, rather than a cultivated staple crop, which is consistent with the difficulties the terrain in Kīlauea Ahupua'a could present to flat field agriculture (see Lifestyle and Subsistence, below).

Kīlauea Ahupua'a is mentioned as part of the long journey of Hawai'i island chief Lonoikamakahiki to see for himself "the famous trunkless *koa* [*Acacia koa*] tree of Ka-hiki-kolo, a tree from which earlier warriors had fashioned war clubs" (Wichman 2003:67). This journey began with Lonoikamakahiki accompanied by "his favorites, his warriors as companions and also his servants" but this retinue soon abandoned him, and when he "happened to look back to see where the rest of his people were" he found "only a solitary man following him... a stranger with whom he had no acquaintance" (Fornander 1916-17, Vol 4:352). The stranger was Kapa'ihiahilina, a Kaua'i native who had heard that the Hawai'i *ali'i* had been deserted by his followers, and brought "a calabash of *poi* [a Hawaiian dish made from the fermented root of the taro which has been baked and pounded to a paste] with some 'o'opu [general name for fishes included in the families Eleotridae, Gobiidae, and Blennidae] fish" as provisions for Lonoikamakahiki (Wichman 2003:68). Lonoikamakahiki was determined to press on to his destination, and observing that Kapa'ihiahilina scrupulously observed the *kapu* (taboos, prohibitions) that were accorded to royalty, told his faithful companion that they would proceed as equals:

Lonoikamakahiki said to him: "do not hold me in sacredness because you are my own brother. I have nothing dearer than yourself, therefore, where I sleep there will you sleep also. Do not hold me aloof, because all that is good has passed and we are now travelling in the region of the gods." In consequence of this, the king's wishes were observed, and they sat down together.  
[Fornander 1916-17, Vol 4:352]

The food that Kapa'ihiahilina had brought ran out, but he foraged *hala* (screwpine. *Pandanus tectorius*) fruit for food, and also braided ferns into garments to replace the *malo* (male's loincloth) made of *tapa* (bark cloth) they wore, which had been damaged by rain. With the aid of this skilled friend, Lonoikamakahiki achieved his wish to see the trunkless *koa* tree, and returned safely home, where he made his new trusted confidante his prime minister.



The meteoric rise of this outsider [Wichman (2003:67) characterizes the Kaua‘i man as a chief himself, but Fornander (1916-17, Vol 4:352) does not give him any rank] led to jealousy from Lonoikamakahiki’s subordinate chiefs, who began plotting against Kapa‘ihiahilina. The plotters eventually convinced Lonoikamakahiki to bar his friend from his presence by spreading rumors that Kapa‘ihiahilina had slept with his wife. Kapa‘ihiahilina then composed a chant reminding Lonoikamakahiki of their friendship, and how they had faced adversity together in their passage through the wilderness of Kīlauea (and other parts of Kaua‘i), a part of which says:

We ate of the ripe pandanus in our  
wanderings,  
Thus were our days of hunger  
appeased, my companion,  
My companion of the tall pandanus,  
From Kilauea to Kalihi;  
The pandanus that had been partly  
eaten,  
Of Pooku in Hanalei.

*Hala ia mao a ka ua ilaila, e ke hoae,  
Hele aku a ai i ka pua pala o ka hala  
Hala ia la pololi o ka ua ilaila, e ke  
hoa.  
He hoa i ka nahele la uhala loloa,  
Mai Kilauea a Kalihi la;  
O ka hala i aina kepaia,  
O Pooku i Hanalei-la.*  
[Fornander 1916-17, Vol 4:358-359]

This chant reminded Lonoikamakahiki of his affection for his friend and all that Kapa‘ihiahilina had done for him, and he gave orders that his friend be restored to the prime minister position and the plotters be executed.

Kīlauea Ahupua‘a is also mentioned as the place where an *ali‘i* named Kāhili ruled, but the *mo‘olelo* that speaks of him actually takes place in Kīpū Ahupua‘a, near the Hulē‘ia River and Mount Hā‘upu. Kahili arrives in Kīpū at the court of the *ali‘i nui* (high chief) Hina, famed for her beauty, just in time to become the subject of a rivalry between the Kaua‘i *ali‘i nui* and a rival beauty visiting from O‘ahu, Pele‘ula. Pele‘ula had heard that “Kaua‘i women were the most beautiful” while holding court at her home of Waialua, and proud of the splendor of her court and her own charms, had made up her mind to visit Kaua‘i to settle the question of where the greatest beauty lay (Wichman 1991:110). Hina welcomed the visiting Pele‘ula, and invited all her own subordinate *ali‘i* to present themselves, all the better to show off Kaua‘i. When Kāhili arrived, both Hina and Pele‘ula saw that he was exceptionally handsome, and agreed to make him the prize in a contest between them, initially ten rounds of *kilu* (a throwing game; *also*: the a small gourd or coconut shell, usually cut lengthwise, used to play the game of *kilu*). A game of *kilu* ordinarily featured many players who threw at targets placed in front of other participants to pick a partner for a kiss (or more), comparable in this respect to the contemporary game of spin-the-bottle. So enamoured were the two female *ali‘i nui*, however, that they instead asked Kāhili to be the sole target in a direct *kilu* contest between the two of them.

The handsome young *ali* 'i was all too happy to be the center of attention, showing his value as stakes by performing a dance and chant in which he declared “Here are the bones of Ko‘olau, / The ‘ulu, breadfruit tree [*Artocarpus altilis*] and warrior of Kilauea” (Wichman 1991:114). The two women proved to be equally adroit at *kilu*, and instead decided to have a beauty contest, letting Kāhili pick which of them he found to show her charms to best advantage. Both women prepared themselves with their best adornments and present their own dances and chants before the court. Pele‘ula showed off well, but Hina’s performance evoked not only her own beauty but the natural wonder of Kaua‘i. Even her rival had to admit that “the beauties of Kaua‘i are beyond compare” (Wichman 1991:119). To commemorate this, a profile of Hina, called Hinaiuika, was carved on the face of Hā‘upu.

## LIFESTYLE AND SUBSISTENCE

The Pre-Contact (e.g. prior to western contact, which is generally considered to begin with the arrival of Captain James Cook in 1778) Hawaiian economy was largely based on subsistence agriculture and aquaculture, supplemented by collection of natural resources, including marine and avifaunal organisms and undomesticated flora. Patrick Kirch notes that the economy was productive and diverse enough to support “considerable craft specialization... canoe-makers, adz-makers, bird-catchers, wood-carvers and tattooing experts” (Kirch 1985:3). The existence of specialized artisans and artists implied a sophisticated society with a bounty of both surplus food and spare labor to support many cultural practices and non-subsistence activities.

Settlements often concentrated in river valleys most amenable to wet *kalo* (taro, *Colocasia esculenta*) cultivation, incorporating *lo* 'i (pond fields, irrigated terraces) and *‘auwai* (ditches, irrigation canals). Areas with higher precipitation permitted cultivation of *kō* (sugar cane, *Saccharum officinarum*) and *mai* 'a (banana, *Musa* spp.). However, dryland agriculture centering on *‘uala* (sweet potato, *Ipomoea batatas*) as the staple crop was also prevalent, especially on drier, leeward areas of the islands, where they were cultivated along with dryland varieties of *kalo*.

Edward and Elizabeth Handy (1972) note that Kīlauea has long been a favorable location for agriculture, and naturally became a population center as well:

On the island of Kauai there were five areas where development of food resources produced concentration of population. One of the best deep-sea fishing areas was along the windward or Napali coast. Adjoining this to the southward were localities where irrigated taro was cultivated extensively in terraces, termed *lo* 'i, at Ha'ena, Hanalei, and Kīlauea. [Handy and Handy 1972:269]

Handy and Handy (1972) also note that the tendency for relatively steep terrain in this region, especially upland, inhibited terracing for wet *kalo* agriculture. Agriculture was likely on *kula* (*lit.* plain, pasture, *in context*: dryland suitable for dry cultivation in contrast to wet cultivation in *lo‘i*) lands with *‘uala* as the favored staple crop.

Kīlauea is watered by a small river whose headwaters take the flow of streams above Kalihiwai as well as those coming down sloping *kula* lands above Kīlauea. This is a peculiar terrain, with terraces along the north side of the river toward its seaward end belonging to Kīlauea and those on the south side to the small *ahupua‘a* named Kāhili. A mile upstream is a small terraced area, but beyond this there were no terraces, for the main stream flows in a narrow gulch, and so do other side streams which flow into the Kīlauea River. Hawaiians evidently never developed *lo‘i* here because the neighboring *kula* land is too high above the streams for irrigation. This *kula* would have been excellent sweet-potato land. On the whole, Kīlauea, despite a sizable river flowing through it, was a relatively small producer of taro because of the nature of its hinterland. [Handy and Handy 1972:421]

While the immediate vicinity of the project area has, in the current day, been rendered flat enough to be amenable to both agriculture and contemporary residential development, the soil map (see Figure 4 and Table 1) certainly shows that the terrain of this area varies greatly.

## **WATER AND MARINE RESOURCES**

The project area is part of what the State of Hawai‘i Division of Aquatic Resources (Parham et al. 2008) categorizes as the Kīlauea, Kaua‘i Watershed, which is supplied with water by the perennial Kīlauea Stream, as well as ample rain (see Climate and Hydrology, above).

As Handy and Handy (1972) note (see Lifestyle and Subsistence, above), the (often steep) terrain near the river made it difficult to harness that water for *lo‘i* agriculture. However, the ancient irrigation ditches attested by Wichman (1998) (see Wahi Pana, above) are evidence of substantial Pre-Contact agriculture, largely inland and *mauka* of the current project area.

Wichman’s (1985:36) account of the Menehune favoring fishing grounds offshore of Kīlauea indicates that marine resources were ample, despite the lack of a reef in the collapsed cinder cone that shapes the beach. Mōkōlea and Moku‘ae‘ae are now part of a nature reserve (see Cultural Resources, below), but these seabird nesting sites were also a source of food. “In the interview of a local resident, Kwai Chew Lung (Chow) ... he recalls that the Hawaiians used to pick up baby chicks on Mokuāeae Rock... he also remembers going fishing there and hunting for eggs to eat” (Fredericksen and Fredericksen 1989:15).



## **CULTURAL RESOURCES**

Thomas Thrum (1907) recorded a single *heiau* named Pailio in Kīlauea Ahupua‘a, as well as another *heiau* named Kipapa in Kāhili Ahupua‘a, but based on later investigations, it would appear that both *heiau* have been destroyed by subsequent activity (see Previous Archaeology, below). There is considerable amount of remnant Pre-Contact Hawaiian terracing near Kīlauea Stream (on private lands), southwest of the current project area, especially where the terrain is steep and uninviting to Post-Contact development.

In some cases (see Previous Archaeology, below), Post-Contact agricultural and habitation features have been found built over or reusing the Pre-Contact terracing. While the native Hawaiian population decreased in the 19<sup>th</sup> century, immigration brought in new settlement, including many Asian workers employed by the Kilauea Sugar Company plantation. Asian-style rice pond fields that were likely developed from remains of older native Hawaiian *lo‘i* (to the south of the project area Clark and Rechtman 2010, Clark et al. 2011), and the presence of a Japanese Cemetery to the west (Cleghorn 2001, Spear 2014, Hulen and Barna 2021), speak to the historical demographic changes in Kīlauea Ahupua‘a.

In the present day, some cultural resources in Kīlauea Ahupua‘a are accessible through programs for preservation of historic locations and traditional culture. A number of structures have been placed on the National Register of Historic Places (NRHP). This includes several buildings associated with the Kīlauea plantation, as well as the Daniel K. Inouye Kilauea Point Lighthouse located within the Kilauea Point National Wildlife Refuge (KPNWR). A number of Hawaiian cultural organization partner with the KPNWR to provide access to the coastal region for traditional cultural practices (see Land Use in the Post-contact Period to the Present).

## **HISTORICAL SETTING**

### **PRE-CONTACT POLITICAL HISTORY**

Wichman (2003:55) writes that “the genealogy of Kaua‘i *ali‘i* was considered the most ancient and impeccable in all the Hawaiian islands” and that “*Ali‘i* from other islands were eager to introduce the Kaua‘i bloodline into their own” because of the prestige of the noble lineages of Kaua‘i. Yet despite the high regard in which Kaua‘i *ali‘i* were once held, significant portions of their history have been largely inaccessible to western historians due to limited written records and *mo‘olelo* that have been preserved (Abraham Fornander 1880, Vol 2:291). Nonetheless, folklore associated with Kaua‘i provides some context for Kauai’s Pre-Contact history.

Martha Beckwith (1970) chronicles the venerable bloodlines from which most Hawaiian *ali‘i* claimed descent, originating from the god Wākea and his wife Papahānaumoku:

From Ulu and Nana-ulu, sons of Ki'i, twelfth in succession from Wakea and Papa, all high chief families count descent. Hikapoloa, as well as the Waha-nui and Keikipaanea families of early legend, belong to the Nanaulu line. The important Maweke family is, according to Kamakau, the first of that line from whom men today trace ancestry. Their contemporaries are the Paumakua of Oahu, the Kuhailani of Hawaii, Puna of Kauai, Hua of Maui, and the Kamauaua of Molokai. To the Ulu line belongs the late migration of chiefs introduced by Paa to the island of Hawaii from whom most families of that island trace descent. Both legends, that of Paa and that of Maweke, are believed to have bearing upon early colonization of the Hawaiian group...

The coming of Maweke and his sons to the Hawaiian group is dated sometime between the eleventh and twelfth centuries. [Beckwith 1970:352]

Based on his being a contemporary of Māweke, whose reign is estimated to the 11th century C.E., Puna, the progenitor of Kaua'i's prestigious bloodlines, can be dated to roughly that time period. Perhaps the most famous descendants of Puna, as attested by the genealogies compiled by Samuel Kamakau (1992:448), are Kukona and his son Manokalanipō, respective the 7<sup>th</sup> and 8<sup>th</sup> *ali'i* 'aimoku (*lit.* chief who eats the land; *in context*: ruling chief of an island) of Kaua'i. Fornander (1980, Vol 2) highlights Kukona as being particular in his notability – he is a major figure in the legends where his forefathers are largely unmentioned:

Indigenous Kauai legends referring to this period have perished, and up to *Kukona's* time naught but the royal genealogy remains. But the war with the Hawaii chief, and the terrible defeat and capture of the latter, as well as *Kukona's* generous conduct towards the Oahu, Molokai, and Maui chiefs who fell into his hands after the battle, brought Kauai back into the family circle of the other islands, and with an *eclat* and superiority which it maintained to the last of its independence. [Fornander 1980, Vol 2:93]

The battle Fornander (1980, Vol 2:93) refers to also contributed to Kaua'i's prestige. In the early 15<sup>th</sup> century, Hawaii Island chief Kalaunuiohua launched an invasion of Kaua'i, accompanied by subordinate chiefs from other islands: Kanialuohua (Maui), Kahakuohua (Moloka'i), and Huakapouleilei (O'ahu). According to David Malo (1898:331-332), Kukona was able to win over these subordinate chiefs after defeating this invasion. Wichman (2003:55) characterizes the subsequent peaceful and prosperous times under Kukona's son Manokalanipō as a 'golden age':

Under Mano-ka-lani-pō, more and more land was opened for agriculture, and the population flourished. Warriors became more athletes than soldiers. So peaceful was this Golden Age that Palekaluhi, twin brother of Mano-ka-lani-pō, died in bed of old age. Such a passing was, after so many years of war, something to be noted. [Wichman 2003:55-56]

Although Manokalanipō led his father's warriors to war to capture the enemy chiefs Kukona was famous for winning over, he apparently had few worries about needing to fight during his own reign. Chiefs in this line of descent would subsequently rule Kaua'i for many generations.

## EARLY POST-CONTACT HISTORY

Captain James Cook made the first recorded contact with the Hawaiian Islands when he landed at Waimea on the southern coast of Kaua'i on January 20, 1778 (Beaglehole 1967; Daws 1974:1–2). After Cook's HMS *Resolution* and HMS *Discovery*, other ships began frequenting the islands to take on provisions and to partake in the sandalwood industry. Soon after, missionaries, visitors, and entrepreneurs also began arriving. Introduction of new technologies, religions, and political systems would play a major role in the eventual unification of the Hawaiian Islands.

A political consolidation of the Hawaiian Islands was already underway, but was accelerated by contact and the introduction of gunpower weapons. Maui chief Kahekili II (c. 1737–1794) was able to bring not only O'ahu, but also Lāna'i and Moloka'i under his rule in addition to his native Maui, and was engaged in warfare with his Hawai'i Island rival Kalani'ōpu'u at the time of contact. Kahekili also seems to have considered Kaua'i to be within his sphere of influence since his half brother Kaeokulani was married to Kaua'i's ruler, Kamakahelei. While Kahekili came closer to unifying the island chain than any before him, after his death at Waikīkī in 1794, his realm fell to conflicts between his heirs and invasion from his traditional rivals on Hawai'i.

According to Fornander (1880, Vol 2:262) Kahekili's son Kalanikūpule was his official heir, but his uncle Kaeokulani (who co-ruled Kaua'i) was in *de facto* control of the majority of his inheritance after the passing of Kahekili. Kalanikūpule was initially only able to secure direct control over O'ahu: "*Kalanikupule*, at his father's death, was recognised as the Moi [king] of Maui and its dependencies, Lanai, Molokai, and Oahu, yet the previous arrangement between *Kahekili* and *Kaeokulani* remained in force for some time, the latter governing Maui and the adjacent islands, while *Kalanikupule* ruled over Oahu." This was not a stable state of affairs, and nephew and uncle were soon at odds with each other. Kalanikūpule would strike a bargain with Captain William Brown for military assistance in this civil war with his uncle, and the firepower provided by Brown's ships proved decisive, delivering him victory over Kaeohulani.

However, Kalanikūpule subsequently tried to seize Brown's ships and firearms to use against Kamehameha, who was now the ruler of Hawai'i Island, the primary rival center of power. While this betrayal was initially successful, the surviving Western crew were able to retake their ships, and promptly replenished their supplies by selling the weapons Kalanikūpule coveted to his rival (Kamakau 1992:170–171). Having secured an invaluable military advantage, Kamehameha established his presence on Maui with an invasion of Lāhainā in February of 1795, his large fleet of war canoes covering the coast from Launiupoko to Mala (Kamakau 1961:171). Kalanikūpule fled to O'ahu, but Kamehameha's forces pursued, and ended the war with the battle of Nu'uuanu on O'ahu in 1795. This left Kaua'i as the only significant political force in the island chain unconquered, and Edward Joesting (1984:58) notes that at this time it was undergoing its own civil war between two of Kaekulani's sons, Keawe and Kaumuali'i. However, Kamehameha's first invasion attempt in 1796 was foiled by bad weather while his fleet tried to cross the Kaieie Waho Channel between O'ahu and Kaua'i, with many canoes sunk (Joesting 1984:59).

Kamehameha was prevented from swiftly making a second attempt by the need to put down rebellions in his own territory, and while Keawe triumphed in the civil war on Kaua'i, he died soon after, and rulership defaulted back to Kaumuali'i. Kamehameha's second try at an invasion in 1804, gathered "an army consisting of about 7,000 Hawaiian men ... eight cannons. forty swivel guns. and six mortars," to be carried by not only canoes but "twenty-one armed schooners" (Joesting 1984:62). This invasion force was struck by an illness called *ma'i 'ōku'u* (*lit.* squatting sickness; possibly cholera). The loss to illness of many of his most "trusted counselors and chiefs. some of whom had served Kamehameha for twenty years or more" made the invasion impossible (Joesting 1984:62). Joesting (1984:62-63) states that the loss of loyal subordinates was so severe that Kamehameha worried about attempts to overthrow him. This may have motivated Kamehameha to shift towards negotiations, with an eventual agreement reached in 1810 for Kaumuali'i to become his vassal, officially completing the unification of the islands while allowing Kaumuali'i to continue to rule Kaua'i as a (largely autonomous) subordinate chief.

Christian missionaries had arrived on Kaua'i in 1820, some of them accompanying Humehume's return home after his father had earlier sent him to the United States (Mills 2002: 127). According to Robert Schmitt (1973:2-3), the missionaries organized Kaua'i's first censuses, beginning in 1831, and would provide the main source of population data until the first comprehensive government census in 1850. Kauai's population was recorded as 10,977 in 1832, thereafter declining to 8,934 in 1836 and 6,956 in 1850 (Schmitt 1973:8). A more detailed regional enumeration in 1835 counted 88 adults and 29 children for a total of 117 individuals in Kīlauea Ahupua'a (Schmitt 1973:25).

## THE MĀHELE

In the 1840s, during the reign of Kāiūkeaouli, massive change in land tenure occurred, commonly referred to as the *Māhele* (division) because the *‘āina* (land) was legally divided between owners (Daws 1974:128). The term may also refer to the idea of the Hawaiian *maka‘āinana* (commoners, residents; *lit.* on the land) being dispossessed of the *‘āina*; separated from something that was once integral to their identity.

Formalizing land ownership had long been suggested by western advisors to the king and chiefs, but the five-month occupation of the islands by British naval officer George Paulet in 1843 may have added urgency to the issue, since privatization offered the hope that *ali‘i* might retain control over their lands as property even if national sovereignty were lost (Daws 1974:112-117). The Board of Commissioners to Quiet Land Titles (often shortened to “the Land Commission”) was established in 1845 to oversee land titles, and this Land Commission would hear claims during the *Māhele*.

The *Māhele* of 1848 divided Hawaiian lands between the king, the chiefs, and the *aupuni* (government). The parcels awarded by the Land Commission were called Land Commission Awards (LCAs). Initially, this only established crown lands owned by the king, *aupuni* lands owned by the government and private lands owned by the *ali‘i*, which were often referred to as *konohiki* (*ahupua‘a* headman) lands after the title given to land agents or stewards that managed *ahupua‘a* and *‘ili*. The subsequent Kuleana Act of 1850 allowed *maka‘āinana* to file claims for land parcels and house lots on which they had been living or cultivating.

In order to file claims, however, the *maka‘āinana* first had to be aware of the awarding of *kuleana* lands and LCAs, procedures that were largely foreign to them. Many of the *maka‘āinana* could not afford the costs associated with filing. People claiming urban house lots in Honolulu, Hilo, and Lāhainā were required to pay commutation to the government before obtaining a Royal Patent on their awards (Chinen 1961:16). Rural *kuleana* claims required a survey, which could be quite costly, assuming that the services of one of the few surveyors present in the islands at the time could be obtained (Moffat and Fitzpatrick 1995:50). Furthermore, awards of rural *kuleana* lands often only encompassed land under active cultivation, without including other locations necessary for traditional survival strategies, such as previously cultivated but presently fallow lands, or resource gathering areas such as *‘okipu‘u* (swidden gardens) and stream fisheries (Kame‘eleihiwa 1992:295; Kirch and Sahlins 1992:23, 110). These factors may have contributed to the relatively low number and size of claims, as only 8421 *kuleana* awards were issued, totaling only 28,658 acres (Moffat and Fitzpatrick 1995:50).

Some contemporary scholars have disputed the notion that the Māhele was the chief instrument of dispossession of the *kanaka maoli* (native Hawaiians). Beamer and Tong (2016:130) point out that although the claims system appears to have awarded the *maka ‘āinana* little, records show that they were able to purchase an estimated 167,290 acres of land between 1850 and 1893, often *aupuni* lands sold to them at relatively low cost. Beamer and Tong (2016:136) also argue that many *ali ‘i* leased or sold land to *hui* (associations) of *kanaka*, keeping some semblance of the former *ali ‘i* - *hoa ‘āina* relationship. In these ways, land not awarded to *maka ‘āinana* during the Māhele were still made available to them. Nonetheless, once foreigners were allowed to acquire land through the Alien Land Ownership Act of 1850, they quickly came to control much of it. By the end of the 19<sup>th</sup> century “white men owned four acres of land for every one owned by a native” (Daws 1975:125).

The *Indices of Awards Made by the Board of Commissioners to Quiet Land Titles in the Hawaiian Islands* (Land Commission 1929) do not list any LCAs in Kīlauea Ahupua‘a. Lloyd Soehren’s (2002-2019) *Hawaiian Place Names* database notes that Kīlauea Ahupua‘a was “returned by Kekauonohi, retained by *aupuni* at the Mahele.” The Office of Hawaiian Affairs (n.d.) *Kipuka Online Database* suggests a slightly more complex transaction in which Kīlauea Ahupua‘a was “relinquished by Mikahela Kekauonohi to Kamehemeha III” and “relinquished by Kamehemeha III to Government.” It should be noted that LCA No. 8559-B, the claim for the crown lands of Hawaii in the name of William C. Lunalilo, includes Kāhili and Kalihiwai Ahupua‘a, the *ahupua‘a* east and west of Kīlauea Ahupua‘a, whereas Nāmāhana Ahupua‘a to the northwest was claimed by Keahikuni Kekau‘ōnohi (also called Mikahela or Miriam) as part of LCA No. 11216. It makes geographic sense that the King, Kekau‘ōnohi, or both once had a claim on Kīlauea Ahupua‘a given their claims on adjacent *ahupua‘a*.

It is clear, however, that Kīlauea Ahupua‘a was declared *aupuni* lands during the Māhele, and that no *kuleana* awards are listed for the *ahupua‘a*. The *Indices* (Land Commission 1929) do list seven other LCAs in Kāhili Ahupua‘a and 28 other LCA in Kalihiwai Ahupua‘a aside from those of the Crown (LCA No. 8559-B; Lunalilo); these are presumably *kuleana* claims. The seven *kuleana* claims in Kāhili Ahupua‘a are the *kuleana* awards closest to the current project area, and cluster on the east bank of Kīlauea stream, mostly near the stream mouth. LCA No. 10333, claimed by Naaimeneo on behalf of her deceased husband Oopu, and confirmed by Royal Patent Grant No. 3370 in 1856, sits on the present border with Kīlauea Ahupua‘a (Waihona ‘Āina N. d.). The other six LCAs in Kāhili Ahupua‘a are LCA Numbers 9067, 10013, 10013-B, 10015, 10082, and 10083. These seven awards are shown on Figure 5, and records for Kāhili Ahupua‘a LCA (excerpted from Ida and Hammatt 1997) are also included in Appendix A.

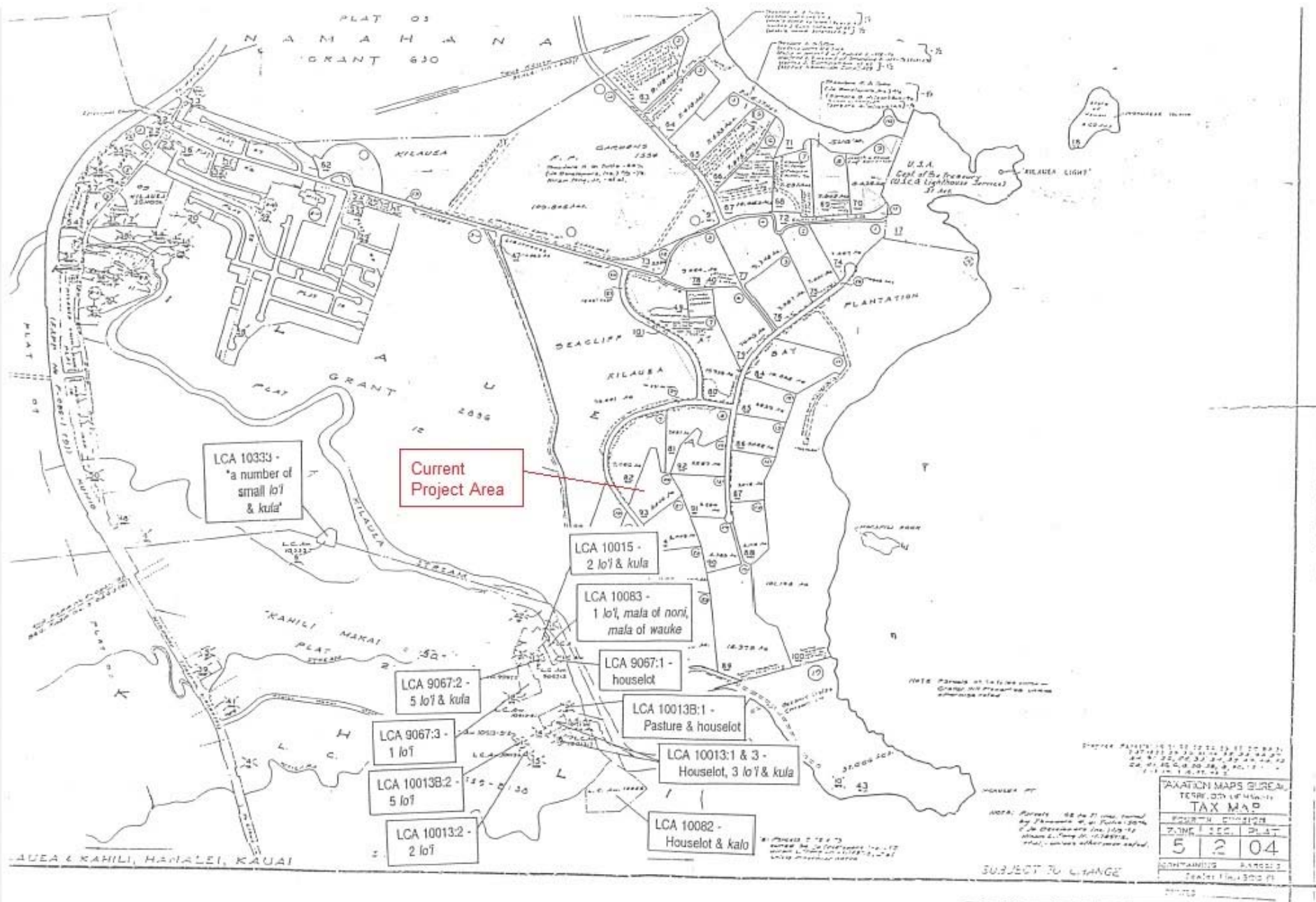


Figure 5: TMK map (zone 5, section 2, plat 004) with LCA parcels labeled; adapted from Ida and Hammatt 1997

Māhele records indicated that there were other claims made for lands in Kīlauea Ahupua‘a during the Māhele, but none were awarded. This includes a claim (No. 6529) by Holokukini, on the basis that he served as *konohiki* for Kīlauea Ahupua‘a under Aaron Keali‘iahonui (husband of Kekau‘ōnohi), and six other claims, all of which were rejected or abandoned. Among the *kuleana* claims was one (No. 9217) that gained some later notoriety for (the claimant) Kealawa‘a complaining that “I returned my claim to land of Kilauea to the Konohiki for the land is being filled with cattle & I have no desire to combat them [*sic*]” (Waihona ‘Āina 2005).

## **LAND USE IN THE POST-CONTACT PERIOD TO THE PRESENT**

Whaling declined in the late 19<sup>th</sup> century, and commercial agriculture and ranching came to the forefront of Hawaiian economy, in part because the Māhele had allowed the consolidation of lands into vast and now privately owned plantations and ranches. The Reciprocity Treaty of 1875 permitting duty-free trade of agricultural products between the Kingdom of Hawai‘i and the United States turned Hawaiian sugar into an immensely profitable commodity. Kuykendall (1967, Vol 3:46-48) credited the sugar industry with cementing commercial agriculture as the economic mainstay of the Hawaiian economy for the rest of the century and beyond.

Commercial sugar production on Kaua‘i began as early as 1835, when the firm Ladd and Company, affiliated with Christian missionaries, secured the first land lease in Hawaiian history, for 980 acres at Koloa for a sugar plantation (Joesting 1984:131). Joesting (1984:147) notes that “optimistic reports of progress in cultivating sugarcane at Koloa plantation raised interest in other agricultural crops,” such as a venture by Sherman Peck and Charles Titcomb to try to raise silkworms. While this plan failed, Titcomb would eventually go on to purchase the whole of Kīlauea Ahupua‘a in 1863 and start a plantation there. Jesse Condé and Gerald Best (1983:150) indicate the plantation was sold to Captain John Ross and Edward P. Adams in 1877.

According to the Kaua‘i Historical Society (N.d.), the plantation was subsequently incorporated as a company, Kilauea Sugar Company Limited, in 1880 and would remain in operation for over 90 years:

It became known as Kilauea Sugar Plantation Company after purchase by a California corporation in April 1899. Headquarters were in San Francisco, California, with local operations in Kīlauea, Kaua‘i, Hawai‘i. In 1955, C. Brewer and Company Ltd., the company’s Honolulu sugar factor (agent), purchased a majority of stock, and the company reverted to its original name, Kilauea Sugar Company Limited. All sugar operations were terminated on December 31, 1971. [Kaua‘i Historical Society N.d.:2]



William Dorrance and Francis Morgan (2000:32) note that “Kilauea Sugar Company was among the smallest in the Islands,” which, given that they indicate it reached “5,000 acres” suggests the economy of scale required for success during the heyday of commercial sugar in Hawai‘i. Carol Wilcox (1996:84) explains that the plantation “had to make the best of marginal conditions. Plagued by rocky terrain, small size, few water resources, and its remote, windward location, it never enjoyed the success of other, better situated plantations.” While the plantation was not as massive as some of its peers, it boasted its own railroad to haul sugar to the mill. The Kauai Plantation Railway (2008) website recorded that railroads on Kaua‘i island used unusually narrow gauge, but the railroad at Kilauea, the first on the island of Kaua‘i, was even narrower:

In late 1881 management of the Kilauea Plantation ordered rail equipment from the John Fowler Co, of Leeds, England. Rail, spikes, a locomotive and cars arrived on Kauai late in 1881 and by the end of 1882 the line was in operation. Track gauge was 2' and the tiny (likely 6 tons) 0-4-2 Fowler locomotive could move up to ten loaded cars of cut cane in one train.

While the original line at Kilauea Plantation remained at 2' gauge to the end, all the other lines on Kauai chose 30" gauge, the only Island in the Hawaiian Chain to run with this gauge.

Condé and Best (1983:150) report that “rail equipment for Kilauea was duly shipped to Kauai and by a curious twist was not only the first railroad built on that island, but it had its first spike driven by an [*sic*] Hawaiian Princess” on September 24, 1881. This dignitary was Princess Regnant Lydia Kamaka‘eha, who would in a decade be crowned as Queen Lili‘uokalani, the last monarch of the Kingdom of Hawai‘i. She was visiting Kaua‘i, and had not been aware of the railroad, but upon arriving at Kilauea Village, she was greeted by employees of the Plantation:

...she was informed that at that moment the first piece of track for the first railway on Kauai was about to be laid, and it would be considered an honor if Her Royal Highness would drive the first spike, which she kindly consented to do. Proceeding to the plantation... a large crowd had collected, the Royal Standard having been hoisted on a temporary staff. Her Royal Highness... took great interest in all these particulars, and expressed her great satisfaction at being able to be present at the laying of the first railway on the Island of Kauai, and trusted it might soon gird the whole island and so develop its resources and promote the industry of its people. [Pacific Commercial Advertiser 1881 *in* Condé and Best 1983:151]

By November of 1881, the railroad at the Kilauea Sugar Company plantation was operational, with three miles of track laid. Both sugar operations and the railroad grew over the next several decades, and “in 1910, Kilauea’s railroad system was comprised of 12 ½ miles of permanent track, 5 miles of portable track, 200 cane cars, six sugar cars and four locomotives” (Soboleski 2017).

Much of the infrastructure built up for the Kīlauea plantation did not survive to the current day. The railroad was phased out first: “Kahili Landing and its railroad track was abandoned beginning in 1928, when sugar from the mill was trucked to Ahukini Landing instead, and by the spring of 1942, trucks had replaced railroad locomotives and cane cars as the means of hauling sugarcane to the Kilauea mill” (Soboleski 2017). Wilcox (1996) states that the land continued to see some agricultural use after sugar operations ended in 1971, but there was no upkeep of the plantation irrigation system, and parts of it were destroyed while others were simply abandoned:

.. no mechanism was established to secure the easements or maintain the old system. Over the years the connections between reservoirs and delivery systems were destroyed by roads, pasture, development, neglect, and intent. The Hanalei Ditch was abandoned, its flumes and siphon no longer operable. The connection from the Kalihiwai Reservoir to Stone Dam was destroyed, as was that between Puu Ka Ele and Morita reservoirs. Puu Ka Ele and Koloko reservoirs' delivery systems were gone. C. Brewer established Kīlauea Irrigation Company, a public utility, to administer the surviving sections that service its guava farming operation. By the mid-1990s, some reservoirs stood alone with little utilitarian purpose. [Wilcox 1996:85]

Several structures associated with the Kīlauea plantation were nominated for the NRHP. This includes the Kilauea Plantation Head Bookkeeper's House, Kilauea Plantation Head Luna's House, Kilauea Plantation Manager's House, Kilauea School, and Kilauea Plantation Stone Buildings. According to the Historic Hawai‘i Foundation (2021), these NRHP properties are located in Kīlauea Town, southwest of the current project area. Aside from plantation buildings, only one other NRHP site occurs within Kīlauea Ahupua‘a: the Daniel K. Inouye Kilauea Point Lighthouse (see Previous Archaeology, below), a set of stone structures located within the present-day Kilauea Point National Wildlife Refuge (KPNWR).

KPNWR occupies Kīlauea Point peninsula, Mōkōlea Point peninsula, Crater Hill, and the coastline north of the project area. The wildlife refuge was established in 1985 and expanded to its current extent in 1988. KPNWR is administered by the US Fish and Wild Life Service (FWS), and is open to visits (and thus serves as a tourist attraction).

The FWS maintains the refuge to protect and preserve not only flora and fauna, especially migratory seabirds and the endangered *nēnē* (Hawaiian goose, *Nesochen sandvicensis*), but also the Daniel K. Inouye Kīlauea Point Lighthouse and Light Station. The FWS also partners with local native Hawaiian organizations such as Kaipuwai Foundation and Na Kia‘i Nihoku, that “perform Native Hawaiian cultural practices and ceremonies at Nihoku summit on the summer and winter solstice and the spring and fall equinox” (Fish and Wild Life Service N.d.). Additionally, portions of KPNWR are open to fishing, and “native Hawaiian fishing at Kīlauea (East) Cove” is recognized as a cultural practice (Fish and Wild Life Service N.d.).

With the closure of the sugar plantation, some farming continued in Kīlauea, but much like the rest of Hawai‘i, the economy shifted toward tourism as the primary industry. The construction of Lihue Airport in 1948-49 had made Kaua‘i accessible for tourism, and “by 1955, the... airport was served by Hawaiian Airlines, Ltd. and Trans-Pacific Airlines, Ltd. on a scheduled basis” (Hawaii Department of Transportation 2022). Based on 2010 census data, the Cedar Lake Ventures, Inc. (2018) *Statistical Atlas* reports that 19.6% “of the civilian employed population aged 16 and older” on Kaua‘i is in the hospitality industry, making it the island’s largest sector of employment.

## **PREVIOUS ARCHAEOLOGY IN THE PROJECT AREA VICINITY**

There has been a significant amount of previous archaeological work in the region, although much of it has concentrated on the coast, or on the far bank of Kīlauea Stream (in Kāhili Ahupua‘a). Conversely, Kīlauea Town to the southwest and the Seacliff Plantation community where the project area is located do not seem to have seen much investigation. Figure 8 shows the location of archaeological work in the vicinity of the project area. Note that several project areas adjoin or overlap Kīlauea Stream (also called Kīlauea River; see Figure 1 above for its location). These previous studies are also summarized on Table 2. While some early work was conducted (based heavily on recording oral accounts and checking for the features described in those accounts), the bulk of archaeological work in the State of Hawai‘i occurred after the U.S. Congress passed the National Historic Preservation Act (NHPA) in 1966 (Kawelu 2015:30).

## **EARLY ARCHAEOLOGICAL STUDIES (THRUM 1907, BENNETT 1931)**

Thomas Thrum (1907) made an early attempt to list all of the *heiau* (*lit.* places of worship; *in context*: temples for native Hawaiian religious practice) in the Hawaiian Islands. The *heiau* he noted on Kaua‘i are described in an article in the 1907 edition of his *Hawaiian Annual* almanac. Thrum (1907:42) recorded one *heiau* named Pailio in Kīlauea Ahupua‘a, as well as one *heiau* named Kipapa in Kāhili Ahupua‘a.



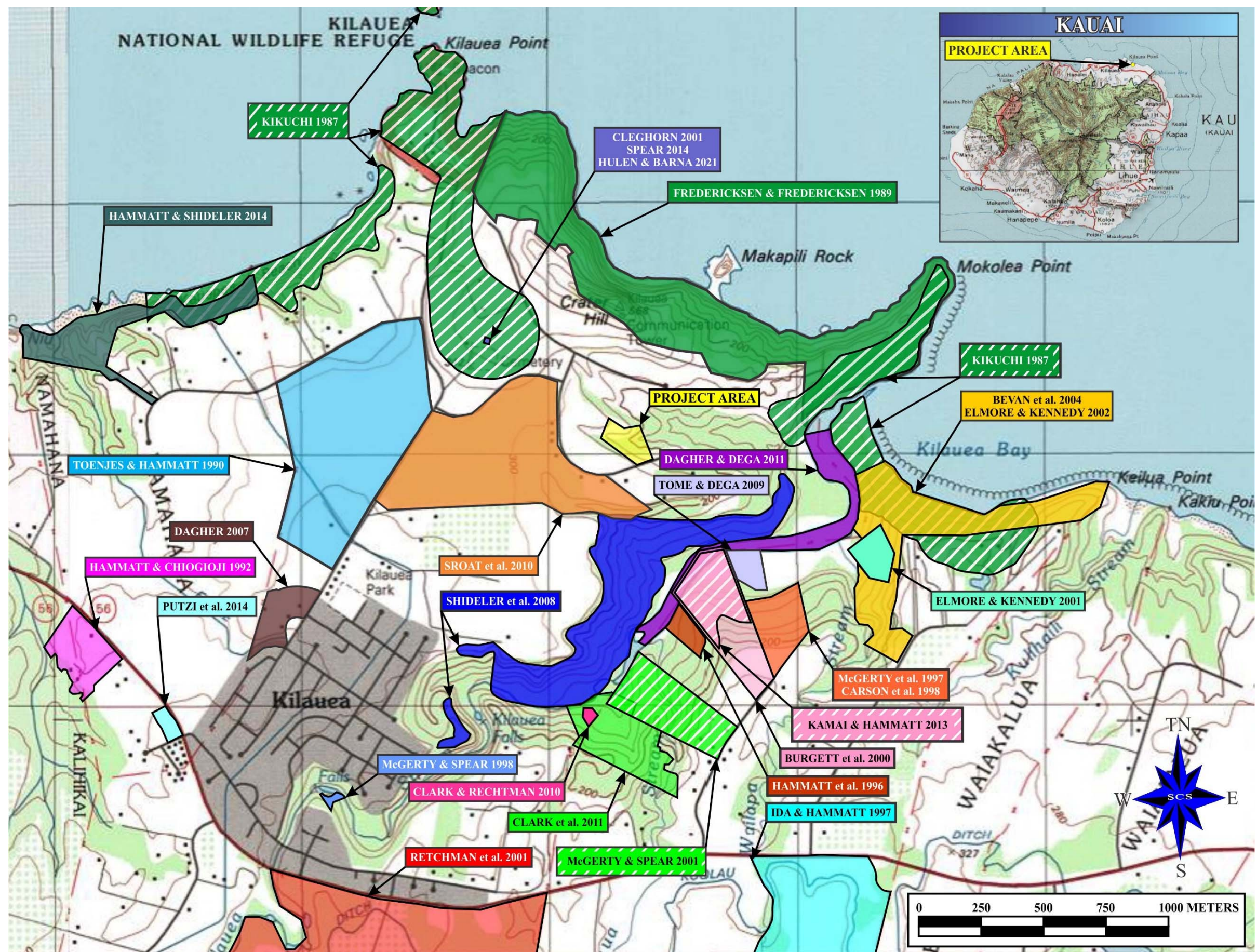


Figure 6: A portion of a 1998 USGS topographic map (Honolulu and Kaneohe, HI quadrangles; 1:25,000 scale) showing previous archaeology in the vicinity of the project area



**Table 2: Archaeological Studies in Nāmāhana, Kīlauea, and Kāhili Ahupua‘a**

<b>Author(s), Date</b>	<b>Research Type</b>	<b>Location</b>	<b>Results</b>
Thrum 1907	Almanac Listing	Kaua‘i Island	Kipapa Heiau (SIHP Site 50-30-04-00132); Pailio Heiau (SIHP Site 50-30-04-00133)
Bennett 1931	Island-wide Survey	Kaua‘i Island	Kipapa Heiau (SIHP Site 50-30-04-00132); Pailio Heiau (SIHP Site 50-30-04-00133)
Kikuchi 1987	Archaeological Survey	Kīlauea Point [TMK: (4) 5-2-004:017]	Kīlauea Point Lighthouse (SIHP Site 50-30-04-00300)
Toenjes & Hammatt 1990	Archaeological Survey	[TMK: (4) 5-2-004:102]	no findings.
Hammatt & Chiogioji 1992	Archaeological Inventory Survey	[TMK: (4) 5-2-017:028]	no findings.
Hammatt et al. 1996	Archaeological Inventory Survey	[TMK: (4) 5-2-021:005]	agricultural complex (SIHP Site 50-30-04-00625); charcoal kiln, enclosure (SIHP Site 50-30-04-00998); cattle fence (SIHP Site 50-30-04-00999)
McGerty et al. 1997	Archaeological Inventory Survey	[TMK: (4) 5-2-021:007]	permanent habitation complex (SIHP Site 50-30-04-00974); garden area & burials (SIHP Site 50-30-04-00975); habitation site (SIHP Site 50-30-04-00976); agricultural area (SIHP Site 50-30-04-00977)
Carson et al. 1998	Data Recovery	[TMK: (4) 5-2-021:007]	confirmed assessment of Site -00974; no cultural material found at Site -00975
Ida & Hammatt 1997	Archaeological Inventory Survey	[TMK: (4) 5-1-005:052 & 102 through 113]	irrigation flume (SIHP Site 50-30-04-00640); Pu‘uka‘ele Ditch remnants (SIHP Site 50-30-04-00641); partially buried culvert (SIHP Site 50-30-04-00642); swale tunnel (SIHP Site 50-30-04-00643)
McGerty & Spear 1998	Archaeological Inventory Survey	[TMK: (4) 5-2-011:033]	agricultural complex (SIHP Site 50-30-04-00625)

Author(s), Date	Research Type	Location	Results
Burgett et al. 2000	Archaeological Inventory Survey	[TMK: (4) 5-2-021:006]	dryland agricultural site (SIHP Site 50-30-04-00632); unmarked grave (SIHP Site 50-30-04-00633); floodplain soil deposits (SIHP Site 50-30-04-01993 )
McGerty and Spear 2001	Archaeological Inventory Survey	[TMK: (4) 5-2-021:005]	additional features of Sites -00625, -00998, and -00999
Elmore and Kennedy 2001	Archaeological Inventory Survey	[TMK: (4) 5-1-005:005]	agricultural complex (SIHP Site 50-30-04-00515)
Cleghorn 2001	Archaeological Monitoring	Kilauea Japanese Cemetery [TMK: (4) 5- 2-004:049 por.] telecommunications installation	no findings.
Rechtman et al. 2001	Archaeological Inventory Survey	Hālaulani Property [ TMK: (4) 5-2-002:011]	dam on Kīlauea Stream (SIHP Site 50-30-03-02060); dam on Pu‘uka‘ele Steam (SIHP Site 50-30-03-02062); ditch and flume remnants (SIHP Site 50-30-03-02063); irrigation tunnel and flume supports (SIHP Site 50-30-03-02064)
Elmore and Kennedy 2002	Archaeological Inventory Survey	[TMK: (4) 5-1-005:016]	additional features of Site -00515; unable to locate Kipapa Heiau (Site -00132)
Bevan et. al 2004	Archaeological Monitoring	[TMK: (4) 5-1-005:016]	additional feature of Site -00515
Dagher 2007	Field Inspection	[TMK: (4) 5-2-023:027 & 028]	no findings.
Shideler et al. 2008	Archaeological Inventory Survey	Kilauea Falls Ranch [TMK: (4) 5-2-012:035 por.]	agricultural terrace (SIHP Site 50-30-03-00579); agricultural complex (SIHP Site 50-30-03-00580); retaining wall, ramp, and trail (SIHP Site 50-30-03-00581); terraces (SIHP Site 50-30-03-00582); terraces (SIHP Site 50-30-03-00583)
Tome & Dega 2009	Archaeological Inventory Survey	[TMK: (4) 5-2-021:007]	agricultural site (SIHP Site 50-30-04-05028)

<b>Author(s), Date</b>	<b>Research Type</b>	<b>Location</b>	<b>Results</b>
Clark and Rechtman 2010	Archaeological Inventory Survey	[TMK: (4) 5-2-012:019]	terraced (rice) fields, SIHP Site 50-30-04-02011); Post-Contact (concrete) structure (SIHP Site 50-30-04-02011)
Sroat et al. 2010	Archaeological Inventory Survey	Kīlauea Agricultural Park [TMK (4) 5-2- 004:099]	Post-Contact habitation site (SIHP Site 50-30-03-02123); plantation-era structures (SIHP Site 50-30-03-02124); Pre-Contact agricultural terrace (SIHP Site 50-30-03-02125); plantation-era drainage (SIHP Site 50-30-03-02126)
Dagher and Dega 2011	Archaeological Monitoring	Kīlauea River Cleanup	insolated finds of human skeletal remains and Post-Contact artifacts; no sites identified
Clark et al. 2011	Archaeological Inventory Survey	[TMK: (4) 5-2-21:041, CPR 0001; (4) 5-2- 12:035 por.; and (4) 5-2- 021:004 por.]	expanded scope of Site -02011 to 4.5 acres; additional features of Site -02012
Kamai & Hammatt 2013	After-the-fact Assessment	[TMK: (4) 5-2-021:006]	no further damage found to Sites -00632 & -00633
Hammatt & Shideler 2014	Field Inspection	[TMK: (4) 5-2-005:036]	no findings.
Spear 2014	Field Inspection	telecommunications facility [TMK: (4) 5-2- 004:049 por.]	no findings.
Putzi et al. 2014	Archaeological Inventory Survey	LDS meetinghouse [TMK: (4) 5-2-019:004]	buried fire pit (SIHP Site 50-30-04-02237)
Hulen and Barna 2021	Archaeological Monitoring	telecommunications facility [TMK: (4) 5-2- 004:049 por.]	no findings.

Wendell Bennett's (1931) *Archaeology of Kauai* attempted to provide a comprehensive overview of archaeological sites on Kaua'i, based on both prior records and his own fieldwork in 1928-29; his site numbers were later converted to State Inventory of Historic Places (SIHP) site numbers. Bennett (1931:133) assigned Pailio Heiau as Site 133 (later SIHP Site Number 50-30-04-00133), and Kipapa Heiau as Site 132 (later SIHP Site No. 50-30-04-00132). He was not able to locate Pailio, noting "nothing remains of the heiau to-day," but attested that Kipapa stood "on the end of the first bluff east of Kilauea River in Kāhili" (Bennett 1931:133).

#### **KĪLAUEA POINT NATIONAL WILDLIFE REFUGE (KIKUCHI 1987, FREDERICKSEN AND FREDERICKSEN 1989)**

William Kikuchi (1987) conducted an archaeological survey of Kīlauea Point [TMK: (4) 5-2-004:017] (as well as several other nearby coastal regions) on behalf of the U.S. Fish and Wildlife Service, which was planning to construct a visitor center for the wildlife refuge. The survey, which included excavation of a test pit to gauge the likelihood of cultural layers being present, found "no sign of any [Pre-Contact] use of the Kilauea Point National Wildlife Refuge area by native Hawaiians" (Kikuchi 1987:3, 11). However, Kikuchi (1987:1) did note that the lighthouse on Kīlauea Point "was placed on the Hawai'i Register of Historic Sites on November 4, 1974, and on the National Register of Historic Sites on October 18, 1979" and "was officially given the State of Hawai'i site number 50-30-04-300 [*sic*, SIHP Site No. 50-30-04-00300]."

In 1988, Xamanek Researches, LLC (XRL) (Fredericksen and Fredericksen 1989) conducted an Archaeological Inventory Survey (AIS) of the approximately 96-acre Crater Hill parcel [TMK: (4) 5-2-004:103] and the approx. 38-acre Mōkōlea Point parcel [TMK: (4) 5-2-004:043], which had just been added to the Kīlauea Point National Wildlife Refuge (previously only approx. 33 acres). Fredericksen and Fredericksen (1989:20) conducted a pedestrian survey of the project area, reporting that "there were no features or artifacts discovered during the course of the survey from either the Hawaiian [Pre-Contact] or [Post-Contact] periods." However, they documented a number of (non-Hawaiian) historic properties that would latter be designated as sites: a radar installation site (later assigned SIHP Site No. 50-30-04-01810) a sugar-loading complex at Mōkōlea Point (SIHP Site No. 50-30-04-01811) the Kīlauea plantation railroad (the railroad build by the Kilauea Sugar Company connecting their plantation to the dock; SIHP Site No. 50-30-04-01812), and a old quarry on Mōkōlea Point (SIHP Site No. 50-30-04-01813).



## **TOENJES AND HAMMATT 1990**

In 1990, Cultural Surveys Hawai‘i, Inc. (CSH) (Toenjes and Hammatt 1990), conducted an archaeological survey on 94 acres of former Kilauea Sugar Plantation Company land north of Kīlauea town [TMK: (4) 5-2-004:102]. The area was “checked for coral, lithic and bone and shell midden remains” that might indicate a cultural deposit, but although “two loci suggesting previous traditional Hawaiian activity were found and tested for subsurface deposits” Toenjes and Hammatt (1990:14) found only a few coral and basalt fragments. Toenjes and Hammatt (1990:1) reported “no structural remains or in situ deposits of historic or archaeological significance.”

## **HAMMATT AND CHIOGIOJI 1992**

In 1992, CSH (Hammatt and Chiogioji 1992) conducted an AIS on a 15.17-acre property for a proposed subdivision on the border of Nāmāhana and Kalihiwai Ahupua‘a [TMK: (4) 5-2-017:028]. In addition to the main project area, a proposed alternative well site “150 to 200 feet south of the south property boundary along the slope of a gully was surveyed” Hammatt and Chiogioji (1992:21). Hammatt and Chiogioji (1992:21) conducted a pedestrian survey of the parcel and excavated a test trench where “a thin scatter of marine sand, coral pebbles and fossil marine shell was observed.” The subsurface testing found only the plow zone from former commercial agricultural use of the parcel, and the marine material was interpreted as originating from the “liming of fields with quarried marine sand deposits” during sugarcane cultivation, and no archaeological sites were reported (Hammatt and Chiogioji 1992:21).

## **HAMMATT ET AL. 1996**

In 1995, CSH (Hammatt et al. 1996) conducted an AIS on an approx. 5-acre portion of a 24.87-acre property parcel [TMK: (4) 5-2-021:005] where a single-family residence was proposed. Pedestrian survey and excavation of two test units and five shovel probes identified three archaeological sites. SIHP Site No. 50-30-04-00625 was an agricultural complex consisting of seven surface features (walls and terraces) and a subsurface cultural layer. Charcoal from the cultural layer was sent for radiocarbon analysis and returned a date range of 1410-1650 Common Era (C.E.) at 2-sigma (95% confidence). This charcoal was interpreted as originating from burning for land clearing purposes, suggesting that agricultural development in this region began around 1400 C.E. SIHP Site No. 50-30-04-00998 consisted of a charcoal kiln, as well as an adjacent terrace area and enclosure that may have been associated with the kiln. SIHP Site No. 50-30-04-00999 consist of two stacked boulder walls that were interpreted as a cattle fence. Hammatt et al. (1996) reported that “the owner of the property, has designed the access road and the location of his single-family residence to minimize impact to the archaeological sites,” allowing preservation through avoidance.

### **McGERTY ET AL. 1997, CARSON ET AL. 1998, TOME AND DEGA 2009**

In 1996, SCS (McGerty et al. 1997) conducted an AIS on a portion of a 26.19-acre parcel on the east bank of Kīlauea stream [TMK: (4) 5-2-021:007]. The survey focused on the flat bench (also called a ‘natural terrace’) portion of the property parcel, above the floodplain. Pedestrian survey and excavation of seven trenches and nine test units identified four archaeological sites with a total of 47 component features. SIHP Site No. 50-30-04-00974 was comprised of ten terraces, ten (rock) alignments, an enclosure, a wall, two fire pits, a hearth, and an *imu* (underground oven). Two charcoal samples from the subsurface features were sent for radiocarbon analysis and both returned date ranges (at 2-sigma) from the late 1600s C.E. to the mid 1900s C.E. Site -00974 was interpreted as a Late Pre-contact to Early Post-Contact permanent habitation complex. SIHP Site No. 50-30-04-00975 was located west of Site -00974, and was comprised of two small enclosures, four alignments, two terraces, a wall, and a pathway. The Site -00975 enclosures were interpreted as possible burials, and the rest of the site as a small garden area. SIHP Site No. 50-30-04-00976 was located south of Site -00975, and was comprised of three enclosures, three terraces, and a possible posthole. A charcoal sample from the posthole was sent for radiocarbon analysis and returned a date range (at 2-sigma) from 1400 C.E. to 1520 C.E. or 1600 C.E. to 1620 C.E. Site -00976 was interpreted as a Pre-Contact habitation site. SIHP Site No. 50-30-04-00977 was located to the west of Site -00975, and consisted of two terraces and an alignment. Site -00977 was interpreted as a probable extension of the agricultural area of Site -00975, separated due to 20<sup>th</sup> century grading and grubbing in the area between them. As the location of Site -00974 was planned for development, McGerty et al. (1997) recommended that data recovery be conducted.

Subsequently, SCS (Carson et al. 1998) conducted data recovery at SIHP Site Numbers 50-30-04-00974 and 50-30-04-00975. Subsurface testing consisted of four backhoe and one manually excavated trench. Testing at Site -00974 yielded total of 111 artifacts interpreted as traditional Hawaiian, compared to only five artifacts that were distinctly Post-Contact. No cultural material was recovered from Site -00975. Radiocarbon analysis of a charcoal sample produced results consistent with previous samples from Site -00974: late 17<sup>th</sup> century to 20<sup>th</sup> century. The results of this data recovery support the prior assessment of Site -00974 (Carson et al. 1998).

In 2009, SCS (Tome and Dega 2009) conducted an AIS on a 6.8-acre portion of the floodplain at TMK: (4) 5-2-021:007. Pedestrian survey and excavation of 12 trenches identified an agricultural site, consisting of a rock walled *lo ‘i* and a rock alignment, that was designated as SIHP Site No. 50-30-04-05028. Tome and Dega (2009) postulated that this agricultural site was associated with the habitation sites previous identified by McGerty et al. (1997).

### **BURGETT ET AL. 2000, KAMAI AND HAMMATT 2013**

In 1997, SCS (Burgett et al. 2000) conducted an AIS on a 27.56-acre parcel on the east bank of Kīlauea stream [TMK: (4) 5-2-021:006], immediately southwest of the parcel where a previous survey had been conducted by McGerty et al. (1997). Unlike the previous survey, this AIS included the floodplain as well as the leveled, upper portion (bench and slope) of the parcel. Pedestrian survey and subsurface testing via four trenches and four shovel probes identified three archaeological sites. SIHP Site No. 50-30-04-00632 consisted of 56 features on the slopes, including terraces, alignments, walls, and upright stones, as well as bedrock boulder overhangs and cupboards. Site -00632 was interpreted as a dryland, or *kula*, agricultural site. SIHP Site No. 50-30-04-00633 was an unmarked grave that a local informant, Kaipo Chandler, pointed out as the resting place of his uncle Thomas Goodman, who died in 1929. Site -00633 was located behind a house that Chandler helped build in the 1960s. SIHP Site No. 50-30-04-01993 consisted of soil deposits identified in the floodplain, which were associated with the construction of berms for *lo 'i*. Sites -00632 and -01993 were assessed as representing Late Pre-contact to Early Post-Contact agricultural activity.

In 2012, CSH (Kamai and Hammatt 2013) conducted an after-the-fact assessment on a portion of the parcel [TMK: (4) 5-2-021:006] surveyed by Burgett et al. (2000), and submitted a letter report. The assessment was intended “to determine whether violations that occurred in November and December 2007 had an adverse effect to historic properties” Kamai and Hammatt (2013:2). This letter notes an earlier report regarding a previous violation in 2003, but that earlier report (McMahon 2003) was not on file at the State Historic Preservation Division (SHPD). Kamai and Hammatt (2013) concluded that there was no further damage to Sites -00632 and -00633 since 2003. As the earlier report is called a “damage assessment report,” it is presumed that these sites were indeed adversely affected during the 2003 violations (Kamai and Hammatt 2013:3).

### **IDA AND HAMMATT 1997**

In 1997, CSH (Ida and Hammatt 1997) conducted an AIS on an 89-acre parcel for a proposed subdivision in Kāhili Ahupua‘a [then TMK: (4) 5-1-005:052; now TMK: (4) 5-1-005:052 & 102 through 113]. Full pedestrian survey and limited subsurface testing did not find any archaeological sites associated with native Hawaiian cultural activity, but did identify four historic properties associated with the former Kilauea Sugar Plantation Company, all which consisted of water control features. SIHP Site No. 50-30-04-00640 was an irrigation flume across Wailapa stream gulch. SIHP Site No. 50-30-04-00641 consisted of an irrigation ditch and tunnel that were interpreted as remnants of Pu‘uka‘ele Ditch. SIHP Site No. 50-30-04-00642 was a partially buried culvert near a swale connected to Kulihā‘ili stream gulch. SIHP Site No. 50-30-04-00643 was a 16m long tunnel at the end of a swale of the same gulch (Ida and Hammatt 1997).

### **McGERTY AND SPEAR 1998**

In 1997, SCS (McGerty and Spear 1998) conducted an AIS on a proposed driveway corridor and associated buffer zones in Kīlauea town [TMK: (4) 5-2-011:033]. A single archaeological site was identified during survey. SIHP Site No. 50-30-04-00644 consisted of five terraces and a rock alignment, and was assessed as a Post-Contact agricultural complex (McGerty and Spear 1998).

### **McGERTY AND SPEAR 2001**

In 2000, SCS conducted an AIS (McGerty and Spear 2001) on a parcel at TMK: (4) 5-2-021:004, on the east bank of Kīlauea stream. This is the parcel immediately south of the one [TMK: (4) 5-2-021:005] where Hammatt et al. (1996) previously conducted an AIS. McGerty and Spear (2001:1) indicate a project area of approx. 6 acres, yet the acreage of TMK: (4) 5-2-021:004 is considerably greater, so the survey likely only encompassed a portion of the parcel, probably in the northwest. McGerty and Spear (2001:19) state that “site numbers previously established by the 1996 study... were applied to similar features within the present project area,” effectively extending the sites previously identified by Hammatt et al. (1996) in neighboring parcel 004 into parcel 005. Therefore, a second charcoal kiln was added to SIHP Site No. 50-30-04-00998, while a section of pavement was added to SIHP Site No. 50-30-04-00999. Almost 50 new features, mostly terraces, were added to the SIHP Site No. 50-30-04-00625 agricultural complex. A charcoal sample from Site -00625 returned a radiocarbon result of 1440 C.E. to 1690 C.E., consistent with the previous analysis (McGerty and Spear 2001).

### **ELMORE AND KENNEDY 2001**

In 2000-01, Archaeological Consultants of the Pacific, Inc. (ACP), conducted an AIS (Elmore and Kennedy 2001) on a 5.69-acre parcel [TMK: (4) 5-1-005:005] on the east bank of Kīlauea stream for the proposed construction of a private residence. Pedestrian survey and six shovel probes identified a single archaeological site. SIHP Site No. 50-30-04-00515 consisted of seven terraces along Wailapa stream, an *‘auwai* (ditch), the remnant foundation of a Post-Contact house, a stone alignment, and two stone mounds. Radiocarbon analysis of a sample from the terraces returned a date range (at 2-sigma) of 1660 C.E. to 1904 C.E. While no clear evidence of Pre-Contact activity at Site -00515 was found, Elmore and Kennedy (2001) considered it possible that initial agricultural use began Pre-Contact.

### **CLEGHORN 2001, SPEAR 2014, HULEN AND BARNA 2021**

In 2001, Pacific Legacy, Inc. conducted archaeological monitoring (Cleghorn 2001) for the installation of a telecommunications compound at Kilauea Japanese Cemetery [TMK: (4) 5-2-004:049 por.]. No cultural materials were identified during monitoring.

In 2014, SCS conducted a field survey (Spear 2014) of the same project area [TMK: (4) 5-2-004:049 por.] for the proposed Kilauea Relo AT&T Facility upgrade. No historic properties were identified, but Spear (2014) recommended archaeological monitoring due to the possibility of unmarked burials in the vicinity.

In 2021, ASM Affiliates, Inc. conducted archaeological monitoring (Hulen and Barna 2021) during upgrades to the telecommunications station (Verizon KILAUEA\_GRAVEYARD A) at [TMK: (4) 5-2-004:049 por.], the same facility previously monitored by Cleghorn (2001). No historic properties were identified during monitoring (Hulen and Barna 2021).

#### **RECHTMAN ET AL. 2001**

In 2001, Rechtman Consulting, LLC (RCL) conducted an AIS (Rechtman et al. 2001) of the Hālaulani Property, an approx. 1400-acre area inland of Kīlauea town [then TMK: (4) 5-2-002:011 & 012; now TMK: (4) 5-2-002:011]. Because of the very large project area, it was agreed in consultation with SHPD “that the margins of the streams and the Kamo‘okoa Ridge area would be surveyed at 100% intensive coverage and that the former and current sugarcane and orchard areas would be surveyed less intensively” (Rechtman et al. 2001:27). The survey identified four Post-Contact historic properties. SIHP Site No. 50-30-03-02060 was a basalt and concrete dam on Kīlauea Stream. Rechtman et al. (2001:30) noted that the site had been documented by an archaeological study in Kalihiwai Ahupua‘a to the east, as “majority of the ancillary dam features exist off property on the western bank,” but re-recorded it since it was partially within the project area. Based on a newspaper article about the opening of the reservoir formed by the dam, it was dated to 1881. SIHP Site No. 50-30-03-02062 was a dam complex on Pu‘uka‘ele Stream, also of basalt and concrete construction. SIHP Site No. 50-30-03-02063 was a water control complex extending from Pu‘uka‘ele Stream, consisting of a ditch and the remnant portions and scattered pieces of a flume. SIHP Site No. 50-30-03-02064 consist of an irrigation tunnel and two flume supports on Kīlauea Stream, approx. 150 m downstream from Site -02060. (Rechtman et al. 2001)

#### **ELMORE AND KENNEDY 2002, BEVAN ET AL. 2004**

In 2002, ACP conducted an AIS (Elmore and Kennedy 2002) of most of the property parcel at TMK: (4) 5-1-005:016 (excluding the northernmost thumb - shaped portion at the very mouth of Kīlauea stream). Elmore and Kennedy (2002:6) noted that “current TMK maps... depict Kipapa Heiau at the base of the bluff east of Kilauea River,” which would put Kipapa Heiau (SIHP Site No. 50-30-04-00132) within the project area. However, no sign of the heiau was found during the survey, and Elmore and Kennedy (2002:6) pointed out that the location indicated on the map was “a sandy location at which it is unlikely a commercially operated sugar cane field would be found.”

The survey did identify nineteen more features of SIHP Site No. 50-30-04-00515, which had previously been documented on an adjacent parcel [TMK: (4) 5-1-005:005] previously surveyed by Elmore and Kennedy (2001). A new sample sent for radiocarbon analysis from Site -00515 returned a date range (at 2-sigma) of 1475 C.E. to 1652 C.E., entirely predating the result from the earlier study. This may have been due to the sample being taken from a greater depth and different soil layer. Additionally, two new archaeological sites were identified. SIHP Site No. 50-30-04-01035 consisted of a terrace and a subsurface pit, and was interpreted as a habitation site. A sample from site -01035 returned a radiocarbon date range (at 2-sigma) of 1262 C.E. to 1523 C.E., which (if accurate) would make the site “one of the earliest occupations along the northern coast of Kauai” (Elmore and Kennedy 2002:44). SIHP Site No. 50-30-04-01036 was a stone wall that likely functioned as a boundary marker.

In 2003, ACP conducted archaeological monitoring (Bevan et. al 2004) at the same parcel [TMK: (4) 5-1-005:016] that had previously been surveyed by Elmore and Kennedy (2002). Monitoring was conducted during installation of utility lines and grading for driveways, and subsurface construction activities were kept a minimum of 25 ft away from any features if the previously identified Sites -00515 and -01035. During monitoring, “an isolated, previously unrecorded, non-irrigated terrace feature located on a steep slope below Rock Quarry Road” was identified, and due to similar context, added as yet another feature of SIHP Site No. 50-30-04-00515, but no sites were newly identified (Bevan et. al 2004:20).

#### **DAGHER 2007**

In 2007, SCS (Dagher 2007) conducted a Field Inspection (FI) of an approx. seven-acre property at the western end of Kilauea Town, on the border with Nāmāhana Ahupua‘a [TMK: (4) 5-2-023:027 & 028]. No historic properties were identified during the FI (Dagher 2007).

#### **SHIDELER ET AL. 2008**

In 2007, CSH conducted an AIS (Shideler et al. 2008) on a 74-acres portion of the Kilauea Falls Ranch property [TMK: (4) 5-2-012:035 por.], including land proposed for a private residence, an agroforestry area, and a region of tablelands suitable for development located near Kīlauea town. The survey identified a total of 62 archaeologically significant features comprising five sites within the agroforestry area. SIHP Site No. 50-30-04-00579 was an isolated agricultural terrace near the eastern end of the project area. SIHP Site No. 50-30-04-00580 was a complex consisting of 53 agricultural terraces and 2 enclosures that may have served as field shelters (temporary habitation), located west of Site -00579 and northwest of a bend in Kīlauea stream.

SIHP Site No. 50-30-04-00581 consisted of a retaining wall with a connected rock alignment that served as a ramp, a smaller second stone wall nearby, and a rock faced trail parallel to the retaining wall. Site -00581 is located near -00580, but is interpreted as a Post-Contact permanent habitation site, likely associated with Japanese occupants based on recovered artifacts. SIHP Site No. 50-30-04-00582 was a pair of terraces separate from, and located south of, the dense cluster of terraces comprising Site -00579. SIHP Site No. 50-30-04-00583 was another pair of terraces, located even further south from Site -00582. Unlike the *lo‘i* terraces on the east bank of Kīlauea stream identified in other studies, the agricultural terraces identified by Shideler et al. (2008) are distant from the stream rather than on the floodplain. Shideler et al. (2008:69) note that “the vagaries of hurricane, tsunami, and flood may have made such planting down by the stream precarious” and that “cultivation upon the steep slope may have been more secure.”

#### **CLARK AND RECHTMAN 2010, CLARK ET AL. 2011**

In 2009, RCL conducted an AIS (Clark and Rechtman 2010) of a 0.735-acre parcel along the southeast bank of Kīlauea stream [TMK: (4) 5-2-012:019]. This parcel is the same land awarded to Naiamaneo with LCA No. 10333 (see The Māhele, above); although this is the only nearby example, it is not unknown for contemporary TMK parcels to match the boundaries of a plot awarded in the Māhele. Pedestrian survey and excavation of three trenches identified two historic properties. SIHP Site No. 50-30-04-02011 consists of nine terraced fields, which collectively occupying the entire parcel. These were interpreted as pond fields for Post-Contact rice cultivation, built on previous *lo‘i* and *kula* land. SIHP Site No. 50-30-04-02012 is a partially-intact concrete slab along the southeast border of the parcel, interpreted as the foundation of a Post-Contact structure, likely a shed or other outbuilding (Clark and Rechtman 2010).

In 2011, RCL conducted an AIS (Clark et al. 2011) of a roughly 21-acre area comprising portions of several properties [TMK: (4) 5-2-21:041, CPR 0001; (4) 5-2-12:035 por.; and (4) 5-2-021:004 por.] surrounding the parcel previously surveyed by Clark and Rechtman (2010). Although Clark et al. (2011) identified new features, these were added as components of the two archaeological sites previously identified by Clark and Rechtman (2010). SIHP Site No. 50-30-04-02011 was expanded to cover approx. 4.5 acres and include a total of 69 discrete Post-Contact rice fields. In addition to the previously documented concrete slab, SIHP Site No. 50-30-04-02012 was revised to include a water retention pond, a cobble-lined trench for a water wheel, and four concrete basins with stone and concrete troughs (Clark et al. 2011).



### **SROAT ET AL. 2010**

In 2010, CSH conducted an AIS (Sroat et al. 2010) of 75 acres at TMK (4) 5-2-004:099 for the planned Kīlauea Agricultural Park, located to the east of Pali Moana Place. The survey identified four archaeological sites, all of which were located in the southeast portion of the project area, where the terrain is more sloped and uneven. SIHP Site No. 50-30-04-02123 was a terrace interpreted as a Post-Contact habitation site. SIHP Site No. 50-30-04-02124 consisted of two concrete wall structures, one linear and one U-shaped, of uncertain function but assessed as likely associated with plantation-era infrastructure. SIHP Site No. 50-30-04-02125 was a terrace interpreted as a likely Pre-Contact agricultural site. SIHP Site No. 50-30-04-02126 was a machine-excavated ditch that was interpreted as a drainage feature for flood control. Sroat et al. (2010) concluded that Sites -02124 and -02126 were associated with Kilauea Sugar Company.

### **DAGHER AND DEGA 2011**

In 2010-11, SCS conducted archaeological monitoring (Dagher and Dega 2011) of the Kīlauea River cleanup in 2010 to 2011, which was a follow up to the 2006 emergency cleanup after the Ka Loko Dam breach. During monitoring two separate isolated finds of human skeletal elements occurred, and a few Post-Contact artifacts were recovered, but no archaeological sites were identified (Dagher and Dega 2011).

### **HAMMATT AND SHIDELER 2014**

In 2010, CSH conducted an FI (Hammatt and Shideler 2014) of 23.8-acre coastal parcel in Nāmāhana Ahupua‘a [TMK: (4) 5-2-005:036]. The FI did not identify any historic properties, but Hammatt and Shideler (2014) noted that the presence of *kalo* plants growing on steep *pali* (cliff, steep hill or slope) likely originated from shoots washed over the cliff from pre-contact *kalo* cultivation efforts, suggesting that pre-contact agriculture occurred nearby.

### **PUTZI ET AL. 2014**

In 2014, SCS conducted an AIS (Putzi et al. 2014) on a approx. 5-acre parcel in Nāmāhana Ahupua‘a owned by The Church of Jesus Christ of Latter-Day Saints [TMK: (4) 5-2-019:004], ahead of the proposed construction of a meetinghouse for the Church. Full pedestrian survey and excavation of ten trenches identified a single archaeological site. SIHP Site No. 50-30-04-02237 consisted of a fire pit located 0.48 m below the surface. Charcoal recovered from Site -02237 was sent for radiocarbon analysis and returned a date range (at 2-sigma) of 1440 C.E. to 1530 C.E., establishing that the fire pit was Pre-Contact. Putzi et al. (2014) noted that although the parcel had once been owned by the Kīlauea Sugar Company, subsurface testing found no sign of a plow zone, suggesting it had been used for pasture instead of planting.

## **METHODOLOGY**

### **FIELD METHODOLOGY**

The archaeological field inspection was conducted on June 1, 2022, by SCS Archaeologist Jason Stolfer, M.A., under the supervision of primary investigator Michael F. Dega, Ph.D. Field methods consisted of a 100% pedestrian survey of the project area and documentation via digital photographs taken at various locations throughout the project area. Sites located were assigned a Temporary Site Number (TS#) as necessary, pending the assignment of a SIHP Site Number.

### **LABORATORY METHODOLOGY AND CURATION**

Since no artifacts were identified during this project, laboratory work consisted of cataloging field notes and photographs. All field notes and digital photographs have been curated and are now stored at the SCS laboratory in Honolulu. All measurements were recorded in the metric system.

## **RESULTS OF THE FIELD INSPECTION**

One archaeological site was identified during the field inspection on June 1. The site was designated as Temporary Site 1 (TS-1), and was comprised of two features: a railroad bridge culvert (Feature 1), and remnant section of railroad track (Feature 2) found nearby. The on-site archaeologist determined that the site was Post-Contact in nature recorded it with photographs and two GPS points taken at the center points of its two features. Figure 7 shows these GPS points superimposed on a client-provided construction map.

Feature 1 (Fe. 1; railroad bridge culvert) was built using basalt and mortar construction and is in good overall condition, protected by thick vegetation that surrounds it. Both ends of the culvert tunnel are exposed and the interior is passable. Feature 2 (Fe. 2; piece of old railroad track) was discovered approximately 12 m east of Fe. 1, by using a metal detector to allow detection through the dense vegetation. Figures 8 through 16 are photographs of the features, and Table 3 summarizes the location and condition of the features.

**Table 3: TS-1 component archaeological features**

Feature Number	UTM (converted) Zone 4Q	Lat Long +4 meters	Description	Status
Fe. 1	459316 E, 2457039 N	22°13'05.8 N, 159°23'41.1 W	culvert of a Plantation-era railroad bridge	Good condition
Fe. 2	459339 E, 2457048 N	22°13'06.0 N, 159°23'40.3 W	section of railroad track	Poor condition (rusty)

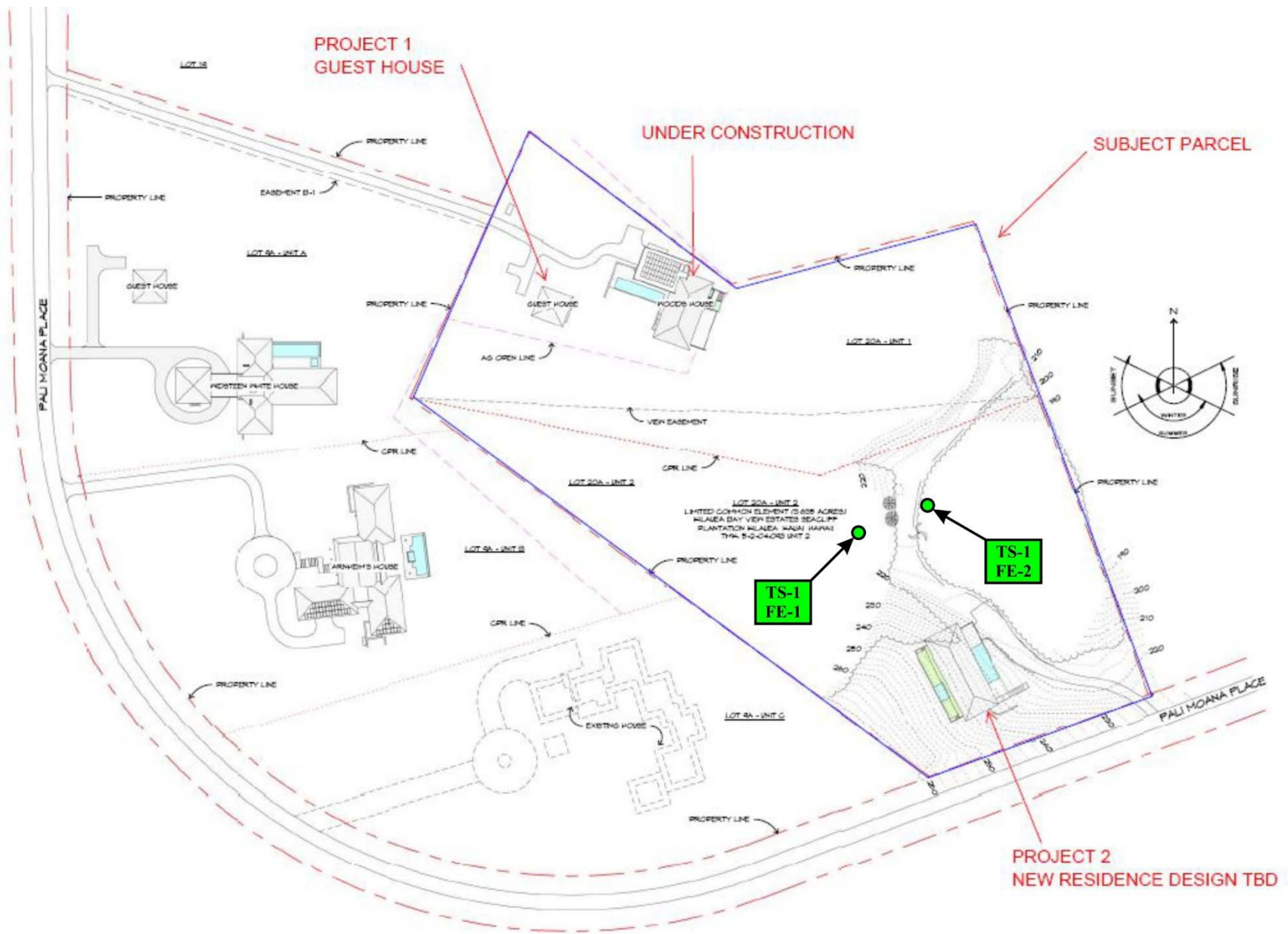


Figure 7: GPS points for the two features of TS-1 in the context of the project area parcel (purple border).

The southwest end (northeast view, Figures 8 through 10) of the railroad bridge culvert (Fe. 1) has an exposed face that measures 6.2 m long and varies in height from .4 m to 1.5 m.

The railroad track (Fe. 2) is difficult to see amidst the vegetation, but is highlighted by the meter bar and tape measure in Figure 10. The railroad track was partially exposed and appears to extend further east (away from the project area) beneath the dense vegetation.

The interior of the railroad bridge culvert (Fe. 1) consists of a horseshoe shaped tunnel with dimensions of 1.45 m high, 1.5 m wide, and 23 m long (Figure 11). Like the exterior faces, the interior exhibits basalt and mortar construction.

The northeast end (southwest view, Figures 12 through 15) of the culvert (Fe. 1) has guards on either side of the tunnel opening and extends out 1.3 m from the hillside that it is built into. The total height of the bridge culvert on this end is 2.3 m. The exposed portion of the culvert face extends sideways at least 2.5 m to northwest, but the stonework appears to extend further beneath the foliage. The culvert face is more visible from the south and extends sideways 10.5 m to the southeast before disappearing into the dense vegetation.



**Figure 8: TS-1 railroad bridge culvert - northeast view**





**Figure 9: TS-1 railroad bridge culvert – east view**





**Figure 10: TS-1 railroad bridge culvert - northeast view**



**Figure 11: TS-1 railroad track - northeast view**





**Figure 12: Tunnel underneath TS-1 railroad bridge - inside culvert view**





**Figure 13: TS-1 railroad bridge culvert - southwest view**





**Figure 14: TS-1 Railroad Bridge culvert view to the northwest**





**Figure 15: TS-1 railroad bridge culvert - south view**





**Figure 16: TS-1 railroad bridge culvert wall - northwest view**

This culvert and railroad bridge were likely constructed as a part of the railroad built to haul sugar for the plantation operated by the Kilauea Sugar Company (see Land Use in the Post-contact Period to the Present). A portion of this railroad located at Mōkōlea Point (approx. 800 m west northwest of the project area) was previously recorded as SIHP Site No. 50-30-04-01812. This railroad was the first to be built on the Island of Kaua‘i, and famously had it’s first spike ceremonially driven in by Princess Regnant Lydia Kamaka‘eha, (later Queen Lili‘uokalani) in 1881 (see Land Use in the Post-contact Period to the Present, above).

## **FINDINGS AND RECOMMENDATIONS**

The general pattern seen in the previous archaeological work in the vicinity (see Previous Archaeology, above) is one that is common to many regions of the Hawaiian Islands where commercial sugar or pineapple agriculture occurred. Remaining Pre-Contact sites are largely found within gullies or other areas of uneven ground, especially near water features. Relatively flat areas, such as tablelands have been subject to considerable ground disturbance for large scale commercial cultivation and Pre-Contact features that may (likely) have been present there have been removed or destroyed.

The sole feature of archaeological significance (TS-1) identified during the present field inspection consisted of a railroad bridge culvert and section of railroad track. These features were constructed as a part of the railroad built to haul sugar for the plantation operated by the Kilauea Sugar Company. Another portion of that railroad located to the northwest was previously designated as SIHP Site No. 50-30-04-01812. It is possible that other remnant portions of the railroad may be found under the foliage or even under the ground surface of other nearby property parcels. Since a historic property has been identified within the project area, SCS recommends that an AIS be conducted to fully document the historic property (TS-1) and determined its extent, age, function, and significance. SHPD should be consulted both in regards to the AIS and to determine if TS-1 should receive a new SIHP number or be recorded as an additional portion of Site -01812.

Based on the findings of this LRFI, only an historic-era cultural resource was identified. Note that portions of the project area were heavily overgrown and more intensive survey during AIS could lead to the identification of additional historical-era resources associated with the railway line. No excavations were conducted during this LRFI and thus, there remains the slight possibility that pre-Contact cultural resources such as habitation area could be documented in subsurface contexts below the plow zone. The same would hold true for *iwi kupuna* (ancestor bones): only a slight possibility that such exist on this plateau area. The majority of traditional burials in the area have been documented near the direct coastline and in sandy sediment.

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**APPENDIX A: NATIVE CLAIMS AND NATIVE AND FOREIGN  
TESTIMONY FOR THE AHUPUA‘A OF KĀHILI**

(excerpted from Ida and Hammatt 1997)

Kahili LCAs and Associated Claims with Kahili mentioned

No. 8559 C. Kanaina Honolulu, Feb. 14, 1848

N.R. 349v4

The Lands of William Lunalilo....

Name of the Land	Ahupua'a	District	Island
57. Kahili	"	Koolau	Kauai
58. Kumukumu	"	"	"
59. Pilaa Waipouli	"	Kapaa, Puna	"
60. Kamalamaloo	"	"	"
61. Kalihiwai	"	"	"
62. Manuahi 'Ili Hanapepe	"	Kona	"

.....

No. 8559B Lunalilo, Wm. C. Iliaina  
(King Lunalilo) Manuahi Kona Kauai - 867 Ac. [Book 10, p. 490]

[8559B Kalihiwai R.P. 8173; Manuahi Hanapepe; Kahili R.P. 8323; Pilaa R.P. 7060; Waipouli R.P. 7373]

No. 9067 Keo

N.R. 403v9

The Land Commissioners, Greetings: I hereby state my claim for seven lo'i, two mala of wauke and the house lot.

Kahili, Kauai, January 17, 1848

KEO X

No. 9067 Keo Clt.

F.T. 165-166v12

Luakini sworn says I know Clt's lands in Kalihi. They are 7 Lois in three distinct pieces.

Kahili & a House Lot in Kilauea.

No. 1 Is House Lot in Kilauea

" 2 " 5 Lois & kula in Kanaele - Kahili

" 3 " 1 " "Uleulehu" (?) Makai

" " " " Mauka

No. 1 is bounded

M. by Govt kula

N. " Luahini's House Lot

M. " Govt kula

A. " " "

No. 2 is bounded

M. by Luakini's lois

N. " Kamalawai's "

M. " Hapahui's "

A. " Konohiki's kula

No. 3 is bounded

M. by Mamuaholono's (?) loi

N. " Kahili River

M. " Unclt lands

A. " Loko "Kaneio"



No. 4 is bounded

M. by my loko

N. " Konohiki's koele

M. " Apahu's loi

A. " My loko

These lands were given by the Konohiki to Clt. in the days of Kaumualii & have been held undisturbed till this time.

Inaole sworn says I know the lands of Kea & all that Luahini has testified is true.

No. 9067      Keo

N.T. 176-177v12

Kuakini sworn he has seen Keo's land in Kahili of seven lois and a house lot.

Section 1 - House lot

Mauka      Government pasture

Napali      Luakini's house lot

Makai      Government pasture

Anahola      Government pasture

Section 2 - Five lois and a pasture together

Mauka      Luakini's loi

Napali      Kanialauna's land

Makai      Hapakua's land

Anahola      Government pasture

Section 3 - One loi, Ulehulehu

Mauka      Mamuakalono's land

Napali      Kahili river

Makai      With weeds, land

Anahola      Kanaio, the konohiki's pond

Section 4 - One loi mauka of Ulehulehu

Mauka      Luakini's land (Pond)

Napali      Konohiki koele

Makai      Apahu's land

Anahola      Luakini's land

Land had been from Kaumualii I to Keo's parents and from them to Keo, all is peaceful to the present.

Inaole sworn he has seen Keo's land, the house lot, the five lois and the pasture. One loi is in section 3, in Ulehulehu and the other lois is mauka of Ulehulehu as section four.

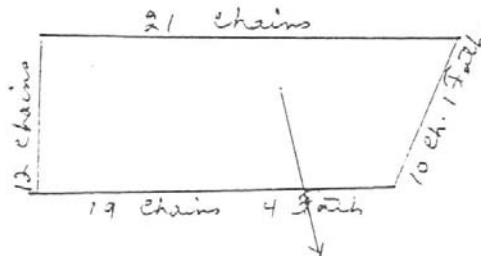
He has known in the same way as Luakini concerning Keo's land, the house lot and his lois. [Award 9067; R.P. 3486]

No. 10013      Leimanu      Koloa, Kauai, January 16, 1848

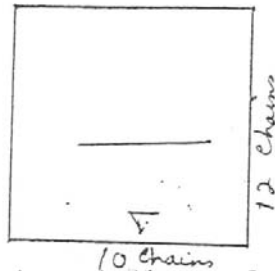
N.R. 251-252v9

The Land Commissioners, Greetings: We, Leimanu and Mokuhalii, are Hawaiian subjects living at Kahili on the Island of Kauai.

We hereby state our claims for land, some lo'is and a kula and a house claim. These are all within the diagram:



I Leimanu, a Hawaiian subject, hereby state my claim at Kahililalo, for a kula for planting wauke; its diagram is as follows:



Respectfully  
LEIMANU

I, Mokuhalii, hereby state my claim in another place, as follows: 5 chains on two sides, 9 chains on another side and 30 in another side /?sic/. I am respectfully,  
MOKUHALII

No. 10013 Leimanu Clt

F.T. 227-228v12

Mokukalii sworn says I know the lands of Leimanu in Kahili. They are in 3 pieces as follows:

No. 1 Is House Lot, 3 lois & kula in "Kaukahiwai"

" 2 " 2 Lois "

" 3 " kula in "Manohala"

No. 1 is Bounded

M. by Lueili's lois

H. " Daniela's "

M. " Koalaiki's "

A. " " "

No. 2 is Bounded

M. by My lois

H. " Kahili river

M. " Alaiki's lois

A. " Keokea's "

No. 3 is Bounded

M. by Hapakui's kula

H. " Kahili River

M. " Daniela's kula

A. " Konohiki's "

These lands have been held peaceably since 1840. Clt. had them from his brother in law. They had been held by the Parents of the brother in law from the days of Kaumualii.

Pupu sworn says I know Clt's lands in Kahili. I have heard all that Mokukalii has testified. It is all true.

No. 10013 Leimanu, B

N.T. 233-234v12

Kumokuhalii sworn he has seen claimants land in Kahili.

Section 1 - House lot and a pasture in Kaiaakahiuu

Mauka Two ili land

Halelea Daniela's land

Makai	Koalaiki's land
Anahola	Koalaiki's land

Section 2 - Two lois

Mauka	Mokuhalii's land
Halelea	Kahili river
Makai	Alaiki's land
Anahola	Keokea

Section 3 - Pasture at Namohala

Mauka	Land
Halelea	Kahili river
Makai	Daniela's pasture
Anahola	Konohiki pasture

Land from the konohiki to Leimanu's brother-in-law at the time of Kaumualii.

Leimanu received this land in 1844, no objections.

Kipu sworn verifies Mokuhalii's testimony is correct, he has known in the same way.

[Award 10013; R.P. 3879]

No. 10013	Leimanu	Koloa, Kauai, January 16, 1848	N.R. 251-252v9
..... [see above]			
[10013B]			

I, Mokuhalii, hereby state my claim in another place, as follows: 5 chains on two sides, 9 chains on another side and 30 in another side /?sic/. I am respectfully,

MOKUHALII

No. 10013[B]	Mokuhalii Clt /no claim in Index/	F.T. 161-162v12
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Kauoha sworn says I know lands of Mokuhalii in Kahili in Ili "Hoopala" & some kula embracing a house Lot & an Orange Tree in "Kapunahoe" [?]

No. 1 Is House Lot & kula adj.

" 2 " 5 Lois in "Hoopala"

No. 1 is bounded

M. by Konohiki's kula

N. " Kalunaaina's loi

M. " Kahili River

K. " Kaleimanu's lois

No. 2 is bounded

M. by Kalunaaina's lois

N. " Kahili River

M. " Kaleimanu's lois

K. " Alaiki's lois

These lands have been held by Clt. & his parents from the days of Kaumualii. They came into the full possession of Clt. in 1844. No one has disputed his claim.

Kealawaa sworn says- I know clt's lands. I have hears the testimony of Kauoha. It is all true.

No. 10013 [B]	Mokuhalii	N.T. 170-171v12
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Kanoha sworn he has seen claimants land in the ili of Hapala, also the pasture in the koa growth.

Section 1 - Pasture and house lot

Mauka	Konohiki pasture
Napali	Landlord's lois
Makai	Kahili river
K.	Kaleimanu's lois

Section 2 - 5 lois in Hapala

Mauka	Landlord's land
Napali	Kahili river
Makai	Kaleimanu's lois
K.	Alaiki's lois

Land to Kumokuhalii from his parents at the time of Kaumualii 1.

Kumokuhalii as a son received it directly in 1844, title secured from parents.

Kealawaa sworn he has seen Kumokuhalii's land in Kahili of Hoopala ili land.

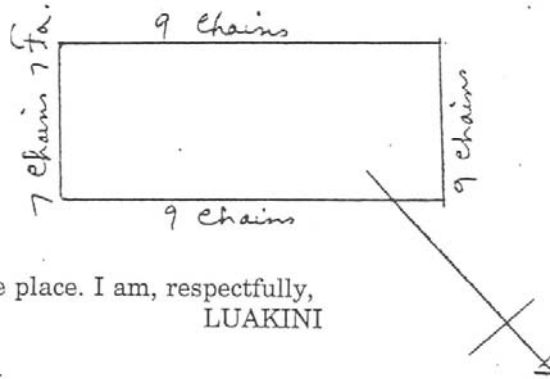
Verifies Kealawaa's statements as true and accurate, life has been peaceful.

[Award 10013B; R.P. 3880]

No. 10015 Luakini Koloa, Kauai, January 16, 1848

N.R. 253v9

The Land Commissioners, Greetings: I, Luakini, a Hawaiian subject living at Kahili on the Island of Kauai, hereby state my claim for land. The diagram follows:



My house is in a separate place. I am, respectfully,  
LUAKINI

No. 10015 Luakini Clt

F.T. 165v12

Inaole sworn says I know Clt's lands in Kahole & Kilauea. They are in two pieces.

No. 1 Is House Lot in Kilauea

" 2 " 2 Lois & kula with 2 Orange trees

No. 1 is bounded

M. by konohiki's kula

N. " " "

M. " " "

A. " " "

No. 2 is bounded

M. by Papai's kula

N. " Kahili River

M. " My Lois

A. " " Kula

These lands were given Clt. in the days of Kaumualii & have been held in peaceable possession till this time.



Holokuhine sworn says I know Clt's lands as above described and have heard the testimony of Inaole. It is all true.

No. 10015 Luakini

N.T. 175-176v12

Inaole sworn he has seen Luakini's land of two lo's, a pasture and a house lot all in one area in Kilauea. Two orange trees also are on this land. This claim has been absolutely secured since the beginning to the present time.

Section 1 Mauka and all around is government pasture

Section 2 Mauka Papai's pasture

Napali Kahili river

Makai Inaole's land

Anahola Inaole's land

Land from the konohiki at the time of Kaumualii, the first and this has been secured since that time to the present.

Holokukini sworn he has seen Luakini's land, the pasture, the two orange trees and the house lot, he has known in the same way as Inaole.

[Award ; R.P. 10015]

No. 10082 Mamao

N.R. 262v9

The Land Commissioners, Greetings: I hereby state my claim for an 'ili named Makaihuwaa. The boundaries of this 'ili.\* All the rights in this 'ili are mine, and that is my claim which is stated to you.

I also have a claim in the 'ili of Kapuka, for two lo'i and some scattered lo'i, a total of six.

Kahili, Kauai, January 17, 1848

MAMAO

\*Not stated.

No. 10082 Mamao Clt

F.T. 229-230v12

Daniela sworn says I know the lands of Mamao in Kahili. It is an Ili called "Makaihuwaa."

This Ili was given by the Konohiki to Pipili at the close of the war of 1824. Pipili held it in peace till his death in 1837. His widow (Kupahu) then held the land in peaceable possession till 1847, when she gave it to her son the "Clt. who has held it in peace to the present time.

No one has disputed the claim:

Bounded as follows:

M. by Konohiki's kula

H. " "Kalama"

M. " Kahili River

A. " Pali of "Makaihuwaa"

Keo sworn says I know the lands of Mamao in Kahili. The Ili "Hokaihuwaa." It belongs to Mamao & to no one else.

Note: This claim embraces a whole Ili, but Clt relinquishes a larger part of the kula & takes that part that borders on his kalo land below the Pali.

No. 10082 Mamao

N.T. 233v12

Daniela sworn he has seen claimants land in Kahili of one section consisting of a whole ili and a house lot in Makaihuwaa.

Land from the konohiki to Pihili after the battle of Wahiawa, no objections.

Pihili died in 1837, land was given to Kupahu, the widow, no disputes. In 1847, the widow gave the ili land to her son Mamao.

Boundaries of that ili

Mauka	Konohiki pasture
Halelea	Kalama's land
Makai	Kahili river
Anahola	Konohiki pasture

Keo sworn he has seen Mamao's ili land and it is his (Mamao) own land just as Daniel, the witness has related. both Keo and Daniela have known in the same way.

[Award 10082; R.P. 4074]

---

No. 10083 Mamuakalono Kahili, Kauai, 17 January 1848

N.R. 262v9

The Land Commissioners, Greetings: I hereby state my claims for one lo'i, a mala of noni, a mala of wauke and the house lot. MAMUAKALONO X

No. 10083 Mamuakalono Clt

F.T. 228v12

Keo sworn says I know Clt's land in Kahili. It is 1 Loi & I gave it to him previous to 1839 & it has been held in peaceable possession till now.

Bounded as follows

M. by Leiakunui's[?] loi

H. by Kahili River

M. " Keo's loi

A. " Koele "

[no more testimony here]

Nc. 60083 Mamuaakalono

N.T. 232v12

[should be 10083]

Keo sworn he has seen claimants land in Kahili of one piece with a loi in Kahili.

Mauka	Luakini's land
Halelea	Kahili river
Makai	Keo's land
Anahola	Koele

Land from the konohiki in 1839, no disputes to the present.

[Award 10083; R.P. 7754]

---

No. 10333 Naiamaneo Koloa, Kauai, 16 January 1848

N.R. 283v9

The Land Commissioners, Greetings: I, Naiamaneo, a subject of Hawaii living at Kahili, Island of Kauai, hereby state my claim: its diagram is as follows: The house is in another place. I am, respectfully,

NAIAMANEO

No. 10333 Naaimaneo (w) Clt

F.T. 229v12

Leimanu sworn says I know the lands of Naaimaneo in Kahili. They are a field of Kalo embracing a number of small lois & kula adj. in Ili "Kupa"

Bounded as follows

M. by Ahupuaa of Kilauea

H. " Kahili River

M. " Brook "Kilauea"

A. " Kahili River

These lands were given by the Konohiki to Clt's Husband, Oopu, in the days of Kamualii. Oopu died in 1847 & the lands fell to the widow (Clt). She has held them in peace till this time.

Mokuhalii sworn says I know Clt's lands in Kahili. I have heard the testimony of Leimanu. It is all true.

No. 10333 Naaimeneo

N.T. 232v12

Kaleimanu sworn he has seen Kaleimanu's (Naaimeneo) land in Kahili.

Mauka Kilauea ahupuaa

Halelea Kahili river

Makai Kilauea stream

Anahola Kahili river

Land from the konohiki to Opu at the time of Kaumualii I.

Opu died in 1847, the land was left to this wife Naaimeneo.

Kumokuohalii sworn he has seen claimants land claim in Kahili. Kaleimanu's statements were accurate and both have known in the same way. No disputes to the present time.

[Award 10333; R.P. 3370]

No. 10564 D. Oleloa

N.R. 294-295v9

To the Land Commissioners, Greetings: I hereby state my claims for land of Kauai. At Haiku Ahupua'a, at Huleia in the Puna District, here are the claims:

...

In the Ahupua'a of Kapaa in Puna there are these claims:

...

At Kahili Ahupua'a in Koolau are four taro lo'i, At Waioli ... At Wainiha. These land claims are on Kauai. These claims are of the same kind -- that is, the occupancy of them is under the people who dwell on the land. I request you to award the claims to me which I have described, in accordance with the law.

The witnesses to the claims are the people living on the land, who know of our cultivation and work. The witnesses of my occupation of konohiki are M. Kekuanaoa and M. Kekauonohi, the ones who appointed me. I am, respectfully,

Honolulu, Oahu, 5 February 1848 D. OLELOA

No. 10564 Daniela Oleloa

F.T. 6-9v12

...

The further hearing of this claim was postponed until witnesses could be procured for Clt's lands is Kahili.



(See Page 80)

No. 10564 Daniela Oleloa Clt finished (See page 64)

F.T. 80-81v12

...

Land from Kauonohi at the time of Kinau, no objections.  
The claim in Kahili is incomplete-postponed.

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**William Lunalilo (20, 22)**

Kahili Ahupua'a Koolau Kauai  
The Great Mahele 1848, 1989:104

Barrère, Dorothy B. compiler  
1994 *The King's Mahele: The Awardees and Their Lands*, Honolulu, HI: p. 432-433.  
Willaim Charles Lunalilo, Alii Award LCA 8559B  
Mahele Book 17-18 (22-23) Received  
Probate 2413, 1414 (AH) Lunalilo died February 3, 1874 without issue.

Left personal property to his father Kanaina, and his real estate for the founding of  
Lunalilo Home.

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[Kahili River]

No. 6529 Holokukini

N.R. 193v9

To the Land Commissioners, Greetings: I hereby state my claim at Kilauea. I am the  
konohiki, under A. Keliiiahonui. My claims are for all the rights and benefits pertaining to  
the konohiki, being the Po'alimas and the Po'ahas, the protected fish, and the protected trees.  
Those are my claims, under A. Keliiiahonui ma. Respectfully,  
HOLOKUKINI

N.R. 193v9

The Land Commissioners, Greetings: I hereby tell you of my three lo'i and also a house lot -  
- those are my claims.

HOLOKUKINI

No. 6529 Holokukini Clt

F.T. 162-163v12

Kanaina sworn says I know the lands of Holokukini in Pilaa & Kilauea. He has 4 Lois  
in "Puaa" Pilaa all in one piece.

Bounded as follows

M. by Konohiki's kula

N. " " "

M. " Sea Beach

A. " Kane's lois

These lois were given by the Konohiki in 1845 & have been held undisturbed till this  
time.

Clt. has also 6 Lois in Kilauea, Ili "Maluawai" & some kula adjoining a House Lot.

bounded as follows

M. by Kahili River

N. " Konohiki's kula

M. " Oleola's lois

A. " Kahili River

These lands in Kilauea were given by Kaluahonui in 1842 & have been held unmolested to this time.

Kolale sworn says I know the lands of Clt. in Pilaa & Kilauea. I have heard the testimony of Kanaina. It is all true.

No. 6529      Holokukini

N.T. 172-173v12

Kanaina sworn he has seen claimants land in Pilaa and Kilauea consisting of 4 lois, of which 3 are small lois and 2 is a large loi.

There are only four lois in the ili of Puua

Mauka and Napali      Konohiki pasture\

Makai                      From the beach sand

Anahola                    Hane's lois

Upai lived under Holokukini.

Land from Opukea to Holokukini in 1845, no objections.

There are 6 lois in Kilauea belonging to Holokukini called Maluawai ili.

There is also a house lot, a pasture and 2 tenants. There are two houses and the men are living under Holokukini who owns the land and house lot.

Mauka                      Kahili river

Napali                      Konohiki's pasture

Makai                      Opeka's lois

Anahola                    Kahili river

Land from Kekiahonui in 1842, title clear since the beginning to the present.

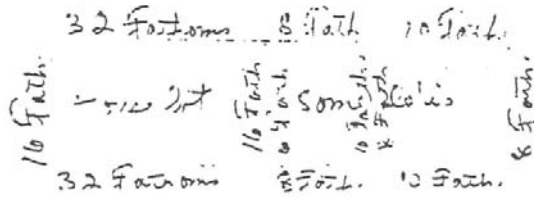
Kohale sworn he has seen Holokukini's land in Kalihi, also a house lot, the pasture and the four lois in Pilaa of the ili land of Puua. He has known in the same ways as Kalaina.

[Award 6529]

---

No. 9260      Kea

N.R. 440-441v9



These are the measurements of my taro lo'i and my house lot, as shown on the diagram. The right was from the time of Kaumualii until the present. It is for you, the Commissioners to quiet land titles, to award it. The Witnesses are Ehuiki and Kauaole.      KEA

No. 9260      Kea Clt.

F.T. 235-236v12

Nakaikuahine sworn says I know the lands of Clt. in Kalihiwai as follows -

No. 1 Is House Lot

" 2 " 2 Loïs in "Auwailalo"

" 3 " 1 " "

No. 1 is Bounded

M. by Konohiki's kula

N. " " "

M. " River

K. " "

No. 2 is Bounded

M. by Kunihihi's loïs

N. " Kekaululu's "

M. " River

K. " My loïs

No. 3 is Bounded

M. by Kunihihi's loïs

N. " River

M. " Kea's loïs

K. " My "

These lands were given Clt by the Konohiki in the days of Kamualii & have been held peaceably till now.

Makaimoku sworn says I know Clt's lands. I have heard all that Nakaikuahine has said. It is all true.

No. 9260      Kea

N.T. 240v12

Nakaikuahine sworn I know the kuleana lands of Kea in Kalihiwai.

section 1 - House lot

Section 2 - 2 loïs

Section 3 - A single loi in Kaauaelale?

Those are his lands. They are quite settled.

Section 1

M. Konohiki's kula

N. Konohiki's kula

M. Kalihiwai river

K. Kalihiwai river

Section 2

M. Kunihihi's land

- N. Peke's loi
- M. Kalihiwai river
- K. Makaikuahiane's lois

Section 3

- M. Kunihinihi's loi
- N. Kahili river
- M. Kea's loi
- K. Kea's loi

These lands of Kea's came from the konohiki down to Kea. During the time of Kaumualii they were secured. They have not been contested until today.

Makaimoku sworn I know these lands of Kea, I have heard Nakaikuahine's testimony. Both have known in the same way. There is no opposition.

[Award 9260; R.P. 5342]

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## DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

### TRANSMITTAL OF AGENCY COMMENTS TO PLANNING COMMISSION

DATE: October 27, 2023

Permit No.(S): Class IV Zoning Permit Z-IV-2024-1  
Use Permit U-2024-1  
Special Management Area Use Permit SMA(U)-2024-5

Applicants(s): BRYAN MADANI and KIANA BUCKLEY

Attached for the Planning Commission's reference are agency comments for the permit referenced above.

F.2.b.1./L.2..

NOV 14 2023



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

FROM: Kaaina S. Hull, Director

Planner: Romio Idica

9/27/2023

SUBJECT: Zoning Class IV Z-IV-2024-1  
Use Permit U-2024-1  
Special Mgt Area Permit SMA(U)-2024-5  
Tax Map Key: 520040930002  
Applicant: Bryan Madani & Kiana Buckley  
Single-Family Residence with Pool

TO:

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

FOR YOUR COMMENTS (pertaining to your department)

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 11/14/2023 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!



OCT 9 '23 PM1:39  
PLANNING DEPT

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

DATE: October 6, 2023

TO: To whom it may concern

FROM: Ellis Jones  
District Environmental Health Program Chief

SUBJECT: RESPONSE\_Madani & Buckley\_SMA(U)-2024-5

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 application. The use of individual wastewater systems is allowed. The type and number of individual wastewater systems to be used on each lot will be determined by the wastewater rules in effect at the time of building permit application.

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 Sina Pruder at the DOH waste-water branch at 808-586-4288 for further information. For comments, please email the Wastewater Branch at [doh.wwb@doh.hawaii.gov](mailto: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



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

FROM: Kaaina S. Hull, Director

Planner: Romio Idica

9/27/2023

SUBJECT: Zoning Class IV Z-IV-2024-1  
Use Permit U-2024-1  
Special Mgt Area Permit SMA(U)-2024-5  
Tax Map Key: 520040930002  
Applicant: Bryan Madani & Kiana Buckley  
Single-Family Residence with Pool

TO:

- |  |   |
|--|---|
| <input type="checkbox"/> State Department of Transportation - STP        | <input checked="" type="checkbox"/> County DPW - Engineering          |
| <input type="checkbox"/> State DOT - Highways, Kauai (info only)         | <input type="checkbox"/> County DPW - Wastewater                      |
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| <input type="checkbox"/> State DLNR - Conservation & Coastal Lands       | <input type="checkbox"/> UH Sea Grant                                 |
| <input type="checkbox"/> Office of Hawaiian Affairs                      | <input checked="" type="checkbox"/> Other: Office of Hawaiian Affairs |

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

We have completed our review and offer the following comments:

1. The applicant shall comply with all provisions of the "Sediment and Erosion Control Ordinance No. 808" to safeguard the public health, safety, and welfare, to protect property, and to control soil erosion and sedimentation. We have received and reviewed plans for grading work associated with this application.
2. During construction, best management practices (BMPs) shall be incorporated to the maximum extent practicable to prevent damage by sedimentation, erosion, or dust to watercourses, natural areas, and other properties. The permittee and the property owner shall be responsible to ensure that BMPs are satisfactorily implemented at all times.

Sincerely,

Digitally signed by Michael Moule  
Date: 2023.10.11 14:05:05 -10'00'

Michael Moule, P.E.  
Chief, Engineering Division

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 11/14/2023 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 9 '23 PM 1:39  
PLANNING DEPT

FROM: Kaaina S. Hull, Director

Planner: Romio Idica

9/27/2023

SUBJECT: Zoning Class IV Z-IV-2024-1  
Use Permit U-2024-1  
Special Mgt Area Permit SMA(U)-2024-5  
Tax Map Key: 520040930002  
Applicant: Bryan Madani & Kiana Buckley  
Single-Family Residence with Pool

RECEIVED

SEP 27 2023

County of Kauai  
Transportation Agency

TO:

- |  |   |
|--|---|
| <input type="checkbox"/> State Department of Transportation - STP        | <input checked="" type="checkbox"/> County DPW - Engineering          |
| <input type="checkbox"/> State DOT - Highways, Kauai (info only)         | <input type="checkbox"/> County DPW - Wastewater                      |
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| <input type="checkbox"/> State DLNR - Conservation & Coastal Lands       | <input type="checkbox"/> UH Sea Grant                                 |
| <input type="checkbox"/> Office of Hawaiian Affairs                      | <input checked="" type="checkbox"/> Other: Office of Hawaiian Affairs |

FOR YOUR COMMENTS (pertaining to your department)

10/6/2023

CTA HAS NO FURTHER COMMENT ON THIS PROJECT.  
MAHALO!

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 11/14/2023 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!



**ENGINEERING DIVISION**  
DEPARTMENT OF WATER, COUNTY OF KAUAI  
MICHAEL K. HINAZUMI, P.E.



JOSEPH E. TAIT  
MANAGER AND CHIEF ENGINEER

DATE: November 6, 2023

TO: Planning Department  
Kaaina Hull, Director ( Romio )

SUBJECT: Zoning Class IV Z-IV-2024-1 Use Permit U-2024-1 Special Management Area  
Permit SMA(U)-2024-5, Single-Family Residence with Pool, Tax Map Key:  
(4) 5-2-004:093 Unit 2, Bryan Madani & Kiana Buckley, Applicant

DOW COMMENTS:

The Department of Water (DOW) has concerns regarding the possible backflow of water into our system with this Zoning Class IV Z-IV-2024-1, Use Permit U-2024-1, Special Management Area Permit SMA(U)-2024-5 applications for the proposed single-family residence with a pool on TMK: 5-2-004:093 Unit 2.

We recommend to the Planning Department that any approval of the proposed permit applications be conditioned whereby the applicant shall be made aware that prior to the DOW recommending water meter service or building permit approval, the applicant will be required to have the device tested by a certified tester and submit to the DOW a completed test report signed by the certified tester.

Requests for additional water meters or increase in water meter size will be dependent on the adequacy of the source, storage and transmission facilities existing at that time.

Regina Reyes-Flores  
Regina Reyes-Flores (Nov 6, 2023 11:45 HST)

Regina Reyes-Flores, P.E.  
Water Resources and Planning Section

Nov 6, 2023

Date

SMA(U)-2024-5, 5-2-004-093 Unit 2, 20231106, Bryan Madani & Kiana Buckley/RF:dlv

## DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

### DIRECTOR'S REPORT

#### I. SUMMARY

**Action Required by Planning Commission:** Consideration of a Special Management Area Use Permit for the construction of a two (2) story farm dwelling and a swimming pool.

**Permit Application Nos.** Class IV Zoning Permit Z-IV-2024-1  
Use Permit U-2024-1  
Special Management Area Use Permit SMA(U)-2024-5

**Name of Applicant(s)** BRYAN MADANI and KIANA BUCKLEY  
Laurel Loo of McCorriston Miller Mukai MacKinnon LLP, Authorized Agent

#### II. PERMIT INFORMATION

PERMITS REQUIRED	
<input checked="" type="checkbox"/> Use Permit	Pursuant to Article 11, section 8-11.3 of the KCC, 1987 as amended, a use permit is required to allow any development, structures or uses within the Special Treatment District (ST)
<input type="checkbox"/> Project Development Use Permit	
<input type="checkbox"/> Variance Permit	
<input type="checkbox"/> Special Permit	
<input checked="" type="checkbox"/> Zoning Permit Class <input checked="" type="checkbox"/> IV <input type="checkbox"/> III	Pursuant to Section 8-3.1 of the KCC, 1987 as amended, a Class IV Zoning permit is procedural requirements in applying for a Use Permit.
<input checked="" type="checkbox"/> Special Management Area Permit <input checked="" type="checkbox"/> Use <input type="checkbox"/> Minor	Pursuant to Section 205A of the Hawaii Revised Statutes (HRS) and the Special Management Area Rules and Regulations of the County of Kaua'i, and Act 229, Session Laws of Hawai'i 2023, a SMA Use permit is required as defined in Section 7.3(C) of the SMA Rules and Regulations where the Director finds that the proposal (1) is a "Development" and (5) may have significant adverse effect on the Special Management area.
AMENDMENTS	
<input type="checkbox"/> Zoning Amendment	
<input type="checkbox"/> General Plan Amendment	

F.2.b2/  
L.2.b.  
NOV 14 2023

October 14, 2024

<input type="checkbox"/> State Land Use District Amendment	
--	--

Date of Receipt of Completed Application: September 27, 2023

Date of Director's Report: October 18, 2023

Date of Public Hearing: November 14, 2023

Deadline Date for PC to Take Action (60<sup>TH</sup> Day): November 26, 2023

### III. PROJECT DATA

PROJECT INFORMATION			
Parcel Location:	The project site is located within the Sea Cliff Plantation Subdivision, 1400 feet south of Iwalani Lane and Pali Moana Place intersection.		
Tax Map Key(s):	(4) 5-2-004:093	Area:	6.8510 acres
ZONING & DEVELOPMENT STANDARDS			
Zoning:	Agriculture (A)/ Open Special Treatment Resource (O/ST-R)		
State Land Use District:	Agricultural (A)		
General Plan Designation:	Agricultural (A)		
Height Limit:	Twenty-five (25) feet		
Max. Land Coverage:	(A) Sixty percent (60%) (O/ ST-R) 3,000 s.f. maximum or not to exceed 10% of the parcel or lot area		
Front Setback:	10'-0"		
Rear Setback:	Five (5) feet or ½ the wall plate height whichever is greater		
Side Setback:	Five (5) feet or ½ the wall plate height whichever is greater		
Community Plan Area:	North Shore Development Plan		
Community Plan Land Use Designation:	N/A		
Deviations or Variances Requested:	N/A		

### IV. LEGAL REQUIREMENTS



<b>Section 8-3.1 (f), KCC:</b>	This report is being transmitted to the Applicant and Planning Commission in order to satisfy the requirements of Section 8-3.1 (f), relating to the provision of the Planning Director's report and recommendation on the subject proposal within sixty (60) days of the filing of a completed application. The application was received on September 27, 2023, and the Applicant, through its authorized agent, was notified accordingly of the Planning Department's intent to commence permit processing.
<b>Public Hearing Date:</b>	November 14, 2023

## **V. PROJECT DESCRIPTION AND USE**

The subject property is within the Sea Cliff Plantation, an existing subdivision approved under S-82-73. The property consists of an area of 6.8510 acres and is further identified as Tax Map Key Number 5-2-004:093. Additionally, it is part of a Condominium Property Regime (CPR) comprising of two (2) units, with the applicant holding ownership of CPR Unit 2.

The applicant is proposing the construction of a two (2) story farm dwelling consisting of four (4) bedrooms, Three and a half (3-1/2) baths, covered lanais, swimming pool with spa, outdoor shower, and a barbecue area. Other improvements include a concrete driveway, water feature, retaining walls, and landscaping. The farm dwelling house displays a modest pitched hip roof line with standing seam metal roof finish. The exterior siding finish of the farm dwelling is concrete board-form concrete and landscaping walls consists of Kaua'i mixed rock.

## **VI. APPLICANT'S REASONS/JUSTIFICATION**

(Refer to Application)

## **VII. ADDITIONAL FINDINGS**

1. The project site is in the Sea Cliff Plantation subdivision and access to the property is off Pali Moana Road.
2. The State Land Use District (SLUD) designation for the subject parcel is "Agriculture," which allows for agricultural growth in a specific area. The Kaua'i County General Plan (GP) designation is "Agriculture". Agriculture lands are reserved for agriculture purposes with little residential development.
3. The property is situated within the North Shore Planning area and will be subjected to the objectives and goals of the North Shore Development Plan (NSDP), that includes the following:

- Goal A: To preserve the unique natural beauty of the North Shore Planning Area.
- Goal B: To preserve the special rural charm of the North Planning area.
- Goal C: To provide for the safety and welfare of the people, of their property of the North Shore Planning Area.
- Goal D: To provide for economic development of the North Shore planning area.
- Goal E: To preserve the wildlife and flora and the North Shore, recognizing man's dependence upon this preservation for his own health and welfare.
- Goal F: To ensure the preservation of historic-archaeological sites in the North Shore Planning Area.
- Goal G: To create a development for evolutionary growth that depends upon a planning process whereby conflicts can be resolved through the establishment of priorities and community participation.
- Goal H: To provide for recreational opportunities that are compatible with the unique qualities and natural features of the North.

4. The proposed farm dwelling is located within Zone "X" of Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map. FEMA had identified these areas to be outside of the 0.2% floodplain and is far enough inland to be vulnerable to coastal erosion or impact coastal waters.
5. The subject site slopes down gradually from the northwestern edge of the property towards the southeastern section and a cross directional slope down from the western to the easterly portion of CPR Unit 2. All grading and drainage run-off resulting from construction activities shall be managed on-site.
6. CZO Development Standards  
The proposed development is subjected to standards prescribed in Sections 8-4.3, 8-4.5, 8-9.2, 8-11.3, and 10-2.4:
  - a. Setback Requirements: Front property line setbacks are ten feet (10'-0") with a side and rear property line setback of five feet (5'-0") or half the distance of the wall plate height whichever is greater.
  - b. Setback between buildings: The distance between buildings shall be ten (10) feet minimum.
  - c. Parking Requirements: The applicant shall provide a minimum of two (2) off-street parking spaces for each of the dwelling units.

- d. **Land/ Lot Coverage:** The proposed development (CPR Unit 2) is entirely within the Open Special Treatment Resource (O/ST-R) zoning district. The allowable land coverage should not exceed more than 10% of the parcel size within its respective zoning area.
- e. **Building Height:** Pursuant to Section 10-2.4(e)(1) of the CZO, referred to as the NSDP. It allows structures to be no higher than twenty-five (25) feet.

#### **VIII. AGENCY COMMENTS**

See Exhibit "A".

#### **IX. PRELIMINARY EVALUATION**

In evaluating the Applicant's request to allow the construction of the proposed development, the following are being considered.

1. **North Shore Development Plan Standards**

The proposed development is a new two (2) story farm dwelling with swimming pool in the Seacliff Plantation subdivision in Kilauea and aligns with the housing goals of the Northshore Development Plan (NDP). Prior to building permit application, the applicant shall work closely with the Planning Department to ensure the dwelling does not exceed the height limitations as outlined in the NSDP.

2. **Native Hawaiian Traditional and Cultural Rights-** The analysis conducted interviews with cultural descendants and knowledgeable community members and examined archival research relying on prior archaeological records and recent inspections. The archaeological documentation revealed the presence of significant cultural, historical, and/or natural resources both within and outside the subject property (see Exhibit "B" section II).

The Ka Pa'akai Identified resources, including traditional and customary Native Hawaiian rights that will be affected or impaired by the proposed action, including:

- **Pre-contact features or sites-** Pre contact sites are mostly situated in gullies or uneven terrain, particularly near water features, as flat areas like tablelands.
- **Railroad bridge culvert and section of the railroad track-** The Archaeological Literature Review and Field Inspection (LRFI) conducted on the property identified a railroad track (TS-1) as shown in Figure 7 of attachment "A", that may be affected by construction activities on the property. The railroad bridge culvert is not only a post-contact historic feature, but it also has cultural significance because of its association with Princess Lydia Kamaka'eha Princess Regnant, later to become Queen Lili'uokalani.

- Impacts to the cultural landscape of Nihoku, including the ability to exercise traditional and customary practices associated with Nihoku and Kilauea- Members of the Kilauea community, particularly Native Hawaiians with ancestral ties to the area, strongly believe that the Seacliff Plantation subdivision, as a whole, has had and will continue to have a negative impact on the cultural landscape of Nihoku.

The Ka Pa'akai analysis provides recommendations, feasible actions, and mitigation measures to reasonably protect Native Hawaiian rights and resources. This includes the following recommendations:

- The protection and preservation of the railroad bridge culvert and section of railroad tracks (see figure 7 of Attachment "A" of the LRFI).
- Planting of native plants.
- Minimal development and grading of the project area to avoid inadvertent findings of Iwi Kupuna.
- Reasonable mitigation impacts to Nihoku as a cultural landscape.

Please refer to Exhibit "B" Section III of the Ka Pa'akai for detailed implementation actions related to the recommendations stated above.

### 3. SMA Rules and Regulations

The COK SMA Rules and Regulations contain objectives, policies and guidelines designed to protect coastal resources. Within the SMA, special consideration is given to recreational opportunities, cultural and historic resources, scenic qualities and open space, coastal ecosystems, and coastal hazards. In evaluating the proposed development relative to the goals and objectives of the SMA Rules and Regulations, the following aspects are taken into consideration:

- Public Access and Coastal Recreation- The subject development has no public access on site. Public access to Kilauea bay and Kahili Beach is approximately a half mile (1/2) mile southwest off Kilauea road and another access approximately one (1) mile southeast off Wailapa Road.
- Cultural/ Historical Resources- Archeological Literature Review and Filed Inspection (LRFI) of Parcel 93 (Attachment A) prepared by Scientific Consultant Services, INC. identified a designated site as Temporary Site 1 (TS-1) and was comprised of two features: a railroad bridge culvert (Feature 1, FE-1), and a remnant section of railroad track (Feature 2, FE-2) found nearby. As shown in Figure 7 of the LRFI shows FE-1 and FE-2 located on CPR Unit 2. The proposed farm dwelling house is approximately 150 feet from TS-1. The applicant has agreed to work and coordinate with Cultural Descendants and knowledgeable community members on the protection and preservation of the railroad bridge culvert and sections of the railroad track located on the subject property.

The archaeological significance of the current field inspection lies in the identification of a railroad bridge culvert and a section of railroad track (TS-1), associated with the Kilauea Sugar Company's sugar cane transportation. Another part of this railroad nearby has already been designated as SIHP Site No. 50-30-04-0182. There is a possibility of discovering additional remnants of the railroad under foliage or even below the surface of nearby property parcels. Given the historic property identification, the consultant (Scientific Consultant Services, INC.) recommends conducting an Archaeological Inventory Survey (AIS) to thoroughly document TS-1, determining its extent, age, function, and significance. Additionally, consultation with SHPD is advised for both the AIS and to decide whether TS-1 should receive a new SIHP number or be recorded as an additional portion of Site-01812.

The LRFI identified only one historic-era cultural resource in the project area. However, due to overgrowth, more extensive surveys during the AIS could reveal additional historical-era resources linked to the railroad. The study did not involve excavations, leaving the possibility of undiscovered pre-Contact cultural resources, like habitation areas, beneath the plow zone. The likelihood of finding iwi kupuna on the plateau area is slight, with most traditional burials documented near the coastline and in sandy sediment.

- c. Scenic and Open Space Resources- The subject parcel is located approximately half a mile (1/2) east of the entry of Sea Cliff Plantation subdivision. The subject site area (CPR Unit 2) is within a view plane easement dedicated to neighboring Lot 9, to maintain an unobstructed view of the shoreline of Kilauea Bay. Improvements, structures, and plantings are prohibited within the view plan easement area that would interfere with the views of the shoreline from a 275 feet elevation on anywhere of Lot 9.
  - d. Coastal Ecosystems- The project site is approximately a quarter (1/4) mile of the Kilauea Wildlife Refuge, U.S. Fish and Wildlife Service and located on a high cliff rocky bluff. The project site has been previously developed with a Farm dwelling and a swimming pool. As represented in the application according to the University of Hawai'i Rare Species database, there are no known or reported threatened and endangered species within or adjacent property.
  - e. Coastal Hazards- The project area/ site is not located within the extreme tsunami evacuation area. The project area/ site is located within Zone "X", as shown on Federal Insurance Rate Maps. (FIRM 150002-0060E) The project will not be impacted by any coastal hazards.
4. CZO Development Standards  
As proposed the project complies with the land coverage, setback, and off-street parking requirements for development within the Open (O) zoning district, as specified in Sections 8-4.3, 8-4.5, and 8-9.2 of the Comprehensive Zoning Ordinance (CZO).

- a. The subject is located within the North Shore Development Plan Area (NSDP) Pursuant to Sec.10-2.4(e)(1) of the CZO, commonly referred to as the NSDP. Structures should be no higher than twenty-five (25) feet. The Applicant should work closely with the Planning Department to ensure that the proposed development is in compliance with the height limitations of the North Shore Development Plan (NSDP).

Finally, it is uncertain as to whether the Applicant has made provisions for night illumination with the project, based on the preliminary plans that have been submitted. If so, night illumination should be designed to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds. Night lighting should be shielded from above and directed downwards and shall be approved by the U.S. Dept. of the Interior Fish and Wildlife Service. If external lighting is to be used in connection with the proposed project, all external lighting should be only of the following type: *downward-facing shielded lights*. Spotlights aimed upward or spotlighting of structures is prohibited.

5. Use Permit

- a. Pursuant to Article 3 of the Comprehensive Zoning Ordinance (CZO), Chapter 8 of the Kauai county Code (1987), the purpose of the Use Permit Procedure is to assure the proper integration into the community of uses which may be suitable only in specific locations of a district, or only under certain conditions, or only if the uses are designed, arranged or conducted in a particular manner, and to prohibit the uses if proper integration cannot be assured. Section 8-3.2 of the CZO specifies a Use Permit may be granted only if the Planning Commission finds that the use meets the following criteria:

- 1) The use must be a compatible use;
- 2) The use must not be detrimental to persons or property in the area;
- 3) The use must not cause substantial environmental consequences; and
- 4) The use must not be inconsistent with the intent of the Comprehensive Zoning Ordinance (CZO).

- b. Based on the foregoing, the following aspects are considered:

- 1) **Compatible Use** – The proposed development is designed to be integrated with the surrounding residential uses within Kilauea Town. As noted in the Director's Report, the project site is within the Seaciff Plantation of the Kilauea Bay Subdivision and the proposed use is compatible with the surrounding uses and is not expected to impact urban activities in the area.
- 2) **Community Input** - The Kilauea Neighborhood Association (KNA) Board and members of the community voted to approve the forthcoming SMA Use permit application.

X. **PRELIMINARY CONCLUSION**

Bases on the foregoing, it is concluded that through proper mitigative measures, the proposed development can be considered, and it complies with the policies and guidelines of the Special Management Area Rules and Regulations in that:

1. The development should not have any substantial adverse environmental or ecological effect.
2. The proposed development should not have any detrimental impact to the environment or the surrounding area and be in compliance with the criteria outlined for the granting of a Special Management Area Use Permit. The Applicant should institute the "Best Management Practices" to ensure that the operation of this facility does not generate impacts that may affect the health, safety, and welfare of those in the surrounding area of the proposal.

Furthermore, the proposal DOES NOT:

- involve dredging, filling, or otherwise altering any bay, estuary, salt march, river mouth, slough or lagoon;
- reduce the size of any beach or other area usable for public recreation;
- reduce or impose restrictions upon public access to tidal and submerged lands, beaches, rivers or streams within the special management area; and
- adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, estuarine sanctuaries or existing agricultural uses of land.

#### **XI. PRELIMINARY RECOMMENDATION**

Based on the foregoing evaluation and conclusion, it is hereby recommended that the construction of a two (2) story farm dwelling, swimming pool, and associated site Improvements Class IV Zoning Permit Z-IV-2024-1, Use Permit U-2024-1, and Special Management Area Use Permit SMA(U)-2024-5 be approved with the following conditions:

1. The proposed development shall be constructed as represented. Any changes to the operation of the respective structure shall be reviewed by the County of Kaua'i, Department of Planning to determine whether Planning Commission review and approval is required.
2. In order to ensure that the project is compatible with its surroundings and to minimize the visual impact of the structures, the external color of the proposed dwelling and rock wall shall be of moderate to dark earth-tone color. The proposed color and landscape plan should be submitted to the County of Kaua'i, Department of Planning for review and acceptance prior to building permit submittal.



3. The following feasible actions or mitigation measures should be taken to reasonably protect Native Hawaiian rights and resources:
- a. Regarding the protection and preservation of the railroad bridge culvert and section of the railroad track (TS-1).
1. The applicant shall consider preparing further documentation of the historic property (TS-1) to determine its extent, age, function, and significance.
  2. Until the extent of TS-1 is confirmed to not extend onto the subject property through further documentation, the applicant shall coordinate with Cultural Descendants and knowledgeable community members on the protection and preservation of the railroad bridge culvert and sections of the railroad track located on the subject property. Actions and specific recommendations by the Cultural Descendants that the applicant shall consider implementing include:
    - i. The stone culvert floor at intake should be repaired and the stone head walls be cleared of vegetative growth. Loose rocks should be secured in place and cemented if formerly affixed in that manner;
    - ii. The drain way, at least up to 15 feet on either side of the lowest point where the water naturally flows should remain as it is with the existing buffalo grass as a bulwark against erosion. Ultimately, the invasive grass shall be kept in check by weed whacking, encroachment of naupaka and the shaded canopy of the new dry land forest;
    - iii. A large buffer from the gully and control for erosion and runoff shall be kept; the applicant shall not allow for substantial movement that changes the slope and shape of the terrain and contain sediment so as to avoid filling the railway tunnel further;
    - iv. The applicant shall consider placing the rail crossing/bridge/culvert built circa 1890 on the State of Hawai'i Historic Registry;
    - v. The applicant shall also consider including the rail bed (despite some of its alterations from fill and grading) and its original path of the railway system, as part of the registry process. If placed on the register, any subsequent work along the bed which reveals the original tracks and elevation should be documented by photos, survey elevations and GPS info, and updated in the registry;
    - vi. The applicant should consider placing a commemorative plaque at the site and inform the Seacliff Plantation Owner's Association of the significance of the structure. The applicant should consider working

with the Owner's Association to inform other owners along the rail path to take pride in its presence by preserving any evidence of its path through their properties as well;

vii. The applicant should acknowledge that the Seacliff Plantation Subdivision storm drain exit on the property above the crossing should not be altered or extended and that the drainage field remain continually grassed to avoid soil erosion;

viii. The applicant should make genuine effort to work with Cultural Descendants to accommodate up to four (4) annual field trips from school groups or historical organizations and researchers.

b. Regarding the planting of native plants.

1. The applicant shall consider the planting of native plants in gulch within the subject property. Native plants can include naupaka, Milo, Kukui, Noni and Kou to provide the basic canopy and ground cover. In addition, but not mandatory are plantings of Ohia and Koa.

c. Regarding iwi kupuna.

1. Because there remains the possibility that pre-Contact cultural resources such as habitation area could be documented in subsurface contexts below the plow zone. The same would hold true for iwi kupuna: a slight possibility that such exist on this plateau area. Thus, grading and development in the area should be minimized to avoid inadvertent discovery of iwi kupuna.

d. Regarding "reasonable" mitigation impacts to Nihokū as a cultural landscape

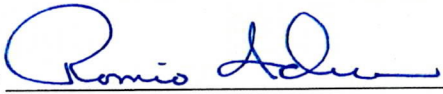
1. Applicant shall work with and meet with the Seacliff Plantation Homeowner's Association to explore opportunities to engage, collaborate, and coordinate with the Cultural Descendants and Kilauea community to constructively address their concerns related to the adverse impacts of Seacliff Plantation's development on traditional and customary practices exercised by native Hawaiians rights and resources. These concerns include reasonable access to the ocean (especially for kupuna) to hunt pigs, fish, gather resources for subsistence and conduct education and ceremonies such as Makahiki, solstice and equinox observances and kilo events.

4. The applicant is advised that should any archaeological or historical resources be discovered during ground disturbing/ construction work, all work in the area of the archaeological/ historical findings shall immediately cease and the applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the County of Kaua'i, Department of Planning to determine mitigation measures.

5. In order to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds, if external lighting is to be used in connection with the proposed project, all external lighting shall be only of the following types: downward facing, shielded lights, spotlights aimed upward or spotlighting of structures shall be prohibited.
6. The applicant shall develop and utilize Best Management Practices (B.M.P's) during all phases of development in order to minimize erosion, dust, and sedimentation impacts of the project to abutting properties.
7. The applicant shall resolve and comply with the applicable standards and requirements set forth by the State Health Department, State Historic Preservation Division-DLNR, Office of Hawaiian Affairs, and County Department of Public Works, Fire, Transportation, and Water.
8. To the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kauai contractors as long as they are qualified and reasonably competitive with other contractors and shall seek to employ residents of Kauai in temporary construction and permanent resort-related jobs. It is recognized that the Applicant may have to employ non-Kauai residents for particular skilled jobs where no qualified Kauai residents possesses such skills. For the purposes of this condition, the Commission shall relieve the Applicant of this requirement if the Applicant is subjected to anti-competitive restraints on trade or other monopolistic practices.
9. The Applicant shall implement to the extent possible sustainable building techniques and operational methods for the project, such as Leadership in Energy and Environmental Design (L.E.E.D.) standards or another comparable state-approved, nationally recognized, and consensus-based guideline, standard, or system, and strategies, which may include but is not limited to recycling, natural lighting, extensive landscaping, solar panels, low-energy fixtures, low-energy lighting and other similar methods and techniques. All such proposals shall be reflected on the plans submitted for building permit review.
10. The Planning Commission reserves the right to revise, add or delete conditions of approval in order to address or mitigate unforeseen impacts the project may create, or to revoke the permits through the proper procedures should conditions of approval not be complied with or be violated.
11. Unless otherwise stated in the permit, once permit is issued, the applicant must make substantial progress, as determined by the Director, regrading the development or activity within two (2) years, or the permit shall be deemed to have lapsed and be no longer in effect.

The Planning Commission is further advised that this report does not represent the Planning Department's final recommendation in view of the forthcoming public hearing process scheduled for November 14, 2023 whereby the entire record should be considered prior to decision-making. The entire record should include but not be limited to:

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

By   
ROMIO IDICA  
Planner

Approved & Recommended to Commission:

By   
KA'AINA S. HULL  
Director of Planning

Date: 10/18/2023

# EXHIBIT "A"

(Agency comments)

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

FROM: Kaaina S. Hull, Director

Planner: Romio Idica

9/27/2023

SUBJECT: Zoning Class IV Z-IV-2024-1  
Use Permit U-2024-1  
Special Mgt Area Permit SMA(U)-2024-5  
Tax Map Key: 520040930002  
Applicant: Bryan Madani & Kiana Buckley  
Single-Family Residence with Pool

TO:

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

FOR YOUR COMMENTS (pertaining to your department)

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 11/14/2023 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!

## Romio Idica

---

**From:** Kamakana Ferreira <kamakanaf@oha.org>  
**Sent:** Wednesday, October 11, 2023 11:12 AM  
**To:** Romio Idica  
**Cc:** Jodi Higuchi Sayegusa  
**Subject:** OHA Comment Re: SMA U-2024-4 and 2024-5, 3839 Pali Moana Place  
**Attachments:** SMA 2024-4, Guest House with Kitchen and Lanai at 3839F Pali Moana Place, Kilauea, Kauai.pdf; SMA Use Permit, 2024-5, and Zoning Class IV Permit, Z-IV-2024-1, Single Family Residence with Pool at 3839 Pali Moana Place, Kilauea, Kauai.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 Romio,

The Office of Hawaiian Affairs (OHA) is in receipt of two Special Management Area (SMA) use permit applications, #s 2024-4 and 2024-5, for improvements at 3839 Pali Moana Place, Kilauea, Kauai. SMA U-2024-4, for Nathaniel Carden and Beth Woods, will add a new guest house with kitchen and pool at Unit 1. SMA U-2024-5, for Bryan Madani and Kiana Buckley, will develop a farm dwelling and a swimming pool at Unit 2. A Ka Pa'akai Analysis for Unit 2 was prepared by Dawn Chang of Ku'iwalu in December 2022 and was utilized in both SMA application packets. Similarly, an archaeological literature review prepared by SCS in 2022 for Units 1 and 2 was included in both SMA application packets as well.

In review of the archaeological literature review, we observe that only a single historic culvert was located during a field inspection. Informants from the Ka Pa'akai Analysis indicated a desire to preserve the historic railroad culvert, which the applicant appears to have committed to. It was suggested that other remnant portions of the railroad may be found under the foliage or even under the ground surface as vegetation was severely overgrown, which made ground visibility difficult. In this regard, a full archaeological inventory survey (AIS) was recommended to fully document the historic culvert. SCS did further concede that subsurface deposits could exist and that there could be benefit to doing an AIS in this regard. It was suggested that there is a slight possibility for pre-Contact cultural resources such as habitation areas to be documented in subsurface contexts below the plow zone.

SCS also states that the State Historic Preservation Division (SHPD) should be consulted. OHA agrees that SHPD should be provided with an opportunity to review and comment on these projects pursuant to Hawaii Revised Statutes (HRS) Chapter 6E-42. OHA would certainly not object to an AIS given that the parcels are overgrown with vegetation and given that there is a possibility of encountering subsurface deposits. If an AIS cannot be done, then monitoring should be pursued to address SCS's concerns. Should SHPD provide comment, please provide copies of them to OHA.

Mahalo for the opportunity to comment. We look forward to seeing our comments addressed and receiving any SHPD comments. Please let me know if you have any questions.

Mahalo,  
*Kamakana C. Ferreira, M.A.*  
Lead Compliance Specialist  
Office of Hawaiian Affairs  
560 N. Nimitz Hwy  
Honolulu, HI. 96817

(808)594-0227





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

FROM: Kaaina S. Hull, Director

Planner: Romio Idica

10/2/2023

SUBJECT: Special Management Area (Minor) SMA(M)-2024-5  
Tax Map Key: 530060450000  
Applicant: Belles Graham LLP c/o PRW Development Co. LLC  
Fence

TO:

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

FOR YOUR COMMENTS (pertaining to your department)

Access shall be provided for  
Emergency Services

If we do not receive your agency comments within 21 days from the date of this request, we will assume there are no objections/comments for this permit request. Mahalo!



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

FROM: Kaaina S. Hull, Director

Planner: Romio Idica

10/2/2023

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| <input type="checkbox"/> Office of Hawaiian Affairs                      | <input checked="" type="checkbox"/> Other: Office of Hawaiian Affairs |

FOR YOUR COMMENTS (pertaining to your department)

If we do not receive your agency comments within 21 days from the date of this request, we will assume there are no objections/comments for 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



**OCT 12 '23 PH1:20**  
**PLANNING DEPT**

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

**DATE:** Oct 10, 2023

**TO:** To whom it may concern

**FROM:** Ellis Jones  
District Environmental Health Program Chief

**SUBJECT:** RESPONSE\_PRW Develop Co. LLC\_SMA(U)-2024-5

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

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

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

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

**Clean Air Branch**

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

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

#### **Clean Water Branch**

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

#### **Hazard Evaluation & Emergency Response Office**

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

#### **Indoor and Radiological Health Branch**

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

#### **Safe Drinking Water Branch**

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

#### **Solid & Hazardous Waste Branch**

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



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

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

#### **Wastewater Branch**

By Revised 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 Sina Pruder at the DOH waste-water branch at 808-586-4288 for further information. For comments, please email the Wastewater Branch at [doh.wwb@doh.hawaii.gov](mailto: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

**Use Permit Application**

**5-5501 Kuhio Highway Guest House & Carport**

Hanalei, Kauai, HI

(4) 5-5-006:016

Prepared by:

Jon M. Kagle, Architect  
Cogent Designs

On behalf of :

Hanalei O'Zone Fund LLC  
Steve Harmsen, President  
Owner

29 September 2023

**F.2.c./L.3.**

**NOV 14 2023**

### **Project Description**

The proposed project consists of the construction of a 2-story structure, containing a Carport on the 1st story and Guest House with covered Lanai on the 2nd story.

The intent of the proposed Guest House is to provide additional dwelling space and parking area to accompany the single-family residence currently under construction.

### **Property Information**

The subject property is a Residential Zone (R-4), narrow, deep lot with perimeter planting along the property lines. An existing 768sf single-family residence built in 1959 currently existing on the northern portion of the property, and has been approved for demolition. The southerly portion of the property has a 3,328sf, 2-story, single-family residence currently under construction. The topography is generally flat. Residential development along Kuhio Highway border the property, as well as residential areas along Anae Road to the North of the subject property.

Property Address: 5-5501 Kuhio Highway, Hanalei, Kauai, HI

Tax Map Key: (4) 5-5-006:016

Lot Size: 21,780sf (0.1905 acre)

### **State and County Zoning Designations**

The properties Zoning Designations are as follows:

- Entirely Urban by State Land Use Commission
- Entirely Residential (R-4) by County of Kauai Comprehensive Zoning Ordinance (CZO)
- Entirely Residential Community by Kauai General Plan, North Shore Land Use Map
- Subject parcel lies within the Special Management Area (SMA).

### **Existing Structures and Uses**

The property has historically been used as a residence with the existing dwelling having been constructed in 1959.

A second single-family dwelling is currently under construction on the property.

- The property and surrounding area served with overhead electrical service.
- Separate water meters are provided at the North-West corner of the property for each dwelling.

### **Proposed Structures and Uses**

The proposed Project is to construct a 2-story structure with a 624sf Carport at the lower level, and 624sf Guest House with 120sf covered Lanai at the 2nd story. The proposed Guest House will share an



individual wastewater system and driveway with the Single-Family Residence currently under construction.

Refer to Appendix A for site plan and lot coverage information, and Appendix B for floor plans and building elevations for the Proposed Garage and Guest House.

### **North Shore Development Area**

The property lies within the North Shore Development Plan area. The Proposed Carport / Guest House will not conflict with any of the environmental, economic, or social goals of the North Shore Development Plan and will be consistent with the aesthetic of rural Hanalei.

- Goals of the North Shore Development Plan
  1. Preserve the unique natural beauty of the North Shore Planning Area
  2. Preserve the rural charm of the North Shore Planning Area
  3. Provide for the safety and welfare of people and their property within the North Shore Planning Area
  4. Provide economic development of the North Shore Planning Area
  5. Preserve the flora and fauna of the North Shore Planning Area and recognizing the dependence and human impact of the area.
  6. Preservation of historic and archeological sites within the North Shore Planning Area
  7. Create development and growth that establishes priorities and community participation with proposed development projects.
  8. To encourage and enhance the recreational opportunities which are unique to the qualities and natural features of the North Shore
- The proposed Garage / Guest House is designed with a fairly traditional architectural style that will integrate well into the established vernacular of Hanalei. These elements of the architectural design will not conflict with Goals 1 and 2 of the North Shore Planning Area.
- The proposed use will not negatively impact public safety or welfare, harm any endemic or endangered species of plants or animals, nor will there be any harm to historic, archeological, or recreational sites. As such, the proposed use is in compliance with goals 3, 5, 6, and 8.
- The proposed use of the property as a dwelling does not create long term economic development for the town of Hanalei, but does create temporary jobs in the construction industry and potentially longer term jobs with property and landscape maintenance. By extending the residential development of the property, it does increase the tax base for the island community as a whole. As such, the proposed use is in accordance of goal 4.
- By complying with the Special Management Area permitting process, the community will have an opportunity to participate during the public presentation of the project to the Planning Commission, and thus fostering the community involvement of goal 7.
- Due to the Project site being within an established neighborhood and not along the shoreline, it does not offer opportunities for the enhancement of the primarily beach and shoreline related recreational activities of Hanalei.

### **Kauai General Plan Vision and Goals**

The Kauai General Plan outlines 4 specific goals:

1. Sustainability and responsible growth
2. Kuleana for the land, resources, and traditions of Kauai
3. Resilience and Vitality of the Community
4. A diverse and equitable quality of life for the Community

The proposed Project is in compliance with long term goals of the General Plan, as follows:

1. Sustainability and responsible growth are achieved through an effort to minimize the building footprint by placing the Guest House occupancy above the Carport area. This addresses the need for additional, modest, housing, within the urban context of Hanalei town, with minimal impact to the natural environment, resources, or infrastructure.
2. Kuleana for Kauai is represented in this proposed Project through the similar goals of sustainable and responsible growth by minimizing the building footprint. The fairly traditional architectural design is consistent with the surrounding neighborhood. The urban context of the project site, in Hanalei town, does not offer many opportunities for habitat to endangered or endemic species of flora or fauna. With the flood prone nature of Hanalei and fairly high water table, extra steps were taken with the individual wastewater system serving the new residence to ensure that wastewater is more than adequately treated before allowing it to leach into the soil. The proposed Guest House will be connected to that existing wastewater system.
3. The proposed Project fosters the notion of a resilient and vital community primarily through the proposed use of the structure and location. Hanalei town is one of the few truly “walkable” communities on Kauai. By providing an additional dwelling within the urban context of Hanalei, the goal of a healthy community by providing much needed additional housing within an area where a wide variety of recreational and commercial activities are easily accessible by foot or very short driving distances.
4. Diversity and an equitable quality of life for the community is also integrated into the project site and development. Both the proposed Carport / Guest House and the Single-Family Residence currently under construction are both modest in design and budget, and intended for long term occupancy by kama’aina families.

### **Kauai General Plan Policies to Guide Growth**

The General Plan outlines 19 specific guiding policies for Growth:

1. Manage Growth to preserve rural character
2. Provide local housing
3. Recognize the identity of Kauai towns and districts
4. Healthy and complete neighborhoods
5. Strategic infrastructure investment
6. Reduce cost of living
7. Balanced transportation system
8. Protect scenic beauty
9. Uphold Kauai as a unique visitor destination

10. Help businesses thrive
11. Help agriculture lands be productive
12. Protect watersheds
13. Clean Energy
14. Prepare for climate change
15. Respect Native Hawaiian rights
16. Protect access to treasured places
17. Nurture keiki
18. Honor Kupuna
19. Communicate with Aloha

The scope of work for the proposed Project is in accordance with the General Plan Policies to the extent to which they are applicable. The Project is modest in Scope, and thus doesn't offer an opportunity to contribute to all the growth policies. The Project is in accordance with the Policies as follows:

1. The Project contributes to growth management and preservation of Kauai's rural character through both the location of the site and the nature of the project. The project site is located within Hanalei town in an established neighborhood, and thus maintains the policy of concentrating development to within existing urban areas.
2. The Project proposes to contribute to local housing by creating a modest dwelling that is intended for long term rental.
3. Hanalei, like all Kauai towns, possesses its own charm and character. The architecture of the proposed development is well within the established design aesthetic of Hanalei town.
4. Hanalei town is a very walkable community with pedestrian access to recreation, commerce, churches, and schools. The proposed Project takes advantage of that walkability by providing another dwelling within an established neighborhood.
5. The proposed Project scope is not such that it can, or requires, infrastructure investment. Access and utilities to the property and surrounding areas are developed and adequate to service the proposed Project.
6. By developing the property with a modest scope, size, and construction budget, the proposed Project can contribute to the local housing issues by being able to offer the property at an affordable rental rate.
7. The Residential scope of the proposed Project doesn't provide for improvements to existing transportation systems, nor have a negative impact upon the existing systems.
8. The proposed Project does not negatively impact scenic views from within Hanalei town. The siting of the project toward the middle portion of the parcel limits its visibility from Kuhio Highway, while the 2-story design scheme may offer some pleasant mountain views to the south and west.
9. The proposed Project as a residential property does not contribute to the visitor industry, but is in keeping with the style and character of Hanalei that draws visitors to enjoy its charm.
10. The proposed Project is located within the existing town of Hanalei. The project being residential in nature does not contribute directly to job growth or economic development.

11. The proposed Project is located on an urban lot within Hanalei town and does not offer significant agricultural use.
12. The proposed Project does not include within its scope any development which would cause a negative impact upon the watershed or natural ecosystems of the Hanalei area.
13. The limited size and corresponding roof area don't offer adequate space for the implementation of photovoltaic panels. However, other building elements such as LED lighting and energy conscious appliances are to be incorporated into the project.
14. The proposed Project site lies within Flood Zone AE-13, and Hanalei has been subjected to several significant flooding incidences over the past several years. The structure's design is in compliance with the Flood Zone AE construction requirements to mitigate potential flood issues. The Kuhio Highway property line lies approximately 700' from the shoreline at Pine Trees park. A topographical survey has been performed for the property and the grade elevations range from 10' above mean sea level along Kuhio Highway drops off to about 7'-8' to the Southern portion of the property.
15. The project site does not include sensitive areas for the perpetuation of traditional Hawaiian cultural practices or activities, nor does the proposed use discourage or negatively impact traditional activities.
16. The Project site being in a residentially developed area, and not along the shoreline, does not offer, encroach upon, or impede access to public recreational spaces, cultural, religious, or shoreline activities. There are no known areas of cultural significance on the property, or accessed through the property.
17. The proposed Project fosters keiki development and kupuna care as the Project would establish a residential unit intended for kama'aina families within a neighborhood setting, with convenient access to schools, commerce, recreation, and family related activities.

The property lies within the Residential Community designation of the Kauai General Plan.

- The policy goals of the Residential Community designated areas are as follows:
  1. Establish predominantly low to high density residential areas within towns.
  2. High density residential uses of 10 units per acre or higher are confined to areas serviced with wastewater collection and major roadway access.
  3. Non-residential uses as established through zoning to provide convenient access to goods and services, increasing livability of the residential communities.
- The proposed use is compatible with the General Plan policies for the low-density (R-4) zoning of the subject property. Parking requirements of two spaces for the Single-Family Residence currently under construction and two spaces for the Guest House are provided.

### **Special Management Area (SMA)**

SMA Considerations:

- Public Access and Coastal Resources:

The Project site does not include, or offer, public recreational activities and thus the proposed development will not impact any public recreational activities in the vicinity of the Project site. Pine Trees Beach Park is located approximately 550' away by foot and offers public beach access. Execution of the proposed Project would not impede any public beach access points.

- **Cultural and Historic Considerations:**

The proposed Project will not have any significant impact on cultural, historic, or archeological resources. The Applicant will protect, report, and preserve any historic resources that may be discovered through the course of development.

- **Coastal Hazards:**

Subject parcel lies within Flood Zone AE-13, based on FEMA FIRM Panel 150002 0035 E, effective date September 16, 2005. Building construction will be in compliance with all requirements of the AE Flood Zone.

- **Coastal Ecosystems:**

Being located in Hanalei town, the Project site is part of the coastal ecosystem. However, the proposed Project is not adjacent to the shoreline and will not have any significant impact on the coastal ecosystem.

- **Scenic and Open Space Resources:**

The surrounding neighborhood is well established with an array of homes. Thus, no public Scenic or Open Space Resources are negatively impacted by the proposed site development.

### **Summary of Permits Required**

#### **Special Management Area Permit:**

- Refer to the attached Special Management Area Assessment form for information regarding the social, economic, and ecological impact of the Proposed Carport / Guest House.
- Presentation and review with the Planning Commission with an opportunity to address any community concerns regarding the proposed use of the property.

#### **Building Permits:**

- Typical Building Permit as issued by the County of Kauai Public Works, Building Division in compliance with the International Residential Code, 2018 edition, as adopted by the County of Kauai.
- Class 1 Zoning Permit.

### **Existing and Proposed Land Use**

Currently, the property is classified as low density Residential, R-4. The Proposed Carport / Guest House, nor Single-Family Residence currently under construction, qualify for any Commercialized uses or occupancies.

- There are no existing land or occupancy use violations on the property.

**Conclusion**

Based on the foregoing evidence of compliance with the Kauai General Plan, North Shore Planning Area, and all County and State Zoning regulations, the Applicant respectfully requests the Planning Commission to grant the Use and Class 1 Zoning permits sought herein and to allow for the construction of the proposed Garage / Guest House to accompany the pending Single-Family Residence.

Jon Kagle, Cogent Designs

Architect and acting as Authorized Agent for Hanalei O'Zone Fund LLC



## ZONING INFORMATION

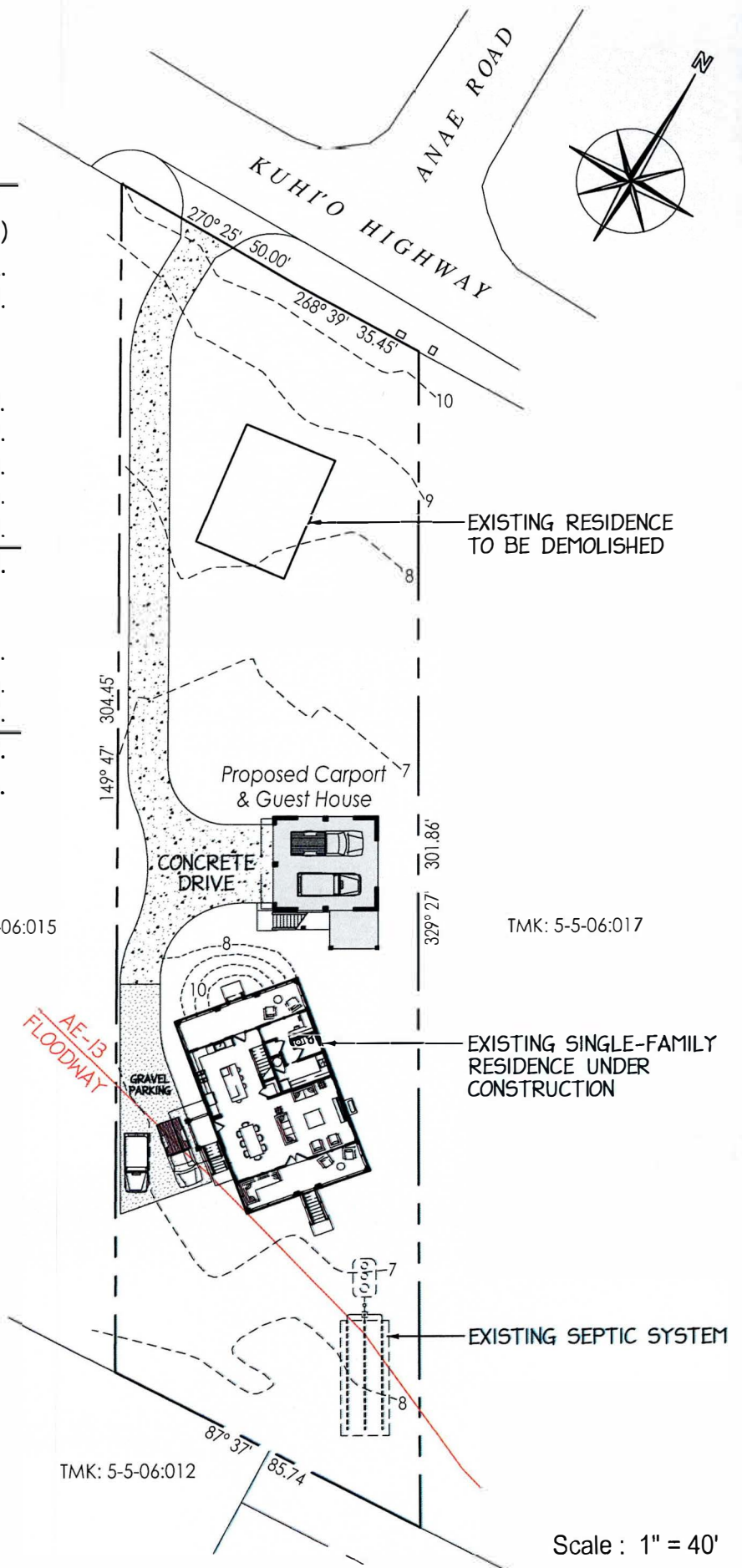
COUNTY ZONING DESIGNATION : RESIDENTIAL (R-4)  
 LOT SIZE : 21,780 sq. ft.  
 ALLOWED LOT COVERAGE: 60% 13,068 sq. ft.

### EXISTING LOT COVERAGE

RESIDENCE TO BE REMOVED	-768 sq. ft.
RESIDENCE UNDER CONSTRUCTION	1,710 sq. ft.
OPEN STAIR (50%) :	48 sq. ft.
CONC. WALKS & LANDINGS :	77 sq. ft.
CONC. DRIVEWAY :	2,465 sq. ft.
<b>TOTAL EXISTING :</b>	<b>3,532 sq. ft.</b>

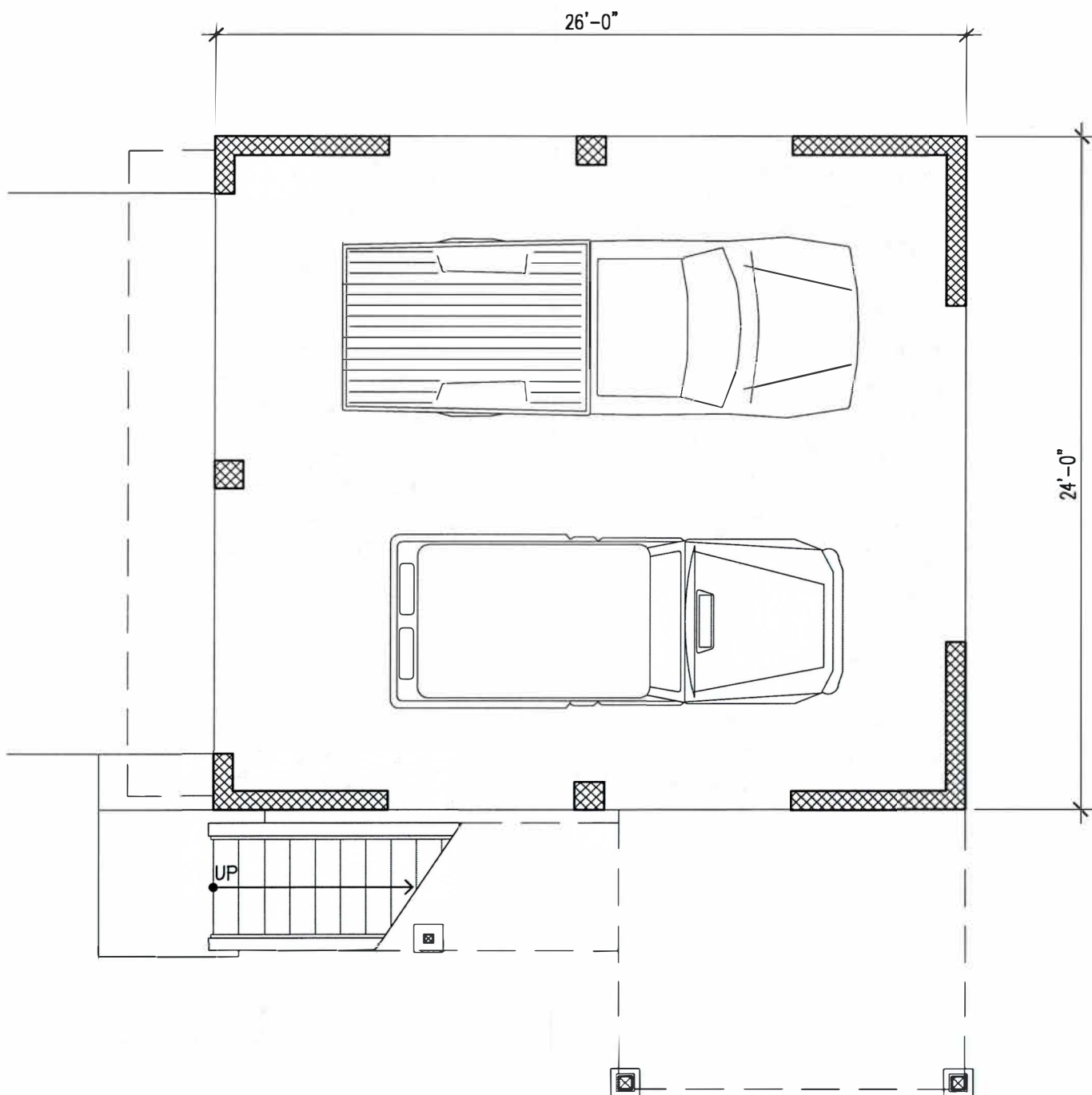
### PROPOSED LOT COVERAGE, RESIDENCE 1

PROPOSED CARPORT / GUEST HOUSE	744 sq. ft.
OPEN STAIR (50%) :	30 sq. ft.
CONC. WALKS & LANDINGS :	34 sq. ft.
<b>TOTAL PROPOSED :</b>	<b>808 sq. ft.</b>
<b>TOTAL EXISTING + PROPOSED :</b>	<b>4,340 sq. ft.</b>

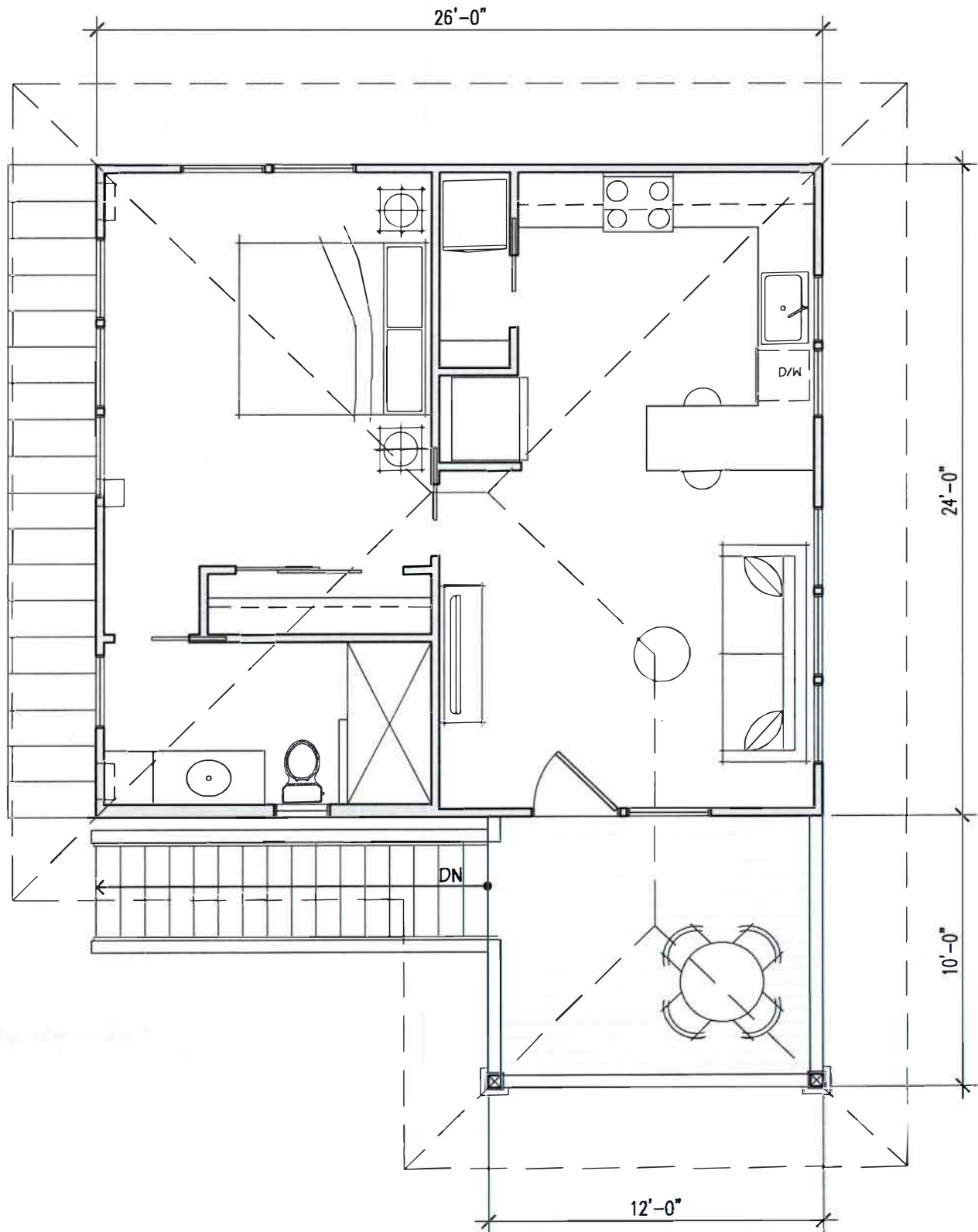


Scale : 1" = 40'

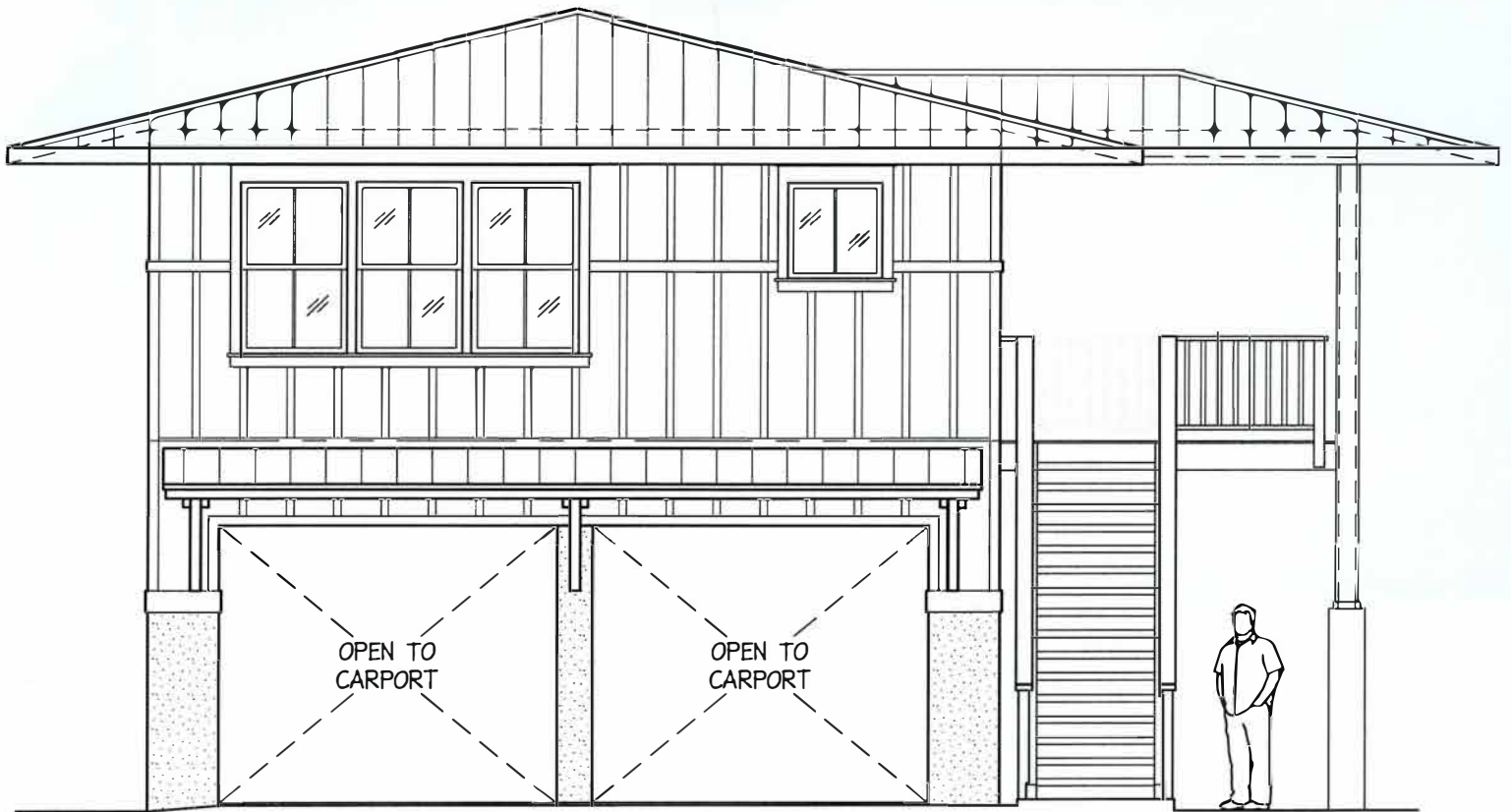




1st Story Floor Plan  
Scale :  $\frac{3}{16}" = 1'-0"$

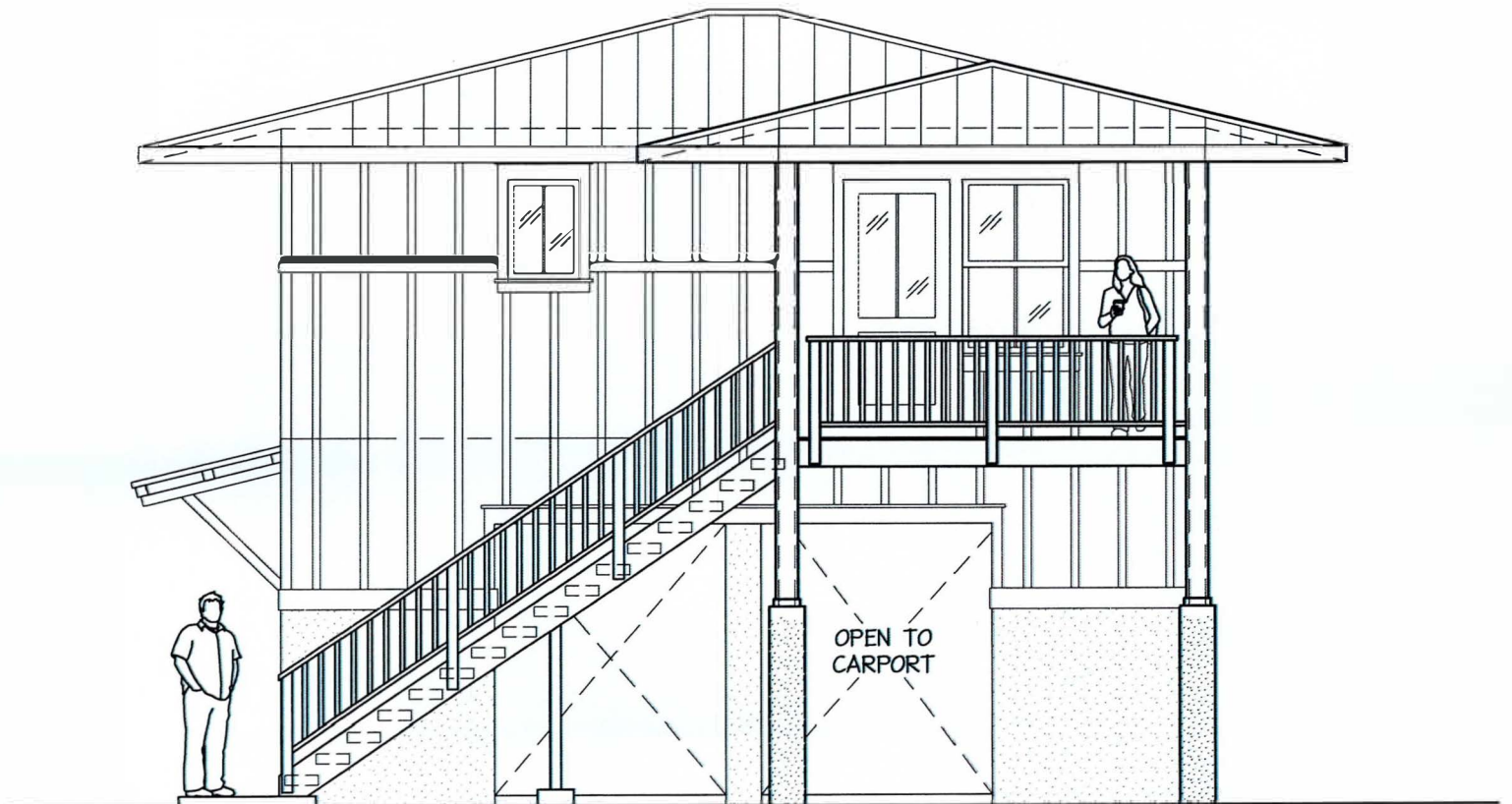


2nd Story Floor Plan  
 Scale :  $\frac{3}{16}" = 1'-0"$



Building Elevation : West

1/4" = 1'-0"



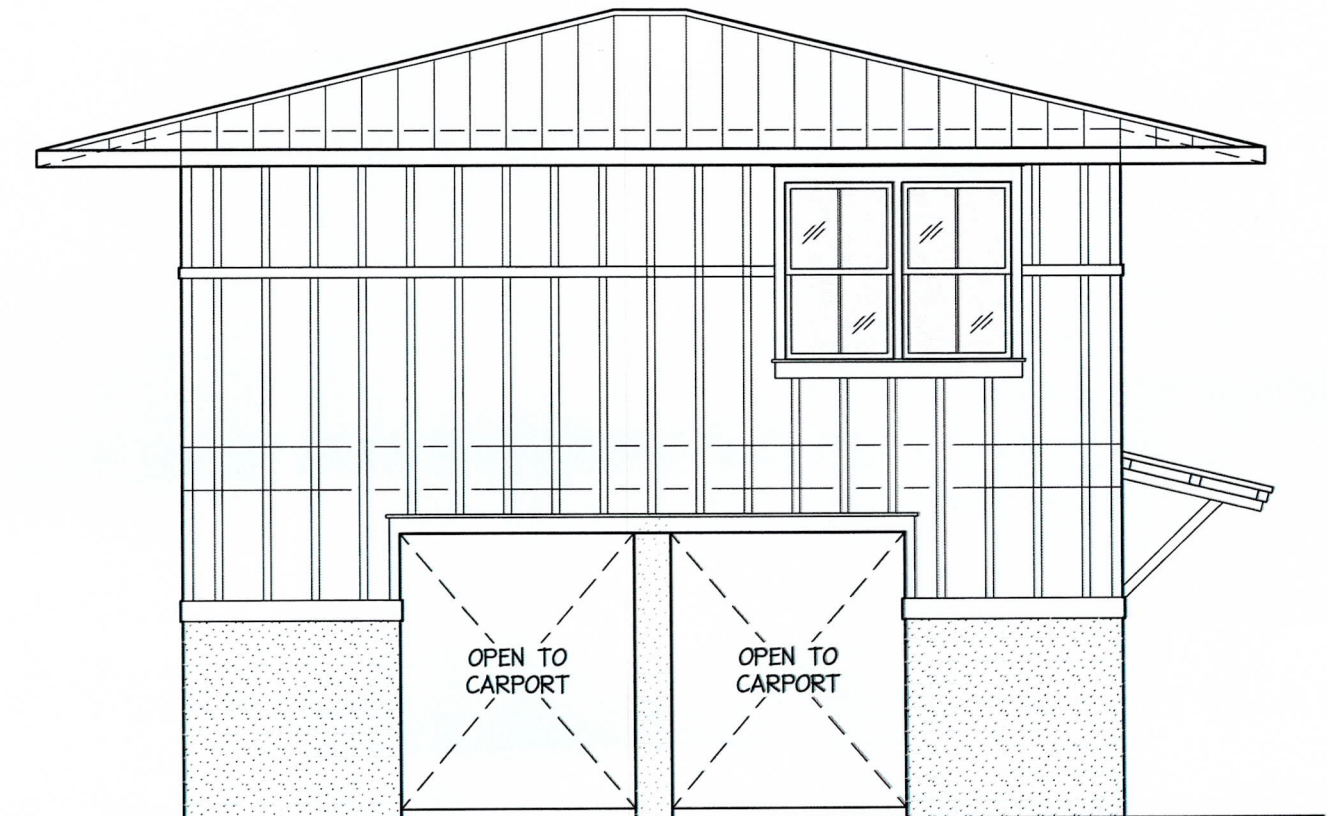
Building Elevation : South

1/4" = 1'-0"



Building Elevation : East

$3/16'' = 1'-0''$



Building Elevation : North

$3/16'' = 1'-0''$

## DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

### TRANSMITTAL OF AGENCY COMMENTS TO PLANNING COMMISSION

DATE: October 23, 2023

PERMIT NO.(S): Special Management Area Use Permit SMA(U)-2024-6

APPLICANT(S): HANAIEI O'ZONE FUND, LLC.

Attached for the Planning Commission's reference are agency comments for the permit referenced above.





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

FROM: Kaaina S. Hull, Director

Planner: Dale Cua

10/2/2023

SUBJECT: Special Mgt Area Permit SMA(U)-2024-6  
Tax Map Key: 550060160000  
Applicant: Hanalei O'Zone Fund LLC c/o John Kegle  
Construction of a new carport with Guest House and associated improvements.

TO:

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

**COMMENTS from DPW Engineering (10/24/23):**

We have completed our review and offer the following comments:

1. The applicant shall comply with all provisions of the Sediment and Erosion Control Ordinance No. 808 (Kaua'i County Code Chapter 22, Article 7) to safeguard public health, safety, and welfare, to protect property, and to control soil erosion and sedimentation. This shall include, but not be limited to, a grading and/or grubbing permit in compliance with the Ordinance, which is required if any of the following conditions apply:
  - The work area exceeds one (1) acre.
  - Grading involving excavation or embankment, or combination thereof exceeds 100 cubic yards.
  - Grading exceeds five (5) feet in vertical height or depth at its deepest point.
  - The work area unreasonably alters the general drainage pattern to the detriment of abutting properties.
2. During construction, best management practices (BMPs) shall be incorporated to the maximum extent practicable to prevent damage by sedimentation, erosion, or dust to watercourses, natural areas, and other properties. The permittee and the property owner shall be responsible to ensure that BMPs are satisfactorily implemented at all times.
3. Based on Panel I 500020035E dated September 16, 2005, the property is located within Special Flood Hazard Area (SFHA) Zone AE. The proposed improvements will need to comply with the County's Floodplain Management Ordinance No. 831.

Digitally signed by Michael  
Moule  
Date: 2023.10.24 11:02:28 -10'00'

Michael Moule, P.E.  
Chief, Engineering Division

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 11/14/2023 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 Kauai  
Planning Department  
4444 Rice St., Suite A473 Lihue, HI 96766  
(808) 241-4050

OCT 9 '23 PM1:40  
PLANNING DEPT

FROM: Kaaiana S. Hull, Director

Planner: Dale Cua

10/2/2023

SUBJECT: Special Mgt Area Permit SMA(U)-2024-6  
Tax Map Key: 550060160000  
Applicant: Hanalei O'Zone Fund LLC c/o John Kegle  
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| <input type="checkbox"/> State Land Use Commission                       | <input checked="" type="checkbox"/> County Water Department           |
| <input checked="" type="checkbox"/> State Historic Preservation Division | <input type="checkbox"/> County Civil Defense                         |
| <input type="checkbox"/> State DLNR - Land Management                    | <input checked="" type="checkbox"/> County Transportation Agency      |
| <input type="checkbox"/> State DLNR - Forestry & Wildlife                | <input type="checkbox"/> KHIPRC                                       |
| <input type="checkbox"/> State DLNR - Aquatic Resources                  | <input type="checkbox"/> U.S. Postal Department                       |
| <input type="checkbox"/> State DLNR - Conservation & Coastal Lands       | <input checked="" type="checkbox"/> UH Sea Grant                      |
| <input type="checkbox"/> Office of Hawaiian Affairs                      | <input checked="" type="checkbox"/> Other: Office of Hawaiian Affairs |

FOR YOUR COMMENTS (pertaining to your department)

10/6/2023

RECEIVED

OCT - 4 2023

County of Kauai  
Transportation Agency

CTA HAS NO FURTHER COMMENT ON THIS PROJECT.

MAHALO!

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 11/14/2023 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 Kauai  
Planning Department  
4444 Rice St., Suite A473 Lihue, HI 96766  
(808) 241-4050

FROM: Kaaaina S. Hull, Director

Planner: Dale Cua

10/2/2023

SUBJECT: Special Mgt Area Permit SMA(U)-2024-6  
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| <input type="checkbox"/> Office of Hawaiian Affairs                      | <input checked="" type="checkbox"/> Other: Office of Hawaiian Affairs |

FOR YOUR COMMENTS (pertaining to your department)

*Must meet requirements of NFPA 2018*

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 11/14/2023 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!

# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

## DIRECTOR'S REPORT

### I. SUMMARY

**Action Required by  
Planning Commission:**

Consideration of a Special Management Area Use Permit to allow the construction of a two-story structure containing a guest house and garage.

**Permit Application Nos.**

Special Management Area Use Permit SMA(U)-2024-6

**Name of Applicant(s)**

HANAIEI O'ZONE FUND, LLC.  
John M. Kegel, Architect, Authorized Agent

### II. PERMIT INFORMATION

PERMITS REQUIRED	
<input type="checkbox"/> Use Permit	
<input type="checkbox"/> Project Development Use Permit	
<input type="checkbox"/> Variance Permit	
<input type="checkbox"/> Special Permit	
<input type="checkbox"/> Zoning Permit Class <input type="checkbox"/> IV <input type="checkbox"/> III	
<input checked="" type="checkbox"/> Special Management Area Permit <input checked="" type="checkbox"/> Use <input type="checkbox"/> Minor	Pursuant to Section 205A of the Hawaii Revised Statutes (HRS) and the Special Management Area Rules and Regulations of the County of Kaua'i, a SMA Use Permit is required as defined in Section 7.3(C) of the SMA Rules and Regulations where the Director finds that the proposal (1) is a "Development" as defined in Section 1.4F; and (2) is in excess of \$500,000.
AMENDMENTS	
<input type="checkbox"/> Zoning Amendment	
<input type="checkbox"/> General Plan Amendment	
<input type="checkbox"/> State Land Use District Amendment	

Date of Receipt of Completed Application: September 29, 2023

Date of Director's Report: November 14, 2023

Date of Public Hearing: November 14, 2023

**F.2.c.1./L.3.b.**

**NOV 14 2023**

**Deadline Date for PC to Take Action (60<sup>TH</sup>**

**Day):** January 13, 2024

### III. PROJECT DATA

PROJECT INFORMATION			
<b>Parcel Location:</b>	The project site is situated on the mauka side of Kūhiō Highway in Hanalei Town directly across the Anae Road/Kūhiō Highway intersection, further identified as 5-5501 Kūhiō Highway.		
<b>Tax Map Key(s):</b>	(4) 5-5-006:016	<b>Area:</b>	21,780 square feet
ZONING & DEVELOPMENT STANDARDS			
<b>Zoning:</b>	Residential (R-4)		
<b>State Land Use District:</b>	Urban		
<b>General Plan Designation:</b>	Residential Community		
<b>Height Limit:</b>	Twenty-Five (25) feet maximum		
<b>Max. Land Coverage:</b>	Residential (R-4) = 60%		
<b>Front Setback:</b>	10'-0"		
<b>Rear Setback:</b>	Five (5) feet or ½ the wall plate height whichever is greater		
<b>Side Setback:</b>	Five (5) feet or ½ the wall plate height whichever is greater		
<b>Community Plan Area:</b>	North Shore Development Plan		
<b>Community Plan Land Use Designation:</b>	N/A		
<b>Deviations or Variances Requested:</b>	N/A		

### IV. LEGAL REQUIREMENTS

<b>Section 8.0, 9.0, and 10.0 of the Special Management Area Rules and Regulations:</b>	This report is being transmitted to the Applicant and Planning Commission in order to satisfy the requirements of Sections 8.0, 9.0, and 10.0 of the Special Management Area Rules and Regulations. The application was received on <b>September 29, 2023</b> , and the Applicant, through its authorized agent, was notified accordingly of the Planning Department's intent to commence permit processing.
<b>Public Hearing Date:</b>	November 14, 2023

## **V. PROJECT DESCRIPTION AND USE**

The project site is located at 5-5501 Kūhiō Highway in Hanalei Town and further identified as TMK: (4) 5-5-006:016 containing a total area of 21,780 square feet. The county zoning designation of the project site is Residential District (R-4).

The proposed development involves the construction of a two-story structure containing a guest house at the upper level and a 2-car garage at the lower level. The guest house will feature approximately 624 square feet (SF) of livable area with a 120 SF outdoor covered lanai. It will feature one bedroom, one bathroom, kitchen and a living area. The proposed two-story structure will be a wood-framed structure with a hip roof line and metal roof finish (refer to Appendix "B" of the Application).

It is noted that based on the zoning and area of the parcel, it is eligible for a total of two (2) residential units.

## **VI. APPLICANT'S REASONS/JUSTIFICATION**

Refer to Application.

## **VII. ADDITIONAL FINDINGS**

1. The project site is located in Hanalei Town, along the mauka side of Kūhiō Highway. The property is zoned Residential District (R-4) and is surrounded by properties that are similarly zoned. Based on the R-4 zoning and area of the lot, the density of the parcel qualifies for a total of two (2) dwelling units.
2. The property is NOT within the Visitor Destination Area.
3. The existing residence on the subject parcel was permitted and built in 2022. original house and garage were built in 2002. It was permitted as a 3 bedroom and 3.5 bathroom, single-family residence.
4. The property is situated within the North Shore Planning Area (NSPA) and will be subjected to all applicable requirements. Additionally, the proposed development shall be subjected to the standards prescribed in Sections 8-4.3 and 8-4.5 of the CZO.
5. The State Land Use District (SLUD) designation for this parcel is "Urban", which allows for urban growth in a specified area.
6. The General Plan designation (GP) is "Residential Community." Residential Community Designation applies to existing areas that are primarily residential with few to no other uses. These areas are located outside the quarter-mile boundary of the Neighborhood Center designation.

7. The subject parcel is located within the Zone “AE” of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM). Zone “AE” is susceptible to 1% annual chance of flooding hazards. This parcel is also within the extreme tsunami evacuation zone. In addition, the subject site is within the County of Kauai’s Sea Level Rise Constraint District.
8. The topography is relatively flat, and no grading of the project area will occur. Existing drainage patterns on the property will not be affected.
9. The primary vehicular access to the project site is taken from Kūhiō Highway, which is identified as a State highway containing 24-foot wide asphalt pavement and wide enough to accommodate two-way vehicular traffic. Vehicular traffic along this roadway is relatively moderate.

10. Special Management Area (SMA)

In addressing the issues of the Special Management Area and its objectives and policies, the following aspects will be considered and evaluated:

- a. Recreational Resources
- b. Cultural/ Historic Resources
- c. Scenic resources
- d. Coastal Hazard
- e. Coastal Ecosystem

Furthermore, the proposal does not:

- Involve dredging, filling or otherwise altering any bay, salt marsh, river mouth, slough or lagoon;
- Reduce the size of any beach or other area usable for public recreation;
- Reduce or impose restrictions upon public access to tidal and submerged lands, beaches, rivers, and streams within the SMA; and
- Adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, estuarine sanctuaries, potential or existing agriculture uses of land.

11. CZO Development Standards

The proposed development is subjected to the standards prescribed in Sections 8-4.3, 8-4.5, 8-9.2, and Chapter 8 Article 12:

- a. **Setback Requirements:** Front property line setbacks are ten feet (10'-0") with a side and rear property line setback of five feet (5'-0") or half the distance of the plate height whichever is greater.
- b. **Setback between buildings:** The distance between buildings shall be ten (10) feet minimum.
- c. **Parking Requirements:** The applicant shall provide a minimum of two (2) off-street parking spaces for the proposed dwelling.
- d. **Lot Coverage:** Pursuant to Section 8-4.3(d) of the CZO, the allowable land coverage within the Residential (R-4) zoning district shall not exceed sixty percent (60%). As represented in Appendix "A" of the Application, the total land coverage is approximately 4,340 SF or 34% of the parcel area.
- e. **Building Height:** Since the parcel is situated within the North Shore Planning Area and pursuant to Section 10-2.4(e) of the Kauai County Code, "no structure shall be higher than twenty-five (25) feet unless a greater height is authorized by the Planning Commission pursuant to a use permit after review (and recommendation) by the North Shore Improvement Advisory Committee."

#### VIII. AGENCY COMMENTS

Refer to attached Exhibit "A"

#### IX. PRELIMINARY EVALUATION

In evaluating the Applicant's request to allow the proposed development, the following items are being considered.

1. General Plan

The proposed development satisfies the following policies of the General Plan, as taken from Section 1.3 and 1.4:

A. 1.3, entitled "VISIONS AND GOALS"

- 1) **Goal #1 "Sustainable Island"** – As represented, the proposed development addresses the need for additional, modest housing within the urban context of Hanalei Town, with minimal impact to the natural environment, resource, or infrastructure.
- 2) **Goal #2 "Unique and Beautiful Place"** – The proposed structure would be in character with the surrounding residences in the neighborhood. As designed, it should not detract from the unique quality of island living nor the beauty of the immediate neighborhood.

- 3) **Goal #3 “A Healthy and Resilient People”** – The subject site is in close proximity to the urban town core and is walking distance to public transportation bus lines, recreational and commercial activities.
- 4) **Goal #4 “An Equitable Place, with Opportunity for All”** – As noted above, the subject site of the proposed development is in close walking distance to parks, commercial activities, and public transportation bus lines. Potential employment opportunities can be easily accessed by bike or walking. Further, the development as represented is intended for long-term occupancy by local residents.

B. Section 1.4, entitled “POLICIES TO GUIDE GROWTH”

- 1) **Policy #1 “Manage Growth to Preserve Rural Character”** – The proposed structure would contribute to growth management and preservation of Kauai’s rural character through both the location of the site and the nature of the project. It would maintain the planning growth policy of concentrating development within existing urban areas.
- 2) **Policy #2 “Local Housing”** – The Applicant represents that the project would be utilized as a long-term rental to assist in providing housing inventory.
- 3) **Policy #3 “Recognize the Identity of Kauai’s Individual Towns and Districts”** – The proposal would be similar in the architecture design style within the surrounding area. The project takes advantage of the walkability of the neighborhood.
- 4) **Policy #4 “Design Healthy and Complete Neighborhoods”** – Hanalei Town is a very walkable community with pedestrian access to recreation, commerce, churches, and schools. The proposed Project takes advantage of that walkability by providing another dwelling within an established neighborhood. The project would contribute to the stability and health of the neighborhood community.
- 5) **Policy #6 “Reduce the Cost of Living”** – While this development would not help in reducing the cost of living of the island’s population, it would provide much needed rental housing for local residents. It would offer an opportunity for a resident to live closer to their workplace, as a result, reducing the resident’s monthly travel expenses.
- 6) **Policy #8 “Protect Kauai’s Scenic Beauty”** – The proposed Project does not negatively impact scenic views from within Hanalei Town. The citing of the project toward the middle portion of the parcel limits its visibility from Kuhio Highway, while the 2-story design scheme may offer some pleasant mountain views to the south and west.
- 7) **Policy#14 “Prepare for Climate Change”** – The project site lies within Flood Zone AE-13, and Hanalei has been subjected to several significant flooding incidences over the past several years. The structure’s design is in compliance with the Flood Zone ‘AE’ construction requirements to mitigate potential flood issues. The property line along Kūhiō Highway lies approximately 700’ from the shoreline at Pine Trees park. A topographical survey has been performed for the property and the grade elevations range from 10’ above mean sea level (MSL) along Kūhiō Highway and drops off to approximately 7-8 feet MSL along the southern portion of the property.



As previously stated, the subject parcel is situated within the Residential Community designation of the Kaua'i General Plan. The policy and goals of the Residential Community designation are as follows:

- Establish predominantly low to high density residential areas within towns;
- High density residential uses of 10 units per acre or higher are confined to areas serviced with wastewater collection and major roadway access; and
- Non-residential uses as established through zoning to provide convenient access to goods and services, increasing livability of the residential communities.

Based on the foregoing, the project would be in consistent with the noted policies for low-density (R-4) zoning of the subject property. Parking requirements of two spaces for the Single-Family Residence currently under construction and two spaces for the Guest House are provided.

## 2. SMA Rules and Regulations

The COK SMA Rules and Regulations contain objectives, policies and guidelines designed to protect coastal resources. Within the SMA, special consideration is given to recreational opportunities, cultural and historic resources, scenic qualities and open space, coastal ecosystems, and coastal hazards. In evaluating the proposed development relative to the goals and objectives of the SMA Rules and Regulations, the following aspects are taken into consideration:

- A. Public Access and Coastal Recreation – The project site does not include or offer immediate access to public recreational activities. However, it is in close proximity to the coastline at Hanalei Bay. Pine Trees Beach Park is approximately 550 feet north of the project site. As such, the project would not impede any access to the coastline area.
- B. Cultural/Historical Resources – As represented, there is no visible evidence of cultural/historical uses on the parcel. Ground disturbance would occur during the construction of the dwelling for the post & pier foundation. Although still a possibility, the Applicant does not anticipate cultural deposits to be found.
- C. Scenic and Open Space Resources – As previously noted, the coastline area at Hanalei Bay is in relatively close walking distance from the project site. The project's location is located mauka of the state highway and would have minimal impacts to the scenic and open space resources of the surrounding area. The subject area is currently a residential neighborhood and the proposal is consistent with the surrounding development.
- D. Coastal Hazards – The subject parcel is located within the Zone 'AE' of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM). The Applicant has represented that the proposed structure would be built in compliance with the construction standards within the AE Flood Zone.
- E. Coastal Ecosystems – The subject property has been extensively disturbed by previous activities and developed lands surrounding the site. As a result, there are

no known rare, threatened or endangered, plant or animal species or critical habitats located within the project site. However, the proposed development should be required to conform to the requirements of the County Department of Public Works (DPW) regarding drainage and runoff concerns from the proposed development, as well as the State Department of Health (DOH) regarding limitations on the existing individual wastewater system.

3. CZO Development Standards

As proposed, the project complies with the building height, setback, and off-street parking requirements for development within the Residential (R-4) zoning district, as specified in Sections 8-4.3 & 8-4.5 the Comprehensive Zoning Ordinance (CZO), respectively.

It is uncertain as to whether the Applicant has made provisions for night illumination with the project, based on the Application that have been submitted. If so, night illumination should be designed to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds. Night lighting should be shielded from above and directed downwards and shall be approved by the U.S. Dept. of the Interior Fish and Wildlife Service. If external lighting is to be used in connection with the proposed project, all external lighting should be only of the following type: *downward-facing shielded lights*. Spotlights aimed upward or spotlighting of structures is prohibited.

## **X. PRELIMINARY CONCLUSION**

Based on the foregoing, it is concluded that through proper mitigative measures, the proposed development can be considered, and it complies with the policies and guidelines of the Special Management Area Rules and Regulations in that:

1. The development will not have any substantial adverse environmental or ecological effect.
2. The development is consistent with the objectives/goals/policies of the County General Plan, the Comprehensive Zoning Ordinance, and other applicable ordinances.

Furthermore, the proposal DOES NOT:

- involve dredging, filling, or otherwise altering any bay, estuary, salt marsh, river mouth, slough or lagoon;
- reduce the size of any beach or other area usable for public recreation;
- reduce or impose restrictions upon public access to tidal and submerged lands, beaches, rivers or streams within the special management area; and
- adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, estuarine sanctuaries or existing agricultural uses of land.

The proposed development should not have any detrimental impact to the environment or the surrounding area and be in compliance with the criteria outlined for the granting of a Special Management Area Use Permit. The Applicant should institute the "Best Management Practices" to ensure that the operation of this facility does not generate impacts that may affect the health, safety, and welfare of those in the surrounding area of the proposal.

## **XI. PRELIMINARY RECOMMENDATION**

Based on the foregoing evaluation and conclusion it is hereby recommended Special Management Area Use Permit SMA(U)-2024-6 to be **APPROVED**. If approved, the following conditions shall be implemented:


1. The proposed improvements shall be constructed as represented. Any changes to said development shall be reviewed by the Planning Director to determine whether Planning Commission review and approval is warranted.
2. In order to ensure that the project is compatible with its surroundings and to minimize the visual impact of the structures, the external color of the proposed dwelling shall be of moderate to dark earth-tone color. The proposed color scheme and a landscape plan should be submitted to the Planning Department for review and acceptance prior to building permit application.
3. The Applicant is advised that should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the Applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the County of Kaua'i, Department of Planning to determine mitigation measures.
4. In order to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds, if external lighting is to be used in connection with the proposed project, all external lighting shall be only of the following types: downward-facing, shielded lights. Spotlights aimed upward or spotlighting of structures shall be prohibited.
5. The Applicant shall develop and utilize Best Management Practices (B.M.P's) during all phases of development in order to minimize erosion, dust, and sedimentation impacts of the project to abutting properties.
6. The Applicant shall resolve and comply with the applicable standards and requirements set forth by the State Health Department, State Historic Preservation Division-DLNR, and the County Departments of Public Works, Fire, Transportation, and Water.
7. To the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kauai contractors as long as they are qualified and reasonably competitive with other contractors and shall seek to employ residents of Kauai in temporary construction and permanent resort-

related jobs. It is recognized that the Applicant may have to employ non-Kauai residents for particular skilled jobs where no qualified Kauai residents possesses such skills. For the purposes of this condition, the Commission shall relieve the Applicant of this requirement if the Applicant is subjected to anti-competitive restraints on trade or other monopolistic practices.

8. The Applicant shall implement to the extent possible sustainable building techniques and operational methods for the project, such as Leadership in Energy and Environmental Design (L.E.E.D.) standards or another comparable state-approved, nationally recognized, and consensus-based guideline, standard, or system, and strategies, which may include but is not limited to recycling, natural lighting, extensive landscaping, solar panels, low-energy fixtures, low-energy lighting and other similar methods and techniques. All such proposals shall be reflected on the plans submitted for building permit review.
9. The Planning Commission reserves the right to revise, add, or delete conditions of approval in order to address or mitigate unforeseen impacts the project may, create, or to revoke the permits through the proper procedures should conditions of approval not be complied with or be violated.
10. Unless otherwise stated in the permit, once permit is issued, the Applicant must make substantial progress, as determined by the Director, regarding the development or activity within two (2) years, or the permit shall be deemed to have lapsed and be no longer in effect.

The Planning Commission is further advised that this report does not represent the Planning Department's final recommendation in view of the forthcoming public hearing process scheduled for NOVEMBER 14, 2023 whereby the entire record should be considered prior to decision-making. The entire record should include but not be limited to:

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

By   
DALE A. CUA  
Planner

Approved & Recommended to Commission:

By   
RA'AINA S. HULL  
Director of Planning

Date: 10/25/2023

**Use Permit Application**

**4437 Aku Road Guest House**

Hanalei, Kauai, HI

(4) 5-5-010:018

Prepared by:

Jon M. Kagle, Architect  
Cogent Designs

On behalf of the Owner :  
2000 Johnson Family Trust

29 September 2023

**F.2.d./L.4.**

**NOV 14 2023**

### **Project Description**

The property located at 4437 Aku Road in Hanalei is a 7,857sf residential zoned (R-4) lot with an existing Single-family Residence and Guest House. Located at the corner of Aku Road and A'awa Road, the adjacent lots on the street are all residentially developed.

The proposed project consists of the demolition of the existing Guest House, and the construction of a new 548sf Guest House with 200sf Lanai, an outdoor shower area, and surfboard storage.

The intent of the proposed Guest House is to provide additional dwelling space on the property and to replace an aging structure.

### **Property Information**

The property is currently a residentially developed lot with some open lawn and landscaped areas. The southern and western property lines contain a 6'-0" tall privacy fence, screening the yard from the streets. The topography is relatively flat, with elevations ranging from approximately 8.35' to 9.25' above mean sea level.

Property Address: 4437 Aku Road, Hanalei, Kauai, HI

Tax Map Key: (4) 5-5-010:018

Lot Size: 7,857sf (0.1804 acre)

### **State and County Zoning Designations**

The properties Zoning Designations are as follows:

- Entirely Urban by State Land Use Commission
- Entirely Residential (R-4) by County of Kauai Comprehensive Zoning Ordinance (CZO)
- Entirely Residential Community by Kauai General Plan, North Shore Land Use Map
- Subject parcel lies within the Special Management Area (SMA).

### **Existing Structures and Uses**

The property is currently developed with improvements being a Single-Family residence and Guest House.

- The existing Single-Family dwelling is an elevated, A-frame structure constructed in 1969 with approximately 864sf of interior living area on the main level with an approximately 384sf open loft space above, 168sf covered lanai at the front of the home, and 120sf covered lanai at the rear.
- The existing Guest House is an elevated structure comprised of approximately 306sf of interior living space and 83sf covered lanai. The existing Guest House appears to have been permitted as a Shed after Hurricane Iniki. It is unknown when the use of the structure transitioned into use as a dwelling, which was the existing use at the time of purchase by the current owner in 2015. The proposed project would eliminate that current non-compliant use by removing that

structure and replacing it with a Building Code and County Zoning Ordinance compliant dwelling, permitted as such.

- A water meter box is provided at the North-West corner of the property and serves both existing structures.

### **Proposed Structures and Uses**

The proposed Project is to construct a 1-story, 748sf Guest House, with 548 sf of interior living space and 200sf covered lanai. The proposed Guest House will share the existing individual wastewater system with the existing Single-Family Residence.

Refer to Appendix A for site plan and lot coverage information, and Appendix B for floor plans and building elevations for the Proposed Guest House.

### **North Shore Development Area**

The property lies within the North Shore Development Plan area. The Proposed Guest House will not conflict with any of the environmental, economic, or social goals of the North Shore Development Plan and will be consistent with the aesthetic of rural Hanalei.

- Goals of the North Shore Development Plan
  1. Preserve the unique natural beauty of the North Shore Planning Area
  2. Preserve the rural charm of the North Shore Planning Area
  3. Provide for the safety and welfare of people and their property within the North Shore Planning Area
  4. Provide economic development of the North Shore Planning Area
  5. Preserve the flora and fauna of the North Shore Planning Area and recognizing the dependence and human impact of the area.
  6. Preservation of historic and archeological sites within the North Shore Planning Area
  7. Create development and growth that establishes priorities and community participation with proposed development projects.
  8. To encourage and enhance the recreational opportunities which are unique to the qualities and natural features of the North Shore
- The proposed Guest House is designed with a fairly traditional "plantation" architectural style that will integrate well into the established vernacular of Hanalei. These elements of the architectural design will not conflict with Goals 1 and 2 of the North Shore Planning Area.
- The proposed use will not negatively impact public safety or welfare, harm any endemic or endangered species of plants or animals, nor will there be any harm to historic, archeological, or recreational sites. As such, the proposed use is in compliance with goals 3, 5, 6, and 8.
- The existing residential use of the property does not create long term economic development for the town of Hanalei, but does create temporary jobs in the construction industry and potentially long term jobs with property and landscape maintenance. By replacing the existing aging Guest House structure, it does increase the tax base for the island community as a whole. As such, the proposed use is in accordance of goal 4.



- By complying with the Special Management Area permitting process, the community will have an opportunity to participate during the public presentation of the project to the Planning Commission, and thus fostering the community involvement of goal 7.
- Due to the Project site being within an established neighborhood and not along the shoreline, it does not offer opportunities for the enhancement of the primarily beach and shoreline related recreational activities of Hanalei.

### **Kauai General Plan Vision and Goals**

The General Plan outlines 4 specific goals:

1. Sustainability and responsible growth
2. Kuleana for the land, resources, and traditions of Kauai
3. Resilience and Vitality of the Community
4. A diverse and equitable quality of life for the Community

The proposed Project is in compliance with long term goals of the General Plan, as follows:

1. Sustainability and responsible growth are achieved through an effort to practice restraint and minimizing the building size to well below the allowed 800sf maximum living area, as adopted in Ordinance No. 1140, amending Chapter 8 of the Kaua'i County Code 1987, relating to Guest Houses. This addresses the need for additional housing, within the urban context of Hanalei town, with minimal impact to the natural environment, resources, or infrastructure.
2. Kuleana for Kauai is represented in this proposed Project through the similar goals of sustainable and responsible growth by minimizing the building footprint. The fairly traditional "plantation" architectural design is consistent with the surrounding neighborhood. The urban context of the project site, in Hanalei town, does not offer many opportunities for habitat to endangered or endemic species of flora or fauna.
3. The proposed Project fosters the notion of a resilient and vital community primarily through the proposed use of the structure and location. Hanalei town is one of the few truly "walkable" communities on Kauai. By providing an additional dwelling within the urban context of Hanalei, the goal of a healthy community by providing much needed additional housing within an area where a wide variety of recreational and commercial activities are easily accessible by foot or very short driving distances.
4. Diversity and an equitable quality of life for the community is also integrated into the project site and development. By minimizing the size of the structure and implementing a modest construction budget, potential rental rates for the Guest House can also remain in line with local affordability. The Guest House is intended to be a long-term rental unit for a young couple that is currently maintaining the property for the Owner.

### **Kauai General Plan Policies to Guide Growth**

The General Plan outlines 19 specific guiding policies for Growth:

1. Manage Growth to preserve rural character
2. Provide local housing

3. Recognize the identity of Kauai towns and districts
4. Healthy and complete neighborhoods
5. Strategic infrastructure investment
6. Reduce cost of living
7. Balanced transportation system
8. Protect scenic beauty
9. Uphold Kauai as a unique visitor destination
10. Help businesses thrive
11. Help agriculture lands be productive
12. Protect watersheds
13. Clean Energy
14. Prepare for climate change
15. Respect Native Hawaiian rights
16. Protect access to treasured places
17. Nurture keiki
18. Honor Kupuna
19. Communicate with Aloha

The scope of work for the proposed Project is in accordance with the General Plan Policies to the extent to which they are applicable. The Project is modest in Scope, and thus doesn't offer an opportunity to contribute to all the growth policies. The Project is in accordance with the Policies as follows:

1. The Project contributes to growth management and preservation of Kauai's rural character through both the location of the site and the nature of the project. The project site is located within the core of Hanalei town in an established neighborhood, and thus maintains the policy of concentrating development to within existing urban areas.
2. The Project proposes to contribute to local housing by creating a modest dwelling that is intended for long term rental.
3. Hanalei, like all Kauai towns, possesses its own charm and character. The architecture of the proposed development is well within the established design aesthetic of Hanalei town. Colors and materials for the proposed Guest House will also complimentary to the existing residence.
4. Hanalei town is a very walkable community with pedestrian access to recreation, commerce, churches, and schools. The proposed Project takes advantage of that walkability by providing another dwelling within an established neighborhood.
5. The proposed Project scope is not such that it can, or requires, infrastructure investment. Access and utilities to the property and surrounding areas are developed and adequate to service the proposed Project.
6. By developing the property with a modest scope, size, and construction budget, the proposed Project can contribute to the local housing issues by being able to offer the property at an affordable rental rate.
7. The residential nature of the Project doesn't provide for improvements to existing transportation systems, nor have a negative impact upon the existing systems.
8. The proposed Project does not negatively impact scenic views from within Hanalei town.

9. The proposed Project as a residential property does not contribute to the visitor industry, but is in keeping with the style and character of Hanalei that draws visitors to enjoy its charm.
10. The proposed Project is located within the existing town of Hanalei. The project being residential in nature does not contribute directly to long-term job growth or economic development.
11. The proposed Project is located on a small, urban lot within Hanalei town and does not offer significant agricultural use.
12. The proposed Project does not include within its scope any development which would cause a negative impact upon the watershed or natural ecosystems of the Hanalei area.
13. The modest scope of the Project does not offer much opportunity to promote clean energy sources. The roof area is too small to implement roof-top mounted photovoltaic panels, nor does the tight confines of the property allow for much opportunity to orient the proposed structure for better solar alignment.
14. The proposed Project site lies within Flood Zone AE-12, and Hanalei has been subjected to several significant flooding incidences over the past several years. The structure's design is in compliance with the Flood Zone AE construction requirements to mitigate potential flood issues. The Project site lies approximately 920' from the shoreline. A topographical survey for the property has not been performed. However, Elevation Certificates for the existing structures indicate the elevations at the proposed building site, being the approximate location of the existing Guest House to be removed, to be between a low point of 8.35' and high point of 8.51' above mean sea level.
15. The project site does not include sensitive areas for the perpetuation of traditional Hawaiian cultural practices or activities, nor does the proposed use discourage or negatively impact traditional activities.
16. The Project site being in a residentially developed area, and not along the shoreline, does not offer, encroach upon, or impede access to public recreational spaces, cultural, religious, or shoreline activities. There are no known areas of cultural significance on the property, or accessed through the property.
17. The proposed Project fosters keiki development and kupuna care as the Project would establish a residential unit intended for a kama'aina family suitable for kapuna living or a couple with a small child within a neighborhood setting, with convenient access to schools, commerce, recreation, and family related activities.

The property lies within the Residential Community designation of the Kauai General Plan.

- The policy goals of the Residential Community designated areas are as follows:
  1. Establish predominantly low to high density residential areas within towns.
  2. High density residential uses of 10 units per acre or higher are confined to areas serviced with wastewater collection and major roadway access.
  3. Non-residential uses as established through zoning to provide convenient access to goods and services, increasing livability of the residential communities.

- The proposed use is compatible with the General Plan policies for the low-density (R-4) zoning of the subject property. Parking requirements of two spaces for the existing Single-Family Residence and one space for the Guest House are provided.

### **Special Management Area (SMA)**

#### **SMA Considerations:**

- **Public Access and Coastal Resources:**  
The Project site does not include, or offer, public recreational activities and thus the proposed development will not impact any public recreational activities in the vicinity of the Project site. Hanalei Pavilion and Beach Park is located approximately 750' away by foot and offers public beach access. Execution of the proposed Project would not impede any public beach access points.
- **Cultural and Historic Considerations:**  
The proposed Project will not have any significant impact on cultural, historic, or archeological resources. The Applicant will protect, report, and preserve any historic resources that may be discovered through the course of development.
- **Coastal Hazards:**  
Subject parcel lies within Flood Zone AE-12, based on FEMA FIRM Panel 150002 0055 E, effective date September 16, 2005. Building construction will be in compliance with all requirements of the AE Flood Zone.
- **Coastal Ecosystems:**  
Being located in Hanalei town, the Project site is part of the coastal ecosystem. However, the proposed Project is not adjacent to the shoreline and will not have any significant impact on the coastal ecosystem.
- **Scenic and Open Space Resources:**  
The surrounding neighborhood is well established with an array of homes. Thus, no public Scenic or Open Space Resources are negatively impacted by the proposed site development.

### **Summary of Permits Required**

#### **Special Management Area Permit:**

- Refer to the attached Special Management Area Assessment form for information regarding the social, economic, and ecological impact of the Proposed Guest House.
- Presentation and review with the Planning Commission and an opportunity to address any community concerns regarding the proposed use of the property.

**Building Permits:**

- Typical Building Permit as issued by the County of Kauai Public Works, Building Division in compliance with the International Residential Code, 2018 edition, as adopted by the County of Kauai.
- Class 1 Zoning Permit.

**Existing and Proposed Land Use**

Currently, the property is classified as low density Residential, R-4. The Proposed Guest House, nor the existing Single-Family Residence, qualify for any Commercialized uses or occupancies.

- There are no existing land use violations on the property.

**Conclusion**

Based on the foregoing evidence of compliance with the Kauai General Plan, North Shore Planning Area, and all County and State Land Use regulations, the Applicant respectfully requests the Planning Commission to grant the Use and Class 1 Zoning permits sought herein and to allow for the construction of the proposed Guest House to accompany the existing Single-Family Residence.

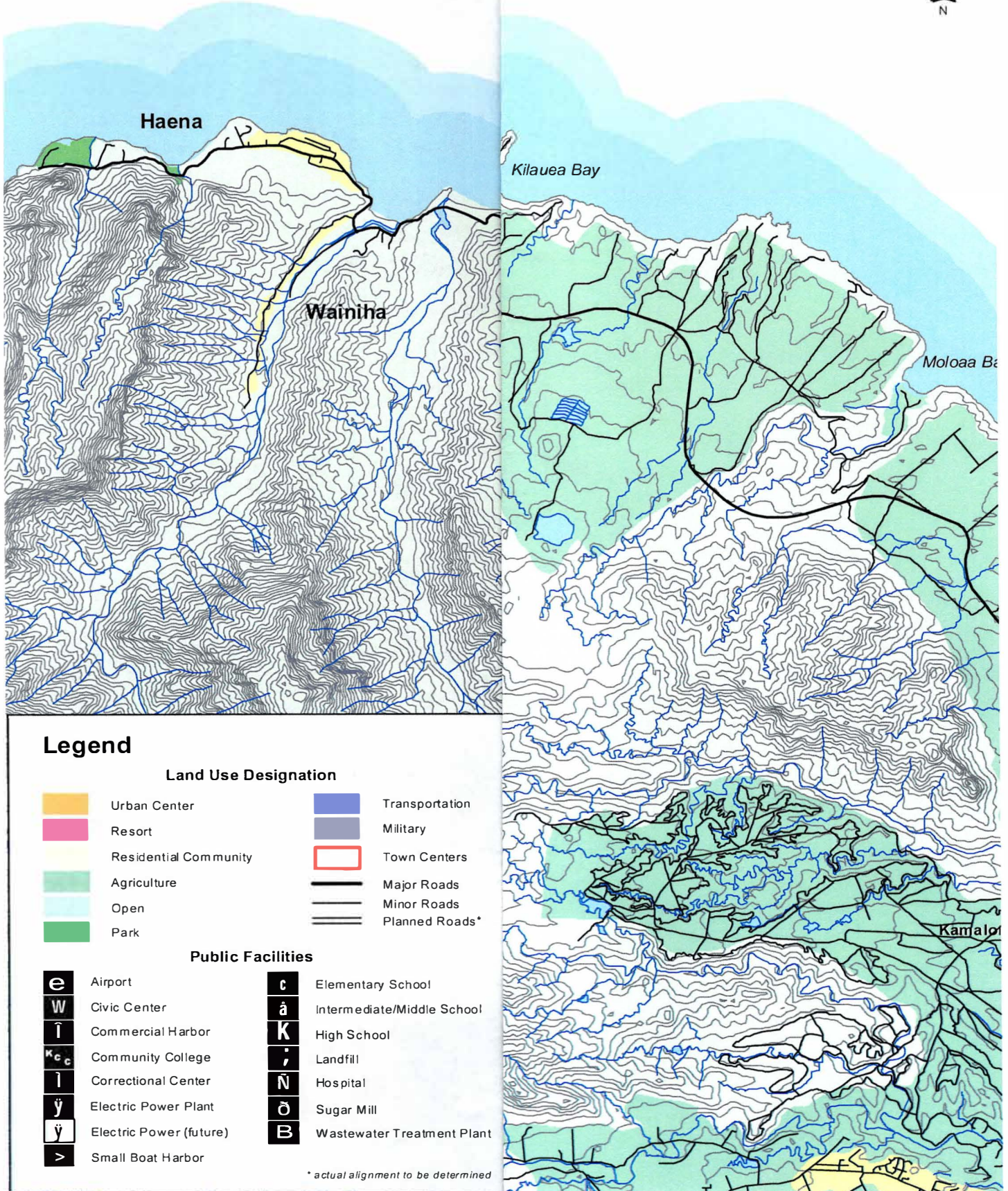
Jon Kagle, Cogent Designs

Architect and acting as Authorized Agent for the Owner, Kevin Johnson, managing partner for the 2000 Johnson Family Trust.

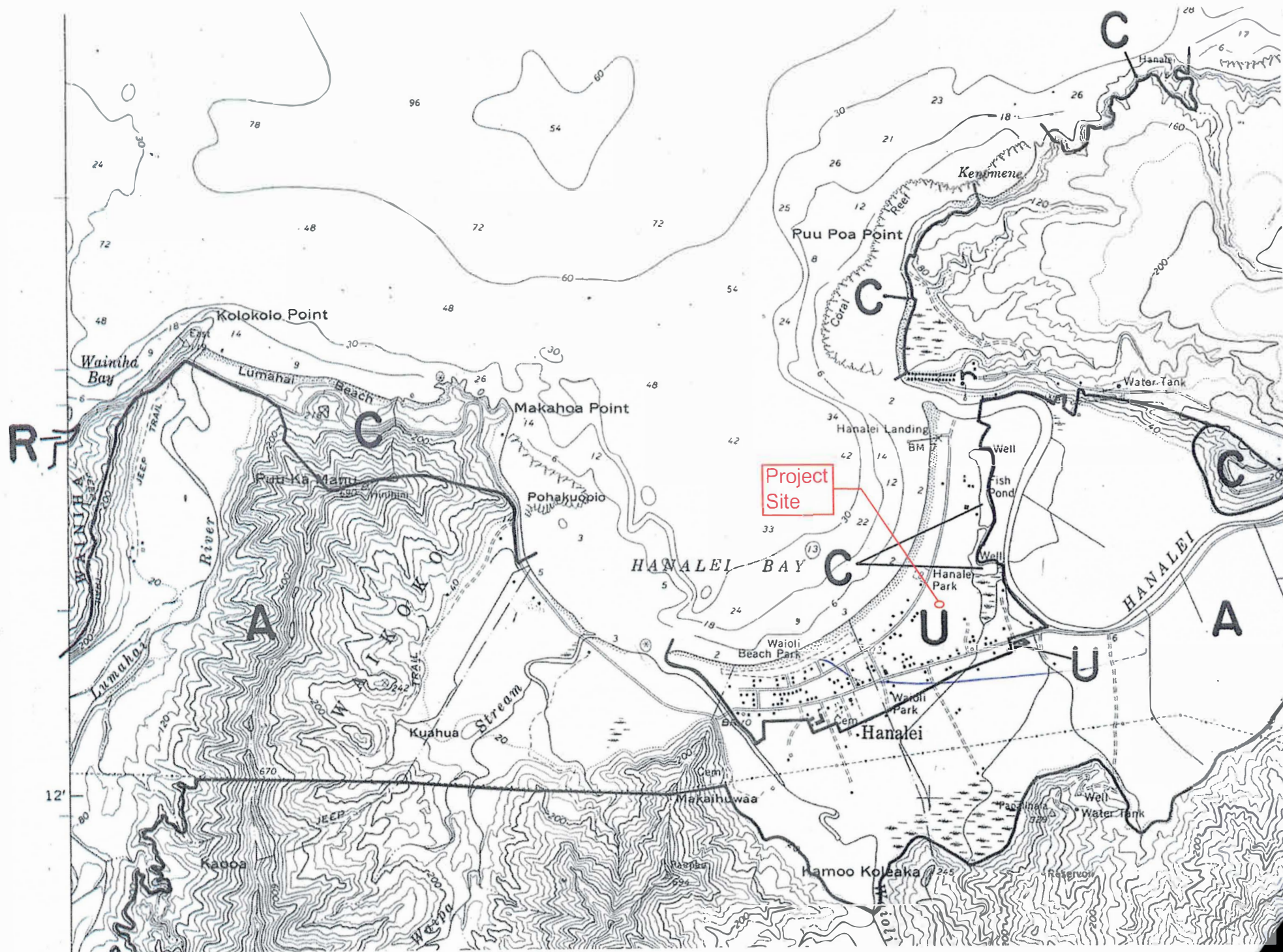


# North Shore Planning District Land Use Map

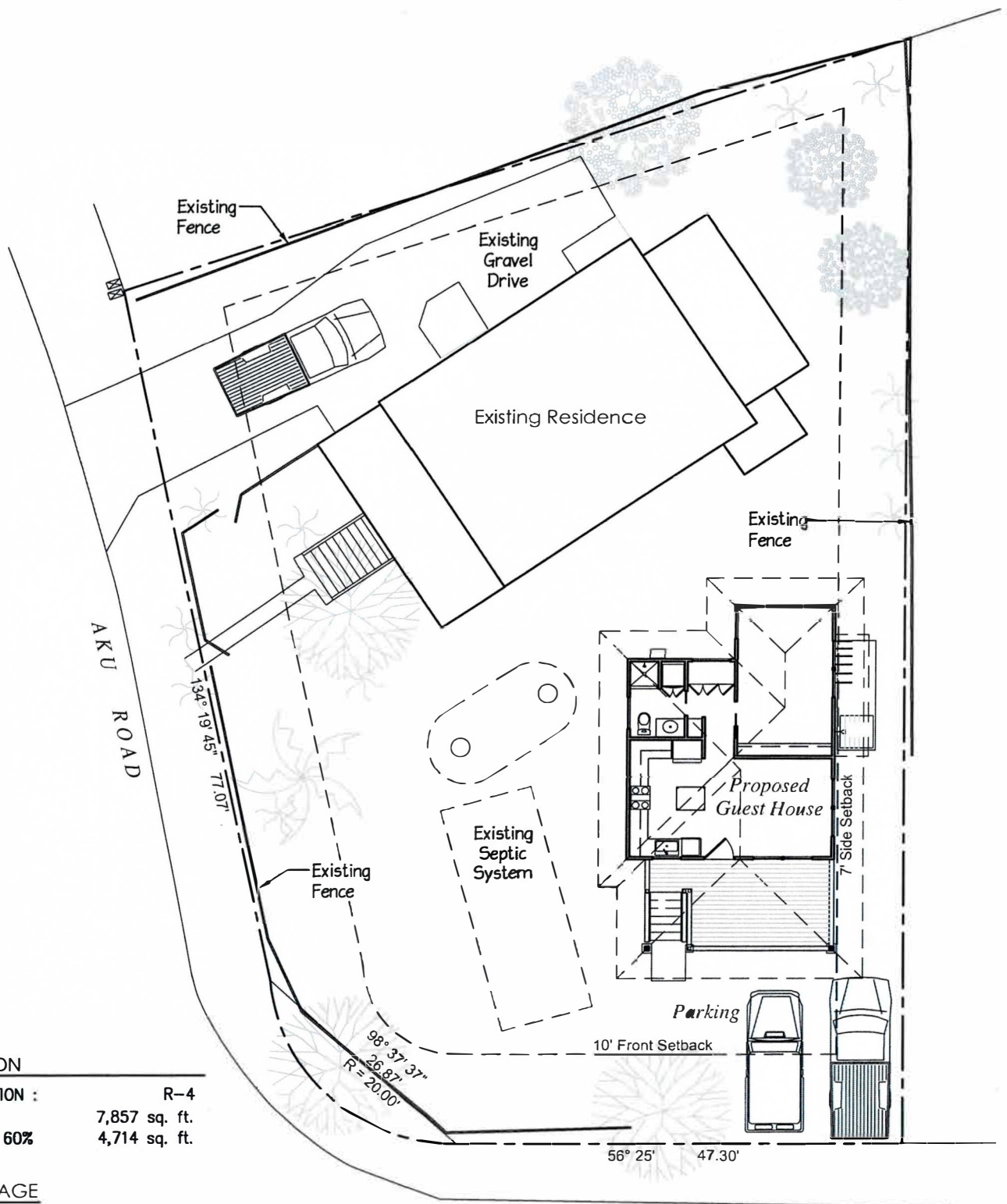
0 3000 6000 9000 12000 15000 Feet











#### ZONING INFORMATION

COUNTY ZONING DESIGNATION :	R-4
LOT SIZE :	7,857 sq. ft.
ALLOWED LOT COVERAGE: 60%	4,714 sq. ft.

#### EXISTING LOT COVERAGE

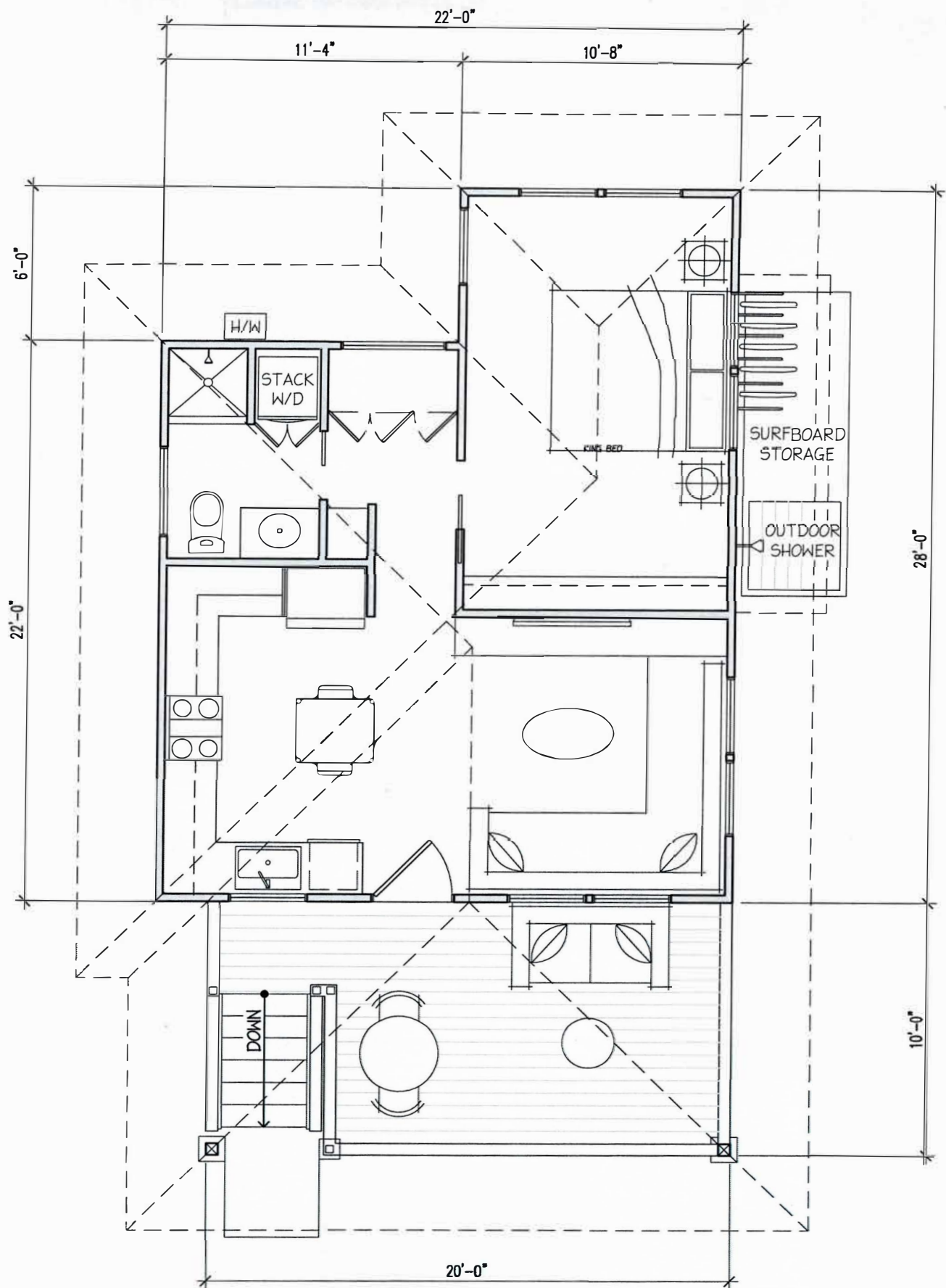
GUEST HOUSE	434 sq. ft.
SINGLE-FAMILY DWELLING	1,159 sq. ft.
OPEN STAIR (50%) :	24 sq. ft.
CONC. WALKS & LANDINGS :	62 sq. ft.
<b>TOTAL EXISTING :</b>	<b>1,679 sq. ft.</b>

#### PROPOSED LOT COVERAGE

GUEST HOUSE TO BE REMOVED	-434 sq. ft.
PROPOSED GUEST HOUSE	748 sq. ft.
CONC. WALKS & LANDINGS :	58 sq. ft.
<b>TOTAL PROPOSED :</b>	<b>372 sq. ft.</b>
<b>TOTAL EXISTING + PROPOSED :</b>	<b>2,051 sq. ft.</b>

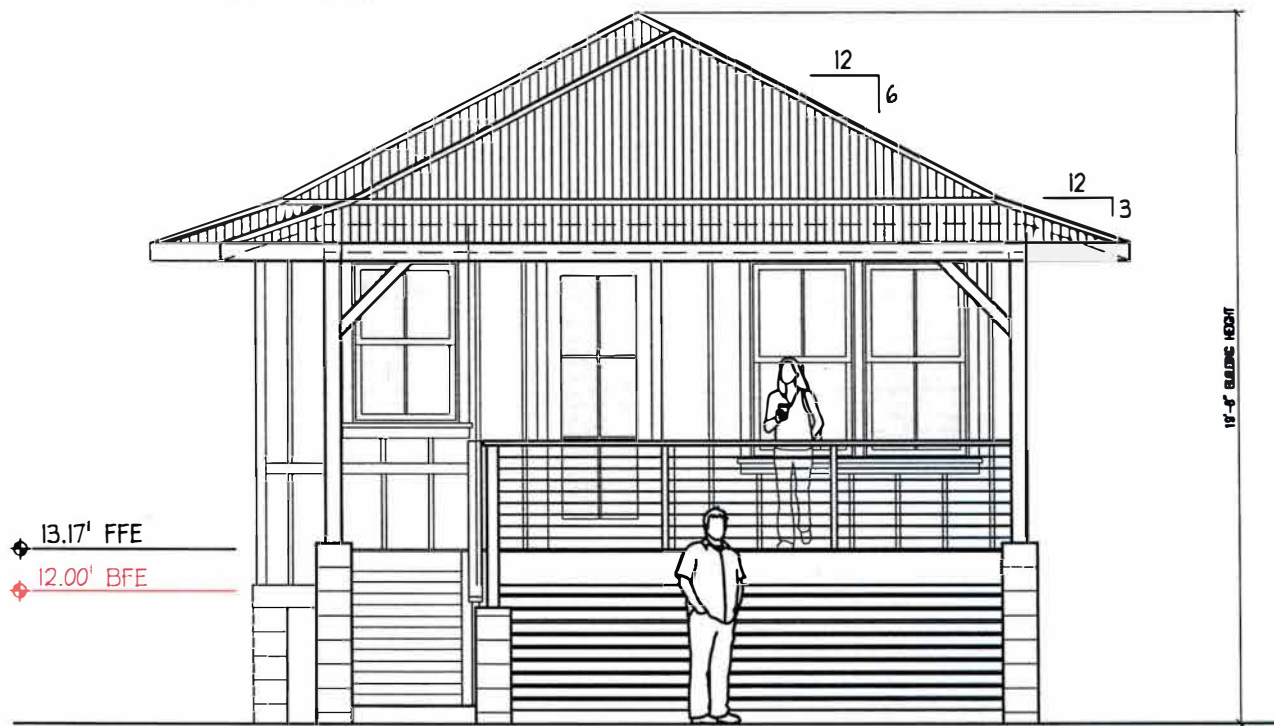
### Plot Plan

1/16" = 1'-0"



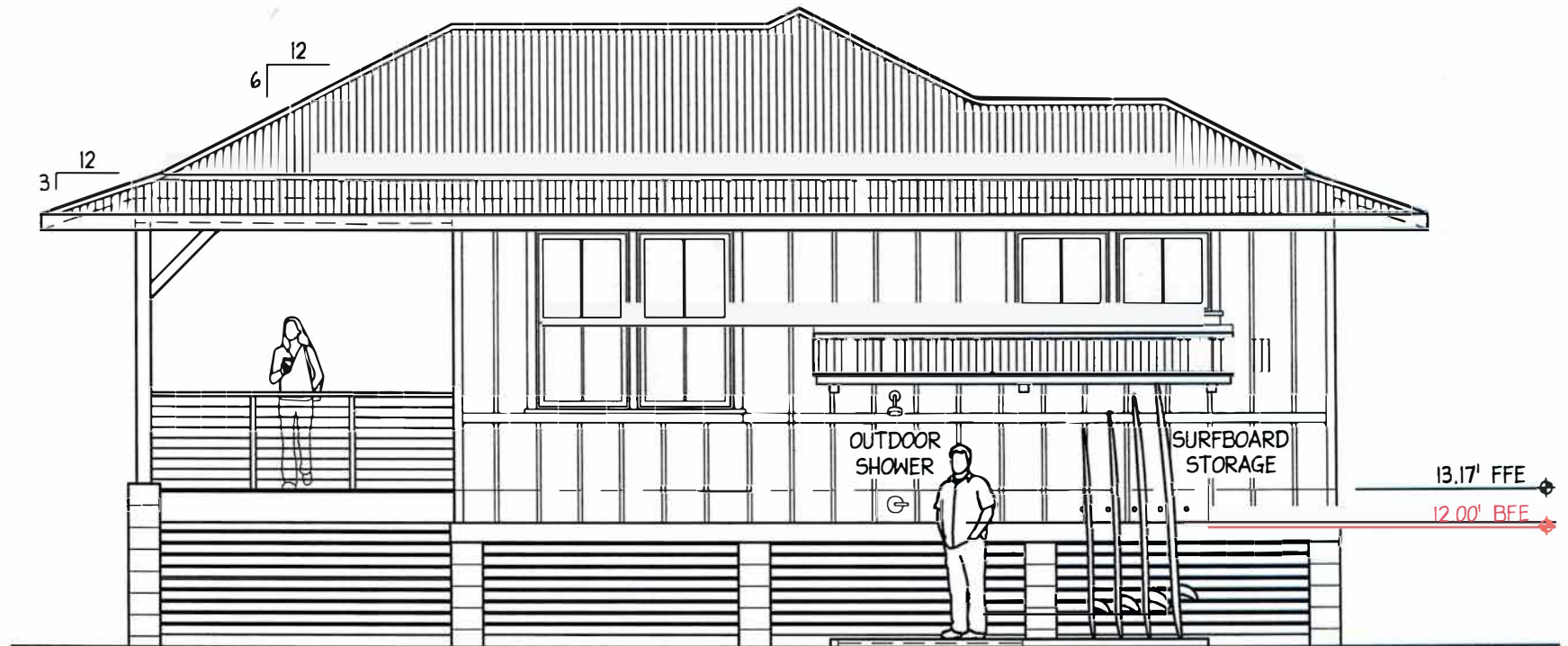
Guest House Floor Plan

$\frac{3}{16}'' = 1'-0''$



Building Elevation : South

3/16" = 1'-0"



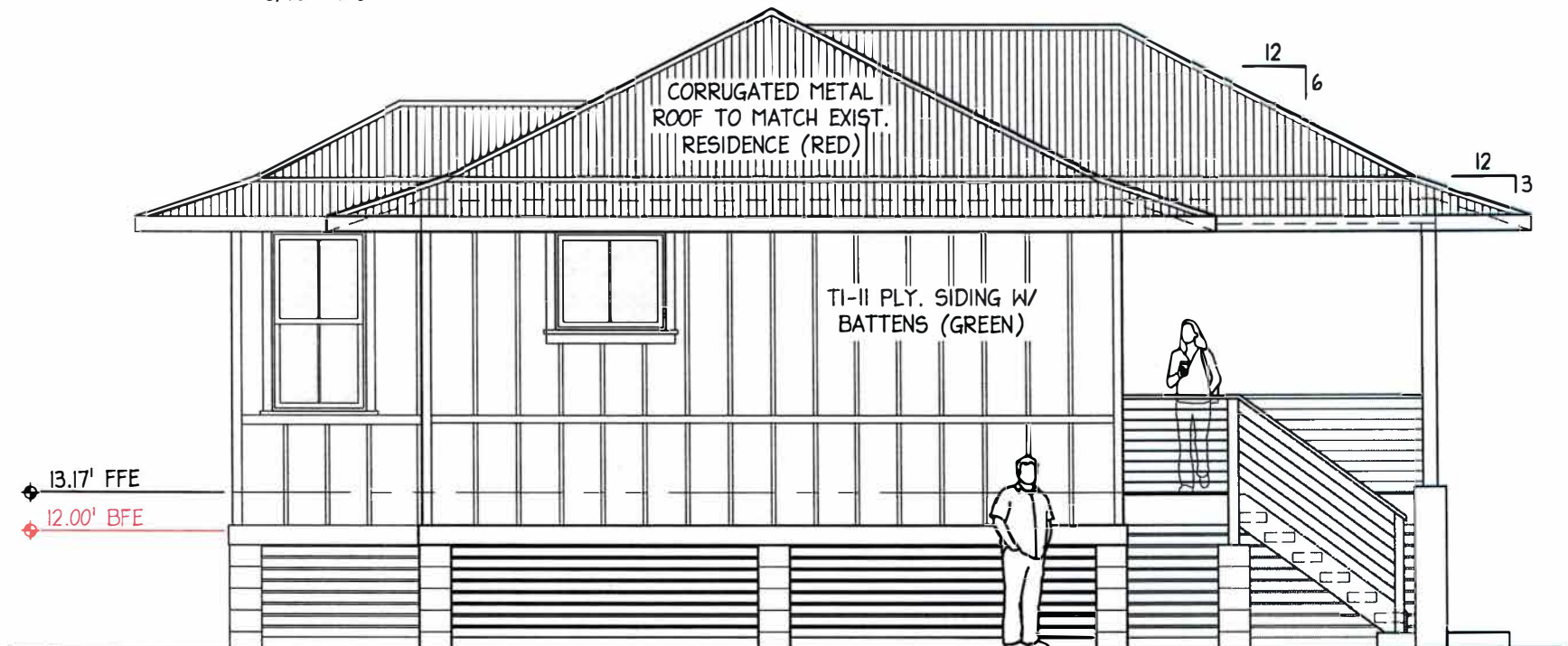
Building Elevation : East

3/16" = 1'-0"



Building Elevation : North

3/16" = 1'-0"



Building Elevation : West

3/16" = 1'-0"



## DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

### TRANSMITTAL OF AGENCY COMMENTS TO PLANNING COMMISSION

DATE: October 25, 2023

PERMIT NO.(S): Special Management Area Use Permit SMA(U)-2024-7

APPLICANT(S): 2000 JOHNSON FAMILY TRUST

Attached for the Planning Commission's reference are agency comments for the permit referenced above.

**F.2.d.1./L.4.a.**

**NOV 14 2023**



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

FROM: Kaaina S. Hull, Director

Planner: Dale Cua

10/2/2023

SUBJECT: Special Mgt Area Permit SMA(U)-2024-7  
Tax Map Key: 550100180000  
Applicant: 2000 Johnson Family Trust  
Demolition and reconstruction of a guest house and associated improvements.

TO:

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

**COMMENTS from DPW Engineering (10/24/23):**

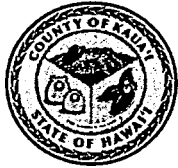
We have completed our review and offer the following comments:

1. The applicant shall comply with all provisions of the Sediment and Erosion Control Ordinance No. 808 (Kaua'i County Code Chapter 22, Article 17) to safeguard public health, safety, and welfare, to protect property, and to control soil erosion and sedimentation. This may include obtaining a grading permit in compliance with the Ordinance.
2. During construction, best management practices (BMPs) shall be incorporated to the maximum extent practicable to prevent damage by sedimentation, erosion, or dust to watercourses, natural areas, and other properties. The permittee and the property owner shall be responsible to ensure that BMPs are satisfactorily implemented at all times.
3. Based on Panel 1500020055E dated September 16, 2005, the property is located within Special Flood Hazard Area (SFHA) Zone AE. The proposed improvements will need to comply with the County's Floodplain Management Ordinance No. 831.
4. The plot plan shows vehicle parking in a manner that would require access from two driveway approaches for the parcel, one on Aku Road and one on A'awa Road. All driveways for the parcel must comply with Kaua'i County Code Chapter 15, Article 2 (Driveway Approaches); each driveway approach must be permitted and paved with asphalt or concrete. County records show no current driveway approach permits for this parcel. Based on available online imagery, the driveway approach on Aku Road appears to be unpaved. The driveway approach on A'awa Road appears to have been unpaved in 2020, then paved in 2021 without a permit. Permits must be applied for using the County's online system: <https://www.kauai.gov/Government/Departments-Agencies/Public-Works/Engineering/Construction-Inspection>.

Digitally signed by Michael Moule  
Date: 2023.10.24 15:46:09 -10'00'

Michael Moule, P.E.  
Chief, Engineering Division

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 11/14/2023 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 Kauai  
Planning Department  
4444 Rice St., Suite A473 Lihue, HI 96766  
(808) 241-4050

FROM: Kaaina S. Hull, Director

Planner: Dale Cua

10/2/2023

SUBJECT: Special Mgt Arca Permit SMA(U)-2024-7

Tax Map Key: 550100180000

Applicant: 2000 Johnson Family Trust

Demolition and reconstruction of a guest house and associated improvements.

TO:

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

FOR YOUR COMMENTS (pertaining to your department)

*Must meet all requirements of NPPA 2018*

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 11/14/2023 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 Kauai  
Planning Department  
4444 Rice St., Suite A473 Lihue, HI 96766  
(808) 241-4050

OCT 9 '23 PM1:39  
PLANNING DEPT

FROM: Kaaina S. Hull, Director

Planner: Dale Cua

10/2/2023

SUBJECT: Special Mgt Area Permit SMA(U)-2024-7

Tax Map Key: 550100180000

Applicant: 2000 Johnson Family Trust

Demolition and reconstruction of a guest house and associated improvements.

TO:

- |  |  |
|--|--|
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| <input type="checkbox"/> State DLNR - Conservation & Coastal Lands       | <input checked="" type="checkbox"/> UH Sea Grant                 |
| <input checked="" type="checkbox"/> Office of Hawaiian Affairs           | <input type="checkbox"/> Other:                                  |

FOR YOUR COMMENTS (pertaining to your department)

RECEIVED

10/6/2023

OCT - 4 2023

CTA HAS NO FURTHER COMMENT ON THIS PROJECT.

MAHAALO!

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 11/14/2023 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

FROM: Kaaina S. Hull, Director

Planner: Dale Cua

10/2/2023

SUBJECT: Special Mgt Area Permit SMA(U)-2024-7  
Tax Map Key: 550100180000  
Applicant: 2000 Johnson Family Trust  
Demolition and reconstruction of a guest house and associated improvements.

TO:

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

FOR YOUR COMMENTS (pertaining to your department)

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 11/14/2023 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!



OCT 12 '23 PM 1:21  
PLANNING DEPT

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

DATE: Oct 10, 2023

TO: To whom it may concern

FROM: Ellis Jones  
District Environmental Health Program Chief

SUBJECT: RESPONSE\_2000 Johnson Family Trust\_SMA(U)-2024-7

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

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

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

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

**Clean Air Branch**

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

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

#### **Clean Water Branch**

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

#### **Hazard Evaluation & Emergency Response Office**

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

#### **Indoor and Radiological Health Branch**

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

#### **Safe Drinking Water Branch**

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

#### **Solid & Hazardous Waste Branch**

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

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

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

### **Wastewater Branch**

By Revised Statute 11-62-31.1 If the parcel is less than 10,000sq feet, an individual onsite waste-water unit may not be possible for future construction. Please contact Sina Pruder at the DOH waste-water branch at 808-586-4288 for further information. For comments, please email the Wastewater Branch at [doh.wwb@doh.hawaii.gov](mailto: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

# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

## DIRECTOR'S REPORT

### I. SUMMARY

**Action Required by Planning Commission:** Consideration of a Special Management Area Use Permit to allow the demolition and reconstruction of a single-story guest house structure.

**Permit Application Nos.** Special Management Area Use Permit SMA(U)-2024-7

**Name of Applicant(s)** 2000 JOHNSON FAMILY TRUST  
John M. Kagle, Architect, Authorized Agent

### II. PERMIT INFORMATION

PERMITS REQUIRED	
<input type="checkbox"/> Use Permit	
<input type="checkbox"/> Project Development Use Permit	
<input type="checkbox"/> Variance Permit	
<input type="checkbox"/> Special Permit	
<input type="checkbox"/> Zoning Permit Class <input type="checkbox"/> IV <input type="checkbox"/> III	
<input checked="" type="checkbox"/> Special Management Area Permit <input checked="" type="checkbox"/> Use <input type="checkbox"/> Minor	Pursuant to Section 205A of the Hawaii Revised Statutes (HRS) and the Special Management Area Rules and Regulations of the County of Kaua'i, a SMA Use Permit is required as defined in Section 7.3(C) of the SMA Rules and Regulations where the Director finds that the proposal (1) is a "Development" as defined in Section 1.4F; and (2) is in excess of \$500,000.
AMENDMENTS	
<input type="checkbox"/> Zoning Amendment	
<input type="checkbox"/> General Plan Amendment	
<input type="checkbox"/> State Land Use District Amendment	

**Date of Receipt of Completed Application:** September 29, 2023

**Date of Director's Report:** November 14, 2023

**Date of Public Hearing:** November 14, 2023

F.2.d.2./L.4.b.

NOV 14 2023



**Deadline Date for PC to Take Action (60<sup>TH</sup>**

**Day):** January 13, 2024

### III. PROJECT DATA

PROJECT INFORMATION			
<b>Parcel Location:</b>	The project site is situated on the makai side of Kūhiō Highway in Hanalei Town directly across the Aku Road/A'awa Road intersection, further identified as 4437 Aku Road.		
<b>Tax Map Key(s):</b>	(4) 5-5-010:018	<b>Area:</b>	7,857 square feet
ZONING & DEVELOPMENT STANDARDS			
<b>Zoning:</b>	Residential (R-4)		
<b>State Land Use District:</b>	Urban		
<b>General Plan Designation:</b>	Residential Community		
<b>Height Limit:</b>	Twenty-Five (25) feet maximum		
<b>Max. Land Coverage:</b>	Residential (R-4) = 60%		
<b>Front Setback:</b>	10'-0"		
<b>Rear Setback:</b>	Five (5) feet or ½ the wall plate height whichever is greater		
<b>Side Setback:</b>	Five (5) feet or ½ the wall plate height whichever is greater		
<b>Community Plan Area:</b>	North Shore Development Plan		
<b>Community Plan Land Use Designation:</b>	N/A		
<b>Deviations or Variances Requested:</b>	N/A		

### IV. LEGAL REQUIREMENTS

<b>Section 8.0, 9.0, and 10.0 of the Special Management Area Rules and Regulations:</b>	This report is being transmitted to the Applicant and Planning Commission in order to satisfy the requirements of Sections 8.0, 9.0, and 10.0 of the Special Management Area Rules and Regulations. The application was received on <b>September 29, 2023</b> , and the Applicant, through its authorized agent, was notified accordingly of the Planning Department's intent to commence permit processing.
<b>Public Hearing Date:</b>	November 14, 2023



## **V. PROJECT DESCRIPTION AND USE**

The project site is located at 4437 Aku Road in Hanalei Town and further identified as TMK: (4) 5-5-010:018 containing a total area of 7,857 square feet (SF). The county zoning designation of the project site is Residential District (R-4). There is an existing single-family dwelling and guest house that dates back to 1969.

The proposed development involves the demolition of the existing guest house and reconstruction of an elevated single-story guest house structure containing approximately 680 SF of livable area with a 200 SF outdoor covered lanai. It will feature one bedroom, one bathroom, kitchen, and a living area. The proposed structure will be a wood-framed structure with a hip roof line and corrugated metal roof finish (refer to Appendix "B" of the Application).

## **VI. APPLICANT'S REASONS/JUSTIFICATION**

Refer to Application.

## **VII. ADDITIONAL FINDINGS**

1. The location of the project site is in Hanalei Town, along the mauka side of Kūhiō Highway. The property is zoned Residential District (R-4) and surrounded by properties that are similarly zoned. Based on the R-4 zoning and area of the lot, the density of the parcel qualifies for a one (1) dwelling unit and a guest house.
2. The property is NOT within the Visitor Destination Area.
3. The existing residence on the subject parcel was permitted and built in 1969. As noted in the Application, there is approx. 864 SF of interior living area, 168 SF covered lanai at the front, and 120 SF covered lanai at the rear portion of the residence.
4. The property is situated within the North Shore Planning Area (NSPA) and will be subjected to all applicable requirements. Additionally, the proposed development shall be subjected to the standards prescribed in Sections 8-4.3 and 8-4.5 of the CZO.
5. The State Land Use District (SLUD) designation for this parcel is "Urban", which allows for urban growth in a specified area.
6. The General Plan designation (GP) is "Residential Community." Residential Community Designation applies to existing areas that are primarily residential with few to no other uses. These areas are located outside the quarter-mile boundary of the Neighborhood Center designation.
7. The subject parcel is located within the Zone "AE" of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM). Zone "AE" is susceptible to 1% annual

chance of flooding hazards. This parcel is also within the extreme tsunami evacuation zone. In addition, the subject site is within the County of Kauai's Sea Level Rise Constraint District.

8. The topography is relatively flat, and no grading of the project area will occur. Existing drainage patterns on the property will not be affected.
9. The primary vehicular access to the project site is taken from Aku Road, which is identified as a County roadway containing approx. 20-foot wide asphalt pavement and wide enough to accommodate two-way vehicular traffic. Vehicular traffic along this roadway is relatively moderate.

10. Special Management Area (SMA)

In addressing the issues of the Special Management Area and its objectives and policies, the following aspects will be considered and evaluated:

- a. Recreational Resources
- b. Cultural/ Historic Resources
- c. Scenic resources
- d. Coastal Hazard
- e. Coastal Ecosystem

Furthermore, the proposal does not:

- Involve dredging, filling or otherwise altering any bay, salt marsh, river mouth, slough, or lagoon;
- Reduce the size of any beach or other area usable for public recreation;
- Reduce or impose restrictions upon public access to tidal and submerged lands, beaches, rivers, and streams within the SMA; and
- Adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, estuarine sanctuaries, potential or existing agriculture uses of land.

11. CZO Development Standards

The proposed development is subjected to the standards prescribed in Sections 8-4.3, 8-4.5, 8-9.2, and Chapter 8 Article 12:

- a. **Setback Requirements:** Front property line setbacks are ten feet (10'-0") with a side and rear property line setback of five feet (5'-0") or half the distance of the plate height whichever is greater.

- b. **Setback between buildings:** The distance between buildings shall be ten (10) feet minimum.
- c. **Parking Requirements:** The applicant shall provide a minimum of two (2) off-street parking spaces for the proposed dwelling.
- d. **Lot Coverage:** Pursuant to Section 8-4.3(d) of the CZO, the allowable land coverage within the Residential (R-4) zoning district shall not exceed sixty percent (60%). As represented in Appendix "A" of the Application, the total land coverage is approximately 4,340 SF or 34% of the parcel area.
- e. **Building Height:** Since the parcel is situated within the North Shore Planning Area and pursuant to Section 10-2.4(e) of the Kauai County Code, "no structure shall be higher than twenty-five (25) feet unless a greater height is authorized by the Planning Commission pursuant to a use permit after review (and recommendation) by the North Shore Improvement Advisory Committee."

#### VIII. AGENCY COMMENTS

Refer to attached Exhibit "A"

#### IX. PRELIMINARY EVALUATION

In evaluating the Applicant's request to allow the proposed development, the following items are being considered.

1. General Plan

The proposed development satisfies the following policies of the General Plan, as taken from Section 1.3 and 1.4:

A. 1.3, entitled "VISIONS AND GOALS"

- 1) **Goal #1 "Sustainable Island"** – As represented, the proposed development addresses the need for additional, modest housing within the urban context of Hanalei Town, with minimal impact to the natural environment, resource, or infrastructure.
- 2) **Goal #2 "Unique and Beautiful Place"** – The proposed structure would be in character with the surrounding residences in the neighborhood. As designed, it should not detract from the unique quality of island living nor the beauty of the immediate neighborhood.
- 3) **Goal #3 "A Healthy and Resilient People"** – The subject site is in close proximity to the urban town core and is walking distance to public transportation bus lines, recreational and commercial activities.

- 4) **Goal #4 “An Equitable Place, with Opportunity for All”** – As noted above, the subject site of the proposed development is in close walking distance to parks, commercial activities, and public transportation bus lines. Potential employment opportunities can be easily accessed by bike or walking. Further, the development as represented is intended for long-term occupancy by local residents.

B. Section 1.4, entitled “POLICIES TO GUIDE GROWTH”

- 1) **Policy #1 “Manage Growth to Preserve Rural Character”** – The proposed structure would contribute to growth management and preservation of Kauai’s rural character through both the location of the site and the nature of the project. It would maintain the planning growth policy of concentrating development within existing urban areas.
- 2) **Policy #2 “Local Housing”** – The Applicant represents that the project would be utilized as a long-term rental to assist in providing housing inventory.
- 3) **Policy #3 “Recognize the Identity of Kauai’s Individual Towns and Districts”** – The proposal would be similar in the architecture design style within the surrounding area. The project takes advantage of the walkability of the neighborhood.
- 4) **Policy #4 “Design Healthy and Complete Neighborhoods”** – Hanalei Town is a very walkable community with pedestrian access to recreation, commerce, churches, and schools. The proposed Project takes advantage of that walkability by providing another dwelling within an established neighborhood. The project would contribute to the stability and health of the neighborhood community.
- 5) **Policy #6 “Reduce the Cost of Living”** – While this development would not help in reducing the cost of living of the island’s population, it would provide much needed rental housing for local residents. It would offer an opportunity for a resident to live closer to their workplace, as a result, reducing the resident’s monthly travel expenses.
- 6) **Policy #8 “Protect Kauai’s Scenic Beauty”** – The proposed Project does not negatively impact scenic views from within Hanalei Town. The siting of the project is consistent and in the same location as the previous guest house location.
- 7) **Policy #14 “Prepare for Climate Change”** – The project site lies within Flood Zone AE-12, and Hanalei has been subjected to several significant flooding incidences over the past several years. The structure’s design is in compliance with the Flood Zone ‘AE’ construction requirements to mitigate potential flood issues. The property lies approximately 900’ from the shoreline area at Hanalei Bay. A topographical survey has been performed for the property and the grade elevations range from 8.35’ to 8.51’ above mean sea level (MSL).

As previously stated, the subject parcel is situated within the Residential Community designation of the Kaua’i General Plan. The policy and goals of the Residential Community designation are as follows:

- Establish predominantly low to high density residential areas within towns;

- High density residential uses of 10 units per acre or higher are confined to areas serviced with wastewater collection and major roadway access; and
- Non-residential uses as established through zoning to provide convenient access to goods and services, increasing livability of the residential communities.

Based on the foregoing, the project would be in consistent with the noted policies for low-density (R-4) zoning of the subject property. Parking requirements for the Guest House are provided.

## 2. SMA Rules and Regulations

The COK SMA Rules and Regulations contain objectives, policies and guidelines designed to protect coastal resources. Within the SMA, special consideration is given to recreational opportunities, cultural and historic resources, scenic qualities and open space, coastal ecosystems, and coastal hazards. In evaluating the proposed development relative to the goals and objectives of the SMA Rules and Regulations, the following aspects are taken into consideration:

- A. Public Access and Coastal Recreation – The project site does not include or offer immediate access to public recreational activities. However, it is in close proximity to the coastline at Hanalei Bay. Hanalei Pavilion and Beach Park is approximately 750 feet north of the project site. As such, the project would not impede any access to the coastline area.
- B. Cultural/Historical Resources – As represented, there is no visible evidence of cultural/historical uses on the parcel. Ground disturbance would occur during the construction of the dwelling for the post & pier foundation. Although still a possibility, the Applicant does not anticipate cultural deposits to be found.
- C. Scenic and Open Space Resources – As previously noted, the coastline area at Hanalei Bay is in relatively close walking distance from the project site. The project's location is located makai of the state highway and would have minimal impacts to the scenic and open space resources of the surrounding area. The subject area is currently a residential neighborhood and the proposal is consistent with the surrounding development.
- D. Coastal Hazards – The subject parcel is located within the Zone 'AE' of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM). The Applicant has represented that the proposed structure would be built in compliance with the construction standards within the AE Flood Zone.
- E. Coastal Ecosystems – The subject property has been extensively disturbed by previous activities and developed lands surrounding the site. As a result, there are no known rare, threatened, or endangered, plant or animal species or critical habitats located within the project site. However, the proposed development should be required to conform to the requirements of the County Department of Public Works (DPW) regarding drainage and runoff concerns from the proposed development, as well as the State Department of Health (DOH) regarding limitations on the existing individual wastewater system.

3. CZO Development Standards

As proposed, the project complies with the building height, setback, and off-street parking requirements for development within the Residential (R-4) zoning district, as specified in Sections 8-4.3 & 8-4.5 the Comprehensive Zoning Ordinance (CZO), respectively.

It is uncertain as to whether the Applicant has made provisions for night illumination with the project, based on the Application that have been submitted. If so, night illumination should be designed to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater, and other seabirds. Night lighting should be shielded from above and directed downwards and shall be approved by the U.S. Dept. of the Interior Fish and Wildlife Service. If external lighting is to be used in connection with the proposed project, all external lighting should be only of the following type: *downward-facing shielded lights*. Spotlights aimed upward or spotlighting of structures is prohibited.

**X. PRELIMINARY CONCLUSION**

Based on the foregoing, it is concluded that through proper mitigative measures, the proposed development can be considered, and it complies with the policies and guidelines of the Special Management Area Rules and Regulations in that:

1. The development will not have any substantial adverse environmental or ecological effect.
2. The development is consistent with the objectives/goals/policies of the County General Plan, the Comprehensive Zoning Ordinance, and other applicable ordinances.

Furthermore, the proposal DOES NOT:

- involve dredging, filling, or otherwise altering any bay, estuary, salt marsh, river mouth, slough, or lagoon;
- reduce the size of any beach or other area usable for public recreation;
- reduce or impose restrictions upon public access to tidal and submerged lands, beaches, rivers, or streams within the special management area; and
- adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, estuarine sanctuaries, or existing agricultural uses of land.

The proposed development should not have any detrimental impact to the environment or the surrounding area and follows the criteria outlined for the granting of a Special Management Area Use Permit. The Applicant should institute the "Best Management Practices" to ensure that the operation of this facility does not generate impacts that may affect the health, safety, and welfare of those in the surrounding area of the proposal.

## **XI. PRELIMINARY RECOMMENDATION**

Based on the foregoing evaluation and conclusion it is hereby recommended Special Management Area Use Permit SMA(U)-2024-7 to be **APPROVED**. If approved, the following conditions shall be implemented:

1. The proposed improvements shall be constructed as represented. Any changes to said development shall be reviewed by the Planning Director to determine whether Planning Commission review and approval is warranted.
2. In order to ensure that the project is compatible with its surroundings and to minimize the visual impact of the structures, the external color of the proposed dwelling shall be of moderate to dark earth-tone color. The proposed color scheme and a landscape plan should be submitted to the Planning Department for review and acceptance prior to building permit application.
3. The Applicant is advised that should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the Applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the County of Kaua'i, Department of Planning to determine mitigation measures.
4. In order to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds, if external lighting is to be used in connection with the proposed project, all external lighting shall be only of the following types: downward-facing, shielded lights. Spotlights aimed upward or spotlighting of structures shall be prohibited.
5. The Applicant shall develop and utilize Best Management Practices (B.M.P's) during all phases of development in order to minimize erosion, dust, and sedimentation impacts of the project to abutting properties.
6. The Applicant shall resolve and comply with the applicable standards and requirements set forth by the State Health Department, State Historic Preservation Division-DLNR, and the County Departments of Public Works, Fire, Transportation, and Water.
7. To the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kauai contractors as long as they are qualified and reasonably competitive with other contractors and shall seek to employ residents of Kauai in temporary construction and permanent resort-related jobs. It is recognized that the Applicant may have to employ non-Kauai residents for particular skilled jobs where no qualified Kauai residents possesses such skills. For the purposes of this condition, the Commission shall relieve the Applicant of this requirement if the Applicant is subjected to anti-competitive restraints on trade or other monopolistic practices.



8. The Applicant shall implement to the extent possible sustainable building techniques and operational methods for the project, such as Leadership in Energy and Environmental Design (L.E.E.D.) standards or another comparable state-approved, nationally recognized, and consensus-based guideline, standard, or system, and strategies, which may include but is not limited to recycling, natural lighting, extensive landscaping, solar panels, low-energy fixtures, low-energy lighting and other similar methods and techniques. All such proposals shall be reflected in the plans submitted for building permit review.
9. The Planning Commission reserves the right to revise, add, or delete conditions of approval in order to address or mitigate unforeseen impacts the project may, create, or to revoke the permits through the proper procedures should conditions of approval not be complied with or be violated.
10. Unless otherwise stated in the permit, once permit is issued, the Applicant must make substantial progress, as determined by the Director, regarding the development or activity within two (2) years, or the permit shall be deemed to have lapsed and be no longer in effect.

The Planning Commission is further advised that this report does not represent the Planning Department's final recommendation in view of the forthcoming public hearing process scheduled for NOVEMBER 14, 2023 whereby the entire record should be considered prior to decision-making. The entire record should include but not be limited to:

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

By   
DAE A. CVA  
Planner

Approved & Recommended to Commission:

By   
KA'ĀINA S. HULL  
Director of Planning

Date: 10/18/2023

# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

## DIRECTOR'S REPORT

TO: Planning Commission

RE: **2023 Status and Progress Report**  
PO'IPŪ SHERATON KAUA'I RESORT  
Special Management Area Use Permit SMA(U)-2007-13  
Class IV Zoning Permit Z-IV-2007-29  
Project Development Use Permit PD(U)-2007-25  
Tax Map Keys: (4) 2-8-015:043, 044 & 082; 2-8-016:003, 004  
Po'ipū, Kaua'i

APPLICANT: Kauai Blue, Inc. (formerly SVO Pacific, Inc. & VSE Pacific, Inc.)

### BACKGROUND

The subject permits were approved by the Planning Commission on October 9, 2007 to facilitate improvements to the existing Sheraton Kaua'i Resort facility. The development includes condominium/timeshare units, several support facilities and uses, off-street parking, and on-site & off-site infrastructure improvements.

Condition No. 4 of the permits requires the Applicant to submit an annual report to the Planning Commission to report the progress of the project until it's completed and it reads:

- "4. *The Applicant shall provide an annual report to the Planning Commission beginning from one year from the date of this approval. The reports shall be submitted to the Department no later than 30 days prior to the annual anniversary date of approval of this project. The report shall provide project status and progress towards project completion and compliance with conditions of approval. Annual reports shall be provided until completion of the project, and compliance with all conditions of approval.*"


### APPLICANT'S REQUEST

In accordance with Condition No. 4, the Applicant is providing its annual status report for 2021 (refer to Attachment).

### RECOMMENDATION

It is recommended that the Commission accepts the Applicant's Annual Status Report dated September 2, 2021. Additionally, the Applicant is advised that all applicable conditions of approval, including the provision of annual status report as required by Condition No. 4, shall remain in effect. The next Annual Status Report be submitted no later than SEPTEMBER 9, 2024.

**G.I.A.I.**  
**NOV 14 2023**

By   
Dale A. Cua  
Planner

Approved and recommended to Commission:

By   
Ka'aina S. Hull  
Director of Planning

Date: 10/25/2023

# EXHIBIT “A”

(2023 Annual Report)

For reference

# BELLES GRAHAM LLP

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PLANNING DEPT.

September 7, 2023

Mr. Ka'āina S. Hull  
Director of Planning  
Planning Department  
County of Kauai  
4444 Rice Street, Suite 473  
Lihue, Kauai, Hawaii 96766

VIA HAND DELIVERY

Re: **2023 Sixteenth Annual Status Report of Compliance With Permit Conditions For Special Management Area Use Permit SMA (U)-2007-13; Project Development Use Permit PDU-2007-25, And Class IV Zoning Permit Z-IV-2007-29, For Poipu Sheraton Kauai Resort, (Kauai Blue, Inc., fka SVO Pacific, Inc. and VSE Pacific, Inc.)**

Dear Mr. Hull:

Pursuant to Condition No. 4 of the above-referenced permits, the Applicant, Kauai Blue, Inc. (formerly known as SVO Pacific, Inc. and VSE Pacific, Inc.), hereby submits this 2023 Annual Status Report providing the status and progress towards project completion and compliance with conditions of approval. This Annual Status Report is intended to report on the status of conditions imposed by the Planning Commission of the County of Kauai, as required by the subject permits, as approved by the Planning Commission on October 9, 2007, and as memorialized in the corresponding permits dated October 10, 2007, attached hereto as Exhibit "A".

Thus, listed below, in the same order as they appear in the approval letter, are each of the stated 22 conditions of the subject permits (in bold italics), followed by a statement of the corresponding status of each of the respective conditions.

***1. In order to minimize adverse impacts on Federally Listed Threatened Species, such as Newell's Shearwater and other seabirds, if external lighting is to be used in connection with the proposed project, all external lighting shall be only of the following types: shielded lights, cut-off luminaries, or indirect lighting. Spotlights aimed upward or spotlighting of structures, landscaping, signage or hotel features within the project site shall be prohibited.***

Status: The Applicant acknowledges this condition. The architects and lighting consultants have specifically been made aware of this requirement and will incorporate appropriate lighting.

**2. In accordance with Section 9-2.8 of the Kauai County Code, 1987, the requirement of the Park Dedication In-Lieu Fee is applicable to this project relating to "Parks and Playgrounds" are applicable to the project and shall be resolved at the time of building permit approval. Also, in accordance with Section 11A-2.2 of the KCC, the Applicant shall submit to the Planning Department an Environmental Impact Assessment Fees (EIA) for the project. The EIA fees are based on \$1,000 per new multi-family unit, and \$100 per the minimum number of parking stalls serving the commercial development components as required by County Code Section 11A-2.2. Both of these fees are due at time of first building permit approval.**

Status: The Applicant acknowledges this condition. The fees will be paid, accordingly.

**3. Applicant shall record all of the conditions imposed under the subject permits with the deed(s) to the properties of the resort project. A copy of this recordation shall be provided to the Planning Department at time of building permit application.**

Status: The Applicant has met this condition. In compliance with Condition 3, a Memorandum of Special Management Area Use Permit SMA (U)-2007-13, Project Development Use Permit PDU-2007-25, and Class IV Zoning Permit Z-IV-2007-29 (a true and correct copy of which is attached to this letter as Exhibit "B") was recorded on June 2, 2008. A copy of the recorded Memorandum was forwarded to the Planning Department on June 6, 2008.

**4. Applicant shall provide annual status reports to the Planning Commission beginning from one year from the date of this approval. The reports shall be submitted to the Department no later than 30 days prior to the annual anniversary date of approval of this project. The report shall provide project status and progress towards project completion and compliance with conditions of approval. Annual reports shall be provided until completion of the project, and compliance with all conditions of approval.**

Status: The Applicant acknowledges this condition. This letter provides the current status and Applicant's manner of addressing all conditions of approval.

**5. Applicant shall substantially commence construction of the project development within one (1) year from the date of full approval, and shall complete construction of the project development within 5 years from the date of approval of the subject permits.**

Status: The Applicant acknowledges this condition. A copy of the letter confirming the Department's definition of "full approval" is attached hereto as Exhibit "C" and made a part hereof by reference.

The Applicant's building permit applications were submitted on June 2, 2008. Included within these permits were four hotel renovation permits which include the Point Restaurant (now open and operating as "Rum Fire") (#08-1205); the Oasis Pool Bar (now open and operating as "Lava's") (#08-1206); the Swimming Pool (#08-1207) continue to be operational; and the Breezeway & Existing Kitchen (now operating as the "Main Kitchen") (#08-1208). All four hotel renovation building permit applications were approved and issued in early 2010.

The pool construction was completed in August of 2011 and a Certificate of Inspection for the pool was subsequently issued. The County issued a Certificate of Occupancy for the Oasis Pool Bar in mid-August 2011 and Certificates of Occupancy for both the Point Restaurant and Breezeway & Existing Kitchen in the second quarter of 2012.

Three additional building permits for modified work to the Point Restaurant, Oasis Pool Bar, and Breezeway and Existing Kitchen (#11-460, #11-461 and #11-462) were applied for on March 28, 2011. All of the work was completed by the first quarter of 2012 and Certificates of Occupancy were issued.

An additional permit for the Coffee Shop/Link Café (#11-463) was applied for on June 27, 2011. The work was completed by the first quarter of 2012 and a Certificate of Occupancy was issued.

Building permits for work in the Dining Room (#11-2167) and for Roofing Work (#11-2323) were applied for in November of 2011. The permits were approved, work was completed in 2012 and the Certificates of Occupancy were issued.

A total of nine new building permit applications – one application for a new employee break room (#12-673) and eight applications for ADA improvements at the Hotel (#12-684 through #12-691) were submitted on April 13 and 16, 2012, respectively. The employee break room has been modified and the ADA work is partially complete.

The value of the work covered by the above-referenced hotel renovation permits is approximately \$16 million.



In addition, three new building permits were submitted in 2013. A wall replacement/awning at the Oasis Pool Bar (#13-1516, value of \$153,000.00) and fitness center relocation (#13-1515, value of \$135,000.00) building permits were submitted on July 12, 2013. The Oasis Pool Bar work has been completed and the fitness center relocation permit was removed from the County system. A re-roofing building permit was submitted on August 15, 2013 (#13-2138-2145, value of \$2,300,000.00). A separate re-roofing building permit (#15-1040, value of \$36,225.00) was submitted on April 16, 2015. All re-roofing building permits have been approved, work started on August 1, 2014, and the re-roofing project is complete. The Applicant also applied for and received Shoreline Setback Determination ("SSD") approval on the above 3 projects including a tennis court demolition project. A separate demo permit was applied for and demo work complete.

Four new building permits were submitted in 2014. A permit for a Welcome Center, mockup unit, and roof safety platform (#13-2666, value of \$80,000.00, #014-931, value of \$80,000.00, #014-392, value of \$50,000.00, and #14,1139, value of \$30,000.00) have been issued and the work completed. An SSD for the above projects has been approved.

Eight new building permits were submitted in November 2015 for renovation of 8 units in the Garden Wing. The permit numbers were #15-3089 - #15-3096 with a total value of \$248,000.00. The work was completed, and Certificates of Occupancy were issued in June and July, 2016.

Furthermore, since submittal of the 2016 SMA Annual Report, the Sheraton Kauai Resort has completed or is in the process of completing approximately \$13,350,000.00 in resort improvements/repair/upgrades and maintenance projects.

The demolition permits for the existing Garden Wing were submitted and approved. Revisions and amendments to the demolition plan will, however, in all likelihood be filed by the Applicant with the County to reflect proposed changes in the design and the re-development of the Garden Wing as explained more fully below. However, since the Applicant was not yet ready to commence demolition, the Building Department requested that the Applicant pick up the plans and the 19 permit applications, which was done.

The Applicant submitted plans for the existing Garden Wing buildings for the first phase of its future timeshare project. The Applicant has built a mockup of timeshare units and reviewed them on-site with the Planning Department. In

addition, the Applicant plans to upgrade the existing mockup units and a building permit was submitted in December 2016. This building permit (#16-2486 with a value of \$210,000.00) was issued on March 22, 2017. The work was completed and a Certificate of Occupancy was issued on March 1, 2018.

With respect to the new timeshare building permits, the Applicant submitted plans in December 2016 and all building permits (#16-2502, #16-2503, #16-2505, #16-2507, #16-2508, #16-2510, #16-2512, #16-2513, #16-2514, and #16-2515 for a total value of \$24,922,119.00) have been approved. This work started in October 2017 and construction was completed in October 2019. A TCO was also received for #16-2514 on January 23, 2018. Work is complete and a Certificate of Occupancy for building permits #16-2507, #16-2508, #16-2510, #16-2512, #16-2513, and #16-2514, were issued on November 2, 2018, November 9, 2018, January 7, 2019, January 16, 2019, November 2, 2018, and December 6, 2018, respectively. Work is almost completed for building permits #16-2502 and #16-2503, and work for building permit #16-2505 has been completed when the 2019 SMA report was filed. Since then, construction and furniture installation has been completed and a Certificate of Occupancy was issued on September 4 and 23, 2019.

ADA building permits for the Ocean and Beach Wings were submitted in May 2017 (#17-1094 and #17-1095 with a total value of \$450,000.00) and Ocean Wing Certificate of Occupancy issued on December 1, 2017, and Beach Wing Certificate of Occupancy issued on April 20, 2018.

Three (3) new building permits were submitted in 2019. A permit for the hotel units renovation located in Buildings 6 and 7 (#19-378 with a value of \$650,000.00, and #19-379 with a value of \$765,000.00) and a permit for the executive offices refresh (#19-622 with a value of \$100,160.00) are pending approval. A SSD for the above projects has also been submitted and approved. Construction work for all three building permits were completed. A Certificate of Occupancy was issued for building permit #19-622 on February 20, 2020. A Temporary Certificate of Occupancy was issued on March 30, 2020 for building permits #19-378 and #19-379. Additional work requested by the Department of Water was completed in late 2020. Therefore, the Certificate Of Occupancy was issued on January 12, 2021.

In summary, the Applicant has spent over \$16 million to complete the Ocean Wing improvements as represented in the SMA. The Applicant has completed the \$2,336,225.00 Garden Wing re-roofing project, \$240,000.00 of building permit work in 2014 and 2015, \$248,000.00 of building permit work in 2016, \$450,000.00 in ADA work in 2017 and 2018, and spent approximately \$13,414,000.00 on various upgrades and maintenance type improvements since the 2016 annual report. Lastly, the Applicant has completed the construction for the conversion of the Garden Wing buildings. It is estimated that the Applicant has spent approximately \$25 million to complete the Garden Wing conversion.

The corona virus pandemic of 2020 had a devastating effect on the visitor and hotel industry in Hawaii. The Sheraton Kauai Resort was forced to shut down normal operations on March 28, 2020. The Sheraton Kauai Resort temporarily re-opened the Garden Wing in Q4 of 2020, but closed again due to travel restrictions. The Sheraton Kauai Resort has since re-opened the Garden Wing on April 9, 2021, and the Ocean Wing on May 5, 2021. Since re-opening, the Sheraton Kauai Resort has done approximately \$500,000.00 in repairs, renovations and upgrades.

Since the 2022 Annual Report filing, the Sheraton Kauai Resort has been in continuous operation and is planning on an AC replacement in 2024 on the Ocean Wing side of the Resort. No other significant improvements were recently completed.

**6. Subject permits approved herein cannot be sold and are not transferable to other than Applicant, its subsidiaries and affiliated corporations and legal entities prior to the completion of the project and issuance of the occupancy permit.**

Status: The Applicant acknowledges this restriction on the sale and transferability of the permits prior to completion of the project and issuance of the occupancy permit.

**7. In accordance with Section 8-5.5 of the Kauai County Code, 1987, the Applicant shall provide a grant of easement for all public areas, such as beach parking, multi-use access paths, shower & bench area, cultural/historical preserves and sites, and lateral coastal multi-use beach walk. Said easement document shall also be recorded, with a recorded copy provided to the Planning Department at time of building permit review. All such public areas shall be adequately signed. The 42 public parking stalls shall also be signed, with such signage managed and maintained by the Applicant to ensure that employees and/or guests shall not be utilizing such parking areas.**

Mr. Ka'āina S. Hull  
Director of Planning  
Planning Department  
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***Language and signage design shall be subject to Planning Department review and approval.***

Status: The Applicant acknowledges this condition. In compliance with Condition 7, a Declaration of Public Facilities Easements (a true and correct copy of which is attached to this letter as Exhibit "D") was recorded on June 2, 2008. A copy of the recorded Declaration was forwarded to the Planning Department on June 6, 2008.

**8. *As represented, the Applicant shall:***

***a. design the Lobby building within the Mauka Parcel to also function as a hurricane emergency shelter for the project's residents, guests and key employees. Said design shall be as reviewed and approved by the County Civil Defense agency. The Applicant shall also maintain its current bus evacuation plan to accommodate guests who may prefer to evacuate the site during impending hurricane situations.***

Status: The Applicant acknowledges this condition. The concepts have been reviewed with the Kauai Civil Defense Agency. The Kauai Civil Defense Agency's letter regarding the hurricane emergency shelter is attached hereto as Exhibit "E" and made a part hereof by reference.

***b. implement alternate transport system recommendations of the Koloa-Poipu-Kukuiula Area Circulation Plan (KPACP), including a Koloa-Poipu shuttle circulator system targeted to residents, visitors and employees.***

Status: The Applicant acknowledges this condition. The Applicant will implement the applicable KPACP recommendations once the Plan is approved by the County.

***c. implement transportation demand management (TDM) measures for employees which could potentially include ridesharing, transit services, and a transportation allowance.***

Status: The Applicant acknowledges this condition. The Applicant is currently reviewing and assessing the various TDM measures available.

***d. seek County authorization to refurbish and maintain the existing comfort station located at the southeastern end of the Hoonani Road cul-de-sac.***

Mr. Ka'aina S. Hull  
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Status: The Applicant acknowledges this condition. A copy of the Applicant's letter requesting the County's authorization is attached hereto as Exhibit "F" and made a part hereof by reference.

***e. develop and implement a demolition and new construction materials recycling program, as reviewed and approved by the Department of Public Works, Solid Waste Division, and DOH.***

Status: The Applicant acknowledges this condition. The Applicant will submit a recycling program to the County for review and approval when it is completed.

***f. prepare a drainage report to address the increase in storm runoff as a result of the development. A copy of the drainage report and grading plan approved by the Department of Public Works shall be submitted to the Planning Department.***

***Filling of the property with material obtained from off-premises shall not be permitted, except as may be necessary to comply with the site drainage and grading requirements as resolved with the Department of Public Works and Planning Department. This prohibition of exported fill material shall not apply to top soil used for landscaping purposes in accordance with the approved landscaped plans. Mass pad filling to increase the heights of the proposed structures shall not be permitted except as resolved with the Department of Public Works and Planning Department.***

Status: The Applicant acknowledges this condition. The Grading Plans and Drainage Report for the property mauka of the railroad berm have been submitted to the County of Kauai, Public Works Department, Engineering Division for review.

Grading plans have also been submitted for the Applicant's first phase of the timeshare conversion project and plans were approved.

***g. provide building and architectural design, vehicular access, view corridors, public access, color scheme, and landscaping as represented in the project application or as was amended during the course of the public hearings. Plans for each phase of the project shall be submitted for the review and approval of the Planning Director at time of building permit review.***

Status: The Applicant acknowledges this condition. The Applicant met with the Planning Director on May 8, 2008. A copy of the letter transmitted to the Planning Director is attached hereto as Exhibit "G" and made a part hereof by reference. Although

the letter in Exhibit "G" references Condition 9, it also covers the requirements of this condition as well.

***h. work with the County Transportation Agency as to the possible relocation of existing bus stops adjacent to the property and for the provision of roof improvements for said bus stops.***

Status: The Applicant acknowledges this condition. The Applicant has met with the County Transportation Agency and commenced discussions on this issue.

***i. place the Hoonani Road utilities serving the project underground.***

Status: The Applicant acknowledges this condition. The design work is complete. Plans were submitted in May 2018 and approved in July 2019. Construction is complete and the Kauai Island Utility Cooperative has started the underground cabling work in June, 2021. Charter Cable started their work in July 2023 and work in process. The timing for undergrounding the utilities along Ho'onani Road is described in the attached letter to the County of Kauai, County Engineer and is attached hereto as Exhibit "H" and made a part hereof by reference.

***j. continue to use its best efforts to work with the County Housing Agency in an effort to develop an agreement for participating in the provision of affordable housing for its employees as may be required by law.***

Status: The Applicant acknowledges this condition. The Applicant met with the County Housing Agency on August 9, 2007, April 10, 2008, and February 24, 2011, and continues to use its best efforts to work with the County Housing Agency to address this condition.

***k. obtain information on the cultural resources of the area once the project's Cultural Focus Group completes its report. Said report shall be provided, and as updated, to the Planning Department.***

Status: The Applicant acknowledges this condition. The Cultural Report was updated and submitted to the Planning Department on May 29, 2008, as shown in the transmittal attached hereto as Exhibit "I" and made a part hereof by reference.

***l. develop a blasting plan for review and approval by the Public Works and Planning Departments. Said blasting plan shall include public notice via newspaper, radio and hand delivered flyers to residents within 100 feet of the property,***

***where notice is given at least 1 week in advance of the activity. Such notice shall include the date and time of the blasting, and a contact name and phone number.***

Status: The Applicant acknowledges this condition. The Applicant will submit a blasting plan to the County for review and approval when it is completed.

***m. follow the dust mitigation protocol established by the Dust Hui during construction of the project. A current copy of said protocol shall be provided to the Department.***

Status: The Applicant acknowledges this condition. A copy of the letter containing the current dust protocol was transmitted to the Planning Department, and is attached hereto as Exhibit "J" and made a part hereof by reference.

***n. the number of units remaining authorized by SMA (U)-96-9 and Z-IV-96-25 shall be reduced from 18 to 15.***

Status: The Applicant acknowledges this condition. The design and footprint of the subject building have been reduced from 18 to 15 units.

***Evidence of the implementation of these programs or the manner of addressing these issues shall be provided to the Department prior to building permit review.***

Status: The Applicant has met this condition. See the response to Item 5, above, for more detail on the status of the building permit applications.

***9. In order to help screen the structure from public views as seen from public areas, and to blend the structures with its surroundings, external colors shall be of earth tones, complementary to the existing Sheraton Kauai Resort buildings within the Makai Parcel and compatible with the surrounding natural background. In addition, the Applicant shall prepare a landscape plan to further soften the existing building mass. The landscape plan shall reflect the use of native plants that are common to the area, endemic, indigenous, or Polynesian-introduced. The proposed color scheme and landscape plan shall be submitted to the Planning Department for review and approval prior to building permit review.***

***In addition, the Applicant shall continue the landscape theme already established on the makai side of Poipu Road, and which the commission has required of the properties located along Poipu Road, while honoring the commitment to preserve the view corridors over this property and down Kapili Road as represented by the Applicant.***



***Applicant shall consult with the Poipu Beach Resort Association regarding foliage along Poipu Road prior to Department review of the landscape design.***

Status: The Applicant acknowledges this condition. The color scheme will be "earth tone" colors as required by this condition. The specific colors will be provided at a later date. The landscape plan has been provided to the Planning Department, and a copy of the transmittal is attached hereto as Exhibit "K" and made a part hereof by reference. In addition, the Applicant met with the Poipu Beach Resort Association Board of Directors on May 8, 2008 to discuss landscaping along Poipu Road.

***10. If historic/cultural remains such as archaeological artifacts, charcoal deposits or human burials are found during construction, the Applicant shall stop work in the immediate area, and shall contact the State Historic Preservation Division (SHPD) at 742-7033, and the Planning Department, to determine appropriate action.***

Status: The Applicant acknowledges this condition. A full-time archaeological monitor has been onsite during all grading activities. On March 29, 2018, an inadvertent discovery was found in sand that was excavated from an existing utility trench within the Garden Wing Building 7 corridor. Work was immediately halted, the area was fenced off, notification to the SHPD Burial Sites Specialist for Kauai was made, Kauai Police Department was notified and dispatched. On March 30, 2018, the Burial Sites Specialist for SHPD and the Kauai Niihau Islands Burial Council member for the Koloa District conducted a site visit and recommended the inadvertent skeletal discovery be moved and the sand pile screened. During excavation along Ho'onani Road, inadvertent burials were discovered on November 21, 2019 and December 10, 2019. All burial remains were stored in a locked and secured location on the property. On March 11, 2020, the burial remains were reinterred in an existing crypt located on the Sheraton Kauai Garden Wing. The archaeologist submitted the required data recovering and monitoring reports to SHPD on March 25, 2021. SHPD provided comments to the Monitoring Report in February 2022 and a revised Archaeological Monitoring Report was submitted in March 2022 and accepted and approved by SHPD on March 31, 2022.

***11. To the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kauai contractors as long as they are reasonably competitive with other contractors, and shall seek to employ residents of Kauai in temporary construction and permanent resort-related jobs. It is recognized that the Applicant may have to employ non-Kauai residents for particular skilled jobs where no qualified Kauai resident***

***possesses such skills. For the purposes of this condition, the Commission shall relieve the Applicant of this requirement if the Applicant is subjected to anti-competitive restraints on trade or other monopolistic practices.***

Status: The Applicant acknowledges this condition, and will hire and contract accordingly.

***12. The Applicant shall consider the application of Leadership in Energy and Environmental Design (LEED) standards and strategies wherever feasible for sustainable site, utilities and building development.***

Status: The Applicant acknowledges this condition, and is assessing the feasibility of various sustainable elements. The Applicant has already contracted for irrigation of the mauka wing using R-1 treated effluent, and the service lateral has been installed.

***13. Approval of the subject permits is based on the revised conceptual site plan dated 9/11/2007 developed by WCIT Architecture, which reflects: a view corridor from Poipu Road through the open motor court of the lobby building, the location of three 4-story parking structures, the location of the 3 and 4-story step-down structures along the perimeter, and reduction in units from 382 to 365 units.***

Status: The Applicant acknowledges this condition, and is proceeding with project design, accordingly.

***14. As recommended by the Water Department, applicant shall be required to:***

***a. Submit a formal request for water service to the DOW for our review and approval. Include detailed water demand (both domestic and irrigation) calculations along with the proposed water meter size. Identify whether water demands will be from new or existing water meter(s). Water demand calculations submitted by your engineer or architect should also include fixture count and water meter sizing worksheets. This shall be done for both the new development and the renovation developments. The Department's comments may change depending on the approved water demand calculations.***

Status: The Applicant acknowledges this condition. The Applicant submitted its formal request for water meters on May 7, 2008, and its formal request for all other water services on May 21, 2008. The Applicant received conditional approvals from DOW on July 29, 2008. The Applicant continues to work with the DOW to

ensure their SMA conditions are met and to expedite their review of the Building Permits.

***b. Prepare and receive DOW's approval of construction drawings for the necessary water system facilities and construct said facilities. These facilities shall include but not be limited to:***

- 1. Additional source and storage facilities.***
- 2. The domestic service connections.***
- 3. The fire service connections, if applicable.***
- 4. The interior plumbing plans with the appropriate backflow prevention device.***
- 5. A 12 inch main extension, approximately 1,200 ft. in length along Kapili Road connecting to the 12 inch main along Poipu and Ho'onani Roads.***

Status: The Applicant acknowledges this condition. With reference to item 14.b.5 above, construction of the 12 inch main extension is complete and has been dedicated to the County. With reference to Item 14.b.2 above, utility laterals for water have been installed under Kapili Road for future service to the project site.

***c. Pay the applicable charges in effect at the time of payment to the Department. At the present time these charges shall include but not be limited to the Facilities Reserve Charge (FRC) \$4,600 per unit of the FRC amount as determined by the approved water meter size; whichever amount is greater.***

Status: The Applicant acknowledges this condition, and will pay the applicable charges, accordingly.

***The Applicant is made aware that applicable FRC liability shall be offset by up to 33% each where water source or water storage improvements are constructed and up to 50% where transmission mains are constructed; provided that the total amount of all offsets shall not exceed 100% of the applicant's FRC liability, and provided further that the offset for any source or storage improvements or transmission main shall not exceed the actual cost of the source or storage improvement or transmission main.***

Status: The Applicant acknowledges this condition.

**d. Receive a "Certification of Completion" for the construction of the necessary water system facilities from the DOW.**

Status: The Applicant acknowledges this condition.

**15. The Applicant shall comply with the requirements and recommendations of applicable County, State and Federal Agencies, including the County Fire, Engineering and Building Divisions of the Department of Public Works, and the State Department of Health, State Department of Transportation-Highways Division.**

Status: The Applicant acknowledges this condition. With respect to the issue of sewer improvements, the Applicant has contributed approximately \$265,000.00 for the purpose of upgrading the existing private sewer system to fully service the project.

**16. As recommended by the State Department of Land and Natural Resources, Historic Preservation Division:**

**a. An approved preservation plan for site 947 (railroad berm) which includes interpretation (short and long term measures) and breaching and restoration plans must be submitted to the State Historic Preservation Division for review and approval.**

Status: The Applicant has complied with this condition. The Applicant submitted the required Data Recovery Plan to the State Historic Preservation Division ("SHPD"), and such plan was accepted and approved by SHPD on June 19, 2007 as evidenced by the communication attached hereto as Exhibit "L" and made a part hereof by reference.

**b. Data recovery of Site 362 shall be completed as agreed to in the approved data recovery plan and an approved report on this work be submitted to the State Historic Preservation Division prior to the start of construction, and**

Status: The Applicant has complied with this condition. The Applicant submitted the required Preservation Plan to SHPD, and such plan was accepted and approved by SHPD on July 9, 2007 as evidenced by the communication attached hereto as Exhibit "M" and made a part hereof by reference.

**c. A qualified archaeologist shall be on the project area for all ground disturbing activities and perform work as outlined in the approved archaeological monitoring plan. An approved report on this work shall be submitted to the State Historic Preservation Division once the monitoring work is completed.**

Status: The Applicant acknowledges this condition. The Cultural Surveys Hawaii ("CSH") monitoring plan was approved by SHPD on January 2, 2018 and CSH has provided the necessary monitoring.

**17. The Applicant shall conform to the anticipated Koloa-Poipu Area Circulation Plan process and will pay, immediately prior to issuance of the first building permit for the project, the voluntary fair share contributions (VFSC), unless the impact fee has been identified in an Ordinance by that time, in which case it shall pay the impact fee. In the event the VFSC is paid, the final fee amount shall be in lieu of the impact fee in the anticipated ordinance. The Applicant shall work out the engineering details of the project access onto Poipu Road, Kapili Road and Ho'onani Road, and the mauka-makai connection road between Poipu Road and Ho'onani Road with the Department of Public Works.**

Status: The Applicant acknowledges this condition, and will pay the voluntary fair share contribution or impact fee, accordingly.

**18. The Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or revoke the subject permits through proper procedures should the Applicant fail to comply with the conditions of approval, or should unforeseen circumstances occur or result.**

Status: The Applicant acknowledges this condition.

**19. Should the Applicant be unable to comply with the development time line in condition #5 above and request an extension of time, applicant is advised that any new laws, ordinances, or regulations that have been implemented within this time frame may become applicable to the project.**

Status: The Applicant acknowledges this condition.

**20. In view of the various conditions and recommendations imposed by the various government agencies as referenced to herein, building permit application or preconstruction work for any phase of the project or portion of the property shall not be accepted until the Applicant submits a status report of all permit conditions that are either required to be complied with prior to or at time of building permit application.**

Mr. Ka'aina S. Hull  
Director of Planning  
Planning Department  
September 7, 2023  
Page 16

Status: The Applicant has complied with this condition. Fifteen Annual Status Reports were filed with the Planning Department on June 2, 2008, September 4, 2009, September 10, 2010, September 8, 2011, September 7, 2012, September 9, 2013, September 9, 2014, September 9, 2015, September 9, 2016, September 8, 2017, September 7, 2018, September 6, 2019, September 4, 2020, September 2, 2021, and September 8, 2022, respectively. The Applicant submitted building permit applications for the project beginning on June 2, 2008, and thereafter as explained more fully in the response to Item 5, above.

**21. 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).**

Status: The Applicant acknowledges this condition.

**22. As an accessory use, the establishment of a rock crusher operation on site shall be subject to review and approval of the Planning Director. Such use shall not be permitted unless it can be assured that the resultant dust and noise can be properly and adequately addressed. If such cannot be assured, such activity shall occur at an alternate site where such impacts to abutting residential uses will not occur.**

Status: The Applicant acknowledges this condition.

I believe that the foregoing 2023 Sixteenth Annual Status Report adequately responds to Condition 4 of the Planning Commission approval of the aforementioned development permits for this Project. In the event you are in need of any additional information or clarification regarding the documents, please feel free to contact me at any time.

Thank you very much for your cooperation and assistance in this matter.

Sincerely yours,

**BELLES GRAHAM LLP**



Michael J. Belles

MJB:jgm  
Enclosures

cc: Mr. Mac Montgomery, w/encls. (via email only)  
Mr. Tim Tansey, w/encls. (via email only)  
Mr. Carlos Rivera, w/encls. (via email only)

### LISTING OF EXHIBITS

- Exhibit "A" - Copy of permit approval letter from the County of Kauai, dated October 10, 2007
- Exhibit "B" - Copy of the Memorandum of Special Management Area Use Permit SMA (U)-2007-13, Project Development Use Permit PDU-2007-25, and Class IV Zoning Permit Z-IV-2007-29, dated May 5, 2008
- Exhibit "C" - Copy of letter confirming the Planning Department's definition of "Full Approval", signed and approved by Ian Costa June 27, 2008
- Exhibit "D" - Copy of the Declaration of Public Facilities Easements, dated May 23, 2008
- Exhibit "E" - Copy of Kauai Civil Defense Agency's letter regarding the hurricane emergency shelter
- Exhibit "F" - Copy of letter requesting the County's authorization to refurbish and maintain the existing comfort station located at the southeastern end of the Hoonani Road cul-de-sac
- Exhibit "G" - Copy of letter to the Planning Director regarding landscaping and color schemes for structures in accordance with Condition 9 of the SMA Permit
- Exhibit "H" - Copy of letter addressed to the County Engineer, County of Kauai, describing the timing for undergrounding the utilities along Ho'onani Road
- Exhibit "I" - Copy of transmittal of Cultural Focus Group Report dated 5-29-08 from Greg Kamm Planning & Management to Planning Department
- Exhibit "J" - Copy of Dust Mitigation Protocol transmitted to the Planning Department
- Exhibit "K" - Copy of transmittal letter providing the landscape plan to the Planning Department
- Exhibit "L" - Copy of a letter dated June 19, 2007 from the State Historic Preservation Division ("SHPD") accepting the required preservation plan for Site 947
- Exhibit "M" - Copy of a letter dated July 9, 2007 from the State Historic Preservation Division ("SHPD") approving the data recovery plan submitted for Site 362



BRYAN J. BAPTISTE  
MAYOR

GARY K. HEU  
ADMINISTRATIVE ASSISTANT



IAN K. COSTA  
DIRECTOR OF PLANNING

IMAICALANI P. AIU  
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUAI  
PLANNING DEPARTMENT

4444 RICE STREET  
KAPULE BUILDING, SUITE A473  
LIHUE, KAUAI, HAWAII 96766-1326  
TEL (808) 241-6677 FAX (808) 241-6699

October 10, 2007

Michael J. Belles  
Belles Graham Proudfoot & Wilson, LLP  
4334 Rice Street, Suite 202  
Lihue, Hawaii 96766

RECEIVED  
OCT 16 2007

Subject: Special Management Area Use Permit SMA(U)-2007-13  
Project Development Use Permit PDU-2007-25  
Class IV Zoning Permit Z-IV-2007-29  
SVO Pacific, Inc., applicant  
Tax Map Key 2-8-15: 43, 44 & 82, and 2-8-16: 3 & 4

BELLES GRAHAM  
PROUDFOOT & WILSON, LLP

Dear Michael:

The Planning Commission, at its meeting held on October 10, 2007, amended and approved the subject permits to develop a time share resort project within the existing Sheraton Kaua'i Resort in Kōloa. Of the existing 413 hotel rooms within the hotel, 227 hotel rooms and all other existing improvements within the Garden Wing parcel will be demolished and the parcel will be consolidated with the adjacent 3 parcels. A time share development consisting of 382 one, two and three bedroom condo units and associated amenities, 948 parking stalls, and typical resort access uses will be provided. The remaining 186 hotel units within the Ocean Wing parcel will remain as hotel rooms. Improvements and renovations will occur also. A previously approved 18 unit wing was voluntarily reduced to 15 units. The proposed development will also include a new access road with a public sidewalk and bikeway, and the undergrounding of existing overhead utility lines along the mauka side of Hoonani Road will occur. Approval is subject to the following conditions:

1. In order to minimize adverse impacts on Federally Listed Threatened Species, such as Newell's Shearwater and other seabirds, if external lighting is to be used in connection with the proposed project, all external lighting shall be only of the following types: shielded lights, cut-off luminaires, or indirect lighting. Spotlights aimed upward or spotlighting of structures, landscaping, signage or hotel features within the project site shall be prohibited.

EXHIBIT "A"

2. In accordance with Section 9-2.8 of the Kauai County Code, 1987, the requirement of the Park Dedication In-Lieu Fee is applicable to this project relating to "Parks and Playgrounds" are applicable to the project and shall be resolved at the time of building permit approval. Also, in accordance with Section 11A-2.2 of the KCC, the Applicant shall submit to the Planning Department an Environmental Impact Assessment Fees (EIA) for the project. The EIA fees are based on \$1,000 per new multi-family unit, and \$100 per the minimum number of parking stalls serving the commercial development components as required by County Code Section 11A-2.2. Both of these fees are due at time of first building permit approval.
3. Applicant shall record all of the conditions imposed under the subject permits with the deed(s) to the properties of the resort project. A copy of this recordation shall be provided to the Planning Department at time of building permit application.
4. Applicant shall provide annual status reports to the Planning Commission beginning from one year from the date of this approval. The reports shall be submitted to the Department no later than 30 days prior to the annual anniversary date of approval of this project. The report shall provide project status and progress towards project completion and compliance with conditions of approval. Annual reports shall be provided until completion of the project, and compliance with all conditions of approval.
5. Applicant shall substantially commence construction of the project development within one (1) year from the date of full approval, and shall complete construction of the project development within 5 years from the date of approval of the subject permits.
6. Subject permits approved herein cannot be sold and are not transferable to other than Applicant, its subsidiaries and affiliated corporations and legal entities prior to the completion of the project and issuance of the occupancy permit.
7. In accordance with Section 8-5.5 of the Kauai County Code, 1987, the Applicant shall provide a grant of easement for all non-leasehold public areas, such as beach parking, multi-use access paths, shower and bench area, cultural/historical preserves and sites, and lateral coastal multi-use beach walk. Said easement document shall also be recorded, with a recorded copy provided to the Planning Department at time of building permit review. All such public areas shall be adequately signed. The 42 public parking stalls shall also be signed, with such signage managed and maintained by the Applicant to ensure that employees and/or guests shall not be utilizing such parking areas. For any leasehold property owned by the applicant such property shall be conveyed to the County only for the duration of the leasehold interest as may be approved by the Planning Department.

Language and signage design shall be subject to Planning Department review and approval.

8. As represented, the Applicant shall:

- a. design the Lobby building within the Mauka Parcel to also function as a hurricane emergency shelter for the project's residents, guests and key employees. Said design shall be as reviewed and approved by the County Civil Defense agency. The Applicant shall also maintain its current bus evacuation plan to accommodate guests who may prefer to evacuate the site during impending hurricane situations.
- b. implement alternate transport system recommendations of the Koloa-Poipu-Kukuiula Area Circulation Plan (KPACP), including a Koloa-Poipu shuttle circulator system targeted to residents, visitors and employees.
- c. implement transportation demand management (TDM) measures for employees which could potentially include ridesharing, transit services, and a transportation allowance.
- d. seek County authorization to refurbish and maintain the existing comfort station located at the southeastern end of the Hoonani Road cul-de-sac
- e. develop and implement a demolition and new construction materials recycling program, as reviewed and approved by the Department of Public Works, Solid Waste Division, and DOH.
- f. prepare a drainage report to address the increase in storm runoff as a result of the development. A copy of the drainage report and grading plan approved by the Department of Public Works shall be submitted to the Planning Department.
- g. Filling of the property with material obtained from off-premises shall not be permitted, except as may be necessary to comply with the site drainage and grading requirements as resolved with the Department of Public Works and Planning Department. This prohibition of exported fill material shall not apply to top soil used for landscaping purposes in accordance with the approved landscaped plans. Mass pad filling to increase the heights of the proposed structures shall not be permitted except as resolved with the Department of Public Works and Planning Department.
- h. provide building and architectural design, vehicular access, view corridors, public access, color scheme, and landscaping as represented in the project application or as was amended during the course of the public hearings. Plans for each phase of the project shall be submitted for the review and approval of the Planning Director at time of building permit review.

- h. work with the County Transportation Agency as to the possible relocation of existing bus stops adjacent to the property and for the provision of roof improvements for said bus stops.
- i. place the Hoonani Road utilities serving the project underground.
- j. continue to use its best efforts to work with the County Housing Agency in an effort to develop an agreement for participating in the provision of affordable housing for its employees as may be required by law.
- k. obtain information on the cultural resources of the area once the project's Cultural Focus Group completes its report. Said report shall be provided, and as updated, to the Planning Department.
- l. develop a blasting plan for review and approval by the Public Works and Planning Departments. Said blasting plan shall include public notice via newspaper, radio and hand delivered flyers to residents within 1000 feet of the property, where notice is given at least 1 week in advance of the of the activity. Such notice shall include the date and time of the blasting, and a contact name and phone number.
- m. follow the dust mitigation protocol established by the Dust Hui during construction of the project. A current copy of said protocol shall be provided to the Department.
- n. the number of units remaining authorized by SMA(U)-96-9 and Z-IV-96-25 shall be reduced from 18 to 15.

Evidence of the implementation of these programs or the manner of addressing these issues shall be provided to the Department prior to building permit review.

- 9. In order to help screen the structures from public views as seen from public areas, and to blend the structures with its surroundings, external colors shall be of earth tones, complementary to the existing Sheraton Kauai Resort buildings within the Makai Parcel and compatible with the surrounding natural background. In addition, the Applicant shall prepare a landscape plan to further soften the existing building mass. The landscape plan shall reflect the use of native plants that are common to the area, endemic, indigenous, or Polynesian-introduced. The proposed color scheme and landscape plan shall be submitted to the Planning Department for review and approval prior to building permit review.

In addition, the Applicant shall continue the landscape theme already established on the makai side of Poipu Road, and which the Commission has required of other properties located along Poipu Road, while honoring the commitment to preserve the view corridors over this property and down Kapili Road as represented by the Applicant. Applicant shall consult with the Poipu Beach Resort Association

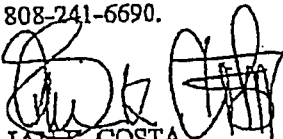
regarding foliage along Poi'pū Road, prior to Department review of the landscaping plan.

10. If historic/cultural remains such as archaeological artifacts, charcoal deposits or human burials are found during construction, the Applicant shall stop work in the immediate area, and shall contact the State Historic Preservation Division (SHPD) at 742-7033, and the Planning Department, to determine appropriate action.
11. To the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kauai contractors as long as they are qualified and reasonably competitive with other contractors, and shall seek to employ residents of Kauai in temporary construction and permanent resort-related jobs. It is recognized that the Applicant may have to employ non-Kauai residents for particular skilled jobs where no qualified Kauai resident possesses such skills. For the purposes of this condition, the Commission shall relieve the Applicant of this requirement if the Applicant is subjected to anti-competitive restraints on trade or other monopolistic practices.
12. The Applicant shall consider the application of Leadership in Energy and Environmental Design (LEED) and green building council principles, standards and strategies wherever feasible for sustainable site, utilities and building development.
13. Approval of the subject permits is based on the revised conceptual site plan dated 9/11/2007 developed by WCIT Architecture, which reflects: a view corridor from Poipu Road through the open motor court of the lobby building, the location of three 4-story parking structures, the location of the 3 and 4-story step-down structures along the perimeter, and reduction in units from 382 to 365 units.
14. As recommended by the Water Department, applicant shall be required to:
  - a. Submit a formal request for water service to the DOW for our review and approval. Include detailed water demand (both domestic and irrigation) calculations along with the proposed water meter size. Identify whether water demands will be from new or existing water meter(s). Water demand calculations submitted by your engineer or architect should also include fixture count and water meter sizing worksheets. This shall be done for both the new development and the renovation developments. The Department's comments may change depending on the approved water demand calculations.
  - b. Prepare and receive DOW's approval of construction drawings for the necessary water system facilities and construct said facilities. These facilities shall include but not be limited to:
    1. Additional source and storage facilities
    2. The domestic service connections.
    3. The fire service connections, if applicable.
    4. The interior plumbing plans with the appropriate backflow prevention device.

the mauka-makai connection road between Poipu Road and Hoonani Road with the Department of Public Works.

18. The Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or revoke the subject permits through proper procedures should the Applicant fail to comply with the conditions of approval, or should unforeseen circumstances occur or result.
19. Should the applicant be unable to comply with the development time line in condition #5 above and request an extension of time, applicant is advised that any new laws, ordinances, or regulations that have been implemented within this time frame may become applicable to the project.
20. In view of the various conditions and recommendations imposed by the various government agencies as referenced to herein, building permit application or preconstruction work for any phase of the project or portion of the property shall not be accepted until the Applicant submits a status report of all permit conditions that are either required to be complied with prior to or at time of building permit application.
21. 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).
22. As an accessory use, the establishment of a rock crusher operation on site shall be subject to review and approval of the Planning Director. Such use shall not be permitted unless it can be assured that the resultant dust and noise can be properly and adequately addressed. If such cannot be assured, such activity shall occur at an alternate site where such impacts to abutting residential uses will not occur.

Should there be any questions regarding the above, please contact planner Michael Laureta at 808-241-6690.

  
IAN R. COSTA  
Planning Director

cc: DPW Engineering Div.  
Water Dept.  
State Health Dept.  
DLNR-Historic Preservation Div.  
Fire Dept.  
Finance Dept., Real Property Div.  
DOT Hwys

End of Exhibit "A"

5. A 12 inch main extension, approximately 1,200 ft in length along Kapili Road connecting to the 12 inch main along Poipu and Hoonani Roads.

- c. Pay the applicable charges in effect at the time of payment to the Department. At the present time these charges shall include but not be limited to the Facilities Reserve Charge (FRC) \$4,600 per unit or the FRC amount as determined by the approved water meter size; whichever amount is greater.

The applicant is made aware that applicable FRC liability shall be offset by up to 33% each where water source or water storage improvements are constructed and up to 50% where transmission mains are constructed; provided that the total amount of all offsets shall not exceed 100% of the applicant's FRC liability, and provided further that the offset for any source or storage improvements or transmission main shall not exceed the actual cost of the source or storage improvement or transmission main.

- d. Receive a "Certification of Completion" for the construction of the necessary water system facilities from the DOW.

15. The Applicant shall comply with the requirements and recommendations of applicable County, State and Federal Agencies, including the County Fire, Engineering and Building Divisions of the Department of Public Works, and the State Department of Health, State Department of Transportation-Highways Division.

16. As recommended by the State Department of Land and Natural Resources, Historic Preservation Division:

- a. An approved preservation plan for site 947 (railroad berm) which includes interpretation (short and long term measures) and breaching and restoration plans must be submitted to the State Historic Preservation Division for review and approval.
- b. Data recovery of Site 362 shall be completed as agreed to in the approved data recovery plan and an approved report on this work be submitted to the State Historic Preservation Division prior to the start of construction, and
- c. A qualified archaeologist shall be on the project area for all ground disturbing activities and perform work as outlined in the approved archaeological monitoring plan. An approved report on this work shall be submitted to the State Historic Preservation Division once the monitoring work is completed.

17. The Applicant shall conform to the anticipated Koloa—Poipu Area Circulation Plan process and will pay, immediately prior to issuance of the first building permit for the project, the voluntary fair share contributions (VFSC), unless the impact fee has been identified in an Ordinance by that time, in which case it shall pay the impact fee. In the event the VFSC is paid, the final fee amount shall be in lieu of the impact fee in the anticipated ordinance. The applicant shall work out the engineering details of the project access onto Poipu Road, Kapili Road and Hoonani Road, and





L-53 STATE OF HAWAII  
OFFICE OF ASSISTANT REGISTRAR  
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on Cert(s) AS LISTED HEREIN



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1st CARL T. WATANABE  
ASSISTANT REGISTRAR

Land Court System

Regular System

After Recordation, Return By Mail ☐ Or Pickup ☒

SVO Pacific, Inc.  
8803 Vistana Centre Drive, Suite 360  
Orlando, FL 32821  
Attn: Bo (Rouselle) Sutton, Esq.

TA290645-5

Title of Document:

(Total Pages: 13)

MEMORANDUM OF SPECIAL MANAGEMENT AREA USE  
PERMIT SMA (U)-2007-13, PROJECT DEVELOPMENT USE  
PERMIT PDU-2007-25, AND CLASS IV ZONING PERMIT Z-  
IV-2007-29

Parties To Document:

KAUAI BLUE, INC., a Delaware corporation  
SVO PACIFIC, INC., a Florida corporation

Tax Map Key Nos.: (4) 2-8-015:043, 044, and 082  
(4) 2-8-016:004

TCT Nos.: 687,179; 797,563; 797,564

THIS MEMORANDUM OF SPECIAL MANAGEMENT AREA USE PERMIT SMA  
(U)-2007-13, PROJECT DEVELOPMENT USE PERMIT PDU-2007-25, AND CLASS IV  
ZONING PERMIT Z-IV-2007-29 ("Memorandum") is made as of May 5th,  
2008, by KAUAI BLUE, INC., a Delaware corporation ("Kauai Blue"), and SVO PACIFIC,  
INC., a Florida corporation ("SVOP").

WHEREAS, Kauai Blue is the fee owner of the land described in Item 1 of Exhibit "A" attached hereto and incorporated herein;

WHEREAS, SVOP is the fee owner of the lands described in Items 2 and 3 of said Exhibit "A" (Items 1, 2 and 3 of Exhibit "A" are referred to collectively as the "Real Property");

WHEREAS, on October 10, 2007, the Kanai Planning Commission (the "Commission") approved Special Management Area Use Permit SMA (U)-2007-13, Project Development Use Permit PDU-2007-25, and Class IV Zoning Permit Z-IV-2007-29 (collectively, the "Permits"), which Permits relate to and authorize the development of a resort, timeshare project on the Real Property;

WHEREAS, the Commission's approval of the Permits is memorialized in that certain letter dated October 10, 2007, from Kauai Planning Director Ian Costa to Michael J. Belles, Esq., a true copy of which is attached hereto as Exhibit "B" (the "Permit Approval Letter");

WHEREAS, condition no. 3 of the Permit Approval Letter provides that "[a]pplicant shall record all of the conditions imposed under the subject permits with the deed(s) to the properties of the resort project"; and

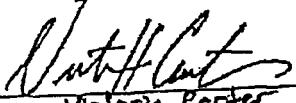
WHEREAS, Kauai Blue and SVOP desire to record this Memorandum against the Real Property to give notice of the approval of the Permits and the conditions thereto as memorialized in the Permit Approval Letter and as required by condition no. 3 thereof;

NOW, THEREFORE, in consideration of the foregoing Recitals, Kauai Blue and SVOP hereby give notice of the approval of the Permits and the conditions thereto as memorialized in the Permit Approval Letter.

IN WITNESS WHEREOF, Kanai Blue and SVOP have each caused this Memorandum to be executed and delivered by a duly authorized officer or representative,

SVO PACIFIC, INC.,  
a Florida corporation

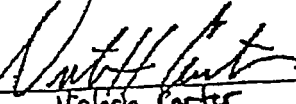
By

  
Name: Victoria Carter

Title: Senior Vice President, Assistant Secretary

KAUAI BLUE, INC.,  
a Delaware corporation

By

  
Name: Victoria Carter

Title: Senior Vice President, Assistant Secretary

STATE OF FLORIDA

COUNTY OF ORANGE

} SS.  
)

On this 5<sup>th</sup> day of May, 2008, before me appeared VICTORIA H. CARTER, to me personally known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same in the capacity stated herein as his free act and deed.

her



Barbara Dickie  
Name: BARBARA DICKIE  
Notary Public, State of FLORIDA

My commission expires: 5/16/10

EXHIBIT "A"

REAL PROPERTY

Item 1:

All of that certain parcel of land situate at Koloa, District of Koloa, Island and County of Kauai, State of Hawaii, described as follows:

LOT 267, area 10.730 acres, more or less, as shown on Map 67, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 956 of Bishop Trust Company, Limited, Trustee for Eric A. and Augustus F. Knudsen;

Being the land(s) described in Transfer Certificate of Title No. 687,179 issued to KAUI BLUE, INC., a Delaware corporation.

Item 2:

All of that certain parcel of land situate at Koloa, Island and County of Kauai, State of Hawaii, described as follows:

LOT 217-C, area 9.718 acres, more or less, as shown on Map 71, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 956 of Bishop Trust Company, Limited, Trustee for Eric A. and Augustus F. Knudsen;

Being land(s) described in Transfer Certificate of Title No. 797,563 issued to SVO PACIFIC, INC., a Florida corporation.

Item 3:

-FIRST:-

All of that certain parcel of land situate at Koloa, Island and County of Kauai, State of Hawaii, described as follows:

LOT 89, area 20,000 square feet, more or less, as shown on Map 18, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 956 of Bishop Trust Company, Limited, Trustee for Eric A. and Augustus F. Knudsen.

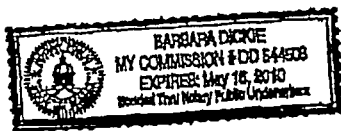
Together with a means of ingress and egress to and from a public highway over and across Lots 162 and 163 as shown on Map 18, and Lot 202 as shown on Map 27, of said Land Court Application No. 956, (Roadways) as set forth by Land Court Order No. 9840, filed September 22, 1950, and Land Court Order No. 20122, filed June 1, 1962.

STATE OF FLORIDA

COUNTY OF ORANGE

)  
) SS.  
)

On this 5<sup>th</sup> day of May, 2008, before me appeared VICTORIA H. CARTER, to me personally known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same in the capacity stated herein as his free act and deed.  
her



Barbara Dickie  
Name: BARBARA DICKIE  
Notary Public, State of FLORIDA

My commission expires: 5/16/10

# EXHIBIT "B"

BRYAN J. BAPTISTE  
MAYOR

GARY K. HEU  
ADMINISTRATIVE ASSISTANT



COUNTY OF KAUAI  
PLANNING DEPARTMENT  
4444 RICE STREET  
KAPULE BUILDING, SUITE A473  
LIHUE, KAUAI, HAWAII 96766-1326  
TEL (808) 241-6677 FAX (808) 241-6699

IAN K. COSTA  
DIRECTOR OF PLANNING

IMAUKALANI P. AIU  
DEPUTY DIRECTOR OF PLANNING

October 10, 2007

Michael J. Belles  
Belles Graham Proudfoot & Wilson, LLP  
4334 Rice Street, Suite 202  
Lihue, Hawaii 96766

RECEIVED  
OCT 16 2007

Subject: Special Management Area Use Permit SMA(U)-2007-13  
Project Development Use Permit PDU-2007-25  
Class IV Zoning Permit Z-IV-2007-29  
SVO Pacific, Inc., applicant.  
Tax Map Key 2-8-15: 43, 44 & 82, and 2-8-16: 3 & 4

BELLES GRAHAM  
PROUDFOOT & WILSON, LLP

Dear Michael:

The Planning Commission, at its meeting held on October 10, 2007, amended and approved the subject permits to develop a time share resort project within the existing Sheraton Kauai Resort in Koloa. Of the existing 413 hotel rooms within the hotel, 227 hotel rooms and all other existing improvements within the Garden Wing parcel will be demolished and the parcel will be consolidated with the adjacent 3 parcels. A time share development consisting of 382 one, two and three bedroom condo units and associated amenities, 948 parking stalls, and typical resort access uses will be provided. The remaining 186 hotel units within the Ocean Wing parcel will remain as hotel rooms. Improvements and renovations will occur also. A previously approved 18 unit wing was voluntarily reduced to 15 units. The proposed development will also include a new access road with a public sidewalk and bikeway, and the undergrounding of existing overhead utility lines along the mauka side of Hoonani Road will occur. Approval is subject to the following conditions:

1. In order to minimize adverse impacts on Federally Listed Threatened Species, such as Newell's Shearwater and other seabirds, if external lighting is to be used in connection with the proposed project, all external lighting shall be only of the following types: shielded lights, cut-off luminaires, or indirect lighting. Spotlights aimed upward or spotlighting of structures, landscaping, signage or hotel features within the project site shall be prohibited.

AN EQUAL OPPORTUNITY EMPLOYER

-SECOND:-

All of that certain parcel of land situate at Koloa, Island and County of Kauai, State of Hawaii, described as follows:

LOT 88, area 20,000 square feet, more or less, as shown on Map 18, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 956 of Bishop Trust Company, Limited, Trustee for Eric A. and Augustus F. Knudsen.

Together with a means of ingress and egress to and from a public highway over and across Lots 162 and 163 as shown on Map 18, and Lot 202 as shown on Map 27, of said Land Court Application No. 956, (Roadways) as set forth by Land Court Order No. 9840, filed September 22, 1950, and Land Court Order No. 20122, filed June 1, 1962.

Being lands described in Transfer Certificate of Title No. 797,564 issued to SVO PACIFIC, INC., a Florida corporation.

End of Exhibit "A"



2. In accordance with Section 9-2.8 of the Kauai County Code, 1987, the requirement of the Park Dedication In-Lieu Fee is applicable to this project relating to "Parks and Playgrounds" are applicable to the project and shall be resolved at the time of building permit approval. Also, in accordance with Section 11A-2.2 of the KCC, the Applicant shall submit to the Planning Department an Environmental Impact Assessment Fees (EIA) for the project. The EIA fees are based on \$1,000 per new multi-family unit, and \$100 per the minimum number of parking stalls serving the commercial development components as required by County Code Section 11A-2.2. Both of these fees are due at time of first building permit approval.
3. Applicant shall record all of the conditions imposed under the subject permits with the deed(s) to the properties of the resort project. A copy of this recordation shall be provided to the Planning Department at time of building permit application.
4. Applicant shall provide annual status reports to the Planning Commission beginning from one year from the date of this approval. The reports shall be submitted to the Department no later than 30 days prior to the annual anniversary date of approval of this project. The report shall provide project status and progress towards project completion and compliance with conditions of approval. Annual reports shall be provided until completion of the project, and compliance with all conditions of approval.
5. Applicant shall substantially commence construction of the project development within one (1) year from the date of full approval, and shall complete construction of the project development within 5 years from the date of approval of the subject permits.
6. Subject permits approved herein cannot be sold and are not transferable to other than Applicant, its subsidiaries and affiliated corporations and legal entities prior to the completion of the project and issuance of the occupancy permit.
7. In accordance with Section 8-5.5 of the Kauai County Code, 1987, the Applicant shall provide a grant of easement for all non-leasehold public areas, such as beach parking, multi-use access paths, shower and bench area, cultural/historical preserves and sites, and lateral coastal multi-use beach walk. Said easement document shall also be recorded, with a recorded copy provided to the Planning Department at time of building permit review. All such public areas shall be adequately signed. The 42 public parking stalls shall also be signed, with such signage managed and maintained by the Applicant to ensure that employees and/or guests shall not be utilizing such parking areas. For any leasehold property owned by the applicant such property shall be conveyed to the County only for the duration of the leasehold interest as may be approved by the Planning Department.

Language and signage design shall be subject to Planning Department review and approval.

8. As represented, the Applicant shall:

- a. design the Lobby building within the Mauka Parcel to also function as a hurricane emergency shelter for the project's residents, guests and key employees. Said design shall be as reviewed and approved by the County Civil Defense agency. The Applicant shall also maintain its current bus evacuation plan to accommodate guests who may prefer to evacuate the site during impending hurricane situations.
  - b. implement alternate transport system recommendations of the Koloa-Poipu-Kukuihula Area Circulation Plan (KPACP), including a Koloa-Poipu shuttle circulator system targeted to residents, visitors and employees.
  - c. implement transportation demand management (TDM) measures for employees which could potentially include ridesharing, transit services, and a transportation allowance.
  - d. seek County authorization to refurbish and maintain the existing comfort station located at the southeastern end of the Hoonani Road cul-de-sac
  - e. develop and implement a demolition and new construction materials recycling program, as reviewed and approved by the Department of Public Works, Solid Waste Division, and DOH.
  - f. prepare a drainage report to address the increase in storm runoff as a result of the development. A copy of the drainage report and grading plan approved by the Department of Public Works shall be submitted to the Planning Department.
- Filling of the property with material obtained from off-premises shall not be permitted, except as may be necessary to comply with the site drainage and grading requirements as resolved with the Department of Public Works and Planning Department. This prohibition of exported fill material shall not apply to top soil used for landscaping purposes in accordance with the approved landscaped plans. Mass pad filling to increase the heights of the proposed structures shall not be permitted except as resolved with the Department of Public Works and Planning Department.
- g. provide building and architectural design, vehicular access, view corridors, public access, color scheme, and landscaping as represented in the project application or as was amended during the course of the public hearings. Plans for each phase of the project shall be submitted for the review and approval of the Planning Director at time of building permit review.

regarding foliage along Poi'pu Road, prior to Department review of the landscaping plan.

10. If historic/cultural remains such as archaeological artifacts, charcoal deposits or human burials are found during construction, the Applicant shall stop work in the immediate area, and shall contact the State Historic Preservation Division (SHPD) at 742-7033, and the Planning Department, to determine appropriate action.
11. To the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kauai contractors as long as they are qualified and reasonably competitive with other contractors, and shall seek to employ residents of Kauai in temporary construction and permanent resort-related jobs. It is recognized that the Applicant may have to employ non-Kauai residents for particular skilled jobs where no qualified Kauai resident possesses such skills. For the purposes of this condition, the Commission shall relieve the Applicant of this requirement if the Applicant is subjected to anti-competitive restraints on trade or other monopolistic practices.
12. The Applicant shall consider the application of Leadership in Energy and Environmental Design (LEED) and green building council principles, standards and strategies wherever feasible for sustainable site, utilities and building development.
13. Approval of the subject permits is based on the revised conceptual site plan dated 9/11/2007 developed by WCIT Architecture, which reflects: a view corridor from Poi'pu Road through the open motor court of the lobby building, the location of three 4-story parking structures, the location of the 3 and 4-story step-down structures along the perimeter, and reduction in units from 382 to 365 units.
14. As recommended by the Water Department, applicant shall be required to:
  - a. Submit a formal request for water service to the DOW for our review and approval. Include detailed water demand (both domestic and irrigation) calculations along with the proposed water meter size. Identify whether water demands will be from new or existing water meter(s). Water demand calculations submitted by your engineer or architect should also include fixture count and water meter sizing worksheets. This shall be done for both the new development and the renovation developments. The Department's comments may change depending on the approved water demand calculations.
  - b. Prepare and receive DOW's approval of construction drawings for the necessary water system facilities and construct said facilities. These facilities shall include but not be limited to:
    1. Additional source and storage facilities
    2. The domestic service connections.
    3. The fire service connections, if applicable.
    4. The interior plumbing plans with the appropriate backflow prevention device.

- h. work with the County Transportation Agency as to the possible relocation of existing bus stops adjacent to the property and for the provision of roof improvements for said bus stops.
- i. place the Hoonani Road utilities serving the project underground.
- j. continue to use its best efforts to work with the County Housing Agency in an effort to develop an agreement for participating in the provision of affordable housing for its employees as may be required by law.
- k. obtain information on the cultural resources of the area once the project's Cultural Focus Group completes its report. Said report shall be provided, and as updated, to the Planning Department.
- l. develop a blasting plan for review and approval by the Public Works and Planning Departments. Said blasting plan shall include public notice via newspaper, radio and hand delivered flyers to residents within 1000 feet of the property, where notice is given at least 1 week in advance of the of the activity. Such notice shall include the date and time of the blasting, and a contact name and phone number.
- m. follow the dust mitigation protocol established by the Dust Hui during construction of this project. A current copy of said protocol shall be provided to the Department.
- n. the number of units remaining authorized by SMA(U)-96-9 and Z-IV-96-25 shall be reduced from 18 to 15.

Evidence of the implementation of these programs or the manner of addressing these issues shall be provided to the Department prior to building permit review.

- 9. In order to help screen the structures from public views as seen from public areas, and to blend the structures with its surroundings, external colors shall be of earth tones, complementary to the existing Sheraton Kapa'i Resort buildings within the Makai Parcel and compatible with the surrounding natural background. In addition, the Applicant shall prepare a landscape plan to further soften the existing building mass. The landscape plan shall reflect the use of native plants that are common to the area, endemic, indigenous, or Polynesian-introduced. The proposed color scheme and landscape plan shall be submitted to the Planning Department for review and approval prior to building permit review.

In addition, the Applicant shall continue the landscape theme already established on the makai side of Poipu Road, and which the Commission has required of other properties located along Poipu Road, while honoring the commitment to preserve the view corridors over this property and down Kapili Road as represented by the Applicant. Applicant shall consult with the Poipu Beach Resort Association

5. A 12 inch main extension, approximately 1,200 ft in length along Kapili Road connecting to the 12 inch main along Poipu and Hoonani Roads.

- c. Pay the applicable charges in effect at the time of payment to the Department. At the present time these charges shall include but not be limited to the Facilities Reserve Charge (FRC) \$4,600 per unit or the FRC amount as determined by the approved water meter size; whichever amount is greater.

The applicant is made aware that applicable FRC liability shall be offset by up to 33% each where water source or water storage improvements are constructed and up to 50% where transmission mains are constructed; provided that the total amount of all offsets shall not exceed 100% of the applicant's FRC liability, and provided further that the offset for any source or storage improvements or transmission main shall not exceed the actual cost of the source or storage improvement or transmission main.

- d. Receive a "Certification of Completion" for the construction of the necessary water system facilities from the DOW.

15. The Applicant shall comply with the requirements and recommendations of applicable County, State and Federal Agencies, including the County Fire, Engineering and Building Divisions of the Department of Public Works, and the State Department of Health, State Department of Transportation-Highways Division.

16. As recommended by the State Department of Land and Natural Resources, Historic Preservation Division:

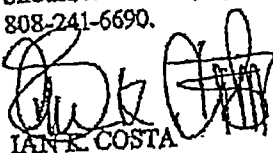
- a. An approved preservation plan for site 947 (railroad berm) which includes interpretation (short and long term measures) and breaching and restoration plans must be submitted to the State Historic Preservation Division for review and approval.
- b. Data recovery of Site 362 shall be completed as agreed to in the approved data recovery plan and an approved report on this work be submitted to the State Historic Preservation Division prior to the start of construction; and
- c. A qualified archaeologist shall be on the project area for all ground disturbing activities and perform work as outlined in the approved archaeological monitoring plan. An approved report on this work shall be submitted to the State Historic Preservation Division once the monitoring work is completed.

17. The Applicant shall conform to the anticipated Koloa—Poipu Area Circulation Plan process and will pay, immediately prior to issuance of the first building permit for the project, the voluntary fair share contributions (VFSC), unless the impact fee has been identified in an Ordinance by that time, in which case it shall pay the impact fee. In the event the VFSC is paid, the final fee amount shall be in lieu of the impact fee in the anticipated ordinance. The applicant shall work out the engineering details of the project access onto Poipu Road, Kapili Road and Hoonani Road; and

the mauka-makai connection road between Poipu Road and Hoonani Road with the Department of Public Works.

18. The Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or revoke the subject permits through proper procedures should the Applicant fail to comply with the conditions of approval, or should unforeseen circumstances occur or result.
19. Should the applicant be unable to comply with the development time line in condition #5 above and request an extension of time, applicant is advised that any new laws, ordinances, or regulations that have been implemented within this time frame may become applicable to the project.
20. In view of the various conditions and recommendations imposed by the various government agencies as referenced to herein, building permit application or preconstruction work for any phase of the project or portion of the property shall not be accepted until the Applicant submits a status report of all permit conditions that are either required to be complied with prior to or at time of building permit application.
21. 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).
22. As an accessory use, the establishment of a rock crusher operation on site shall be subject to review and approval of the Planning Director. Such use shall not be permitted unless it can be assured that the resultant dust and noise can be properly and adequately addressed. If such cannot be assured, such activity shall occur at an alternate site where such impacts to abutting residential uses will not occur.

Should there be any questions regarding the above, please contact planner Michael Laureta at 808-241-6690.



IAIN K. COSTA  
Planning Director

cc: DPW Engineering Div.  
Water Dept.  
State Health Dept.  
DLNR-Historic Preservation Div.  
Fire Dept.  
Finance Dept., Real Property Div.  
DOT Hwys

End of Exhibit "B"

GREG KAMM PLANNING & MANAGEMENT  
P.O. BOX 1200  
KOLOA, KAUAI, HAWAII 96756

June 16, 2008

Mr. Ian Costa, Director  
Kauai County Planning Department  
4444 Rice Street Suite 473  
Lihue HI 96766

RE: Sheraton Kauai Resort Expansion Project (the "Project")  
Special Management Area Use Permit SMA-(U)-2007-13  
Project Development Use Permit PDU-2007-25  
Class IV Zoning Permit Z-IV-2007-29 (the "Subject  
Permits") TMKs: 2-8-16:3 & 4 and 2-8-15: 82, 43 & 44.

Dear Mr. Costa:

Thank you for taking the time to meet with Eric Crispin, Vice President of Starwood Hotels and Resorts, Jean Camp and myself, along with your Senior Planner, Mike Laureta to discuss the Project and its Subject Permits.

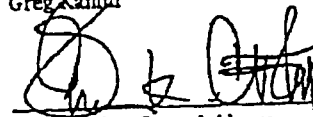
Per your request, this letter, once fully executed, will document the Planning Department's definition of "full approval", as such phrase is used and contained in Condition #5 of the Special Management Area Use Permit SMA-(U)-2007-13 for the Project. As you confirmed, it was the Planning Department's original intent for "full approval" to mean the Applicant's acquirement of all permits and approvals, from all governmental agencies and departments, necessary to allow for all construction approved by the Subject Permits.

In closing, please provide your counter-signature and date below, and return one original to my attention. Mahalo for your on-going help and support.

Very truly yours,



Greg Kamm

  
Approved as Stated Above  
Ian Costa, Planning Director

6/27/08  
Date

EXHIBIT "C"



**RECORDER'S MEMO**  
Document Text NOT Legible For Digital Imaging



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OFFICE OF ASSISTANT REGISTRAR  
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on Cert(s) AS LISTED HEREIN



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/s/ CARL T. WATANABE  
ASSISTANT REGISTRAR

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return by: Mail ( ) Pickup ( )  
Belles Graham Proudfoot & Wilson (DHW)  
4334 Rice Street, Suite 202  
Lihua, Kauai, Hawaii 96766  
Telephone: (808) 245-4705

TLA 390682 -5

This document contains 8 pages

TYPE OF DOCUMENT:

DECLARATION OF PUBLIC FACILITIES EASEMENTS

PARTIES TO DOCUMENT:

DECLARANTS: SVO PACIFIC, INC. a Florida corporation  
8801 Vistana Centre Drive  
Orlando, Florida 32821

KAUAI BLUE, INC., a Delaware corporation  
1111 Westchester Avenue  
White Plains, New York 10604

TAX MAP KEY FOR PROPERTY:

(4) 2-8-015-043, (4) 2-8-015-044, (4) 2-8-015-082 and (4) 2-8-016-004

## DECLARATION OF PUBLIC FACILITIES EASEMENTS

This Declaration of Public Facilities Easements is made effective this 23rd day of May, 2008, by SVO PACIFIC, INC., a Florida corporation, whose mailing address is 8801 Vistana Centre Drive, Orlando, Florida 32821 ("SVO"), and KAUAI BLUE, INC., a Delaware corporation, whose mailing address is 1111 Westchester Avenue, White Plains, New York 10604 ("Kauai Blue"), hereinafter collectively called the "Declarants."

### I. RECITALS

A. SVO is the owner of certain property located in District of Koloa, Island and County of Kauai, State of Hawaii described as (a) Lot 89, as shown on Map 18, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii ("Land Court") with Land Court Application No. 956, identified by Kauai Tax Map Key No. (4) 2-8-015-043, being a portion of the property described in Transfer Certificate of Title No. 797,564, (b) Lot 88, as shown on Map 18, filed in the Land Court with Land Court Application No. 956, identified by Kauai Tax Map Key No. (4) 2-8-015-044, being a portion of the property described in Transfer Certificate of Title No. 797,564, and (c) Lot 217-C, as shown on Map 71, filed in the Land Court with Land Court Application No. 956, identified by Kauai Tax Map Key No. (4) 2-8-015-082, being the property described in Transfer Certificate of Title No. 797,563.

B. Kauai Blue is the owner of certain property located in District of Koloa, Island and County of Kauai, State of Hawaii described as Lot 267, as shown on Map 67, filed in the Land Court with Land Court Application No. 956, identified by Kauai Tax Map Key No. (4) 2-8-016-004, being the property described in Transfer Certificate of Title No. 687,179.

C. The properties described herein are collectively referred to herein as the "Declarants' Property."

D. The Declarants' Property is a portion of the property that is the subject of Special Management Area Use Permit SMA(U)-2007-13, Project Development Use Permit PDU-2007-25, and Class IV Zoning Permit Z-IV-2007-29 (collectively the "Permits"), all approved by the Planning Commission of the County of Kauai, State of Hawaii (said County being hereinafter referred to as the "County") by that certain unrecorded letter dated October 10, 2007 (the "Permit Approval Letter").

E. Pursuant to the rights granted under the Permit Approval Letter, the Declarants intend to construct a resort vacation project (the "Declarants' Project").

F. As one of the conditions to the granting of approval of the Permits, the Declarants are required to establish certain easements for all non-leasehold public areas as more particularly described in the Permit Approval Letter.

### II. DECLARATION OF EASEMENT

Pursuant to the foregoing Recitals, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, and subject to all of the terms, conditions and

limitations contained herein, the Declarants do hereby declare the following areas to be public easements for the following purposes:

(A) Easement A-1, being a perpetual, non-exclusive easement for public pedestrian access purposes around the entire perimeter of the Declarants' Property.

(B) Easement A-2, being a perpetual, non-exclusive easement for public vehicular and pedestrian access purposes.

(C) Easement A-3, being a perpetual, non-exclusive easement for public pedestrian access purposes to the burial site located within this Easement Area.

(D) Easement A-4, being a perpetual, non-exclusive easement for public pedestrian access purposes.

(E) Easement P-1, being a perpetual, non-exclusive easement for public vehicular parking purposes in compliance with the terms and conditions of the Permits.

(F) Easement H-1, being a perpetual, non-exclusive easement for historic preserve and public pedestrian access purposes.

The foregoing easements shall be referred to herein as the "Easement" or the "Easements," depending on the context.

The Easements are located approximately as shown on the map attached hereto and incorporated herein by reference as Exhibit "A." The portion of the Declarants' Property subject to the Easements shall be referred to hereinafter as the "Easement Areas" or the "Easement Area," depending on the context.

EXCEPTING AND RESERVING HOWEVER, from this Declaration the right of the Declarants to make use of the land within the Easement Areas in any manner which is not inconsistent with the Easement purposes described herein and the right to grant other easements within the Easement Areas for such purposes as are not inconsistent with and will not unreasonably interfere with the public rights hereunder.

This Declaration is made on the following terms and conditions:

1. Intent The Declarants' intention is to establish the Easements to be used by the County and the general public for the purposes stated herein, subject to the terms and conditions contained in this Declaration.

2. Improvements Within Easement Area The Declarants shall construct, install, maintain, reconstruct, replace and repair such specific improvements within the Easement Areas in furtherance of the purposes described herein as shall be appropriate and, if necessary, as approved in advance by the appropriate governmental agency. The Declarants shall have the right to construct, install, maintain, reconstruct, replace and repair additional improvements or utilities within the Easement Areas, and to install and maintain vegetation within the Easement Areas, provided such vegetation or

improvements do not unreasonably interfere with public's rights hereunder or the public's use of the Easement Areas.

3. Condemnation. If at any time the Easement Areas, or any part thereof, shall be condemned or taken for any public project by any governmental authority, the County shall have the right to claim or recover from the condemning authority, but not from the Declarants or either of them, such compensation as is payable for the Easement and the rights granted herein.

4. Relocation of Easement Areas. The Declarants reserve the right from time to time to relocate any portion or all of the Easement Areas to a new location(s) within the Declarants' Property.

5. Designation of Land Court Easements; Grant of Easement For Public Facilities. It is understood that after construction of the improvements authorized under the Permit Approval Letter or as may be further authorized by the County Planning Commission pursuant to a final consolidation approval for the Declarants' Property, and after designation of the Easement Areas on an appropriate Map approved by the Land Court of the State of Hawaii (the "Land Court"), the Declarants and the County will enter into one or more formal "Grant(s) of Easement For Public Facilities" on substantially the same terms and conditions contained herein and describing the Easement Areas in detail, consistent with the approved Land Court Map designating the Easement Areas. The Declarants agree to submit the appropriate Map and Petition to the Land Court to designate the Easement Area(s) located in each Phase of the Declarants' Project prior to the issuance by the County of a Certificate of Occupancy for that Phase of the Declarants' Project. Not later than forty-five (45) days after Land Court approval of the said Map and Petition for such Phase of the Declarants' Project, the Declarants shall deliver in recordable form to the County Planning Department a Grant of Easement For Public Facilities for such Phase of the Declarants' Project.

6. Exercise of Rights. The Declarants and all members of the general public shall exercise their respective rights hereunder in such manner as to occasion as little interference as reasonably necessary with the use of the Easement Areas by the other party.

7. County's Indemnification. This Declaration is made on the express condition that the County and the County's agents, servants, employees, invitees and guests, and the general public, will use the Easements at their sole risk, and that the County will indemnify, defend and hold harmless the Declarants and their respective successors and assigns against any and all claims and demands for any liability, costs, expenses, attorneys' fees, loss, damage or injury to persons or property, including the claims of its agents, servants, employees, invitees and guests that shall or may arise by reason of the use of the Easement by the County and the County's agents, servants, employees, invitees, or guests, except to the extent such claims or demands arise by reason of the Declarants' own gross negligence or willful misconduct.

8. Condition of Easement Area. The Declarants have not made and do not make any representation or warranty with respect to the condition of the Easement Areas, and the Easement Areas shall be used and enjoyed by the public in their "as is" condition.

9. Limitation of Use.

a. The County's and the general public's rights hereunder shall be strictly limited to those necessary to allow the County or the general public to utilize the Easement Areas for the purposes

intended and described above. Such rights hereunder shall be limited to those uses legally permitted on the Easement Areas and for no other purposes. The Declarants, for themselves and their respective successors and assigns, reserve the right to peaceably remove any person: (a) who has caused or is causing a public nuisance within or in the immediate vicinity of the Easement Areas or (b) whose actions are illegal or in violation of the terms of this instrument.

b. In addition to the general terms stated in the preceding paragraph 9.a, use of the entire Easement Areas by the County and the general public shall be restricted as follows:

(1) Hours of use of the Easement Areas under this Declaration shall be limited to daylight hours (i.e., sunrise to sunset); and

(2) Normal community standards of dress and behavior shall be required by all persons using the Easement Areas pursuant to this Declaration.

c. The Declarants reserve the right to remove any vehicle that is parked or abandoned within the Easement Areas for an unreasonable amount of time.

10. Maintenance. The Declarants shall be solely responsible for maintaining and repairing the improvements in the Easement Area in good and safe repair and condition. The Declarant shall place and maintain adequate signage, and with regard to the vehicular parking area such signage shall clearly indicate that the parking area is for public parking and not for the Declarants' employees and/or guests.

11. Service of Notice. Any written notice or request required or authorized to be served hereunder shall be deemed delivered and received either upon the actual personal receipt thereof by the receiving party or within five (5) business days after the notice has been posted with the U.S. Mail, return receipt requested, addressed to the receiving party at its address as stated herein, or at such other address as the receiving party may have previously designated to the sending party in writing.

12. Severability. If any term or provision of this Declaration is determined by a court or competent jurisdiction to be illegal, invalid or unenforceable for any reason whatsoever, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of the remainder of this Declaration.

13. Headings For Reference Only. The headings of the sections and subsections herein are inserted only for convenience and reference and shall in no way define, limit or describe the scope or intent of any provision of this Declaration.

[text continued on next page]

STATE OF FLORIDA )  
COUNTY OF ORANGE ) SS:

On this 23<sup>rd</sup> day of MAY, 2008, before me appeared DENIS IEBRILL, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



CHRISTINE MALONEY  
MY COMMISSION # DD 424478  
EXPIRES: September 1, 2009  
Bundled Time Budget Notary Services

Christine Maloney

Name of Notary: CHRISTINE MALONEY  
Notary Public, In and For Said State and County.

My commission expires: 09/01/09

STATE OF FLORIDA )  
COUNTY OF ORANGE ) SS:

On this 23<sup>rd</sup> day of MAY, 2008, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



CHRISTINE MALONEY  
MY COMMISSION # DD 424478  
EXPIRES: September 1, 2009  
Bundled Time Budget Notary Services

Christine Maloney

Name of Notary: CHRISTINE MALONEY  
Notary Public, In and For Said State and County.

My commission expires: 09/01/09

14. Counterparts. This Declaration may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages from separate signed copies may be attached to a single copy for purposes of recording.

15. Interpretation. This Declaration shall be interpreted in accordance with the laws of the State of Hawaii.

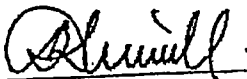
16. Terms. The term "Declarants" as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals or corporation, and the Declarants and each of their respective devisees, successors in trust, successors, heirs, personal representatives and assigns, according to the context thereof.

17. HRS Chapter 520. It is intended that this Declaration will promote the purposes of Hawaii Revised Statutes Chapter 520 by making land and water areas available to the public for recreational purposes, and as a result that the Declarants will be eligible for the limitations in liability set forth in said Chapter 520.

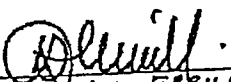
IN WITNESS WHEREOF, the Declarants have executed this Declaration of Public Facilities Easements effective as of the date written above.

DECLARANTS:

SVO PACIFIC, INC., a Florida corporation

By   
Name: DENIS EBRILL  
Its: SR. VICE PRESIDENT

KAUAI BLUE, INC., a Delaware corporation

By   
Name: DENIS EBRILL  
Its: SR. VICE PRESIDENT







BRYAN BAPTISTE, Mayor  
MARK B. L. MARSHALL, Administrator

**KAUAI CIVIL DEFENSE AGENCY**  
**COUNTY OF KAUAI**  
3990 Kapa Street, Suite 100  
Lihue, HI 96766



Box: (808) 241-1800  
FAX: (808) 241-1860  
e-mail: emops@koda.state.hi.us

August 31, 2007

The Honorable Theodore Daligdig III, Chairman, and Members  
Kauai County Planning Commission  
4444 Rice Street  
Lihue, Kauai, HI 96766

Attn: Mike Laureta, Planner

RE: Sheraton Kauai Expansion Project Permit Applications

Dear Chairman Daligdig and Members of the Commission:

I am writing to comment on the subject applications as it deals with hurricane treat to the subject property.

Mr. Jim Neely of Starwood and Mr. Greg Kamm, planning consultant, met with me to seek my advice and comment relative to the design of the project and operational response to hurricane advisories, watches, warnings, and actual events. They indicated the Planning Commission had raised this question during a recent hearing, so they wanted input from the Civil Defense Agency.

I have already met with Mr. Nick Arruda, Director of Security for the Sheraton Kauai, and his staff several times and have apprised him of our Agency's preferences and concerns. Their current plan is to use chartered buses (already under contract to Sheraton) to evacuate to a Public Shelter. This new initiative builds on that previous approach and provides an opportunity to expand and "build in" solutions to this resort expansion project.

As you are aware, there is a significant shortage of emergency shelter space on the Island. Although both Kauai Community College and the Kauai War Memorial Convention Hall are public shelters, available to all, in light of the overall shortage, we would like to see additional alternatives become available. Accordingly, where possible and appropriate, Civil Defense is recommending "Shelter in Place on Site." In this instance, particularly for hurricanes, it appears that portions of Sheraton's new mauka lobby building will be able to accommodate most or all of the approximately 1,500 visitors and employees, including the key staff members families, whom we have learned from experience, need to be sheltered on property to keep the key staff on the property.

EXHIBIT "E"

The Honorable Theodore Daligdig III, Chairman, and Members  
August 31, 2007  
Page 2

The sub-grade parking garage can be made suitable to house these visitors and staff during and possibly after a hurricane event. After the event, the lower level of the building (one level above the garage) will allow expansion of available space and a greater degree of comfort.

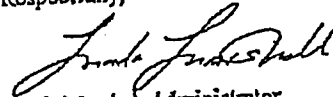
Sheraton appears ready to undertake the needed facilities program modifications to make the building have a greater wind-resistance factor, as well as the needed utilities to serve the occupants.

At the same time, some guests may prefer to evacuate, to reach a shelter closer to the airport to facilitate departure from the island. Given the advances in prediction of hurricanes out to a window of at least several days, these two strategies, when paired, represent a reasonable response to a hurricane threat.

On this basis, the County Civil Defense Agency recommends the Commission's approval of the expansion, subject to the condition that both programs of hardening and upgrading the lobby building and maintaining the bus evacuation option be conditions of that approval.

It is rare that a resort takes such forward-thinking measures, so I am pleased to be able to write this letter.

Respectfully,



Mark Marshall, Administrator  
Kauai Civil Defense Agency

c: Mr. Jim Neely, Starwood, 808-665-0495 fax  
Mr. Eric Crispin, Starwood, 808-924-5039 fax  
Mr. Greg Kamm, GK P&M 808-742-1751 fax

GREG KAMM PLANNING & MANAGEMENT  
P.O. BOX 1200  
KOLOA, KAUAI, HAWAII 96756

voice: 808-742-1144 cell: 808-639-1144 fax 808-742-1751

May 20, 2008

Mr. Donald Fujimoto, County Engineer  
Kauai County Department of Public Works  
4444 Rice Street Suite 275  
Lihue HI 96766

RE: Sheraton Kauai Resort Expansion Project  
Special Management Area Use Permit SMA-(U)-2007-13  
Project Development Use Permit PDU-2007-25  
Class IV Zoning Permit Z-IV-2007-29  
TMKs: 2-8-16:3 & 4 and 2-8-15: 82, 43 & 44.

Dear Donald:

Condition 8.d. of the subject permits requires the Applicant to "seek County authorization to refurbish and maintain the existing comfort station located at the southeastern end of the Hoonani Road cul-de-sac."

This letter is our request for authorization to undertake steam-cleaning of all surfaces, repainting of the structure in a color similar to the existing, and replacement of any fixtures or fittings which are required.

Thereafter, Sheraton Kauai/Starwood will maintain the comfort station to a standard appropriate to the quality destination which Poipu has become.

Please authorize us to proceed and contact me with any questions,

Very truly yours,



Greg Kamm for Starwood Hotels & Resorts

cc: Sheraton Kauai/Starwood Compliance Team

EXHIBIT "F"

GREG KAMM PLANNING & MANAGEMENT  
P.O. BOX 1200  
KOLOA, KAUAI, HAWAII 96756

May 20, 2008

Mr. Ian Costa, Director  
Kauai County Planning Department  
4444 Rice Street  
Suite 473  
Lihue HI 96766

RE: Sheraton Kauai Resort Expansion Project  
Special Management Area Use Permit SMA-(U)-2007-13  
Project Development Use Permit PDU-2007-25  
Class IV Zoning Permit Z-IV-2007-29  
TMKs: 2-8-16:3 & 4 and 2-8-15: 82, 43 & 44.

attn: Mr. Mike Laureta, Senior Staff Planner

Dear Mr. Laureta:

Condition 9 of the subject permits reads as follows:

9. In order to help screen the structure from public views as seen from public areas, and to blend the structures with its surroundings, external colors shall be of earth tones, complementary to the existing Sheraton Kauai Resort buildings within the Makai Parcel and compatible with the surrounding natural background. In addition, the Applicant shall prepare a landscape plan to further soften the existing building mass. The landscape plan shall reflect the use of native plants that are common to the area, endemic, indigenous, or Polynesian-introduced. The proposed color scheme and landscape plan shall be submitted to the Planning Department for review and approval prior to building permit review.

In addition, the Applicant shall continue the landscape theme already established on the makai side of

EXHIBIT "G"

*Poipu Road, and which the Commission has required of other properties located along Poipu Road, while honoring the commitment to preserve the view corridors over this property and down Kapili Road as represented by the Applicant. Applicant shall consult with the Poipu Beach Resort Association regarding foliage along Poipu Road prior to Department review of the landscaping plan.*

Starwood Hotels/Sheraton Kauai met with the PBRA Board on the morning of May 8, 2008. Our landscape architects, Walters, Kimura, Motoda, Inc. presented the conceptual landscape plan to Board. There was a healthy exchange of ideas, and ultimately the Board expressed support that Sheraton was going to upgrade Poipu Road.

As you recall, Eric Crispin and I met with you and Donald Fujimoto on the afternoon of May 8, 2008 and delivered the landscape plan we had presented to PBRA that morning. This constituted submission of the plans called for in the above condition. We understood from the meeting that both the landscape plans and the rural roadway and sidewalk sections for Poipu and Kapili Roads and the "landscape bulb" section for Ho'onani Road were acceptable to both key departments, so we are moving forward on the construction documents on that basis.

The only item remaining to fully comply with this condition is submittal of a color scheme for the structures. We will be submitting that shortly, but you may rest assured the scheme will follow the condition's directive of utilizing "earth tones."

For your convenience, attached is a copy of the same landscape brochure we presented to PBRA and to you.

Please contact me with any questions.

Sincerely,



Greg Kamm  
for Sheraton Kauai

encl.

cc w/o encl.: Sheraton Kauai/Starwood

**STARWOOD**  
HOTELS & RESORTS WORLDWIDE, INC.

May 29, 2008

Donald M. Fujimoto, P.E.  
County Engineer, Director, Dept of Public Works  
County of Kauai  
Mo'ikeha Building  
4444 Rice Street Suite 275  
Lihue, Kauai, HI 96766

RE: Sheraton Kauai Resort Expansion Project  
Special Management Area Use Permit SMA-(U)-2007-13  
Project Development Use Permit PDU-2007-25  
Class IV Zoning Permit Z-IV-2007-29  
TMKs: 2-8-16:3 & 4 and 2-8-15: 82, 43 & 44.  
And  
Consolidation of Land Court Application 956, Lot 267 (Map 67), Lot 217-C  
(Map 71) and Lots 88 and 89 (Map 18) into Lot A, at Koloa, Kauai, Hawaii.  
(S-2007-38, SVO Pacific, Inc./Kauai Blues, Inc.).

Dear Mr. Fujimoto:

This letter is to formally transmit our Draft drawings dated 8 May 2008 for the Sheraton Kauai Resort expansion, as reviewed and discussed at our meeting on May 9, 2008 at our Starwood office in Honolulu, which was in follow-up to our earlier discussion on April 11, 2008 with Greg Kamm, Wally Kudo and Deputy Ed Renaud at your office.

In the letter to Ron Wagner dated Nov. 28, 2007 granting Tentative Approval of the Consolidation, Condition 1.b.(2) reads as follows:

*(2) [Applicant shall] Widen and improve Po'ipu Road, Kapili Road, and Ho'onani Road with curbs, gutters, and sidewalks in accordance with the Department of Public Works roadway standards;*



2155 Kalia Avenue, Suite 300, Honolulu, Hawaii 96815 Tel: 808 821 4000 Fax: 808 823 0551

EXHIBIT "H"



By way of summary of our discussions on this topic, the following are highlights as agreed upon:

- **Generally:**
  - Rather than implementing an "urban section" of curbs, gutters, and sidewalks as called for above, we will provide a "rural section" more typical of and in keeping with the Poipu Resort area. The rural section will reflect the drawings prepared by Walters Kimura Motoda, Inc. dated May 8, 2008 (attached): e.g. roadway bordered by grass swale, small landscaped berm, sidewalk, and large, undulating landscaped berm. Further, "widen" is intended to mean a widening of the ROW, but not necessarily widening the pavement.
- **Poipu Road:**
  - Will follow "rural section" with grass swale, low landscaping, meandering shared use path (bike/pedestrian walkway), undulating berm (berm undulates both vertically and horizontally).
- **Kapili Road:**
  - Will follow "rural section" with grass swale, low landscaping, meandering shared use path (bike/pedestrian walkway), landscaped berm.
- **Beach Access Road:**
  - This private driveway will have a public access easement. The design will follow the same "rural section" with landscaping bordering Kiahuna Plantation, followed by roadway, grass swale, low landscaping, meandering shared use path (bike/pedestrian walkway), and an undulating berm. On this driveway, once we get to final engineering, we may accommodate the bicycles in a bike lane instead of a shared use path, but they will be accommodated.
- **Ho'onani Road:**
  - Will have curbs, gutters, sidewalk. Note as discussed, the existing street parking will remain, and we plan to create landscaping "bulb-outs" to protect the parking, enhance the landscaping, and to provide the perception of a slightly narrower road. As discussed, the existing wide pavement causes drivers to accelerate on this dead-end road and creates a danger to pedestrians going to the beach; the landscaped bulb-outs will create defined "pockets" for street parking while give the perception of a narrower, calmer, quieter, and hopefully safer road. We anticipate minimal, if any, loss of street parking stalls by doing this significant improvement. At the same time it will enhance the road's appearance.

Mr. Donald Fujimoto  
Page 3

#### Construction Sequencing

We plan to begin construction of the resort expansion at the currently undeveloped land in the corner of Poipu Road and Kapili Road.

- **Initial Construction**

We plan on beginning construction in the vacant parcel located in the corner of Poipu Road and Kapili Road, making the sidewalk and landscaping improvements, providing continuity to our neighboring properties (Koloa Landing to the West and Kiahuna Plantation to the East). We will also plan on providing landscaping and sidewalk improvements along Kapili Road, connecting the new development to our existing Resort.

- **Further Construction**

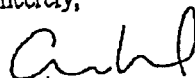
After completion of Initial Construction, we plan to subsequently build the remaining elements of the Resort as indicated in our site plan, implementing the new Beach Access Road and the undergrounding of utilities / landscaping on Ho'onani Road, to coincide with the future phases of development, which call for demolition of the existing Garden Wing hotel rooms and facilities.

Please note that we have met with Planning Director Ian Costa about this approach and his reaction toward this design was favorable.

We understand, based on our meetings with you and your staff, that the approach outlined above and shown in the attached drawings meet with your approval, and we will proceed accordingly.

Please contact me if this is not your understanding, We invite you to call me to coordinate any questions you may have.

Sincerely,

 for ERIC CRISPIN

Eric Crispin  
Vice President, Development - Hawaii  
Starwood Hotels & Resorts Worldwide, Inc

encl.

by email w/o encl.: Mike Fujita, WOC  
Larry Cunha, WCIT  
Greg Kamm, GKP&M  
Jean Camp, CC LLC  
Mike Williams, Starwood  
Jim Neely, Starwood  
T. Sannerborg, Starwood

GREG KAMM PLANNING & MANAGEMENT  
P.O. BOX 1200  
KOLOA, KAUAI, HAWAII 96756

voice: 808-742-1144 cell: 808-639-1144 fax 808-742-1751

May 29, 2008

Mr. Ian Costa, Director  
Kauai County Planning Department  
4444 Rice Street  
Suite 473  
Lihue HI 96766

via hand delivery

RE: Sheraton Kauai Resort Expansion Project  
Special Management Area Use Permit SMA-(U)-2007-13  
Project Development Use Permit PDU-2007-25  
Class IV Zoning Permit Z-IV-2007-29  
TMKs: 2-8-16:3 & 4 and 2-8-15: 82, 43 & 44.

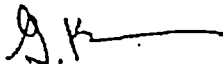
attn.: Mr. Mike Laureta, Senior Staff Planner

Dear Mr. Laureta:

In compliance with condition 8.k. of the above-referenced permits, I am pleased to enclose one copy of the Hawaiian Cultural Plan for the Sheraton-Poipu Beach Villas, prepared by the Peter Apo Company in cooperation with the Cultural Focus Group assembled for this effort.

Please contact me with any questions.

Very truly yours,



Greg Kamm

encl.

cc w/o encl via email: Sheraton Kauai  
Starwood Compliance Team

EXHIBIT "I"

# STARWOOD

April 23, 2008

Mr. Ian Costa, Director  
Kauai County Planning Dept.  
4444 Rice St.  
Building A Suite 473  
Lihue, Kauai, HI 96766

Subject: Sheraton Kauai Resort  
Special Management Area Use Permit SMA (U)-2007-13  
Class IV Zoning Permit Z-IV-2007-29  
SVO Pacific, Inc. Applicant  
Tax Map Key 2-8-15:43, 44, 82, and 2-8-16:3 & 4 Polpu, Kauai

Re: Condition No. 8.m - Dust Mitigation Protocol

Dear Mr. Costa:

This letter is to document Starwood's compliance with SMA Condition No. 8.m for the subject property, which states:

"m. follow the dust mitigation protocol established by the Dust Hui during construction of the project. A current copy of said protocol shall be provided to the Department."

Starwood has been a founding member of the Dust Hui which was formed in conjunction with Kuku'i'ula, Goodfellow Brothers, Koloa Landing, and KMP. The Dust Hui protocol was created in the Spring of 2007, and has been managed and implemented on various job sites by Ms. Patil Melzener in accordance with the following Protocol:

1. Best Management Practices are put into place: Dust fence, sprinklers installed to keep down dust, earthwork contractors hose down site work during earth moving operations.
2. Hot line number is set up (ideally same number as the existing number).
3. Phone calls received by that number are logged as to caller, address, date, time, nature of complaint
4. A personal site visit is then conducted by the "Dust Mitigation Officer" to assess the damage, verify complaint
5. Individual who files the complaint obtains one or more cost estimates for mitigation - i.e. car wash, power wash/cleaning of individual home, other measures as deemed necessary.

STARWOOD

W

WESTIN

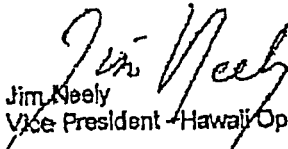
EXHIBIT "J"

6. Dust Mitigation officer reviews and authorizes the work to be done.
7. Individual pays for the work and work is performed
8. Developer reimburses the Individual for the authorized work

This letter is to inform you that SVO Pacific, Inc. will adhere with the above Dust Mitigation Protocol or as may be subsequently amended.

Should you have any questions, please feel free to contact me at (808) 689-3691.

Yours very truly,  
SVO PACIFIC, INC.

  
Jim Neely  
Vice President - Hawaii Operations

GREG KAMM PLANNING & MANAGEMENT  
P.O. BOX 1200  
KOLOA, KAUAI, HAWAII 96756

May 20, 2008

Mr. Ian Costa, Director  
Kauai County Planning Department  
4444 Rice Street  
Suite 473  
Lihue HI 96766

RE: Sheraton Kauai Resort Expansion Project  
Special Management Area Use Permit SMA-(U)-2007-13  
Project Development Use Permit PDU-2007-25  
Class IV Zoning Permit Z-IV-2007-29  
TMKs: 2-8-16:3 & 4 and 2-8-15: 82, 43 & 44.

attn: Mr. Mike Laureta, Senior Staff Planner

Dear Mr. Laureta:

Condition 9 of the subject permits reads as follows:

9. In order to help screen the structure from public views as seen from public areas, and to blend the structures with its surroundings, external colors shall be of earth tones, complementary to the existing Sheraton Kauai Resort buildings within the Makai Parcel and compatible with the surrounding natural background. In addition, the Applicant shall prepare a landscape plan to further soften the existing building mass. The landscape plan shall reflect the use of native plants that are common to the area, endemic, indigenous, or Polynesian-introduced. The proposed color scheme and landscape plan shall be submitted to the Planning Department for review and approval prior to building permit review.

In addition, the Applicant shall continue the landscape theme already established on the makai side of

EXHIBIT "K"

*Polpu Road, and which the Commission has required of other properties located along Polpu Road, while honoring the commitment to preserve the view corridors over this property and down Kapili Road as represented by the Applicant. Applicant shall consult with the Polpu Beach Resort Association regarding foliage along Polpu Road prior to Department review of the landscaping plan.*

Starwood Hotels/Sheraton Kauai met with the PBRA Board on the morning of May 8, 2008. Our landscape architects, Walters, Kimura, Motoda, Inc. presented the conceptual landscape plan to Board. There was a healthy exchange of ideas, and ultimately the Board expressed support that Sheraton was going to upgrade Polpu Road.

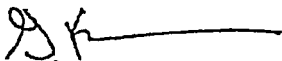
As you recall, Eric Crispin and I met with you and Donald Fujimoto on the afternoon of May 8, 2008 and delivered the landscape plan we had presented to PBRA that morning. This constituted submission of the plans called for in the above condition. We understood from the meeting that both the landscape plans and the rural roadway and sidewalk sections for Polpu and Kapili Roads and the "landscape bulb" section for Ho'onani Road were acceptable to both key departments, so we are moving forward on the construction documents on that basis.

The only item remaining to fully comply with this condition is submittal of a color scheme for the structures. We will be submitting that shortly, but you may rest assured the scheme will follow the condition's directive of utilizing "earth tones."

For your convenience, attached is a copy of the same landscape brochure we presented to PBRA and to you.

Please contact me with any questions.

Sincerely,



Greg Kamm  
for Sheraton Kauai

encl.

cc w/o encl.: Sheraton Kauai/Starwood



LINDA LINGGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION  
681 KAMOKILA BOULEVARD, ROOM 355  
KAPOLEI, HAWAII 96707

6.22.07

ALLAN A. BARTH  
CHAIRMAN  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSIONER OF WATER RESOURCES MANAGEMENT

PETER YOUNG  
DEPUTY DIRECTOR - LAND

ADJUTANT GENERAL  
BOARD OF LAND AND NATURAL RESOURCES  
BOARD OF CONSERVATION  
COMMISSIONER OF WATER RESOURCES MANAGEMENT  
COMMISSIONER OF LAND AND NATURAL RESOURCES  
COMMISSIONER OF CONSERVATION AND RECREATION

FOREST AND WILDLIFE  
HISTORIC PRESERVATION  
KUMULIWA BEACH RESERVE COMMISSION  
LAND  
STATE PARKS

June 19, 2007

Hallett Hammatt, Ph.D.  
Cultural Surveys Hawai'i  
Post Office Box 1114  
Kailua, Hawai'i 96734

LOG: 2007.1965  
DOC: 0706NM35  
Archaeology

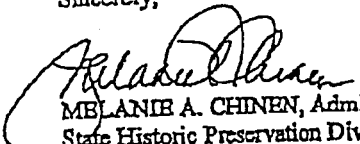
Dear Dr. Hammatt:

SUBJECT: Chapter 6E-42 - Historic Preservation Review - Preservation Plan and  
Reconstruction Plan for Site 50-30-10-0947 a Railroad Berm in Koloa  
(CSH, Hammatt and Shideler May 2007)  
Koloa Ahupua'a, Kona District, Kauai  
TMK: [4] 2-8-015: 082

Thank you for submitting the aforementioned preservation and reconstruction plan for the railroad berm at the Sheraton Kanai Hotel by CSH, Hammatt and Shideler (2007). The plan calls for four breaches in the berm, three stabilization areas, and two reconstruction locations along the berm. Billy Fields is the overseer of the stabilization and reconstruction work on the berm. The Kauai Historic Preservation Review Commission in their June 2007 meeting approved of this plan. The plan includes interim and long-term measures which are acceptable. The plan is acceptable.

If you have any questions, please call Nancy McMahon our Kauai and Molokai Archaeologist who reviewed this plan at (808) 742-7033.

Sincerely,

  
MELANIE A. CHINEN, Administrator  
State Historic Preservation Division

NM:jen

c: Greg Kamm, Greg Kamm Planning and Management  
KHPRC

EXHIBIT "L"

**EXHIBIT "M"**

LINDA LINGGEE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
STATE HISTORIC PRESERVATION DIVISION  
601 KAMOKILA BOULEVARD, ROOM 555  
KAPOLAH, HAWAII 96707

ALLAN A. SMITH  
MEMBER CHAIRMAN  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCES MANAGEMENT

PETER T. YOUNG  
DEPUTY DIRECTOR

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

ACQUITTORNEY  
BOATOWN AND OCEAN RECREATION  
BUREAU OF CONVEYANCE  
COMMISSION ON WATER RESOURCES MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RECREATION DEVELOPMENT  
BUREAU  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAPOLAH BOULEVARD IN CONSERVATION  
LAND  
STATE POLICE

July 9, 2007

Hallett Hammatt, Ph.D.  
Cultural Surveys Hawai'i  
Post Office Box 1114  
Kailua, Hawai'i 96734

LOG: 2007.1971  
DOC: 0707NM02  
Archaeology

Dear Dr. Hammatt:

Subject: Chapter 6E-42 - Historic Preservation Review - Archaeological Data Recovery for  
-SIHP No. 50-30-010-0362 at the Proposed Starwood Vacation Ownership  
Development Project, Koloa Ahupuaa, Kona District, Island of Kauai (CSH,  
Tulchin and Hammatt May 2007)  
TMK: [4] 2-8-015: 43, 44, 82

Thank you for submitting the above cited archaeological data recovery report by Cultural Surveys Hawai'i (Tulchin and Hammatt) which we received on June 7, 2007. Site -0362 is a temporary habitation site where further archaeological work was done to gather information about construction and stone tool exchange patterns and age. Your research concludes that the method of construction was a base course on basalt bedrock. You have also included that construction of the hearth occurred after the construction of the enclosure. Furthermore, this report concludes that the tools originated from a local source from Koloa. The radiocarbon dates suggest the site dates from 1410 AD to modern.

The report is acceptable and is accepted as final. In the future, we recommend that when dating wood samples you also include a discussion identifying the wood type. If you have any questions, please call Nancy McMahon our Kauai and Molokai Archaeologist who reviewed this plan at 808-742-7033.

Sincerely,

  
Melanie A. Chinen, Administrator  
State Historic Preservation Division

NM:

EXHIBIT "M"

# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

## PLANNING DIRECTOR'S REPORT

**RE:** Annual Status Report 2023  
Special Management Area Use Permit SMA(U)-2004-06  
Project Development Use Permit P.D. U-2004-30  
Class IV Zoning Permit Z-IV-2004-35  
Tax Map Key: (4) 2-8-015:025-037, 045-074, 081  
Po'ipū, Kaua'i

**APPLICANT:** Po'ipū Beach Villas, LLC.

### PROJECT BACKGROUND

The subject permits were approved by the Planning Commission on November 23, 2004 to allow the construction of 323 multi-family condominium units, a manager's unit, 508 off-street parking stalls, swimming pool, and accessory structures and uses. Subsequent extensions were granted in one-year and two-year terms in 2006 and 2007, and a 5-year term was granted in 2009.

Condition No. 7 (original version) of the permits establishes the time frame to demonstrate "*substantial completion*" of the project:

- "7. *The Applicant shall provide annual status reports to the Planning Commission beginning one year from the date of this approval. The reports shall provide project status, and progress toward project completion and compliance with conditions of approval. Annual reports shall be provided until completion of the project, and compliance with all conditions of approval. Within five years of the date of approval of this application, the Applicant shall demonstrate substantial completion of the project. Substantial completion shall be demonstrated, at minimum, by the construction of all infrastructure, foundations, structure walls and roofing.*"

The condition was subsequently amended by the Planning Commission on November 24, 2009 to read as follows:

- "7. The Applicant shall submit to the Planning Department, annual status reports for review and approval by the Planning Commission no later than 60 days prior to November 23 of each consecutive year hereafter. The report shall provide project status and progress toward project completion and compliance. No later than September 23, 2014, the Applicant shall demonstrate substantial completion of the project. Substantial completion shall be demonstrated, at minimum, by the construction of all infrastructure, foundations, structure walls and roofing."

**A.I.B.I.**  
**NOV 14 2023**

In 2020, the Applicant requested an amendment to the project to increase the number of resort units (103 units) and reduce the number of buildings onsite. It was approved by the Planning Commission on November 10, 2020. There were additional conditions/requirements added and as a result, some of the conditions were renumbered to reflect the amendment. The condition concerning the annual reports remained but was renumbered to what is now Condition No. 8, which reads:


- "8. The Applicant shall provide annual status reports to the Planning Commission beginning one year from the date of this approval. The reports shall provide project status, and progress toward project completion and compliance with conditions of approval. Annual reports shall be provided until completion of the project, and compliance with all conditions of approval. Within five years of the state of approval of this condition, the Applicant shall demonstrate substantial completion of the project. Substantial completion shall be demonstrated, at a minimum, by construction of all infrastructure, foundations, structure walls, and roofing."

#### APPLICANT'S REQUEST

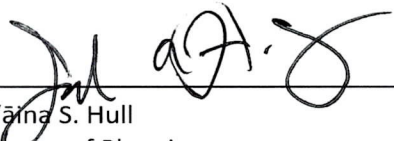
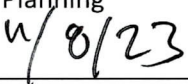
In accordance with Condition No. 8, the Applicant is providing the attached status and progress report (dated November 1, 2023) on behalf of Poipu Beach Villas, LLC., refer to Exhibit 'A'.

#### RECOMMENDATION

It is recommended that the Commission receives the Applicant's Annual Status Report dated November 1, 2023. Additionally, the Applicant is advised that all applicable conditions of approval, including the provision of annual status report as required by Condition No. 8, shall remain in effect.

By  \_\_\_\_\_  
Dale A. Cua  
Planner

Approved and recommended to Commission:

By  \_\_\_\_\_  
Ka'aina S. Hull  
Director of Planning  
Date:  \_\_\_\_\_

# EXHIBIT “A”

(2023 Annual Status Report)

## **KOLOA LANDING 2023 STATUS REPORT**

November 1, 2023

### **KAUAI PLANNING COMMISSION**

4444 Rice St., Ste. A473  
Lihue, HI 96766

RE: KOLOA LANDING 2023 ANNUAL STATUS REPORT  
Special Management Area Use Permit SMA(U)-2004-6  
Project Development Use Permit PDU-2004-30  
Class IV Zoning Permit Z-IV-2004-35  
Tax Map Keys (4) 2-8-015: 025-037, 045-074, 081  
Poipu, Kauai, Hawaii

APPLICANT: POIPU BEACH VILLAS, LLC

Ladies and Gentlemen of the Kauai Planning Commission,

The following report provides the current progress to date of the Koloa Landing Project originally approved in 2004. A total of twenty (20) conditions were attached to the approval, and since 323 units are already constructed, these conditions have been complied with.

On November 10, 2020, an amendment to the above permits was approved by the Planning Commission (Exhibit 1), which allowed an increase of 103 additional units to the overall project, raising the density from the original 323 units to 426 units. It should be noted that the public infrastructure (roads, sewer, utilities, etc.) to accommodate the additional 103 units is already in place, installed during the initial phases of the project.

### **COMPLIANCE WITH CONDITIONS OF APPROVAL**

This updated project status report addresses conditions that were added or revised in the approval of the amended permits dated November 10, 2020. The previous status report on the above subject project, dated December 12, 2022, provided updated information on the progress made at that time towards the development of these additional units and compliance with the added conditions, which were as follows:

Condition #23: Construction Parking: *".....an onsite parking area shall be designated for construction workers. Workers are discouraged from parking along the Poipu Road and Kapili Road right of way." Provision of construction worker parking onsite during the period of construction.*

This condition will be met by establishing a temporary parking area for construction workers on a site plan at time of building permit application.

Condition#24: Shoreline Setback Determination: *"...a Shoreline Setback Determination (SSD) may be necessary prior to building permit application."*

Compliance with this condition will be addressed at time of building permit application.



Condition #25: Workforce Housing: *"Prior to building permit review and action, the Applicant shall meet any requirements established by the Housing Agency. Documentation shall be submitted to the Planning Department by the Applicant demonstrating compliance with the Housing Agency's rules and requirements."*

Since the last status report submittal, the applicant has been negotiating with Mr. Adam Roversi, the Kauai County Housing Administrator, to discuss alternative solutions towards meeting the housing requirements applicable to the approval of the additional 103 units.

In June, 2022, a workforce housing analysis, as required by the Workforce Housing Ordinance, to explore options and develop a housing requirement, was prepared by CBRE Associates, an independent research firm, the study of which was submitted to the Housing Agency for review.

In December 2022, the Housing Administrator concluded that the workforce housing requirement would be established at 36 units. After reviewing options available, and due to the fact that Poipu Beach Villas LLC has agreed to make these units available at 60% of the Kauai median household income, a 50% reduction in the number of units to be provided was allowed. Therefore, the consensus reached with the Housing Administrator was to provide rental accommodations totaling 18 units, to satisfy the provision triggered by the additional density approved for the project.

To meet this requirement, the applicant has proposed a creative solution and will pursue the option of providing housing accommodations at another facility at property in Lihue, under their ownership (4536 Ekolu St; TMK: 3-8-08: 27, 1.445 ac.). Currently, a large residence of approximately 6,850 gross sq. ft., exists on the property, which is under lease to the Women In Need, a non-profit organization tasked with the care of abused women and children. The residence contains nine (9) bedrooms and six (6) baths, in addition to kitchen, living, dining, etc., facilities.

The solution proposed has two increments:

The first is to renovate the existing residence to ensure that each of the nine (9) bedrooms have a designated bathroom and a small kitchenette. This involves building three (3) additional bathrooms within the existing structure.

The second is to provide a new residential facility on the property, to include nine (9) bedrooms together with nine (9) in suite bathrooms and a small kitchenette. This new residence would also have a central entry, dining, living, utility, and communal kitchen area similar to the existing residence.

Condition #26: Bus Stop: *"Prior to building permit application, the applicant shall work with the County Transportation Agency (CTA) to coordinate whether a bus stop is necessary to serve the project."*

A bus stop would have been easily accommodated when this project was first approved if such a condition was established and incorporated as part of the original off-site improvements. Being that it is an "after the fact" condition, added in 2020, it becomes more of an issue to have it installed after the Poipu Road improvements were constructed. In addressing Condition #26, which requires the applicant to work with the County

Transportation Agency to coordinate whether a bus stop is necessary to serve the project, bus stops already exist near the project; a stop is located at the Kiahuna Shopping Village, which is approximately 1200 feet east of the project, and another near the Koloa Fire Station, approximately 1500 feet to the west. However, in light of this condition, the applicant will consult with the County Transportation Agency to determine its need.

WORKFORCE HOUSING AGREEMENT – DRAFT (Exhibit 2)

To solidify compliance with condition #25, the applicant has prepared a draft Workforce Housing Agreement with the Housing Agency and County of Kauai, committing to the provision and development of the required eighteen (18) units at the location proposed above.

The purpose of this agreement is as follows:

- a. To assure compliance by the developer and to confirm that the provision of the eighteen (18) units as proposed meets the requirements of County's Workforce Housing Ordinance, Ch. 7A Sec. 1.4.1(c)(2) and 2.1(b)(2);
- b. To provide the County of Kauai a contractually enforceable recourse should the developer fail to provide the affordable units as proposed, which include liquidated damages or withholding final inspections or certificates of occupancy.
- c. This agreement, currently in draft form, has county approval and is ready for execution prior to building permit application.

Should any additional information or clarification be needed relative to the solutions presented in the above status report, please contact me at (808) 651 9961 or email [thadley@koloalanding.com](mailto:thadley@koloalanding.com).

Respectfully submitted,

Todd Hadley, President

Attachments:

- Exhibit 1: Planning Commission Approval Letter dated November 12, 2020  
Exhibit 2: Draft Workforce Housing Agreement