



## PLANNING COMMISSION

KAAINA S. HULL, CLERK OF COMMISSION

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

RECEIVED

24 MAY 29 12:44

CLERK OF  
THE COUNTY CLERK  
COUNTY OF KAUAI

- The Planning Commission Meeting will be at:

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

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

**IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF BOARDS & COMMISSIONS AT (808) 241-4917 OR [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, June 4, 2024

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

RECEIVED

'24 MAY 29 P12:44

CLERK OF  
THE COUNTY CLERK  
COUNTY OF KAUAI

**A. CALL TO ORDER**

**B. ROLL CALL**

**C. APPROVAL OF AGENDA**

**D. MINUTES OF THE MEETING(S) OF THE PLANNING COMMISSION**

1. March 3, 2024.

**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)-2024-9), CLASS IV ZONING PERMIT (Z-IV-2024-4), and USE PERMIT (U-2024-4) to allow construction of a parking facility featuring four (4) canopy structures with rooftop photovoltaic (PV) system, new storage building, associated on-site improvements on a parcel situated on the west side of Ala Kalanikaumaka in Po'ipū, immediately adjacent to the Kukui'ula Shopping Center, situated approximately 350 feet west of the Ka'ulu Street/Ala Kalanikaumaka intersection, further identified as Tax Map Keys: (4) 2-6-015:010 & 011 (Por.), and affecting a total land area of approximately 13.35 acres = **KUKUI'ULA VILLAGE LLC**. [Director's report received 5/22/2024.]

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

- b. CLASS IV ZONING PERMIT (Z-IV-2024-5), VARIANCE PERMIT (V-2024-1), involving a 2-lot subdivision to allow deviations from the development standards within the Residential zoning district, and SPECIAL PERMIT (SP-2024-2) to allow a deviation from the minimum lot size requirement within the State Rural Land Use District, as prescribed by Hawaii Revised Statutes (HRS) Section 205-2(4)(c), on a parcel situated on the eastern side of Oma’o Road, approximately 1,700 feet south of the Oma’o Road/Naulu Place intersection, and further identified as 3756 Oma’o Road, Tax Map Key: (4) 2-7-004:007, and containing a total area of 1.126 acres = **DAVID A. & JODY K. STILLWELL, TRUSTEES.** [Director’s report received 5/22/2024.]

- 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. ZA-2024-1: A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Zoning Designations in Wailua, Kauai that would amend Zoning Map ZM-WA 500 (Wailua). The purpose of the bill is to eliminate the Special Treatment – Public Facilities (ST-P) zoning district designation for affected residential lots within Wailua = **COUNTY OF KAUAI, PLANNING DEPARTMENT.**

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

- b. ZA-2024-2: A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Zoning Designations in Hanapēpē, Kauai that would amend Zoning Map ZM-H 200 (Hanapēpē). The purpose of the bill is to eliminate the Special Treatment – Public Facilities (ST-P) zoning district designation for affected residential lots within Hanapēpē = **COUNTY OF KAUAI, PLANNING DEPARTMENT.**

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

- c. ZA-2024-3: A bill (2919) for an ordinance amending Chapter 8, Kaua’i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance (CZO). The purpose of this Ordinance is to expand the permissiveness of guest houses in zoning districts Residential (R-1 to R-6 and R-10 to R-20), Neighborhood Commercial (C-N), General Commercial (C-G), Agriculture (A), Open (O), and University (UNV), and make other technical edits = **KAUAI COUNTY COUNCIL.**

- 1. Transmittal of Agency Comments to Planning Commission.
- 2. Transmittal of Public Testimony to Planning Commission.
- 3. Director’s Report pertaining to this matter.

**G. CONSENT CALENDAR**

**1. Status Reports**

- a. Project status update for Project Development Use Permit PDU-2009-9, Class IV Zoning Permit Z-IV-2009-6, Tax Map Key: (4)3-8-005:022 = **UAHI RIDGE HUI, LIMITED PARTNERSHIP.**

**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. Clerk of the Commission's Recommendation to Re-number an Appeal of Forfeiture File for Failing to timely renew TVRNCU #1184, Charles Smith and Deani Higashi, approved by the Planning Commission on October 24, 2023, to CC-2024-6.

**I. COMMUNICATION**

- 1. None for this meeting.

**J. COMMITTEE REPORTS**

- 1. Subdivision Committee Report.
  - a. Subdivision Application No. S-2024-9  
**Inouye Family Trust, et al.**  
Proposed 2-Lot Boundary Adjustment  
TMK: (4) 2-3-018: 015 and 036  
Kalāheo, Kōloa, Kaua'i
  - b. Subdivision Application No. S-2017-6  
**Moloa'a Valley Homeowners, LLC.**  
Proposed 7-Lot Subdivision  
TMK: (4) 4-9-011: 013  
Kawaihau, Kaua'i

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

- 1. None for this Meeting.

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

1. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-9), CLASS IV ZONING PERMIT (Z-IV-2024-4), and USE PERMIT (U-2024-4) to allow construction of a parking facility featuring four (4) canopy structures with rooftop photovoltaic (PV) system, new storage building, associated on-site improvements on a parcel situated on the west side of Ala Kalanikaumaka in Po'ipū, immediately adjacent to the Kukui'ula Shopping Center, situated approximately 350 feet west of the Ka'ulu Street/Ala Kalanikaumaka intersection, further identified as Tax Map Keys: (4) 2-6-015:010 & 011 (Por.), and affecting a total land area of approximately 13.35 acres = **KUKUI'ULA VILLAGE LLC.** [Director's report received 5/22/2024.]
2. CLASS IV ZONING PERMIT (Z-IV-2024-5), VARIANCE PERMIT (V-2024-1), involving a 2-lot subdivision to allow deviations from the development standards within the Residential zoning district, and SPECIAL PERMIT (SP-2024-2) to allow a deviation from the minimum lot size requirement within the State Rural Land Use District, as prescribed by Hawaii Revised Statutes (HRS) Section 205-2(4)(c), on a parcel situated on the eastern side of Oma'o Road, approximately 1,700 feet south of the Oma'o Road/Naulu Place intersection, and further identified as 3756 Oma'o Road, Tax Map Key: (4) 2-7-004:007, and containing a total area of 1.126 acres = **DAVID A. & JODY K. STILLWELL, TRUSTEES.** [Director's report received 5/22/2024.]
3. ZA-2024-1: A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Zoning Designations in Wailua, Kauai that would amend Zoning Map ZM-WA 500 (Wailua). The purpose of the bill is to eliminate the Special Treatment – Public Facilities (ST-P) zoning district designation for affected residential lots within Wailua = **COUNTY OF KAUAI, PLANNING DEPARTMENT.**
4. ZA-2024-2: A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Zoning Designations in Hanapēpē, Kauai that would amend Zoning Map ZM-H 200 (Hanapēpē). The purpose of the bill is to eliminate the Special Treatment – Public Facilities (ST-P) zoning district designation for affected residential lots within Hanapēpē = **COUNTY OF KAUAI, PLANNING DEPARTMENT.**
5. ZA-2024-3: A bill (2919) for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance (CZO). The purpose of this Ordinance is to expand the permissiveness of guest houses in zoning districts Residential (R-1 to R-6 and R-10 to R-20), Neighborhood Commercial (C-N), General Commercial (C-G), Agriculture (A), Open (O), and University (UNV), and make other technical edits = **KAUAI COUNTY COUNCIL.**

## 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)-2024-9), CLASS IV ZONING PERMIT (Z-IV-2024-4), and USE PERMIT (U-2024-4) to allow construction of a parking facility featuring four (4) canopy structures with rooftop photovoltaic (PV) system, new storage building, associated on-site improvements on a parcel situated on the west side of Ala Kalanikaumaka in Po'ipū, immediately adjacent to the Kukui'ula Shopping Center, situated approximately 350 feet west of the Ka'ulu Street/Ala Kalanikaumaka intersection, further identified as Tax Map Keys: (4) 2-6-015:010 & 011 (Por.), and affecting a total land area of approximately 13.35 acres = **KUKUI'ULA VILLAGE LLC.**
2. CLASS IV ZONING PERMIT (Z-IV-2024-5), VARIANCE PERMIT (V-2024-1), involving a 2-lot subdivision to allow deviations from the development standards within the Residential zoning district, and SPECIAL PERMIT (SP-2024-2) to allow a deviation from the minimum lot size requirement within the State Rural Land Use District, as prescribed by Hawaii Revised Statutes (HRS) Section 205-2(4)(c), on a parcel situated on the eastern side of Oma'ō Road, approximately 1,700 feet south of the Oma'ō Road/Naulu Place intersection, and further identified as 3756 Oma'ō Road, Tax Map Key: (4) 2-7-004:007, and containing a total area of 1.126 acres = **DAVID A. & JODY K. STILLWELL, TRUSTEES.**
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4. ZA-2024-2: A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Zoning Designations in Hanapēpē, Kauai that would amend Zoning Map ZM-H 200 (Hanapēpē). The purpose of the bill is to eliminate the Special Treatment – Public Facilities (ST-P) zoning district designation for affected residential lots within Hanapēpē = **COUNTY OF KAUAI, PLANNING DEPARTMENT.**
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6. Project status update for Project Development Use Permit PDU-2009-9, Class IV Zoning Permit Z-IV-2009-6, Tax Map Key: (4)3-8-005:022 = **UAHI RIDGE HUI, LIMITED PARTNERSHIP.**

7. Clerk of the Commission's Recommendation to Re-number an Appeal of Forfeiture File for Failing to timely renew TVRNCU #1184, Charles Smith and Deani Higashi, approved by the Planning Commission on October 24, 2023, to CC-2024-6.
  
8. Subdivision Application No. S-2024-9  
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Proposed 2-Lot Boundary Adjustment  
TMK: (4) 2-3-018: 015 and 036  
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9. Subdivision Application No. S-2017-6  
**Moloa'a Valley Homeowners, LLC.**  
Proposed 7-Lot Subdivision  
TMK: (4) 4-9-011: 013  
Kawaihau, 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 July 9, 2024. 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.

**O. ADJOURNMENT**

**DEPARTMENT OF PLANNING**

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

SPECIAL MANAGEMENT AREA (SMA) Minor Determinations

Date (Action)	SMA Minor Permit number	Location (TMK)	Activity/ structure
Approved (4.14.2024)	SMA(M)-2024-15	Hanalei (5-5-001:042 Unit 1)	Construction/ After the Fact (ATF) shed
Approved (5.09.2024)	SMA(M)-2024-16	Hanalei (5-8-010:017)	Placement / Temporary tent.
Approved (5.06.2024)	SMA(M)-2024-17	Hanalei (5-5-004:005)	Construction/ New Lava Rock Piers, fence, wood access gate, hot tub, pavers, and associated site improvements.
Approved (5.06.2024)	SMA(M)-2024-18	Hanalei (5-5-004:004)	Construction / New outdoor shower area (2), fence, wood access gate, hot tub, sauna, cold plunge, and (ATF) pagoda, fire pit, and pavers.

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.

June 4, 2024

SHORELINE SETBACK DETERMINATIONS

Application No.	Name of Applicant(s)	Property I.D. (Tax Map Key)	Location	Development/Reasons
SSD-2024-30	Concorra Cliffs LLC	5-5-004:013	Hanalei	Interior alteration, demolition and removal, and structural and nonstructural improvements to existing single-family residence and garage and a guest house above. / Shoreline is accreting at 1.7 tenths of a ft per year required setback is 60 feet, proposed development is 340 feet from shoreline.
SSD-2024-31	Royal Sonesta Kauai Resort	3-5-002:002	Līhu'e	Temporary tent 20'X40' not to exceed 6 months. / Required setback 100 feet from shore, tent is placed an additional 100 feet away from setback.
SSD-2024-32	Poipu 808 LLC	2-8-020:004 Unit 11	Kōloa	Repair and Renovations Replacement of window, water heater, kitchen cabinets, and bathroom vanities. Unit A3./ Property on 50 foot high cliff bluff with a required setback of 65 feet. Work is an additional 27 feet (92 feet ) outside of shoreline setback area.
SSD-2024-33	Scott Sloan	5-5-005:006	Hanalei	Addition and renovations of existing single-family residence. / Accreting shoreline. Required setback 60 feet from shoreline. The development is approximately 416 feet away from the shoreline.

SSD-2024-34	Kiahuna Phase III-A and IV-A Mori Family Limited Partnership Bldg. 33	2-8-016:007 Unit 5, 6, 7, 8, and 9	Kōloa	Repair of spalling, foundations, and deck repairs. / Required setback is 100 feet from the shoreline. Development is an additional 200 feet from required setback.
SSD-2024-35	Juan P Garcia Neveu	1-3-005:045 Unit 4	Kekaha	Bedroom and entertainment area addition to existing residence. / Required setback 151 feet. Development approximately an additional 150 feet away from required setback. Work deemed unsubstantial per DPW letter.
SSD-2024-36	Sealodge Phase I	5-4-005:007	Princeville	In-kind replacement of exterior posts supporting stairs and landings; in-kind replacement of interior waste and vent piping; interior finishes repairs associated with plumbing work. / Structures located on a 150-foot-high cliff bluff. The required setback is 100 feet from shoreline. All work is located an addition 120 to 140 feet away from required setback.
SSD-2024-37	Christopher L Basler	2-6-022:013	Kōloa	New pool and associated site improvements. / Property on a high rocky cliff bluff, required setback 75.5 feet. Pool is setback at 265 feet from shoreline.
SSD-2024-38	Kuhio Shores	2-6-005:014	Kōloa	Relocate electrical room to third floor above BFE. All work is electrical, no new walls renovated. / Work deemed unsubstantial per Department of Public Works letter.

SSD-2024-39	Makahuena at Poipu	2-8-020:003 Unit 58	Kōloa	Replacement of kitchen cabinets and countertops. / Unit is located on a high rocky cliff bluff. The required setback is 100 feet from shoreline. Work is approximately an additional 72 feet away from required setback.
SSD-2024-40	Holoholo Nui, LLC	2-6-006:030	Kōloa	New 2 story single family dwelling. / Rocky shoreline. Development is 200 feet away from shoreline. Required setback is 60 feet.
SSD-2024-41	Carolyn Zemeckis	4-3-009:036	Kapa'a	Renovation of existing garage. / Required setback from shoreline is 95 feet. Development is located approximately 300 feet from shoreline.
SSD-2024-42	Craig Schwed	4-5-001:012	Kapa'a	New single-family residence (2nd on parcel). / Required setback 107 feet from shoreline. Proposed residence is an additional 178 feet from required shoreline setback.

KAUA'I PLANNING COMMISSION  
REGULAR MEETING  
March 12, 2024  
**DRAFT**

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Donna Apisa at 9:01 a.m. - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

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

Excused or Absent

The following staff members were present: Planning Department – Director Ka'aina Hull, Deputy Director Jodi Sayegusa, Staff Planner Dale Cua, Romio Idica, Planning Secretary Shanlee Jimenez; Office of the County Attorney – Deputy County Attorney Laura Barzilai, Office of Boards and Commissions – Support Clerk Lisa Oyama.

Discussion of the meeting, in effect, ensued:

**CALL TO ORDER**

Chair Donna Apisa: Commissioners, commissioners, we're ready. We call the Commission meeting to order. Thank you.

**ROLL CALL**

Planning Director Ka'aina Hull: Good morning, Madam Chair, members of the Commission. First order of business is roll call. Commissioner Ako?

Commissioner Gerald Ako: Here.

Mr. Hull: Commissioner Cox?

Commissioner Helen Cox: Here.

Mr. Hull: Commissioner DeGracia?

Commissioner Francis DeGracia: Here.

Mr. Hull: Commissioner Ornellas?

Commissioner Jerry Ornellas: Here.

Mr. Hull: Commissioner Otsuka?

Commissioner Lori Otsuka: Here.

Mr. Hull: Commissioner Streufert?

Commissioner Glenda Nogami Streufert: Here.

Mr. Hull: Chair Apisa?

Chair Donna Apisa: Here.

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

### **APPROVAL OF AGENDA**

Mr. Hull: Next up we have the approval of the agenda. The department doesn't have any recommended changes to the agenda.

Mr. DeGracia: I move to approve the agenda as is.

Ms. Streufert: Second.

Chair Apisa: All in favor. Aye (unanimous voice vote). Agenda is approved. 7:0.

### **MINUTES OF THE MEETING(S) OF THE PLANNING COMMISSION**

Mr. Hull: Next we have the Minutes of the Meeting of the Planning Commission for the following meeting minutes, October 10th, 2023, October 24th, 2023, November 14th, 2023, December 12, 2023, and January 9th, 2024.

Chair Apisa: Could we have a motion to approve the minutes?

Ms. Cox: I move we approve the minutes.

Ms. Streufert: Second.

Chair Apisa: Are the minutes for all of the mentioned meeting? All in favor. Aye (unanimous voice vote). Any opposed. Motion carries. 7:0.

### **RECEIPT OF ITEMS FOR THE RECORD**

Mr. Hull: Next, we have Receipt of Items for the Record. The department did not receive any additional advance items for Receipt of the Record prior to the posting the agenda, however, subsequent to the posting the agenda, a number of communications and submittals were turned

into the Planning Department to transmit to the Planning Commission. As we've kind of pointed out several months ago, there was a complaint against the Planning Commission concerning how the agenda was being handled with the Office of Information Practices. The OIP has eventually got back to us, stating that the transmittal all of these communications to the Planning Commission prior to the commencement of the meeting could violate Sunshine Law and recommended against the practice of doing so. So, in such we have to hold all these communications until the actual meeting in the morning of, for which the Planning Commissioners you have a packet about that thick, which you did not get to see in advance. The members of the public that would like to see that, it is available at the Planning Department window, but at this time we're looking at taking a 45-minute recess so the Planning Commissioners and those members of the public that want to see it, can review these submittals prior to one over the actual agenda items.

Chair Apisa: Thank you. We will recess to review these items.

The Commission recessed this portion of the meeting at 9:04 a.m.  
The Commission reconvened this portion of the meeting at 9:45 a.m.

Chair Apisa: Meeting will reconvene. We're right on schedule 9:45. So, good morning to everyone. Thank you for coming.

#### **HEARINGS AND PUBLIC COMMENT (None)**

Mr. Hull: We have no additional, that was Receipt of Items for the Record. We have no Hearings, no further agency hearings.

#### **CONSENT CALENDAR (None)**

Mr. Hull: Nothing else on the consent calendar.

#### **GENERAL BUSINESS MATTERS**

Mr. Hull: So, we move directly into Agenda Item H. The first two agenda items, one item H.1., is a contested case hearing as well as H.2., is a potential contested case hearing. So, I'll be stepping down and handing over the clerking responsibilities to Laura Barzilai. Thank you all.

Chair Apisa: Thank you, Ka'aina. Good morning, everyone, and thank you for coming. I'd like to read a statement before we begin. As we've done in the past, I would like to now make a statement about public decorum. Mahalo for all public participants. Your presence and participation are valuable to the Commission, please be reminded that in the spirit of Aloha, respectful communication and proper decorum are necessary to maintain an orderly meeting. Public statements or remarks of aggression, threats of violence, profanity or personal comments about the Commissioners or the department staff which disrupt this commissions meeting may result in the speakers removal from the meeting. Please note Planning Commission rule 1-2-20G, Any person or persons who willfully disrupt the meeting or hearing to prevent and compromise the conduct of the meeting may be removed from the room. Please respect others when they are speaking and maintain decorum when providing your own testimony and as a reminder, everyone speaking has three minutes to speak. Everyone has the same three minutes. Please be

mindful and respectful of this also. Mahalo for your cooperation during this meeting and thank you again for being here.

Deputy County Attorney Laura Barzilai: Thank you, Chair. I'd like to read a statement about the Planning Commission. Based upon recent public comment, it may be beneficial to the public for the Commission to provide this statement regarding the appointment and authority of the Planning Commissioners. Pursuant to requirements of the County Charter, the Commission is made-up of members with knowledge and awareness of environmental, business, and organized labor concerns by way of the persons, education, training, occupation or experience. Each of these seven Commissioners are volunteers. Appointed by the Mayor and approved by the County Council. Each bring their experience from a different area of community life, such as labor union management, a former chancellor of higher education, professional agriculture, business, and real estate. The Commissioners are not paid for their dedicated public service during the term on the Commission. They deserve respect and courtesy as they do their jobs here, just as they show respect and courtesy to all participants and the public, again, pursuant to charter, each may serve a maximum of two consecutive three-year terms but may return to the Commission after at least a one-year break. Commissioners comply with the County Code of Ethics and diligently recuse themselves if there is an indication of personal interest. They don't make decisions on any matters where they might have a direct personal financial gain or have direct business personal, or employment interest. These recusals have happened many times at Planning Commission and will continue going forward. In the spirit of Aloha, out of courtesy and respect, any questions or comments regarding the subject matter of this statement should be directed to the Planning Department via e-mail and not directly to or at the individual volunteer Commissioners. Thank you for your attention, understanding, and courtesy at this morning's meeting, we can proceed now. Chair, if you'd like to read the item into the record.

Chair Apisa: General Business Mater Item Number H.1.

In the Matter of Petitions to Appeal Planning Director's Determination in Regard To The Applications of Try Slow, LLC Shoreline Setback Applications and Determinations, SSD-2023-45, SSD-2023-46, SSD-2023-47, and SSD-2023-48, Received on July 24, 2023, The Hale Makai Cottages, located at 4400 Oneone Road, Hanalei, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 5-8-008:034, containing 39,000.00 square feet.

- a. Petition for Appeal submitted by Petitioners on July 24, 2023.
- b. Petitioners Malama Kua'aina and Caren Diamond's Prehearing Statement.
- c. Applicant Try Slow, LLC's Prehearing Statement.
- d. Respondent Planning Department of the County of Kaua'i's Prehearing Statement.
- e. Conditional Settlement Agreement.
- f. Stipulation and Order to Vacate Pending Hearing Dates in Contemplation of Dismissal approved by Hearing Officer Harlan Kimura on February 9, 2024.
- g. Stipulation, Recommendation, and Order Approving Withdrawal of Appeal.

Ms. Barzilai: First, we'll call for public testimony. We have two people signed up the first is Steve Sedgwick.

Chair Apisa: Good morning.

Ms. Barzilai: Thank you, Sir. You have three minutes to speak. Please state your name for the record.

Mr. Steve Sedgwick: My name is Steve Sedgwick. Good morning, Madam Chair, Mr. Hull, who's not here, and Commissioners. I'm here today, my wife, who shared a testimonial via the process of hopefully you've read it. Robin Yasuoka Sedgwick is not here because of health reasons, but I wanted to share with you some very, very important information that you may have not been able to consider in the past. I've lived at the house either part time or full time for 23 years and to me, my position is I want to support Ms. Diamond's efforts to block this development. Everything that Ms. Diamond has shared with you regarding the last time the state of the easements or the shoreline was surveyed nearly 45 years ago, all the issues that she's brought up are real, they're absolutely real, and for me it's not about another easement. I do believe that the public should have easements, but this is about common sense. This area that we're talking about Anchorage Point, it's a marine sanctuary. We have monk seals that haven't been born on this beach in 35 years. We have shearwaters that are nesting in the vegetation in front of the (inaudible) in front of the (inaudible) in front of the cottages, we have endangered species that no one is brought a voice to this Commission and today not only do I want to share about everybody has a responsibility to protect these endangered species and it's very, very pristine area of Kaua'i. In addition, I want to talk a little bit about some of the public safety issues, I wanted to share with you about the easement. I know about the history of the property, I've been there during the whole 25 years of litigation, but there were some real settlements with the county back in 2008 that moved parking back onto Oneone Road for the cottages. Today, my only access, my only access is through a little tiny dirt road that I could barely get my car into now and nobody has recognized that the responsibility of parking in such a little tiny dirt area is no different than what we see at Tunnels Beach. I just, I'm just shocked that we would even consider allowing a public easement when 56 seconds, 56 seconds to the west and 56 seconds to the east are current public easements. Now the reef, again, we're talking about a sanctuary, a marine sanctuary here. The coral reef is finally, finally, after years of being dead, it's now rejuvenating. We've got a terrible, terrible, dangerous beach. I know Caren has saved people off this beach.

Ms. Barzilai: I'm sorry, Madam Chair, three minutes.

Chair Apisa: Three minutes. Can you wrap it up?

Mr. Sedgwick: Wow, I can wrap it up. In addition, there are Hawaiian artifacts that are being discovered in front of my house. In 2018, we had a hurricane that ripped out the sand and we're finding Hawaiian artifacts in front of the house at Anchorage Point, thousands of them. So, I had hoped that you would reconsider and give it some time. Let's get the DNLR out there. Let's get Shoreline management out there. Let's get the lifeguards to talk about how dangerous the beach is. Let's get the Fire Department out there to look out at how this road is not, this road cannot handle.

Chair Apisa: If we can wrap it up.

Mr. Sedgwick: Thank you very much.

Chair Apisa: Don't mean to cut you off, but we have to give equal time.

Mr. Sedgwick: Got it.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you. Next testifier, Laurel Loo.

Ms. Laurel Loo: Thank you. Thank you, Madam Chair, Commissioners, Mr. Hull, Ms. Barzilai for your time to this and thank you to the Commissioners for your volunteerism. My name is Laurel Loo. I'm an attorney for the Sedgwick's, and I'm here to raise some issues of concern. Mr. Sedgwick is a person, Mr. and Mrs. Sedgwick are the people the most directly affected by this proposed pathway because it will block their ingress and egress into their property, they have not been consulted about this until yesterday, when Mr. Sedgwick met with Try Slow, yesterday evening. So, we should have been brought in months ago. Because of our concerns about the blocking of his access, we are requesting that Try Slow consult with the Fire Department and emergency responders about the reasonableness of this access. Another concern we have are liability concerns about the dangerous rip currents in front of this proposed pathway, Mr. Sedgwick informs me that this year alone there have been three to four drownings in the general area alone because of a riptide that is present there, which most local fishermen know about. The county's liability and directing people down this pathway into a dangerous beach needs to be considered. There needs to be a conscious decision by the county on whether to place lifeguards or warning signs, and I don't believe any of that has occurred. I do not believe that First Responders have been consulted about this proposal. So, along with Mr. and Mrs. Sedgwick's environmental concerns, I think it's reasonable to halt things for a few weeks so that the county can bring into the conversation people like the Sedgwick's, whose access will be blocked to their property and First Responders, not to mention, as Mr. Sedgwick has pointed out, environmental agencies that can take a look at the artifacts and the endangered species that are on the beach, most notably monk seal, which was found and is there now, a baby monk seal. Thank you and we're available for any questions.

Ms. Barzilai: Is there anyone else who would like to testify on this item? Please approach and state your name for the record you have three minutes to testify. Thank you. Did you folks want to come forward? I don't think there any more testifiers, Madam Chair. I think we're supposed to hear from parties right now. If the parties can approach to make statements and arguments. You can read your statement now, Chair.

Chair Apisa: While the parties are coming forward, we will now consider item H.1. on our agenda. The Conditional Settlement Agreement and the Contested Case on the Malama Kua'aina versus Try Slow LLC, and the Planning Department. At this time, we would like to take comments from the parties, starting with the applicant Try Slow then petitioner Malama Kua'aina, followed by the department. Please limit your comments to 10 minutes or less. Thank you.

Mr. Ian Jung: Okay, good morning, Chair and members of the Commission, Ian Jung, on behalf of the applicant, Try Slow LLC and with me is Mr. Arreguin, who's the principal for Try Slow LLC. First, I want to just bring the Commission back around to how we got here. So, as some of

you may have recalled, we filed a shoreline setback determination application which was then timely appealed by Ms. Diamond and Kua'aina, Malama Kua'aina and that matter was referred to the hearings officer for which we started the contested case as a part of the hearings on the matter, as the course of the contested cases went, we met with Ms. Diamond and her representatives and found a solution to try and resolve some of the issues that were raised in the general case itself, I mean, I don't want to claim any misrepresentation here, but my client has been speaking with Mr. Sedgwick for about a month now about this matter, and I spoke with Ms. Loo about this on Friday, so they've had at least a weekend to discuss this and come to us with any of their concerns. They did meet yesterday to discuss some of these concerns, but I think what they're forgetting is that this is private property, that is abut Oneone Road, which is a part of the old Wainiha Hui Subdivision. There are certain spurs that were created as a part of the subdivision application and this one lot is a public County Road that delivers right into the property for which the proposed access will be. It seems like this access is the primary issue and whether or not there's any environmental issues to it. The HR is 520, Chapter 520 allows for landowners to provide public recreational use through their respective properties. So, state law allows for this type of access to be granted and it inoculates from a liability standpoint, the owners to do this type of access. So, with Ms. Diamond and I, we went out there to try and identify where would be a good location to create this proposed access and it's not an easement. There already is an old existing easement on the property. It's a nonexclusive easement that takes it to an old triangulation station for the US Geological Service, so this is just overlaid on top of that to provide folks in the neighborhood or the general public to have pedestrian access only. And we tried to offer Mr. Sedgwick and Ms. Loo the potential to put up certain signage and Ms. Diamond was willing to work with me on coming up with signage to limit parking similar to what goes on down in certain turn off roads and tunnels to encourage people not to try and park on this little spur road that drops down into the beach access area. So, we're still willing to do that. And the claim of environmental impacts, it actually encourages good environment where you can have access to a beach resource and Ms. Diamond, I think will speak to some of the points that historical access where people had used this particular area to get down to the beach. I think what was failed to mention on the Eastern boundary line of Mr. Sedgwick's property is a six-foot rock wall which will at least contain the right of passage that people will get to the beach from meandering over onto his property. So, there is a defined boundary where people will be able to walk and go through this proposed new declaration of recreational use area to get onto the beach without impacting Mr. Sedgwick's property. With that, I'll leave it there, but it you know, we started this contested case and this particular matter, I mean Mr. Sedgwick's a little late to the game, you have a right to appeal within 30 days of the notice of the applications. He did not (inaudible), did not appeal. So, he lacks standing to now come in and try and assert a delay in this matter where we're just having the appeals with John. Thank you.

Chair Apisa: Thank you.

Ms. Caren Diamond: Good morning, commissioners. Caren Diamond, I'm here today from Malama Kua'aina and for myself. This is one of those win-win settlement agreements where the community really benefits the access here was a traditional beach access that has been there since the 1947 Wainiha partition decree that and in the 1993 Na Ala Hele Beach Access Report, they cited this beach access as being a community beach access. It is, there's a state easement that it follows along and so in 2004, the current landowner that is different than this landowner now put a wall up and blocked the beach access, and ever since 2004 beach access there has been

blocked. In 2006, the Kaua'i County Open Space Commission put it on their priority list to restore our lost beach accesses and this beach access was listed in that list to the community has long wanted this beach access to be back and in this settlement agreement, Mr. Arreguin should be applauded because the community gets its beach access back and it restores beach access both to and along the shoreline, which is what coastal zone management is all about, and our public trust rights to use our beaches and get to them, and so I urge your support of this agreement, which restores our public access both to and along the beach and is a win-win for everybody. So thank you.

Chair Apisa: Thank you.

Deputy County Attorney Chris Donahoe: Good morning, Chair. Deputy County Attorney Chris Donahoe on behalf of the department. Is it on? I'll talk louder then. How this matter started was four separate shoreline setbacks determinations that were made for proposed repairs. The county, when the county first got involved with this there was intervention with by Ms. Diamond and there was quite a distance between the parties, and parties made great efforts to include myself in trying to come up with a resolution. Went halfway through a contested case hearing and the county is satisfied with the terms set forth in the settlement agreement that address the concerns of both Ms. Diamond as well as the owner. For the county's responsibilities, the one clause that's the mostly irrelevant, is the county (inaudible) process on a timely basis the withdrawal of the appeals and also the building permit applications because at the end of the day, the county stands by its determinations in this settlement agreement will allow those repairs based on those (inaudible) settlement determinations to go forward. To do agree that the settlement agreement is clear, that the five-foot-wide access is a pedestrian access, and I did go through some of the concerns that Mr. Sedgwick and his wife had put forward in written testimony. And although I understand the concerns, it also seems that the property that he's discussing 4411 operates as an active TVR. So, it's rented out, so it's number 5134 is, so there's concerns about traffic, public access, beach congestion, I heard monk seals, a Hawaiian artifacts, marine sanctuary damage, but if it's being rented out to other persons and families who are noisy can cause the same amount of beach damage, the dangerousness to the surf, then those concerns also are put upon Mr. Sedgwick because he's renting a the property out and it's interesting cause in the ad under the VRBO for to rent out the property, the guests are promised...offers a once in a lifetime vacation experience, providing contemporary luxury and private beach setting so, it would seem that it's more about the additional access, not so much that does Mr. Jung's client have the right, which under 5, under the DRUE public can access it, that's and limit the liability and so that's what was done here and it's reasonable under the circumstances given how far apart these parties were and it was included the pre hearing statements for each of you to review to see how far apart they were and so this, the department stands by its determinations that originally made and stands by and supports this settlement agreement. The one proviso and I'm sorry, Chair under the stipulation and order to vacate pending hearing dates in the order approving withdrawal of appeal and the conditional settlement. It was accidentally put that under it was the wrong chair, so we would need to change the name to Apisa, so we apologize.

Chair Apisa: I've been called worse.

Mr. Donahoe: That's all. Thank you. Thank you.

Chair Apisa: Commissioners, are there any questions to the parties?

Ms. Streufert: Yes, if I could. One of the issues, and that's of more concern to me than all the other ones, is that this is going to block egress and ingress into the Sedgwick's property, which means that there could be a problem with Fire department or with Emergency Management or, I'm sorry, Emergency Services, which could include fire trucks, which tend to be wider, and ambulances and that kind of thing. Can you address that? Is that a valid concern and how is that going to be addressed?

Mr. Jung: Yeah, I had, again, as discussed, I had discussed this matter with Ms. Loo on Friday and we thought of concepts to put up no parking signs in certain areas, kind of like what occurs in Tunnel, and then my client actually and met with Mr. Sedgwick to discuss that. Ms. Diamond and I had also discussed what kind of community signs we should think about creating or putting up there, so people won't park through there. It is a county road, so we can't technically put up any signs in the county road unless we get approval from the Engineering Division, but one of the thoughts is, you know, we could identify it as a residential access and that parking shall be outside this area and we can work with the Engineering Division to maybe vegetate it a little further and identify a beach path only versus any parking where people with park in there. So, two lots up, as Mr. Sedgwick had identified, there are two accesses kind of that split this two lots up on Alealea Road there's an access point that is used, but from my understanding I spoke to Mr. Graham about this because he has a lot of knowledge in dealing with the Wainiha Hui partition action. Those accesses were developed for sort of the residential community of that area. A lot of the tourists that I understand don't use this particular beach because it's kind of wind swept and kind of off the area, which people always refer to as Tunnels. So, it's not like it's a heavily used beach and during our hearing, one of the concerns that was raised for people who come off that secondary access or that primary access and Ms. Diamond raises is, if there's a large swell event and there's a run up on water and people are walking the beach, then there can be an egress point from the beach to get out of that area from where, and I don't know the Hawaiian name, but whatever is referred to as Anchorage Point, but from that point to get out of the way of harm. So, in actually, my opinion, and I was born and raised on Kaua'i and did a lot of water activities. It helps the situation where you can, if you're walking the beach and need to egress out very quickly you can go up that access, versus having to go further down towards Hanalei Colony.

Ms. Streufert: But those are for visitors. I'm looking at the residents who are living there. Is that going to be a problem for them? Is that a safety issue, that's my concern.

Mr. Jung: Yeah, well, it would fall, it's a county road. So, my client and I we don't have any control over what kind of signage puts up, but we can work together on putting respective signage on our respective properties to request consideration for the neighbors, but it's just like any other road where someone may park and block your driveway you just put up signs, please don't block this driveway and it happens all the time, right. And this, and I agree with you the way this was originally designed, you got to think about when it was done in 1960, they didn't have turnarounds, they didn't have fire, like large fire trucks that we need to turn around and I think one of the issues now is fire or the trash truck. I heard there was a complaint that they have to drag, the vacation renters have to drag their trash cans all the way up to Alealea Road out of Oneone Road because there was no turn around and it was designed at a time when you didn't

have street standards like we have now. So, I think it's just going to take some coordination and there is a complaint process that roads division takes that if someone's blocking a driveway or if there is people are parking, you can call and they'll request folders or whatever things people put to have those removed. So, it doesn't block driveway access. But at the end of day, we're willing to work through them. You know and come up with some certain signage.

Chair Apisa: So, for clarity, if I could just ask a question, I guess for clarity. What I'm hearing is that it is a county road and so emergency vehicles do have access provided there's no cars illegally parked on the side of the road.

Mr. Jung: Correct?

Chair Apisa: Thank you. Any other questions? Commissioner Streufert, did that...

Mr. Ako: Madam Chair, I think I have questions probably for Mr. Sedgwick. I'm trying to figure out whether the appeal is to determine, is regarding the shoreline determination setback or whether the appeal is about the agreement that was just settled.

Mr. Sedgwick: I support Ms. Diamond's in her assessment of why (inaudible)...

Chair Apisa: Speak into the microphone.

Unknown Woman: You have to state your name, Sir.

Mr. Sedgwick: My name is Steve Sedgwick with Robin Sedgwick Yasuoka. We support Ms. Diamond in her assessment that the shoreline needs to move these cottages back 60 feet. What I am opposing today is I just, just on Wednesday afternoon I was able to get a copy of the settlement agreement, so I'm here today mainly opposing what I read 72 hours ago. I had to read 600 pages, be able to digest it and be able to put a opposition to the settlement agreement. So, I've had no time in spite of what these guys are saying. They misled me about everything that's going on here today. My first view of it was literally last Wednesday at 4:00. And I wish I would have been consulted. I wish I had been able to provide some input, but I was denied and quite frankly I was lied to by Try Slow and I think they need to go slower. I think they need to try it slower. I know that I've done subdivisions down there where it took me 10 years to do it right. And I met with Chris, and I said you've got a subdivision, you need to disclose to the Commissioners what you're doing with these three lots. Put it forward, put everything on the table and do it right. We're going to be back here a year from now. We'll be fighting about the same. And that's why I highly recommend that we get a map, let's see what their provision is. Let's look at the parking, get the Fire Department down there to recognize it. I also see what's gone down in Po'ipū, I have a house in Po'ipū and it's ruined, it is absolutely a mess.

Mr. Ako: So, at the end of the day, say today, your desire would be that we rescind the agreement that has been achieved between Try Slow and Ms. Diamond?

Mr. Sedgwick: Based upon new information that's being put forth on the sanctuary of the endangered species, the artifacts that have been identified that are over 1000 years old and that have just been discovered in the last couple of years, I would call on Hawaiian Community to obsoletely support this denial of the approval, rescind it based upon new information.

Mr. Ako: Yeah, so your issue is not with the shoreline determination set back.

Mr. Sedgwick: I am 100% in favor of Ms. Diamond's efforts to deny any permit for anything until it's done right. It's got to be done right.

Mr. Ako: Okay. Thank you.

Mr. Sedgwick: Thank you.

Ms. Barzilai: Any other questions, Chair?

Chair Apisa: Do the Commissioners have any other questions?

Ms. Streufert: Could I ask our attorney, what was the process to get to this agreement?

Mr. Donahoe: So initially it was set up for contested case and the issue was an appeal. Oh, I'm sorry, Deputy County Attorney Chris Donahoe. The process was once the determinations were made and the determinations were made to exempt and consider the proposals repairs to all four cottages, Ms. Diamond appealed, stating that the main issue was the location of Cottage 4 and whether they should have been exempted or not. So, that was initially how it, how it came to pass. We went through several days of hearing where one of the other issues was the what the terms of the 2008 settlement agreement stated, and then the 2018 settlement agreement stated and how those settlement agreements categorize the four cottages so...

Ms. Streufert: (Inaudible) and there's an issue about the (inaudible).

Mr. Donahoe: An issue about vegetation. So, one of the, oh, I'm sorry.

Ms. Streufert: The wall, and also the wall.

Mr. Donahoe: Yes.

Ms. Streufert: As I recall.

Mr. Donahoe: Yeah. So, some of the testimony that had come out and again we didn't finish the contested case hearing. Some of the testimony that had come out was what had been planted at the time before the 2008 agreement and then 2018 and since then and so the issue became, was it new vegetation or had it just been growing there? But then, so one of the concerns was can there be a resolution to cut back some of that vegetation that would assuage Ms. Diamond's concerns and as well as property owners, and so that was part of the negotiations that went into this was, and also how do we reclassify these four cottages now, so the language that was in controversy from the 2008 settlement agreement and the 2018 settlement agreement. We start from this point forward going forth. This is how they're category is now. This is how the vegetation is now and moving forward this is what's being negotiated, so that was negotiated mostly between the parties through multiple site visits to determine what was a reasonable compromise. And so, the reasonable compromise was to approve the exemptions and consider them as repairs to allow those repairs once the building permits are submitted, but also address the concerns of the vegetation and the access to the beach.

Ms. Streufert: Thank you.

Ms. Cox: My question is also to you is, at what point and what are the requirements and also what actually happened as far as notifying the neighbors? Is there any...

Mr. Hull: Ka'aina Hull on behalf of the Planning Department. Just to take a step back, there's no new proposal being proposed in this. I think a lot of times you're like, oh, something's being proposed, a new development is being proposed here, what is being proposed was repairs to existing structures, and so when the repair proposals came in, our coastal planner has to review them to determine is this repair like exceeding a certain threshold and necessitates a shoreline setback survey to be done. Ultimately, the department determined no, it's just repairs, and no survey is necessary. Ms. Diamond appealed that, that possibly they may need a survey and through that process and I think kudos to both parties, Ms. Diamond used the process to leverage public access. Public access for the public to access the beach. The property in this situation we see time and time again the property owner instead of saying no, I'm going to exert my legal rights to keep the public off of my property and from the beach has come to the table and said no, I'm in agreement we should provide the public with access to the beach so, that's what's so hard and so there was no public notification process on whether or not this owner was doing repairs or not.

Ms. Cox: And Ka'aina if in a contested case and possible settlement and at any point during that, is there a, does anything trigger informing anybody else?

Mr. Hull: Not for the shoreline setback determination process.

Ms. Cox: Thank you.

Ms. Streufert: That road of egress and ingress it is actually a county road, is that correct?

Mr. Hull: That's county road.

Ms. Streufert: Okay.

Mr. Hull: Sorry, and I think to our attorneys point, yes, public accessing this beach, (inaudible) or not there's environmental concerns, but I have to say that the opposition to the public access and the beach from a commercial entity that legally does but rents to vacation rental customers in this area to access that beach, I find a little hard to, quite honestly swallow.

Chair Apisa: I'm sorry. What was that? Find it hard. I didn't hear your last words.

Mr. Hull: I just find it a little hard to swallow.

Chair Apisa: Oh, swallow. Thank you. I have a question for the county attorney, so there was no public notice to put this in the newspaper. Is that correct? There was no requirement.

Mr. Donahoe: No, there was no requirements.

Chair Apisa: But I know this was not our first agenda item on this subject. So, I know that it has been on a previous agenda, but...

Mr. Jung: Yeah... Mr. Donahoe, if I can respond to that. So, I think let me layout the process and I think that would help the Commissioners and the notice requirements that are set forth. So, the shoreline setback determination process requires an application to be submitted to the Planning Director, which then gets assigned within his office, and then as a part of the assignment, they intake the application and the shoreline planner will then put out a sheet that shows which applications are up for review and then have them determined. So, at that point that sheet then gets attached to the Planning Commission agenda, which some of you probably have seen before, and then once that agenda goes not noticed, it gets noticed in the normal Planning Commission Agenda protocol and the way the Planning Commission rules allow for individuals or interested individuals to go then appeal any shoreline setback determination. So, then they have 30 days after the public notice that's posted on the Planning Commission meeting agenda to file an appeal. That appeal was filed and then when the appeal is filed, you get generated a contested case notice, which also gets put up for public review. So, it's not like any notice wasn't done, there's notice, if Mr. Sedgwick was paying attention to what was going on and bear in mind this is a very simple repair of four existing homes that sit on the property and no expansion, no subdivision, no red flags that normally would trigger any full Planning Commission review, it's just repairs based on a standard that's set forth in the ordinance. And so, there were, there was notice that was put out. Ms. Diamond knows what to look for and filed her appeal. And we worked through it. So, for them to come in now saying I have a right, yeah you had a right, but you missed that, right, you missed the timeliness of that right. And I think by taking additional testimony like this, we're kind of reopening the contested case. So, I think the matter before the Planning Commission now is whether or not the petitioner is allowed to withdraw her appeals versus flush out all these issues.

Chair Apisa: In other words, accept the agreement of the resolution and that was reached.

Mr. Jung: Correct.

Ms. Barzilai: It's an approval of the settlement, Chair.

Chair Apisa: Approval of the settlement.

Ms. Barzilai: At this point, it appears that Mr. Sedgwick's option would be to go back to the hearing officer in order to receive permission to intervene somehow in that matter, because the appeal has already been withdrawn. So, it's before you for approval in that regard. So, your options now are to ask additional questions for more clarification. We could enter executive session if you wish to discuss the legal issues or if you're ready to act, we can do that, and you can call for a motion, Chair we can have discussion on the record.

Chair Apisa: Commissioners, are you ready to make a motion, or would you like to go into executive session?

Mr. Ornellas: I just have one quick question before we get this (inaudible). (Inaudible) stated that there are two beach accesses in the vicinity and both of them are less than an minute away. I was

just curious, is that a minute drive or is it a minute walk? You don't have a map showing all the accesses?

Ms. Diamond: There's only one beach access nearby and it's called Path G, and it is next to the lot next door on the other side to the west of it and to the east Hanalei Colony Resort is, and so there is quite a bit of people walking from Hanalei Colony Resort past this that will benefit from having the increase safety of increased lateral access.

Mr. Ornellas: Given the history of tsunamis in that area (inaudible).

Commission Support Clerk: Lisa Oyama: Commissioner Ornellas, your microphone please.

Chair Apisa: Maybe pull it closer.

Mr. Ornellas: Is it on now?

Ms. Barzilai: Commissioner, look for the red button. When the red light is on, your mic is on.

Mr. Ornellas: It was on.

Ms. Cox: You just have to speak louder.

Chair Apisa: Maybe pull it closer to you.

Mr. Ornellas: (Inaudible) no further questions.

Chair Apisa: There was the talk about this wall. I'm just curious that the wall is on Sedgwick's property or whose property is the wall on?

Ms. Diamond: There's actually there's a wall that runs lateral that's on Mr. Sedgwick's property. The wall that blocks the beach access at current is on Try Slow's property.

Chair Apisa: Alright, thank you. Any other questions?

Mr. Ako: I have a question. So, before us right now is the option of whether we accept the agreement or we reject the agreement that has come out between Try Slow and Ms. Diamond?

Ms. Barzilai: Whether the Commission approves the settlement and allows for the withdrawal of the appeal.

Mr. Ako: Right. Arguments regarding, I guess the issues that are bringing up by Mr. Sedgwick right now that needs to be petitioned before the Commission or before somebody to have legal standings.

Ms. Barzilai: Before the hearing officer who has now allowed for the withdrawal of the appeal he has signed that withdrawal at this point, so it would have to be reopened within the contested case and you would have to defer this item and you have to allow for Mr. Sedgwick to appear before the hearing officer. If you choose today to not approve the conditional settlement.

Mr. Ako: Got it. Thank you.

Ms. Barzilai: Thank you.

Ms. Cox: I am too. Go ahead.

Chair Apisa: Please, please.

Ms. Otsuka: I move to accept the conditional settlement agreement.

Chair Apisa: Louder. No, just your voice is soft.

Ms. Otsuka: I move to accept the settlement agreement.

Ms. Cox: I...

Chair Apisa: Is that sufficient?

Ms. Barzilai: Would that include also the withdrawal of the appeal?

Chair Apisa: Including the withdrawal...

Ms. Otsuka: Including the withdrawal of the appeal.

Ms. Barzilai: That's sufficient.

Chair Apisa: Alright. Thank you.

Ms. Cox: I second the motion.

Chair Apisa: We have a motion on the floor and a second. Is there any discussion? We'll take A roll call, please.

Ms. Barzilai: Motion to approve settlement and withdrawal appeal. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: Unanimous. Motion carries. 7:0.

Chair Apisa: Motion carried.

Ms. Otsuka: I just want to say thank you for working together and settling this is. It's really nice.

Chair Apisa: Yeah. It's very nice to see the settlement. Thank you.

Mr. Jung: Thank you.

Ms. Otsuka: Thank you.

Ms. Cox: Thank you.

Mr. Donahoe: I'm sorry. One more thing, Commissioners. Deputy County Attorney, Chris Donahoe, again. There was also, because technically, the contested case hearings were still pending, so, we did submit a stipulation order to vacate those in contemplation of this. I don't know if a separate motion is necessary.

Ms. Barzilai: We can do a motion to approve stipulation.

Ms. Otsuka: Is it a separate motion?

Ms. Streufert: To do what?

Ms. Barzilai: I think we handled the substance of it, but would you prefer...

Chair Apisa: Yeah.

Mr. Donahoe: Just (inaudible) cause there's three separate documents.

Ms. Barzilai: Okay. So, before you, Commissioners, you have stipulation recommendation and order approving withdrawal of appeal, do I have...Chair, would you like to entertain a motion to approve stipulation?

Chair Apisa: Yes, I would like to entertain the motion to with approve...

Ms. Barzilai: Approve the stipulation recommendations and approving withdrawal.

Ms. Cox: So moved.

Chair Apisa: Okay, we have a motion on the floor. Thank you. Do we have a second?

Ms. Otsuka: Second.

Chair Apisa: Any discussion on that to close this matter?

Ms. Barzilai: I'll take a second roll call vote, Madam Chair. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: Motion carries, Chair. 7:0. The item is concluded and perhaps you'd like to ask for a recess.

Chair Apisa: Before we go into our next Item H., regarding Coco Palms, we will take a 10-minute recess.

The Commission recessed this portion of the meeting at 10:33 a.m.  
The Commission reconvened this portion of the meeting at 10:47 a.m.

Chair Apisa: With Item No. H.2., General Business Matters.

In the Matter of the Petition of Friends of Maha'ulepu to revoke Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1

and Special Management Area Use Permit SMA(U)-2015-6 issued to Coco Palms Hui, LLC for use at Wailua, Kaua'i, Tax Map Keys 4-1-003: 004 (por.), 005; 007, 011, and 017 and 4-1-005: 014 and 017.

- a. Petitioner Friends of Maha'ulepu's Petition for Revocation of Permits Issued to Coco Palms Hui, LLC.
- b. Petitioner Friends of Maha'ulepu's Supplement to Petition to Revoke Permits Issued to Coco Palms Hui, LLC.
- c. Petitioner Friends of Maha'ulepu's Memorandum in Opposition to RP21 LLC and Coco Palms Hui LLC's Petition for Intervention and Reply to Opposition to Petitioner's Supplement to Petition.
- d. RP21 LLC and Coco Palms Hui LLC's (1) Petition for Intervention; and (2) Memorandum in opposition to Petitioner Friends of Maha'ulepu's Petition for Revocation of Permits issued to Coco Palms Hui, LLC.
- e. RP21 Coco Palms LLC and Coco Palms Hui LLC's Opposition to Petitioner Friends of Maha'ulepu's Supplement to Petition for Revocation of Permits Issued to Coco Palms Hui, LLC.
- f. Director's Report Pertaining to this Matter.
- g. Supplement #1 to Director's Report.

Ms. Barzilai: And Chair, we also had an item that came in yesterday as testimony, which is RP21's Reply to Petitioner Friends of Maha'ulepu's Memorandum in Opposition to RP21 Coco Palms LLC and Coco Palms Hui LLC's Petition for Intervention and Reply to Opposition to Petitioner's Supplement to Petition with declarations attached, and we'll begin with public testimony, we have many people signed up, starting with Jennifer Cole. If you'd like to approach, you have three minutes to testify. Jennifer? We can wait on Jennifer. We have Haunani Rossi, please. Ms. Rossi, please state your name for the record, you have three minutes to testify.

Ms. Haunani Rossi: Good morning, Commissioners. My name is Haunani Rossi. I am a native Hawaiian, born and raised in Hawai'i. I reside in the Wailua Houselots Subdivision and own a parcel of land along with my family on Koki Road behind the Coco Palms Hotel. It has been 32 years since Hurricane Iniki destroyed the Coco Palms Hotel and we have all witnessed developer after developer and their grand promises to restore the Coco Palms Hotel to its former glory. As a landowner, I was upset to witness the illegal dumping on Koki Road of coconut trees and green waste on state land by RP21 Coco Palms LLC in unmarked dump trucks daily in the year 2023. I understand that the hotel's demolition management plan required that all green waste and trees be taken to heart and soul in Moloa'a, this was not done and the land on Koki Road still has not been cleaned up. Unfortunately, native birds, especially the Koloa duck, have not visited the area since the dumping occurred over 10 months ago. What we have all, I simply support or I strongly support the petition to revoke the various permits held by the owners and developers of Coco Palms. Not only are the permits out of date, the developer and owners has not acted on the permits in the time granted to them. Now is the time for your board to show support for the community and revoke all permits. As what we have all witnessed on Kaua'i with the rebuilding of the Alekoko Fishpond restoration in October of 2023 with over 2000 volunteers, children, teens, adults, kupuna, visitors coming out in one day. Why can't we do the same for the Coco Palms Hotel? The group the I Ola Wailua Nui's vision for the land is not just landscaping, but a

clear vision for sustainability, cultural and traditional practices. It's time for the people to malama the 'aina of Wailua, one of significant history. Mahalo.

Ms. Barzilai: Next person is Gabriela Taylor. Please state your name for the record, you have three minutes.

Ms. Gabriela Taylor: Good morning, commissioners. I'm Gabriella Taylor. As a 50-year resident of Kaua'i, I'm testifying against the rebuilding of the Coco Palms Hotel. It's shocking to see that the request for the revival of Coco Palms has now returned and being considered. Since the Kaua'i public strongly rejected it several years ago for reasons that are still, are even more pronounced now, considering it the large increase in both tourism and tourist as well as population in their vehicles. Kaua'i is the small island that deserves protection for its beautiful nature, which is being harmed by vehicle pollution as well as roads and destruction, rebuilding of Coco Palms Hotel years ago that has not changed. Why should this already crowded area be impinged upon since it was rejected by the public already? Please do not cater to the proposed builder, rather listen to the people who live here and help us protect our beautiful island.

Chair Apisa: Thank you.

Ms. Taylor: You're welcome.

Ms. Barzilai: Thank you, Ms. Taylor. Next person...

Chair Apisa: If we could...

Ms. Barzilai: If we could please...

Chair Apisa: Refrain from...

Ms. Barzilai: In order to move this along.

Chair Apisa: Yes.

Ms. Barzilai: Thank you so much.

Chair Apisa: This is for public testimony, please. Thank you. The next testifier.

Ms. Barzilai: Jo Amsterdam. Good morning. Please state your name for the record.

Ms. Jo Amsterdam: Good morning, everybody. Jo Amsterdam here. I've only been here for a little over 20 years. I recognize that I woke up this morning in the occupied Country of Hawai'i, but since we're here at this time, I'd like to ask that we consider some of the facts that have come out over the years, many, many years that we've been trying to stop the rebuilding of the huge pile of opala that was the Coco Palms Resort. We have a serious traffic problem already this will exacerbate the situation hugely. The area is an extreme, sacred place. It's the most, maybe sacred place in all the islands of Hawai'i. The Kings and Queens are buried there, etcetera, so please let's reconsider the whole idea of a resort renewal and let's resurrect the place as a, as an area of respect and consideration of the culture that we all are enjoying living here. Let's allow the

people that are the actual lineal descendants, decide how the area is used in the future so that we all can get an education about the beautiful culture that the occupation is working hard to destroy. Mahalo nui.

Chair Apisa: Thank you. Again, please refrain from responses.

Ms. Barzilai: Next testifier Elizabeth Okinaka. Sorry, Chair. Please state your name for the record.

Ms. Elizabeth Okinaka: Aloha Commission, my name is Elizabeth Okinaka. For the record, today I would like to state that I am in strong support of the revocation of these permits. The SMA permits are required, and the 3403 exemption is no longer valid for this property. There is no way for them to even apply for an SMA permit. They have not had control of this land for over 5 years, and they do not have the 75% ownership that is required for an SMA permit. They also do not have control of the state lands and RP's that some of these permits were granted on. Therefore, there is a no valid EIS for this project and the new SMA requires an environmental review and assessment. There is also no valid Ka Pa'akai Analysis on file for this project. There is illegal grading and grubbing that is happening on site as we speak. Carpenters Union, Layton, and the contractor should be ashamed of themselves for operating illegally, not only here, but on multiple sites with heavy machinery. Time to take pride in the work that you guys are doing and that means acting in good faith and not illegally on sites where they have no permits to operating these machines. The developer is supposed to have a 20-foot buffer near this historic fishpond. The previous site designated for the public parking is a lease that this developer no longer holds. Instead, they are now proposing public parking near the fishpond. This not only violates the buffer, but it is also violating numerous conditions pertaining to the US Fish and Wildlife, there are four conditions relating to US Fish and Wildlife, and critically endangered seabirds on this property, critical habitat for these species was never established. No proof of consultation with US Fish and Wildlife was ever sought. There should be a critical take permit on file with US Fish and Wildlife, plus a critical take or critical habitat plan for these species that live on that property. Traffic, we see that there was a \$93,000 payment that was made. I'd like to know, I see no proof of that ever being paid, where it went, and that it actually contributed to that project in the Wailua Road widening. There is archaeological and cultural and spiritual significance to this site. This is an extremely culturally significant and sensitive area and there is no denying this. This is a literal cemetery. Bottom line, these permits should have never been issued because they are using ceded lands that they have no right to use. Permits are flawed and that justifies revocation. They should have to start this entire process again. The underlying permits were issued on an illegal basis. Permits on ceded lands they have no right to. The Planning Commission, you are public trustees and it is your permit and you guys need to deal with this issue and not brush off these issues onto SHPD. If the county and the Planning Commission wants to gain more public respect, you guys need to start doing what is right and this is a prime example of a site...

Ms. Barzilai: Three minutes, Chair.

Ms. Okinaka: ...that should be preserved for future generations. Revoke these permits.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you, Ms. Okinaka. Next testifier Bridget Hammerquist.

Ms. Bridget Hammerquist: Good morning, Chair Apisa, Commissioners. My name is Bridget Hammerquist, and I was born in Hilo, and I've lived, my family home has been on Kaua'i since I was 16. Ua Mau ke Ea o ka 'Āina i ka Pono o Kaua'i. The life of our land is preserved in righteousness. Today as a personal individual, I ask for righteousness for the Wailua historic site that was once part of a resort. That resort came to an end in 1992 with hurricane. It was in bad repair even before that date, and what Ms. Okinaka just said, is in our petition to revoke, first and foremost the land is in a special management area, an SMA permit is required under the county's rules, 1.4A, in order to get an SMA permit, the developer has to have at least 75% ownership of the fee simple land and they have to have a lease right to the state lands for not less than five years at the time of their application. Through the many developers that have been on the site, and especially for the current developers, they do not qualify that document that Ms. Barzilai mentioned that was rushed in as an 11<sup>th</sup> hour Hail Mary yesterday, has attached to it a proposed draft lease from a deputy AG at the state, that (inaudible) to provide what may become a lease to the current developer that in and of itself is clearly evidence that they do not have one and have not had one. In fact, I Ola Wailua Nui, who wants to restore the site to its historic beauty preservation, putting up signage to teach people who come there, what used to be there in the way of the royalty, a wonderful YouTube video made by Randy Whitman is on YouTube, available for the history of the Wailua River and its surrounding properties, and people can take that into consideration. But at this time, revocation is absolutely called for. There's also never been a Ka Pa'akai Analysis a law that passed and has been effective in the State of Hawai'i since 2000. This is clearly a large development. They never went to the neighboring owners. When our petition was filed it was supported by eight people who live in the immediate area of the proposed resort restorations...

Ms. Barzilai: Three minutes.

Ms. Hammerquist: ...and those people are (inaudible) more of them are kānaka maoli than Mr. Trask suggested.

Chair Apisa: Thank you.

Ms. Hammerquist: We do just have one Hawaiian representative and I thank you very much for your time, but please, let's do something like for our land, our shoreline depends on your doing that. Mahalo nui and I'll reserve the rest of my comments for our petition.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you, Guy Holt.

Mr. Guy Holt: Aloha.

Ms. Barzilai: Please state your name, Sir.

Mr. Holt: My name is Guy (inaudible) Mark Holt, and I'm here on Kaua'i. I've been here for almost 30 years now, all my family is from here. My mom's from the Big Island, Ka'ū. My dad's from here. Our ancestry goes back to the Kings and the Queens. So, I have 75% ali'i nui, and I

have 75% kahuna nui bloodline. I don't think anybody else in this room, maybe one other person might have it, but I think you folks need to go back to the beginning of time when Queen Lili'uokalani was held with a gun to her head by your people saying that they want to steal her land for whatever reason. So, guess what, Australia came here and wrapped the Admiral flag around her, took her out of the palace and brought her to Washington DC, where she wrote the pink letter. I think all of you need to get educated on the pink letter and who owns this property and who doesn't. And that's all I have to say. Thank you.

Chair Apisa: Thank you.

Ms. Barzilai: Next we have Ali'i Hepa.

Mr. Ali'i Hepa: Aloha, guys. Good morning. My name is Charles Kamuela Kekaihakuloa, I'm a descendant, Hepa, I'm a descendant of Queen Deborah Kapule. Her son, her only child. Her only child had a daughter. This is my great grandma, Wahine Ko'olau, which is my grandma, my dad's mom's mom. Basically, you guys all heard throughout testimony time and time again, and I gave each and every one of you an affidavit of heirship, a copy of my affidavit of heirship that is notarized and certified by the land court. Judges know who owns this property, I have full access in this property and claim into the Coco Palms area, including the fishpond and my family. Wailuanuiahō'āno, that crew that was spoken upon that want to preserve the land, did not come up to me or any of my family for any authority or question or any asking of permission with respect upon the lands, the lands is actually there in Coco Palms is ran by my family and is in paper, black and white in copies that I served each and every one of you and put you guys all on notice one time and you guys have those copies. My family, the Ka'iu bloodline, the true heir of Queen Deborah Kapule, we are very upset, we're very bothered by this, and we're about to take individuals to court of land (inaudible) and we're going to start suing people, branches, individuals, chairs, enough is enough. I ain't going to sit around no more longer to go through any of this, me and my family. By law and by courts of higher courts, we recognize and this the issue and this topic right now as we speak the Bureau, the FBI is known of what's going on. We ain't playing. It's time to play ball if we have to again. There's only two types of people is going to go hell in this world. I know where I'm going for doing righteous and good work. The two people is going to go hell is bribery of judges because all they do is play the act of God. Second is attorneys, because all they do is lie. Lies after lies. Please cancel this today, I repeat, cancel all their permit. They're doing illegal scraping right now as we speak, there's video proofs of illegal dumping in Koki Road, there's videos. I have multiple videos, I'm willing to share with you guys. And there's no permits to do what they're doing. They're scraping, soil scraping, they're doing all kinds of stuff there. There's burials there, that's being bothered till today, of my ancestors. So, is it legal for them to dig up my bones? Can I dig up people's families' bones that is working on site? Can I go take their kupuna's bones and return it when they return mines first? This is enough. This is madness. This is not the kuleana of anybody that is sitting here today or you guys kuleana. This is the kuleana on royal decrees. The Palapala Sila Nui lies in my hands. That's true titleship to the land and true titleship of what I showed and shared with you guys, the copies that you guys have.

Ms. Barzilai: Three minutes, Chair.

Mr. Hepa: So, please guys, you guys heard the people. You heard me.

Chair Apisa: Thank you.

Mr. Hepa: Thank you.

Ms. Barzilai: Joell Edwards.

Ms. Joell Edwards: Good morning. Good morning, Commissioners. My name is Joell Edwards. I'm a small business owner and community leader from Wainiha. First, I want to acknowledge with profound respect and gratitude the lands of the Kaua'i people where I have the honor to live, work and learn every day. I strongly support the petition to revoke and oppose any hotel development at the Coco Palms for the following reasons: the Coconut Grove is ceded state land. Developers do not have the appropriate legal authority to enter or perform work in the grove. The developer had been planning to situate parking stalls on parcels they do not have lease to. The new proposed parking is on private fee simple parcel and is in violation of the required 20-foot buffer zone from the fishponds, which are on a national historical registry. Also, guidance was never sought on the issues that the US Fish and Wildlife cited. There are four conditions relating to mitigating effects to the endangered sea birds that have been documented on the property. The permit required the developer to consult with US Fish and Wildlife, and there's no evidence that this has occurred. As a small business owner who works with our county agencies, I am held and also hold myself to follow all regulations and I would implore that large developers be held at the same level. Thank you.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you, LeeAnne Spencer. Please state your name for the record.

Ms. LeeAnne Spencer: Aloha kakahiaka. My name is LeeAnne Spencer, and I've only lived on Kaua'i for a little over 11 years as a full-time resident. There are a lot of local Hawaiian people who are going to talk to you about the fact that this is sacred land and should not be developed, and frankly in my opinion, that should speak for itself, that should be enough of a reason, but since it is not, I would ask you to consider the following possibilities as well. I look at this from a business and economic risk liability perspective. You are, let's just assume that this hotel is approved, and it gets built and we are down the road, and they are having constant flooding and drainage problems. Do we really think that they are going to absorb this themselves and just go, oh, this is our cost of doing business? No, they are going to come back against the county for allowing them to build in a drainage zone. They're going to sue us, and this is going to be an ongoing liability that is easily foreseen that I think the same thing could potentially happen with traffic. They, as my understanding, they're not planning to build a pedestrian overpass. So, how do we think that these people are going to get to the beach, they're going to be walking in traffic, there's going to be accidents, there's going to be liability. Do we really think that the hotel is going to just absorb this and say, oh, it's our problem, it's our cost of doing business. No, they are going to come back against the county and they're going to sue us. So, you are asking for future liability ongoing forever if you approve this project. And I also would submit that these people clearly have not been following the rules so far. So, why do we think that they're going to follow the rules in the future? They're not. They're going to come back against the county. They're going to make it your ongoing problem for years and years and years to come. The only solution is to please revoke the permits now. There seem to be plenty of grounds to do so. They've not been

following the rules. They don't anticipate that they would follow the rules in the future, and you are literally saddling us with this liability. If in my business we have to do a business case risk reward if we're taking on future liability, what is the advantage to us, what is it that we're gaining? I personally have not seen that business case. I cannot imagine why the county would want to be saddled with this for decades to come, and the only solution is to please, please revoke this permit now. Mahalo.

Chair Apisa: Thank you.

Ms. Barzilai: Ruta Jordans. Please state your name for the record. You have three minutes.

Ms. Ruta Jordans: My name is Ruta Jordans, and having heard all the other speakers first, I have to say I've only lived on Kaua'i for six years and I've spent my whole life traveling, and I finally arrived here. I'm sorry it took me so long, but I've found a place where the people are bonded, they love. Everybody loves. If you live here, you love Kaua'i. I've not felt that any other place where I've lived, so all I want to say to you is that I strongly support the petition to revoke and oppose any hotel development. Thank you.

Chair Apisa: Thank you.

Ms. Barzilai: Mr. Rupert Rowe.

Mr. Rupert Rowe: My name is Rupert Rowe. I don't know what to say and how to say what I need to say because there is a problem. It's about time we take and put on our thinking cap as a lineal descendant of this area, we have watched the pain and suffering of the kānaka maoli. As we come here to talk to you folks, I don't want to be prejudice. Everyone that is not one kānaka is one malihini, regardless whether you lived in Hawai'i all your life. Okay, so now the kānakas are standing up for what's taking place throughout Hawai'i. Coco Palms, Kāne'iouma Heiau and Punalu'u on the Big Island, these are things that when the people will stand, you folks will know the problem, try to listen to us and understand where we stay, not where you stay and how much money you will make in passing things that is not in the interest of the kānaka. I only speak to you because I'm 82 years old. Time is limited, do not pass this project. I don't know what else to say, so I'm gonna leave you with our word, the Queen said aloha, think before you do what you need to do for the right things that affects Hawai'i.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you, Sir. Terrie Hayes, please. Terrie Hayes.

Ms. Terrie Hayes: Aloha. Mahalo, Commissioners. Terrie Hayes for the record. Resident for over 20 years in the Po'ipū area. Founding member of Hui Malama o Kāne'iouma. One of the authors, proud to say of the AHA Moku bill, missed you all at our County Council meeting that we were invited to give a presentation at, that was last Wednesday, March 6th. Please watch it online. There is a PowerPoint that is out to describe and explain to you what is actually going on and has gone on here in the state for many years. 2012, then Governor Abercrombie signed 288, Act 288 which became law. Now some say it's just a suggestion, it's not just a suggestion. This is what was found to be fact, and again Aha Moku developed and identified those in our culture which could preserve our culture. The focus of Aha Moku is to perpetuate and save our

resources. Why isn't anybody listening? But wait, you listen. Why aren't you doing something that's proactive? I woke up this morning and had the revelation, why should any of this have to do with politics? The administration prior to the current administration supported us. These are facts from the state that have been identified for some time. Again, Bridget mentioned the Ka Pa'akai Analysis 2000, this is 2024, Abercrombie 2012, this is 2024, so we're talking 24 years we're talking an additional 12 years. Aha Moku was established back in 2006, obviously from 6 to 12, was a long time to get to where we got to, but we fought hard for it. Resources are not just for the kānaka, but they have the knowledge. Resources are for all of us. You are, by not doing what this imposes you to do, it's not just a good idea, it's the law, right, smoking used to be, well, it's nothing, but now you can't. We all need to learn. We all need to really look at this. I have brought you brochures from Kāne'iōlouma. I'm sure the ones for Wailua are being made in the process. These explain what is in Po'ipū, what it used to be. By the way, you approved this to be a drainage, the TMK. Now many of you might not have realized that that TMK was this. So, I'm going to leave these for you. I propose that you watch the County Council meeting. We are glad to come and give you our own private explanation of it all. Kāne'iōlouma has a website. It has a place to donate. It explains the phases that we're in.

Ms. Barzilai: Three minutes.

Ms. Hayes: We have completed two of our phases. We are trying to do the rest of it, it's going to be a kahua. The only one that exists in Hawai'i with the makahiki grounds.

Chair Apisa: Thank you.

Ms. Hayes: You cannot use this for drainage no more than you can destroy Coco Palms land.

Chair Apisa: Thank you.

Ms. Hayes: Please do your research. Please folks. Tabling things you don't understand. Asking for more information like the gentleman said. Why are we digging this up?

Chair Apisa: Thank you for your testimony.

Ms. Hayes: We did this. We did this before the Land Use Commission years ago.

Chair Apisa: Okay, thank you.

Ms. Hayes: And the decision was made and nobody's abiding by it. This should not be an administrative issue.

Chair Apisa: Okay, thank you.

Ms. Hayes: That's how we got this far. The documents are here...

Chair Apisa: Okay.

Ms. Hayes: ...I'd be glad to copy them. I have more of these which are available.

Ms. Barzilai: Chair, (inaudible).

Ms. Hayes: ...we'd like you to look at them.

Ms. Hayes: I'll pass them out.

Chair Apisa: Thank you for your testimony.

Ms. Hayes: You're very welcome.

Ms. Barzilai: Noa Espirito. Noa Espirito. Is Noa here?

Unknown Woman from public audience: He is.

Ms. Barzilai: While we're waiting for Noa, may I have Mr. Hooser, please, Gary Hooser.

Mr. Gary Hooser: Good morning, Planning Commissioners. For the record, my name is Gary Hooser former Kaua'i County Council Member, Hawai'i State Senator, and Director of the Office of Environmental Quality Control, which administers Chapter 343 the EIS Law. I'm testifying today on my own behalf in strong support of the petition to revoke. I ask the Planning Commission whose responsibility is to represent the public interest, to direct the Planning Director to take the steps needing to revoke the existing permits and force county permitting laws and rules and require the owner developer to start over. I ask that the county with your leadership start enforcing the law. All the things that we're raising now here at the table are raised by the community doing their homework. The county should be here enforcing those grading and grubbing ordinances, enforcing the permits. The existing permits are flawed. The underlying permits are flawed. They were granted under false pretenses and misrepresentations. I choose my words very carefully. I know my facts. I've done this before. The developers and owners are lying to you, to the county and to the public. The prior developers have lied to you, the county, and the public. And there's too many lies and misrepresentations to list here today. There's no question that the Coconut Grove is an integral part of the resort's overall plan. They've got maps and graphics and planning documents associated with the hotel permits, show and feature the Coconut Grove that its uses. However, the developers have no ground lease granting the right to use these lands, they may have a draft lease, they may have a proposed lease, they may have a lease under discussion with the Board of Land and Natural Resources has not approved any lease and they're not allowed to use these lands until that, but yet the permits were granted, the county permits were granted based on them having this permission and they don't have it. I have a letter for the Kaua'i District Land Office, reinforcing what I just said. The BLR has not approved the lease. The county also granted permits to the resort development based on the misrepresentation that the developer owner had the legal right to use the state-owned crown lands adjacent to the few simple lands on the corner of Kuamo'o and Kūhiō Highway. The permit says they're supposed to put hotel parking there, 40 or 50 units, and they're supposed to use that for permanent ingress and egress. They do not have control of this property. They can't put the parking there and they can't use it for ingress and egress, yet the permits for granted for that purpose. Now, the ingress and egresses all have to be on the north side. One ingress and egress and that should be reevaluated. There's no question about that. There may be, these are major changes to the approved plans.

Ms. Barzilai: Three minutes.

Mr. Hooser: Traffic impacts have not been evaluated. And the 20-foot buffer zone from the fishponds prevents the required parking stalls from being placed there.

Chair Apisa: If you could wrap it up for, it's been three minutes.

Mr. Hooser: The county also granted under false representation that they would provide affordable housing. They're not doing that. They also said they were going to dispose of the land in Moloa'a, they're not doing that. In summary, I personally witnessed the illegal grading and grubbing...

Ms. Barzilai: Three minutes, 30 seconds.

Mr. Hooser: Okay. I personally witnessed it. There's no archaeological observers, there's no permits. In summary, the process under which these permits were granted is inherently flawed. The county permits were issued based on numerous and ongoing misrepresentations by the current developer owner and by the (inaudible) owner, it is absolutely clear that they have no legal right to use the Coconut Grove nor the adjacent state lands.

Chair Apisa: Okay. Thank you.

Mr. Hooser: Thank you.

Ms. Barzilai: Noa Espirito, do you want to come up? Noa? Thank you. Please state your name for the record. You have 3 minutes.

Mr. Noa Mau-Espirito: Hi. My name is Noa Mau-Espirito. RP21 Coco Palms LLC did not grub and grade, they were removing trash and dump cars from Koki Road, as I am a witness and was one of the men working with them, removing, and towing the cars out of Koki Road. RP21 Coco Palms LLC has also been working with me and other lineal cultural descendants in restoring the ancient waterways, fishponds and taro patches within Kaumuali'i's Land Commission award located on Koki Road in the back. The violation accusations has prevented the cleanup of the trash and dumped cars and since the violation accusations has begun we have to stop the removal of the dump cars and the trash, and since we have to stop, more cars have been dumped in the back of Koki road. Get ice boxes, get washers, dryers, get cars. The place is getting worse right now as we speak because we had to stop cleaning in the back by Koki Road. Me and other lineal and cultural descendants were looking forward to restoring the kalo patches once the cleanup of the Koki Road was supposed to be finished but was interrupted by the violation accusations. So, you know, I'm down there at Wailua and I'm telling you guys right now, nobody else since I've been there in 2016 had put the effort to clean up the place of all the dumped cars, and these dump cars is rubbish. Been there since 1992. So, I feel like it's everybody's fault for the mess back there right now that we got to deal with, it's the state's fault, the county's fault, everybody had neglected that problem back there, and now me and RP21 stay trying to check for cleanup all the mess and somebody had to come in with these accusation charges and we had to stop cleaning out. As soon as we was finished cleaning out those cars and trash we're supposed to start doing the lo'i's back there already, but these false accusation charges of grubbing and grading had prevent us from finishing the job, moving out the cars, the trash so we could start restoring the

lo'i's back there, that is, also what everybody stay bringing up, cultural historic property this that, this that, the 13 lo'i's that we're working with them for restore is recorded as that historical property as a lo'i, so...what I would say is these guys we had plans for finish restoring the taro patches once we finish yanking out all the cars and trash from the place where these accusations was fabricated. Which I believe these guys have a warranty deed for, and people only mentioning crown lands...

Ms. Barzilai: Three minutes.

Mr. Mau-Espirito: ...as also kuleana lands down there too, not only crown lands, only the Coconut Grove is crown lands down there.

Chair Apisa: Okay. Thank you very much for your testimony.

Mr. Mau-Espirito: Thank you.

Ms. Barzilai: Jordan Loudon.

Ms. Jordan Loudon: Hi, good morning. Jordan Loudon for the record. Thank you, Commissioners and Chair for your time and for listening to all of us today. I'm writing on behalf of the agenda item and I'm in strong support of Friends of Maha'ulepu Petition to Revoke the permits. On behalf of many of concerned residents and lineal descendants of Wailua, the proliferation of the Coco Palms Resort was a combination of many factors. In 1953, there was one reputable hotel on island with 69 rooms. The certain, the future of the sugar industry was uncertain. Gus Guslander saw that there was an opportunity in the outer island market for tourism and then Grace Guslander showed up and everyone knew that it was her work and her vision that created the magic of Coco Palms, as noted in the David Penhallow book Grace Herself, inquired with a longtime friend and former Coco Palms employee, Gladys Brandt, that wondering if Bishop Estate or Kamehameha Schools had ever considered purchasing the lands at Coco Palms and turning it into an educational and spiritual site for Hawaiians on Kaua'i. The author goes on to say that Grace never lost the notion that the Wailua area was the most sacred spot for Hawaiians, and all of Hawai'i. The window of opportunity for the restoration of the Coco Palms Hotel is closed. The factors that came together to allow the success of the Coco Palms Hotel can never and will never be replicated. There are far more than 69 hotel rooms on this island. The tourism industry has long had a grip on the outer islands and Grace Busher will not be there learning the names of the employees, children and family members and buying Christmas gifts for each and every one of them. She cannot, as a ghost, the operation will flounder, whether from constant staffing shortages, natural disasters or more than likely a combination of those two. Thank you for your time and consideration. This is the third time that a petition to revoke these permits has been in front of a Commission such as you guys. The third time, third time to charm, right? Don't they say that? The communities one is clear, we don't want a hotel where there used to be one for three or so decades. This community is looking towards the future that for centuries the history of...can I start the sentence over? How about this? The history that for centuries predicated a hotel operation is the future we look to. We ask that you hear us, the community members not outside influences who for too long have seen this place as a cash cow. Will milk the cow until it's gone, and when the milk is gone, they'll take their money to the next pasture, please revoke these permits today. Thank you.

Chair Apisa: Thank you.

Ms. Barzilai: Keisha Kilar.

Ms. Keisha Kilar: Aloha. I'm Keisha Kilar. I'm kānaka maoli, descendant and last surviving era of Lot Keku'iapoiwa, my great-great-great tūtū man and just one question for everybody here, you guys obviously heard the pleads, you know, and from the people and the kānakas. You guys want to be a part of the solution or keep being a part of the (profanity) corruption. Excuse my language. Kala mai, you know...

Ms. Barzilai: No profanity, please Keisha.

Ms. Kilar: Yes, kala mai, speaking from my heart, you know. Not with like. Now we just call. For palms, you know, everywhere in Hawai'i you guys not you guys, but the state. The illegal occupancy and the occupiers of our state has failed miserably for our people. Nobody's hearing us and what you guys have to realize is we are the heart of Hawai'i. If our people decide not to go to work and pay our taxes anymore. Guess what? Every single one of you lose your job in the office. By Constitution the people does have the right to choose who they want to govern and you guys need to open your guys eyes as simple as that. There shouldn't have to be any explanation. You know, you guys need to see it in your hearts, you know, find the compassion for our people. Lahaina, you guys treating them like they are separate state, not you guys, again, but you guys know exactly who, the same people that has been lying to you guys and lying to each and every one of us. You know, we need to find solutions and there...it's as simple as just listening. Listening to us, the people who have allodial, the actual allodial titles to all this lands, not all the sugar companies, but like braddah Hepa said, we are watching, and we will sue anybody who is affiliated with the illegal State and foreign entities of Hawai'i. If it was up to me, I'd shut the whole Hawai'i down, to save my people. Lahaina, that is sad. You guys all know how sad that is. Talk about developing, and you guys cannot even rebuild nobody's homes down there, nobody's, and that is a shame. You just keep trying to take every little thing we have left of our kūpunas, and our people, our culture, not yours. It's a shame.

Ms. Barzilai: Three minutes, Madam Chair.

Chair Apisa: Thank you for your testimony.

Ms. Kilar: Mahalo nui.

Ms. Barzilai: Ellen Ebata. Ellen? Is Jennifer Cole here? Is there anyone else who would like to testify on this matter? Please state your name for the record. You have three minutes.

Unknown woman from public audience: Okay. Hi, how's it going everybody? I'm not going to demonize the Planning Department.

Ms. Barzilai: We need your name, please.

Chair Apisa: We need your name for the record.

Ms. Mel Kaye: Mel Kaye.

Chair Apisa: Thank you.

Ms. Kaye: I'm not going to demonize the Planning Commission developers, the Planning Department, because we all know in this world money talks and you know what walks. So, I'd just like to throw a little bit of common sense into the equation and not get emotional. What are you guys going to do about the traffic, and the sewage, and at what point this is place going to turn into O'ahu? Everybody wants to come here because it's nice and country and then they decide they want to build a house, and there's so much development all over this island and I don't know if you guys have to get back and forth to work during rush hour, and if you've seen the line of cars from the homesteads to Olohena in the morning or how many traffic fatalities this year, three already. I can't tell you how many times I driven by that intersection of Coco Palms where Brick Oven used to be and there is like an accident. Why, too many cars, poor planning, poor infrastructure, and of course, that's why Lahaina got burnt to a crisp, because everybody was just in on the take, money, money, money. Okay, and it doesn't matter whether you're a kānaka or not, because there are kanakas out there that are like, yeah, we want our hotel back and we want to make money too. So, it's the haves and the have nots and it's the people that care and the people that don't care. And I know that the county is being threatened with lawsuits by the developers, and they have money for days, or years, eons. Layton Construction, where are they from, Utah? Wonder what religion they belong to, but I believe, probably maybe the Bible it says for it is the love of money that is the root of all evil, and what I see that is happening here on this island is evil, and greed.

Ms. Barzilai: Three minutes.

Chair Apisa: Thank you for your testimony.

Ms. Kaye: You are welcome. I don't know if it's going to make a difference.

Chair Apisa: Thank you.

Ms. Barzilai: Is there anyone else would like to testify? Hi, please state your name for the record.

Ms. Kamali'i Haumea-Thronas: Aloha, my name is Kamali'i Haumea-Thronas. I'm 21 years old. A lot younger than a lot of people here, but I'm native Hawaiian. I already submitted online testimony through e-mail where I went into detail, so I wanted to keep this short. Thank you, Commissioners, Chair, for being here, listening to us, but I wanted to reiterate what was mentioned by some others who chose to testify today in relation to specifically, the revocation of permits that were awarded to Coco Palms LLC. My position is in strong support of the revocation permits claimed by Coco Palms LLC and to please consider requiring them to go through the proper protocol in terms of assessment, environmental assessment, and in obtaining new permits by starting the process over again. The illegal dumping also, I just want to mention the Aunty Haunani Rossi mentioned was cleared green waste and did not have to do with anything about the cars or the trash that was mentioned that was dumped on Koki Road. Knowing that you are as respectable Commissioners honor and serve the law and proper systems, I know that you will all seriously consider and go through the motion of revoking the permits. Mahalo.

Chair Apisa: Thank you for your testimony.

Ms. Felicia Cowden: Aloha, I'm Council Member Felicia Cowden and I really, my heart goes out to all of you volunteers. I appreciate the work that you're doing. I also go through pages and pages and pages of the documents, and the concerns and I look and I make the comparisons between them. I've followed this for about since about 20, probably 13 or 14 pretty closely and I've seen the changes and there are nuances everywhere. You guys have 6 inches in front of you of paperwork, so I don't want to go through every one of these different 25 elements. Most recently it seems like the shoreline set back at the Sea Shell restaurant is surfacing as maybe has expired. What I have watched that you have watched because I've been in here when you've had it and even in Council, we've had the developer offer a price to sell the property. To you, to us, we understand, I was at the credit bid when at the foreclosure and we understand that really this is a distressed asset with a great history, certainly a history prior to the hotel, and people trying to get their money out, the county doesn't want to have the responsibility, the liability of this property, and neither does the state. So, it's a complex problem and it's difficult and so, it's a game of hot potato. But what really strikes me the most profoundly is just how threatening we are with our floods with Kuamo'o Road crumbling, with the ocean coming up close to the highway, to the flooding and the water in the garage. We can't get that sewage pump station to stop smelling really dismally and awful. There are so many things that are working against this property. And what I feel like I have watched since probably 2006 is one developer after another, works hard, maybe they have a vision, but they move it forward enough that they get more permits or more entitlements, so then when they sell it to the next unsuspecting investor buyer that they get stuck with what's going on next and now, and at the Council, we had all of us but one vote towards even eminent domain. I've worked on a lot of different possibilities, I don't want to punish RP21, it's not about that. So, I could just, it seems like it's time that we need to move past what's happening and I have like pages and pages, probably 7 pages of documentation I've written this thick, to the Board of Land and Natural Resource that I sent. I don't want to tire you with it, but we have to look at the big picture. I feel like half the population lives north of the Wailua River, half the population lives South. We have gained 45,000 more...

Ms. Barzilai: It's three minutes.

Ms. Cowden: Okay.

Ms. Barzilai: Sorry.

Ms. Cowden: ...residents, and this is a critical nexus when we build this, or half built this. We threatened this the health in hazard mitigation. Thank you.

Chair Apisa: One question just to clarify, are you speaking individually or for the Council?

Ms. Cowden: Can I speak as both? I'm certainly as a Council person who has responsibility for our hazard mitigation. We don't have any place to put people that would be having problems if this area breaks or has a more difficult area, certainly as a citizen I can speak as both I think, but as a Council member, Committee Chair for Public Safety, I worry about the public's safety. I think any of us could look at what kind of challenges we have with the flooding and the sea rise and everything else right in that spot, when we harden and complicate the area right next to it, that's a problem.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you. Anybody else would like to testify? We do not take repeat testimony, but would anybody else like to come up? Hi, Sir, please state your name for the record.

Mr. Kane Turalde: Aloha. My name is Kane Turalde, and I'm here on behalf of the people, yeah, and what we're here for, for you guys to revoke the lease and everything that's going on over. In back of the time during the time of the Hawaiian Kingdom and the Kingdom of Hawai'i, their lands was stolen. So, these lands, our families still have the correct documents, the Palapala Sila Nui, the Palapala Ho'okō, and also the Palapala, the Palai Palapala, verifying that they do own the lands, but during the time of the provisional Government of America, they were all evicted and the land was stolen. I played music at Coco Palms, I've seen how this place go, I seen when it flooded. I played music at the bar, Sunken Bar, the place flooded when we had a big flood. So, you know for you guys to hear everybody come up here to testify, you guys got to open your eyes and listen your ears because Uncle Rupert he's one of my kūpunas, Aunty Nani is another of my kūpunas. When they speak, I have to also speak for them and what they speak about because these lands are crown lands. My uncle Val Ako, he was, he actually built Coco Palms. He took me down there and he showed me the area where he used to make salt, 1953, and this area is a sacred area. So, I live in Waimea, to come from Waimea, I will go to help Noa them restore the lo'i's because I'm also a taro grower and a salt maker. Everything was passed down to me, by my kūpunas of the Kingdom of Hawai'i and the Hawaiian Kingdom. So, being here, speaking to each and every one of you over here, like I said, you guys gotta open your eyes and listen your ears good from what the people are saying over here because we do have jurisdiction over the lands and we do have the correct papers to educate all of you to see. DLNR on O'ahu, they heard it from me. Some of you may have been, you know, listening in. So, we're here for a reason for you guys to revoke the lease and for these people to stop what they're doing and we can reopen the lo'i's and we can also reopen the fishponds to raise fish, to even feed your families for the future of Kaua'i. Mahalo nui loa.

Chair Apisa: Thank you.

Mr. Turalde: Aloha.

Chair Apisa: Mahalo.

Ms. Barzilai: Mahalo, Sir. Anybody else would like to testify?

Mr. Micah Bukoski: Aloha, good morning. Micah Bukoski with I Ola Wailuanui. I don't have a lot to say. There's been a lot said and I just would hope that you guys take all that into account. There was a lot of really good things put forward here. At the very beginning one of the main things was the spirit of aloha, right, we're asking and looking for respects coming from the place of the spirit of aloha. Allowing things to go as they are, allowing these things to continue without revoking these permits is not in the spirit of aloha. There is no aloha there, at least if we're going to do it, let's do it right. I'm in strong, strong support of revoking these permits enough is enough. I mean, you guys have seen it. We've all, many people have been here for years, if not born and raised. I'm born raised from Kaua'i and seeing this island change throughout my lifetime has been pretty crazy. I'm imagining that this is going to be one of those moments that we look back

on that my kids look back on 20-30 years. I don't want my own keiki, my own children to be sitting here in this position once again looking back at this, still fighting more development, still trying to build. I think if some things are allowed to continue to go as they are now, this is going to be one of those moments. We look back on 20-30 years wondering why, why did we do that. So, in the spirit of aloha, do what's right, enough is enough. Mahalo.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you very much everyone. If there's no other testimony, we will be taking a lunch break now and then hearing from the parties.

Chair Apisa: Is there any other persons to testify?

Ms. Barzilai: Please state your name for the record.

Ms. Puanani Rogers: Aloha mai ka kou. For the record, my name is Puanani Rogers. I'm a kānaka 'ōiwi kūpuna and I reside in the ahupua'a of Keālia all my 84 years of life. Thank you for this opportunity, again, and you know we been back here many, many times. This isn't the first and I hope it is the last, but it doesn't seem to be that way. Mahalo for sharing your mana'o about what the duties of you people are, sitting here in these seats and I do cling on the word that you said about respect, and respect is two ways. I would respect you if you respect us and I'm talking about the respect of listening, understanding and deeply, deeply considering all the things that we're saying, all the testimonies of everybody that is here today, I support every single one of them because how can we stop speaking when we know we have the truth. There is harm being done on the 'aina there. It has been going on for too long, we're very, very tired, very, very disappointed, and very, very sad. I mean, can you see our pain when we speak of our 'aina and how we respect it and it's our lives. It keeps us alive the 'aina. It's our waiwai, it's our wealth. So, respect that. Respect what we say about our 'aina. It's spiritual, maybe that's what's wrong. You folks don't understand the spiritual part about this movement. It is a spiritual movement because we are led by spirits. The spirits of our kūpuna, living and dead. And I do invoke their spirits to be here with us today so they can witness what is going on. So, respect us if you would expect us to respect all of you. And I don't mean it personally, I just mean it as a whole and what I've experienced from speaking to you many, many times before and not see any results of what we have been seeing all these years and everybody's ignoring the elephant in the room, which is this developer cannot yet show us clear title of the land. He does not own it.

Ms. Barzilai: Three minutes.

Ms. Rogers: I want to see his clear title, please and I behoove all of you to do your homework and remember the oath that you took when you took this seat, which was to protect our 'aina...

Ms. Barzilai: Three minutes, ten seconds, Chair.

Ms. Rogers: ...and to find out who owns the land first before you can even make decisions on it.

Chair Apisa: Thank you for your testimony. Thank you.

Ms. Rogers: Thank you, Donna Apisa.

Chair Apisa: Thank you.

Ms. Rogers: And please, I support the petitions, of course, I support anything that benefits our people. That's another thing. Each time you make a decision, make sure that it benefits us. Mahalo. Mahalo ke Akua.

Ms. Barzilai: Thank you. We will reconvene at 12:45.

The Commission recessed this portion of the meeting at 11:54 a.m.  
The Commission reconvened this portion of the meeting at 12:47 p.m.

Chair Apisa: The meeting will reconvene. We are on Agenda Item H.2.

In the Matter of the Petition of Friends of Māhā'ulepū to revoke Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1 and Special Management Area Use Permit SMA(U)-2015-6 issued to Coco Palms Hui, LLC for use at Wailua, Kaua'i, Tax Map Keys 4-1-003: 004 (por.), 005; 007, 011, and 017 and 4-1-005: 014 and 017.

- a. Petitioner Friends of Māhā'ulepū's Petition for Revocation of Permits Issued to Coco Palms Hui, LLC.
- b. Petitioner Friends of Māhā'ulepū's Supplement to Petition to Revoke Permits Issued to Coco Palms Hui, LLC.
- c. Petitioner Friends of Māhā'ulepū's Memorandum in Opposition to RP21 LLC and Coco Palms Hui LLC's Petition for Intervention and Reply to Opposition to Petitioner's Supplement to Petition.
- d. RP21 LLC and Coco Palms Hui LLC's (1) Petition for Intervention; and (2) Memorandum in opposition to Petitioner Friends of Māhā'ulepū's Petition for Revocation of Permits issued to Coco Palms Hui, LLC.
- e. RP21 Coco Palms LLC and Coco Palms Hui LLC's Opposition to Petitioner Friends of Māhā'ulepū's Supplement to Petition for Revocation of Permits Issued to Coco Palms Hui, LLC.
- f. Director's Report Pertaining to this Matter.
- g. Supplement #1 to Director's Report.

Chair Apisa: We will now consider Friends of Māhā'ulepū's Petition for Revocation of Permits Issued to Coco Palms Hui along with RP21 and Coco Palms Hui's Opposition to the Petition, and Petition to Intervene, and the Planning Department's Director's Report on this matter. We will start with arguments and statements on the intervention and the revocation from Friends, followed by RP21 Coco Palms and Coco Palms Hui, and finally the Department. Each will have 10 minutes to present, then three-minute rebuttal. Then questions from the Commissioners Friends of Māhā'ulepū you may proceed.

Ms. Barzilai: So, parties and their Council can please come forward. We have 3 tables. So, Chair, the Petitioners can start with their presentation.

Chair Apisa: Yes. Petitioners, you have 10 minutes for your presentation.

Ms. Hammerquist: Thank you, Commissioners, Commission Chair Apisa, and the rest of all of you. Thank you. I would start by saying this is not difficult sometimes it's difficult for you, but I think today we've presented something in our petition and in our supplement to our petition that actually point out a violation of basic county ordinance and I'm referring to the Shoreline Management Area or Special Management Area Permit. In section 1.4 A, of that permit it requires an applicant for an SMA permit, have at least 75% control of fee simple land, if that's involved. If their development intends to involve state lands, whether lease or RP, they have to have no less than have, they have to have exercised no less than five years control of that land. They have to have been a lessee for at least five years. That's the way it reads. Even if it were interpreted that they have to have a lease that goes forward for a period of greater than five years, which they may want to argue, I don't think it does. They haven't had that either. They don't have a lease yet and what they brought before you in that 50-page filing yesterday, was a draft prepared by someone in the AG's office, no indication that the Land Board has approved it or had anything to do with it. The Coco Palms issue is scheduled to be on the agenda at the end of March, before the Board of Land Natural Resources. It has not been heard, but what is really important and is in Exhibit 27, is the fact that as of December 31<sup>st</sup> 2023, the revocable permits that were held, not by Coco Palms Hui ever, but by Coco Palms Ventures LLC were terminated and they were, and they were terminated because Coco Palms Ventures has been absent from the state. Their DCCA license was terminated December 4<sup>th</sup>, 2017. Taxes were unpaid on the lands, the state and fee lands for six years, the state lands were not finally paid, the back taxes were not paid until June of last year, and there were voluntarily paid by the current developers, now anyone can go in and pay anyone's taxes. The county will take the tax payment. It's just like you can go to a bank and put money in somebody's account. If you have the account number, but it doesn't mean that they were current, it doesn't mean that they complied with the law. They have never had a lease. The last lease was not even with Coco Palms Ventures. They never got the lease assignment approved by the Land Board and the Land Board meeting, if you read the Minutes from April 14<sup>th</sup>, 2023, Director Chang made it clear to Mr. DeCoursey and Mr. (Inaudible) that in order for a lease to exist for anyone on state land it has to be a lease approved by the Land Board. If it has, if there's an assignment to be had, Director Chang pointed out that the assignment has to be brought before the board for approval because it is state land and that never happened, with Coco Palms Ventures LLC or anyone thereafter. Coco Palms Hui followed Coco Palms Ventures with the operators, initially, Chad Waters and Tyler Green. They were foreclosed on in 2019 by Reef Capital for nonpayment of their loan and there was a sale, foreclosure sale and thereafter RP21, which was created in the state in 2021, February 2021. They were on site and Coco Palms Hui was on site in with new management and the management that took over Coco Palms Hui, the people that Chad Waters and Tyler Green started, that group was operating during the foreclosure, but in all that time, in all that time, the taxes weren't paid, and the RP's, she made it very clear, April 2023, April 14th are not assignable. They can't be transferred. And so, in December of this past year, December 31st, the RP's were terminated, they were still in the name of Coco Palms Ventures LLC. So, what rights does Coco Palms Hui and RP21 have with regard to the state land as of this moment in time, none. The fact that they submitted a draft proposed supposedly AG approved lease form is of no consequence. If the board decides to grant the application of I Ola Wailuanui, and I have one of their representatives seated to my right, Mr. Gary Hooser, and their application has been submitted for both lease land and the revocable permit land. I think we also have Terry Tico in the audience, who's the attorney for I Ola Wailuanui that filed those applications. If the state

decides to give it to the people of Kaua'i and allow this nonprofit group to restore the historic significance of that site, that draft you got yesterday at the 11<sup>th</sup> hour goes right in a wastebasket. Because it means nothing, and it has no effect. But more importantly, is our county's code under the Special Management Area permitting, it says that an individual whose development will impact or utilize or rely on state lands must be able to establish they have had five years of control of those lands through a valid lease and that can't be done and has never been done by this group. And I think that sometimes our county is so concerned about being sued by developers, they don't necessarily go through the steps necessary to comply with our own laws when you read the Director's Report I think it's really significant that he said, well, they haven't done some things, you know, they really are in violation of some things, but it's not really ripe yet. Right? When will it be ripe? I'll go through a few of those things. First the permits were illegally issued because they are using a Special Management Area and it goes all the way to the Coconut Grove especially, you can look at the state map for the SMA area this SMA line and they've never qualified for an SMA permit, but then if you consider any of many of the other things, just their building permits and this was in the, this was a problem for Michael Dahilig, in September, on September 11th, 2018, when he filed his second petition to revoke against this same developers the Chad Waters, Tyler Green, Coco Palms Hui, that their permit files have applications but no contents and we recently got a large production of documents from the building division and we asked them for everything they had with regard to the permit files for this developer and they produce the documents and I asked for them up to and through the date of date of production and the date of production was February 7th, 2024. When the documents were produced, there are a lot of permit files and there are a lot of applications, but the last renewal for the application we could find was in June of 23 that expired December 31st of 23 because you have six months after you apply and that's under the building code 12-2.1 and 2.2, which addresses permitting and the time to perfect the permit after it's approved and he had a problem with the fact that none of the files have blueprints or any real plans. They have an application, they still do that, they just have an application, and they have an application initial application and they have an application for extension, but the documents that say how they're going to build things, the blueprints, they aren't there. So, it's they're shy of that. They haven't performed a Ka Pa'akai Analysis ever and our county has been enforcing the Ka Pa'akai Analysis for other developments and other individuals that are building on property where it would be called for and they've been enforcing it since 2021 and this developer has done nothing about a Ka Pa'akai Analysis, which further supports the petition to revoke. They don't qualify to develop this property, relying on state lands or on the primary property. They haven't... Ka Pa'akai's even for their property, it's a sizable development. It's supposed to be done, and it's site specific. And when the executive director for the AHA Moku Advisory Committee testified last Wednesday before the County Council, she said all over the state it is a requirement and has been law since 2000, so they've not complied with that, they've gotten permits illegally without meeting the SMA requirements.

Ms. Barzilai: Chair, it's 10 minutes, but it's at your discretion if you'd like to have Ms. Hammerquist (inaudible).

Chair Apisa: Are you nearing, it's been 10 minutes. Are you nearing...

Ms. Hammerquist: Yes. And most importantly, on the seashore, we have a lot of endangered birds. We have a lot of seabirds. They've not done anything to seek US Fish and Wildlife

Council and there we could find no documents to that effect and the sea level rise is real. It comes up right almost to the road, and that land that they want to develop is actually state land and County Beach Park, because the state owns below the high watermark. And I think it's important, ladies and gentlemen, that Condition 20, which was in the permit in 2015, required them to give an easement to continue the bike path on the makai side of the road to assist with that process, they were supposed to give the county an easement. That condition was dropped altogether in 2018. Why? Probably because they can't give an easement for what they don't own. That's State and County Beach Park. Finally, I think it's really telling that there's a sewer problem, a traffic problem, a high-water table, and this would just be a poor location and if we have a developer that has not met conditions and our director says they have, oh yeah, there's conditions they haven't met. This is many years, many years after that permit was given to them, there is no excuse and time for revocation is now. Thank you.

Chair Apisa: Thank you.

Mr. Mauna Kea Trask (not speaking directly into microphone): Just for the record, I think Mr. Hooser is here on behalf I Ola Wailuanui, I think he's here for the (inaudible)...I don't think he should be here.

Ms. Hammerquist: Actually, he is a member of Friends of Māhā'ulepū, Mr. Trask.

Ms. Barzilai: We were curious about that. Mr. Hooser, are you a member of Friends of Māhā'ulepū?

Mr. Trask: Because he wasn't, and he wasn't one of the (inaudible).

Ms. Barzilai: Did you put in a declaration in support of this matter?

Mr. Trask: He did not.

Ms. Barzilai: He did...

Mr. Trask: Did he?

Ms. Barzilai: ...put in a dec., but he didn't indicate if he's a member of this group.

Mr. Trask: I didn't see it in the (inaudible).

Ms. Barzilai: He is.

Mr. Hooser: May I speak?

Ms. Barzilai: Yes, Sir.

Mr. Hooser: Thank you. I'm here in support of Friends of Māhā'ulepū, I'm here representing myself. I'm on the Advisory Board of I Ola Wailuanui, but I do not represent I Ola Wailuanui. I'm here to support the speaker, Bridget and if Mr. Trask doesn't want me here supporting the speaker of my left, then I guess we can, we can debate that. I'm not sure what the harm is caused

by me sitting here. I wasn't planning on speaking, but if I make him nervous or uncomfortable, then we can have that discussion and this board here to rule on that. Thank you.

Mr. Trask: I'm sorry. Just for the record, it's just a matter of decorum, I think. I just was understanding this was for parties. It doesn't seem like Mr. Hooser, by his own admission, is a party, that's all.

Ms. Hammerquist: I didn't represent that he was, Mr. Trask. But he hasn't said anything and I'm blind, so he offered to sit next to me and assist if I needed it. I'm sorry.

Ms. Barzilai: In general, if Ms. Hammerquist needs the physical assistance, it would be fine for Mr. Hooser to support her, but customarily at Council table, we only have parties to the matter, so this would be at the discretion of the Chair.

Chair Apisa: Well, it seems that I mean, I've seen in the past one person accomplish her, so I don't really know that you needed Gary, but I mean, I don't think any harm is done, but a matter of protocol. I don't know do you object to just excusing yourself? I mean you're still in the room. You're hearing everything that said, you're not going to speak. Is it a problem if you not be at the table?

Mr. Hooser: (Inaudible).

Ms. Hammerquist: No, I think you should stay. I think it's good if you stay, but you don't have to. (Inaudible).

Mr. Hooser: She prefers to let me stay.

Ms. Barzilai: Thank you. So, you're staying as a friend and for physical support of Ms. Hammerquist. Thank you very much, but you're not appearing as a party and you don't intend to speak on behalf of Friends because you're not a member.

Mr. Hooser: No, no.

Ms. Hammerquist: And he wasn't represented as a party.

Chair Apisa: Okay. All right. Thank you for clarifying that. Thank you.

Mr. Hooser: Thank you.

Ms. Hammerquist: Thank you.

Ms. Barzilai: I think we were having the applicant make his presentation, make the presentation right now. Mr. Trask is your client here?

Mr. Trask: I'm here on behalf of my client.

Chair Apisa: All right. Thank you. If you would proceed with your presentation, you have 10-minutes.

Mr. Trask: Thank you very much.

Chair Apisa: Thank you.

Mr. Trask: So, there's a lot of confusion about this. So, first off as...

Chair Apisa: Thank you. I'm sorry. Please proceed.

Mr. Trask: Okay. So, let's see. It is Friends of Māhā'ulepū's burden of proved production and persuasion to bring forth specific and articulable facts to prove the allegations against RP21 and Coco Palms Hui. Simply put, they failed to do so. What they've done is imposed rhetorical questions and presented you absence of evidence as evidence of absence, which is not true. In our responsive (inaudible) we provided you with every document to show that we do have site control. You know the last night or I'm sorry Monday what was provided to you, was a copy of the preliminary approved and signed off consent to quick claim and assignment of a lease, and this is not the RP's, okay, this is for the coconut grove. Those were approved in May 2018. I've provided you with the minutes and the agenda from that BLNR hearing, and that's their Exhibit 6. So, the reason why is because the paperwork was held up. I don't know why, we didn't have control over it, you didn't have control over it and it's not your kuleana. It's literally not your land. These are failed arguments that did not persuade the BLNR and they're improper before you today, but nonetheless we provided you the Commissioners deed, right, we provide you the consent and those documents are being signed now. The issues about not paying taxes again that was all raised in false allegations in a notice of default of lease. We've addressed all that before the land division. Coco Palms Hui was assigned the lease in 2018, that's a fact. There's evidence to prove it. Moving on, what we have here is general anti development sentiment, which is prolific on Kaua'i now, but what happens when that development is itself on the State and National Historic Register? What do you do then? We submit that, like any other historic property, the Constitution of the State of Hawai'i recognizes the value of conserving and developing the historic cultural property within the state for the public good. It doesn't matter what the historic property is, it doesn't matter if you like it. History is very contentious nowadays, some people don't like certain statutes, other people do. The point is, is this reason this hotel is on the Historic State and National Register because it plays an important part of history. And what that part was, was in the mid-20th century, if you look at, and this, this is a surprising to me as anyone else because I originally started off my career in, in my worldview like Noa, that you heard today. All right, but if you read Kalani Flores' research on Coco Palms, if you read the preservation plan, if you read the litany of documents that I have read for this development you would know, that Auntie Adelaide chose to drive Roberts bus in this area and research Hawaiian history and culture because all of a sudden that generation got interested in again, this is the mid-20th century Hawaiians, my grandfather, right, that level, they largely forwent their culture, right, but it was Coco Palms that brought it back and that is what is in the State and National Historic Register, this historic function, our domestic hotel resort and its architectural classification is modern movement, Tiki Polynesia. Its development and use embodies the exuberance of Hawai'i's mid-century Polynesian and Tiki experience with combined educating resort guests about ancient traditions while providing them with a Polynesian tiki cultural vacation. Alright times have changed, but that was the most authentic presentation of native Hawaiian culture at the time. And right now, RP21 and Coco Palms Hui LLC, are devoted and dedicated to bringing to, to build on that and bring an authentic one. And

we're working with Noa Mau-Espirito to do it. If anyone person is responsible for stopping this development 2016, it's Noa. The fact that he was here today and put his credibility on the line and admitted that RP21, and you have this in the recent filing that I submitted. We paid thousands of dollars to clean up that backlot on conservation land, the alleged illegal grading, grubbing never happened, but that's not your kuleana either, that's conservation line. The director will tell you that's out of your jurisdiction. None of these people were complaining when homeless were grading that area. None of these people were complaining when the cars were piling up, 70 to 80 vehicles, white goods, Noa's down there, regulating for real. The fact that Noa showed up made me convinced that this was a good project. So, you can feel good about what you're doing today because you're actually preserving history. This is not a new development. In fact, this is the oldest hotel. This is the one hotel that got it right. This is the one hotel that everybody copied ever since. Going through it, obviously. We are the land owners and permittees. We have standing to intervene into these proceedings today. The parking condition, the preservation plan, if you would actually read it, if one would actually read it, provides that an interim buffers during construction renovation, that's we're doing right now, you put an orange fence around the edge of the of the lagoon, thereafter, the long term preservation is a 20 foot buffer, but you still can build what's inside it as long as your SHPD consultant approval. What we did was we provided a, we asked the department for preliminary parking plan to say, did we need those RP's in order to satisfy those conditions? Their conclusion was long as you do 399 stalls, it's fine. We have 560, that's 161 more than we need. We want to provide as much as possible, but in any event we can accommodate it, and this idea that, oh, because it's RP's you can't show five years, it's an RP, it's only good for one year, that's not the issue, the issue is that these (inaudible) state parcels are also within the Coco Palms Resort Historic District. They are also on the State and National Historic Register. This is what these properties are for. We stay within the building footprint; we follow the approved plans and that's what it is. We're not here to ask for permits. We're here to present existing permits. Everyone's contesting the credibility of my client, my client's moving forward, they spent millions of dollars on this development within the past year. The beach loop, Shell Restaurant that's the condition imposed by the county. Everyone uses it for parking. Construction commenced, we provided you Exhibit 14, Exhibit 21, approval. We did the wall cladding in Building 11, it's done. Public parking stalls, again those will be provided. Free of cost, right. The TIR, of course, that can be updated. It was always planned to be updated because when it was permitted, everyone thought the four lane on Kūhiō Highway improvement will be done in 2018, it didn't. Now that we do have a four lane traffic is better and we will update the TIR, as required, that's not failure to comply with the permit. We can't comply with it before it's done. We will comply with that condition. The housing agreement, you have the housing agreement. If we can't provide those housing (inaudible) lots, we provide the housing elsewhere, subsequent designated areas. Those will be provided; they have to be provided. The demolition was, it was satisfied in 2017, as clearly stated by the permit. We talked about vested rights in (inaudible), not because that we don't have to comply with these conditions, it's because the government cannot revoke someone's permits just because community changes its mind, or more specifically, a small portion of the community changes its mind. That's the issue, okay. These are property rights. They're permits, they're legally issued, they're valid. You can't take them away now. Illegal grading, rubbing didn't happen. Fish and Wildlife Service, again, newly raised argument. We're not complaining. We address it. You have it. You have the (inaudible) plan. You have a copy of emails that went back and forth between Hui and FWS back in 2016. Simply put, look, ultimately, I really want the Petitioners to

understand that we're not here to make enemies, okay we want to work with them. I've been reaching out to I Ola Wailuanui since May 2nd, 2023 when I got hired. We want to work this out because everything they want to do; we are going to do as well. We'd love to fold them in, the only difference is that we'll pay for it. We're working with Noa Mau, the idea for this area is a hotel develops within the footprint and does it the right way. Thereafter, a few look mauka, it's like how it used to be before the guinea grass, before the haole koa, even before the rice paddies, kalo all the way up to 'Ōpaeka'a, just like Hanalei, that's what it was. That's what it should be. We need to work together now. This is Coco Palms it's only appropriate that it is the funding mechanism to bring this back and do it the right way more authentic, just like Grace Guslander did, she worked with...

Ms. Barzilai: Ten minutes.

Mr. Trask: ...the locals. That's what we want to do. Just let us do it. Let us finish the job. Mahalo.

Chair Apisa: Thank you. Right on the dot, 10 minutes. Have you finished your presentation?

Mr. Trask: Subject to rebuttal.

Chair Apisa: Alright, thank you. Yes, go ahead. The department, your turn, please.

Deputy County Attorney Chris Donahoe: Thank you, Chair. Deputy County Attorney Chris Donahoe on behalf of the department. Thank you, commissioners. I just wanted to cover two major issues, one is more of an illegal analysis, so I'm going to focus more on that, which is the standing issue by the petitioners to bring the revocation action, and then two is the alleged failure of the developer to perform certain specific conditions as alleged in the petition. Preliminarily which I think the commission needs to be made aware of is, Mr. Trask was correct in in the sense that this matter involves approved entitlements and vested rights, and so the potential of revocation of those permits from the county's perspective could expose it to significant liability. So, I just wanted to make the commission aware of that. With regard to the alleged violations in the petition, I'll defer and submit under the recommendations and that were made in the both Director's Reports in January 2024 and also March 5th, 2024, which both come to the conclusion of recommending denial of the revocation of the permits and based on a that either, a) there's compliance and there wasn't enough basis for failure for the developer to fail to conform to what the specific conditions that are laid out. I don't want to reiterate the reasons given but I submit on those reasons. Regarding the standing issue, the petitioners cite three cases in support of the reason to support why they have standing to bring this to action. The Akau case, the Kahoma case, and the Maui Electric case, and I just wanted to differentiate distinguish some of those cases and I'm getting into some of the facts because I think it's important because there's some certain aspects that differentiate the cases from this matter. The Akau case is factually different, it was a class action to (inaudible) right away along public trail, so I don't want to spend a lot of time in that. The Kahoma case, it was a situation where an environmental group challenged an original SMA permit and they brought action to appeal the denial of that. Here, we have already approved existing permits and it's a petition to revoke based on the failure to perform under those conditions. The environmental group in Kahoma was held to have standing. However, the members who brought, the court made it very clear that the members who were able to have

standing were adjacent to the project and therefore that it would diminish the use and enjoyment of their property because it was adjacent. In reviewing the declaration submitted by the petitioners, they'll list the addresses and if you look up the addresses, there's everything from the three minute drive, .5 miles, .6 miles, .7 miles all the way up to Ms. Johnson, I believe said somewhere in Kapa'a and you heard testifiers from around the island today, so I think that differentiates when it comes to the issue of standing in the Kahoma. The Maui Electric case really clarifies it, that was the 2017 case. It was where the Maui Electric sought approval of a power purchase agreement and then the approval was challenged by the Sierra Club asserting certain environmental causes, environmental objections to why those permits should not be made in effect. So, the court found that they did not have to a certain injury that's different in kind from any injury to the general public, but they must still meet a three-part standing test, which is, one, they have to, the petitioner had to have suffered an actual or threatened injury. Two, the injury must be fairly traceable to the defendants' actions, and three, a favorable decision would likely provide relief for that injury. So, in the Maui Electric case, the Supreme Court found that they did have standing under a clean and healthful environment, which is what the petitioners are alleging in their petition and the court reviewed supporting affidavits to make those findings. However, the submitted affidavits differ from that case to this case, and I'm going to tell you why, one, it demonstrated a threatened injury to the right to a clean health environment, very specifically from the effect of greenhouse gases, and then two, it explained there were very detailed and specific in explaining the potential effects to those members of the permit itself, in that case, it was burning coal. And in fact, one of the submitted affiants said that she had to close her windows to run air filters inside and therefore they said that they found standing because it was a threatened injury caused by that plant that was fairly traceable to the actions of the descendant, which was the plant that was doing it to its members, so you look at standing in this matter, the Planning Commission has to determine, based on the declarations and the testimony, does an actual or threatened injury that's fairly traceable to RP21's alleged failure to perform under the specific conditions in the petition exist. Now that you heard the testimony, you've read the declarations, they share passionate concerns, but they seem to be arguing instead that it's compliance with the conditions and not noncompliance with conditions, that's their alleged injury. It appears to be opposing any development of Coco Palms at all. The testimony of the declarations raised concerns regarding traffic, beach crowds, wastewater, seabird, tsunami, evacuation issues, disruptions, historical cultural sites, flooding, but just like in the affidavits submitted to Maui Electric, where was the testimony specifically to detail how an actual injury was to a certain member or the group to the condition specific, specifically alleged in the petition, and I think that that's where an issue was raised here with regard to standing, you know, most testimony didn't even reference any specific condition. It just basically was against the development. So, it seems to raise a question if noncompliance wasn't an issue and RP21 and Hui was in compliance, would there still have been an action, and it appears that would have been because it appears that unlike Maui Electric, it's a general concern, if we don't want this development, in fact one testifier today said, we don't want a hotel and so the petitioners, they're asserting certain of the similar concerns set forth in Kahoma, but the court in that case found it was an original SMA permit, and that's when these issues could have been raised. There were public hearings prior to the approval of the initial permits in March 15, 2015. The Planning Department initiated revocation proceedings in 2016 and 2018 and 2020, where this information could have been brought forward, but it wasn't. So, it's...and you know the 2000, December 31, 2018 conditions that are at issue here those were amended and approved after a hearing. That's

when it should have been set forth. That's where I would agree with the whole ruling in Kahoma that there was injury in fact, but I think there's an issue as far standing goes with, are the petitioners alleging an actual or threatening injury, and is that based, is it fairly traceable to the actions of R21, not in general to the development, but specifically to the conditions and the allegations as to each specific condition and with...so, in conclusion if the commission finds that their standing wasn't established, we request that the petition be denied with regard to the alleged failure to perform certain conditions based on the Director's Reports and the supplement report, we request the Planning Department deny the petition and that's based on there's no reasonable cause to believe that there's been a failure to perform the specific conditions as alleged in the petition, and so with that I'm finished. I'll take questions if you have any. Thank you, commission.

Chair Apisa: Thank you.

Ms. Barzilai: We have rebuttal. If you like, Madam Chair.

Chair Apisa: Yes, a three-minute rebuttal for each party, please. Starting with Ms. Hammerquist.

Ms. Hammerquist: Thank you, Commissioner. First, I'd like to start by saying, Mr. Trask really does stretch the truth, if this body watches the April 14th, 2023, meeting before Director Dawn Chang, she confronted Mr. DeCoursey at that time, he said he had an assignment in his safe from Coco Palms Ventures, which we've never seen, and it did not get produced in a recent DLNR production, but she said to him, Mr. DeCoursey, no matter what's in your safe in Utah, you acknowledge that this board has the authority and the lease provides that we must approve an assignment for it to be valid, and he agreed, and he said it has never been before you. They do not have a lease. They did not have a lease in Coco Palm Ventures and Coco Palms Hui followed. There was no lease perfected in 2018 and that's an easy thing to get Director Chang to confirm. The (inaudible) issue is on the calendar for the BLNR board at the end of this month. The RP issuance is also on the calendar. It has not been done. They have neither lease nor RP and I do take strong exception to Mr. Trask continually saying Coco Palms Hui has had a lease since 2018 because that is not true. With regard to standing, four of the petitioners who filed suit happened to be Hawaiian. I think it's rather racist to Mr. Trask to suggest they need to be Hawaiian. They are close to the project and while the County Attorney, Mr. Donahoe, raises the fact that in the case he discussed Kahoma, they were closer, they were adjacent. I think that's a way conservative interpretation of that court decision. These people did articulate an actual injury. They lost 75 coconut palms that RP21 took down and that is why there is a pending action at the DLNR Office of OCCL, Office of Conservation and Coastal Land Management filed a complaint that Director Chang signed, and they are still under that complaint and it has not been resolved. So, to say that there's no actual injury is false. We do raise a right to a clean and healthful environment, and we do say one thing that has never been addressed is if the SMA Permit Law County Code Section 1.4a has not been met, then the permits issued are by definition unlawful, and they are not going forward with their condition permit development, as Mr. Dahilig found in 2018. There is no action that we could find taken by the commission in 2020, but what we did find interesting was in 2015 the developer had a requirement to widen the road out of Apana, widen the road of Haleilio and sidewalk them both. In 2018, that condition was altered, and it was stated that in 2017 a payment of \$93,000 that all that work supposedly bought them the right to rely on the county doing the work. That I think, must have been, should have

been brought before the board and acted upon, and that is a violation of a condition. Also, the fact that 2017 says the demolition was satisfied, the demolition wasn't begun until the end of this, last year, in December of 23, so there is no question that there are conditioned violations. There's no question they have never met a Ka Pa'akai Analysis, they do not have legal permits under our own County Code, the SMA 1.4, and they've not met the building codes, 12 2.1...

Ms. Barzilai: We've reached four minutes.

Ms. Hammerquist: ...and 2.2.

Ms. Barzilai: The same courtesy will be provided to the other Council.

Ms. Hammerquist: Thank you.

Ms. Barzilai: Thank you.

Ms. Hammerquist: Appreciate it. I do appreciate it and thank you for listening. Please look at the Board of Land and Natural Resource minutes from April of 2023, it's real clear, Mr. DeCoursey admitted, that they don't have a lease.

Chair Apisa: Okay. Thank you. We've now extended the rebuttal to four minutes.

Mr. Trask: Thank you. I'm not going to disparage the petitioners. I'm going to politely characterize them as confused. All right because the reason what happened, what actually happened in April 14, 2023, cause I did watch it because I wasn't there.

Ms. Hammerquist: I was.

Mr. Trask: Was that Mr. DeCoursey said, he had an assignment of lease that was predicated from PR2, Prudential, a Prudential Lending Entity to Coco Palms Ventures that was entered into between private parties subject to the consent of BLNR, if any of you have ever worked with the state, have had a lease with them or done anything with them, you know that it takes them time because the DLNR is the largest, most underfunded state agency in the state. Things take time. If you look in this own record, it took Grace Guslander years to get the final documents for her, for the lease. The point remains unchanged. We have the lease. You have the minutes from the May 2018 meeting where they did approve it and Ms. Allison Neustein at the January 12th, 2024 BLNR meeting told them the lease was approved in 2015, you have it, the preliminary approval paperwork is in. You have a copy of that. That's a done issue. We're not talking about RP's. They're conflating the RP's, which are annual, okay with the lease, which is 45 years or something, 65 years, extends till about 2045. As far as the RP's right now, you also know what the current recommendation for land division is, give it to RP21 because we have the means and the ability and the commitment to provide, not only satisfies historic use because remember these state lands are part of the historic district. They too need to be put to historic use or you have to delist them. That's why they're leaving that out of the conversation. If you're not going to make this a hotel, you're delisting historic property. That's it. All right. So, then what you need to do is and that current would be the recommendation is to give it long term easement to RP21 and lease. Open bid. So, that's what we're doing. We're going to provide the parking, we're going to provide the education opportunities. We're working with the Coco Palms Cultural Advisory

Committee, which is mandated to be created by this county during the 2015 permitting process, it was done. I'm sorry, I am not a racist, but when you establish standing, you talk about traditional customary practices, you have to establish that your native hawaiian, which means you have to show that you're descended from the lineal descendants of the Aboriginal peoples who occupied the state before 1778. That's not a racial class. That's a political class. I said this numerous times before this body. If you look at, and talk about credibility, this is very important. For the record, I'm handing a copy of the Exhibit 31 to Petitioners. Permission to approach.

Mr. Donahoe (not speaking directly into microphone): (Inaudible), Mr. Trask (inaudible) provide (inaudible).

Ms. Barzilai: Mr. Trask, do you have any extra copies for members of the public who would like to look, and can you please describe the exhibit for the record?

Mr. Trask: So, this is a copy.

Chair Apisa: Before we continue, this is just, again, a matter of protocol, but just again purely protocol, but could the three of you kind of be on your own table so that that there's it just it just? Kind of looks encroaching. If you could, guys, or Gary, if you could scoot or go on the other side or yeah. Thank you. Yeah. I mean technically that there, there is a reason that there are two tables there and it just, I think it's just a matter of protocol. Thank you.

Mr. Trask: All right, so as an offer approved, one of the issues raised by one of the declarants, Ms. Rossi, was that she was a kalo farmer and she said it today at the table. She said she has a kuleana lot up Koki Road and that's where she did it.

Ms. Rossi: Mauna Kea, I own the property.

Mr. Trask: Yes, she does. And so, in our reply, in our opposition, we've concluded pictures from that property that I took showing that there's no kalo there. I'm not trying to invalidate Ms. Rossi, I'm just trying to say that they are saying, what they are, the evidence they're providing to you is not credible because there's evidence contrary to it that directly contradicts it. In their subsequent opposition reply, they included pictures of a beautiful little Hawaiian girl standing by a big kalo plant and they said we do farm, it's just fallow. So, I couldn't, I couldn't think, well, but I felt terrible. So, I thought I made a mistake, and I couldn't figure out how to look at that until I thought this morning, hey, the County of Kaua'i Real Property Tax Division has a pictometry function on every single lot in this county, and if you go look at it, you can look at GIS aerial photographs going back to 2008. So, I did that because I wanted to correct the record if I was wrong. However, according to government records, GIS photography shows from November 2008 to and until October 28, 2021, her kuleana lot was entirely foul, there's no kalo on it. So, all I'm saying is that this is indicative of the petition. I'm not calling anyone anything, but they need to bring to you specific, articulable, and credible facts to sustain their burdens of proof and production and persuasion.

Ms. Barzilai: Mr. Trask, you're well over six minutes at this point. Thank you very much.

Mr. Trask: Sorry. Just let me close up. To prove by preponderance of evidence that our permit should be revoked. They haven't done so, and this is direct evidence of it. Thank you.

Chair Apisa: Thank you, and county, your rebuttal, please.

Mr. Donahoe: Deputy County, Chris Donahoe. I will save these four minutes (inaudible).

Chair Apisa: Okay.

Mr. Donahoe: Thank you. Thank you, commission.

Ms. Hammerquist: Commissioners? Can we allow Ms. Rossi, since this was raised in rebuttal and it really didn't rebutted in our directive, and we allow her, did we allow her to respond?

Ms. Barzilai: Chair, I think it would be at your discretion if the Commissioners want to ask questions directly of Ms. Rossi. But I think at this phase we're moving on to questions from the Commissioners.

Chair Apisa: I would agree with that. I think we could ask questions. At this point, Commissioners we're open to questions from the Commissioners of the three parties present at the table.

Mr. DeGracia: Not a question, but at this point since I feel it's prudent. Could we have Ms. Rossi explain what she sees, according to her kuleana or her property, and whether or not she's raising or growing kalo on the property.

Ms. Rossi: For the record, thank you, Haunani Rossi. My family and I do own this parcel. We own it outright. We pay taxes on it. We do farm it for only family consumption. And we all know that there are times where kalo is fallow. We do deal with guinea grass and we are not allowed to grub and grade, so a lot of it is done by hand with a sickle. I understand that Mauna Kea Trask took pictures of my property back in December, but when was the last time he was there? We are back growing. So, we don't always have huli on a regular basis, but we do farm it for family consumption only, not commercial. My testimony today was basically about Koki Road and the fact that we have to drive that daily to see our farm. And the grubbing and grading that they did do back in 2023, they didn't clean it. It's still there. I have pictures. I stopped those truck drivers and asked them what they were doing, and they were dumping coconut trees and green waste there. Now if I were to do that on my property, I would be fined. And how dare he say that the Land Board has a lot on their plate. Yes, they do, but they had no problem telling him to stop the grading and grubbing or they would be fined \$15,000 a day. Have they cleaned it up? No. Thank you.

Mr. DeGracia: Ms. Rossi, one follow up question.

Ms. Rossi: Yes.

Mr. DeGracia: According to your understanding with the permits, are you growing kalo on your property being affected by the actions of the applicant, and any condition on the permit is affecting you from growing kalo?

Ms. Rossi: No. The only thing that I think it would affect all of us that have property there, is the fact that back in 2020/21, 2021 there was flooding there and we have to evacuate an 80 plus year

old woman and a family of three due to all that water that came through there and that, I believe was in March of 2021. So, our concern as property owners if that land is not cleared, then we've got a problem. But with all the grading and grubbing and the coconut trees and the concrete that's left there, that's going to create a problem should we get water runoff coming down. So, I don't know how they can say they're good stewards of the land when that's still there.

Mr. DeGracia: Thank you, Ms. Rossi.

Ms. Rossi: Thank you.

Chair Apisa: Other questions from the Commissioners?

Mr. Ako: Madam Chair if I can follow up on that. So, right now you are growing kalo on the land.

Ms. Rossi: Yes.

Mr. Ako: So, there is kalo on there?

Ms. Rossi: There is.

Mr. Ako: How long does it, I don't know how this thing works. How long does it take to grow kalo?

Ms. Rossi: I believe it takes about nine months.

Mr. Ako: About nine months.

Ms. Rossi: But we have different varieties that we grow and again it's for family consumption.

Mr. Ako: Family consumption.

Ms. Rossi: Yes.

Mr. Ako: When was the last time you made a harvest or whatever?

Ms. Rossi: Probably in November of last year, October of last year. I have to ask my husband, but he just started planting within the last two to three weeks. So, there is some growing now.

Mr. Ako: So, there's some growing. Which you have not harvested yet.

Ms. Rossi: No.

Mr. Ako: Prior to that, when was the last time you had a harvest of kalo?

Ms. Rossi: Oh gosh. I can't...

Mr. Ako: I mean are we talking a year? I mean if it takes nine months...

Ms. Rossi: Yeah.

Mr. Ako: A year or longer?

Ms. Rossi: No. No. Less than that.

Mr. Ako: I should say maybe when was the last time that you had kalo growing on that property prior to November of 23?

Ms. Rossi: I would say probably October, November of last year.

Mr. Ako: Right. Prior to that.

Ms. Rossi: I don't know. You'd have to talk to my husband. He's the one that does that.

Mr. Ako: So, that probably takes place where the land you said is fallow.

Ms. Rossi: Fallow, yeah. And then again, it's getting the huli too.

Mr. Ako: Okay. So, it's not like it's a yearly thing that goes on growing your kalo.

Unknown Woman from audience: It is a yearly thing.

Chair Apisa: If we can have the people at the table speak, please, thank you.

Ms. Rossi: It is a yearly thing, you know, as far as planting and then harvesting, but we have different types of kalo growing, so they mature at different times too.

Mr. Ako: So how...

Ms. Rossi: So, it's dry land.

Mr. Ako: Yes, when we growing the kalo, how big an area are we using? This size or that size.

Ms. Rossi: Maybe a little bigger than this area.

Mr. Ako: Bigger than this area?

Ms. Rossi: Yeah, and we have it spread out in different parts of this parcel cause we have different varieties.

Mr. Ako: So, if I look at these pictures here, I know they're not real. Would I be able to tell if there's kalo on this property? In these photos.

Ms. Rossi: No. I don't know when he took this, but no.

Ms. Otsuka: On the bottom left is the dates.

Ms. Rossi: It's kind of hard to see on this.

Mr. Ako: Yeah, okay. That's okay. The property that own, is this within the, this isn't within the lease of what we're talking...

Ms. Rossi: No. No.

Mr. Ako: ...about for Coco Palms, right. This is just your separate and apart, but just...

Ms. Rossi: Hmm...

Mr. Ako: ...I don't know if I want to say adjacent but close by.

Ms. Rossi: Yeah.

Ms. Hammerquist: It is adjacent, isn't it?

Ms. Rossi: It's adjacent to the state.

Mr. Ako: To the state land.

Mr. Trask: It's about three lots down.

Mr. Ako: Yeah. Thank you.

Chair Apisa: Are there questions, Commissioners?

Mr. Ornellas: I have a question. So, is there a source of water to that, I'm assuming it's a kuleana lot, is that correct?

Ms. Rossi: No, it's not a kuleana lot.

Mr. Ornellas: Is there a source of water?

Ms. Rossi: No, my husband has to truck it in.

Mr. Ornellas: Okay. Thank you.

Ms. Streufert: I think there was a question about the leases and if I'm reading Exhibit 18, where Friends of Māhā'ulepū submitted, it says that General Lease 4878 does not expire until August 17, 2048.

Ms. Hammerquist: That's true.

Ms. Streufert: And cannot be arbitrarily canceled. So, does that not seem like there is a lease?

Ms. Hammerquist: There is the lease, but it's never been signed with approval by the board to either of the developers that have, from Ventures on, none of them have had approval from the landlord to be the leaseholders. So, the state is the holder of the lease land, as Dawn Chang told us all in April, I was there personally at that meeting, and Mr. DeCoursey assured her they have never brought it to the board for approval. So, they're not valid leaseholders unless the board

approves the assignment, but I would like to ask if we may, for Mr. Hooser to read an e-mail on that exact subject from the Land Board Agent, Alison Neustein. So, can he read it to you?

Mr. Trask: We'd object.

Ms. Hammerquist: So, you'll know the status of the lease.

Mr. Trask: No. We'd Object.

Ms. Hammerquist: Well, that doesn't mean it can't be read.

Ms. Barzilai: (Inaudible) on record for (inaudible).

Ms. Streufert: Can I just continue on this? The next paragraph says that the hotel itself is being constructed on private property.

Ms. Hammerquist: The primary portion of the hotel is being constructed on leased, on fee simple land, but they're constructing the wedding chapel, their plan is to construct the wedding chapel in the Coconut Grove that's leased land. Their plan is to park cars on the...

Ms. Streufert: I'm just trying to establish...

Ms. Hammerquist: Sure.

Ms. Streufert: ...that according to this there is a general lease that goes until 2048.

Ms. Hammerquist: And that was held by an entity that's no longer in existence. So, it has to be effectively modified, the Land Board is the only entity that can do it. Other parties can't run around and put their name on the lease. That doesn't work. So, the lease with Amfac was effectively assigned and there is Land Board record of that, but the entity that had the assignment predated Coco Palms Ventures LLC., and they're no longer in an existing entity so, there's a non-entity that was the last approved holder of the lease that expires in 2048. So, that's a matter that the Land Board has to take on, and they did the same with the RP's, and then they voted, they were terminated as of the end of December last year.

Ms. Barzilai: That satisfy your question?

Mr. Hooser: You know, Mrs. Hammerquist has (inaudible)...

Chair Apisa: I'm sorry.

Mr. Trask: Objection.

Mr. Hooser: (Inaudible) she's blind.

Chair Apisa: No.

Mr. Hooser: She is not able...

Chair Apisa: No, no.

Mr. Hooser: She is not able to read on her own.

Chair Apisa: Alright, but...

Mr. Hooser: I believe the rules allow assistance for her to read something.

Chair Apisa: There's another party there that would be able to read it.

Mr. Hooser: Okay. Can the other party read it?

Ms. Barzilai: If it's the (inaudible).

Mr. Hooser: I just find it appalling that you will not let someone read something...

Ms. Barzilai: Is it in response to a question?

Ms. Hammerquist: Yes, the lease question. It's from the Land Board on the lease.

Mr. Trask: No.

Ms. Hammerquist: Yes.

Mr. Trask: We haven't seen this, we haven't seen this reported e-mail. We don't know what time it is. Again, this was the reason why I raised this; Mr. Hooser is represented, has been in the past, the treasurer of I Ola Wailuanui. He has a vested interest in this, he's not a party. He said he wanted to sit here to hold Ms. Hammerquist hand. Now he wants to testify. Now he wants to present exhibits.

Ms. Hammerquist: No, no, no, no.

Mr. Trask: It's not the issue.

(Multiple people speaking at once)

Ms. Hammerquist: This is an e-mail that we got from the Land Division, I just can't read it.

(Multiple people speaking at once)

Mr. Hooser: That paragraph...

(Multiple people speaking at once)

Mr. Trask: We'd object. This is beyond decorum. We're supposed to be here on this...issue.

Ms. Hammerquist: No, this directly answers your question about the lease and it will offer truth to your deliberation.

Ms. Barzilai: It would (inaudible).

Ms. Hammerquist: It's not. It is (inaudible).

Mr. Trask: We would ask for copies of it before so we can understand what it is.

Ms. Hammerquist: It'll be read out loud and I'll be happy to hand you the phone and you can read it yourself too, Mr. Trask.

Chair Apisa: I would like to continue on with questions from the Commissioners.

Mr. Trask: Thank you.

Ms. Streufert: I was just questioning the statement that Friends of Māhā'ulepū submitted which was Exhibit 18, on the 2048, or the lease until 2048. That's what I wanted to...

Ms. Hammerquist: And this addresses that.

Ms. Streufert: Oh okay. If anyone else has questions. I'll come back to mine later.

Mr. Ako: Since we on the leases, Madam Chair. Can I ask?

Chair Apisa: Yes.

Mr. Ako: I think for me, what gets real confusing is the fact that we hear these Coco Palms names all over the place, right. I think as I understand it, and please I'm just trying to figure this out for my own understanding to move forward, right. As I understand the initial permits were issued or assigned to Coco Palms Hui, which was a Hawai'i LLC at that time, which I kind of referred to as Coco Palms Hui, Hawai'i. They foreclosed on their property and from there, the lease was, the permit for the lease was then assigned to Coco Palms Ventures.

Mr. Trask: No.

Chair Apisa: No.

Mr. Ako: No?

Mr. Trask: No.

Chair Apisa: No. Coco Palm Ventures preceded, and they're out of the picture. Coco Palms Hui was right before the current owners.

Mr. Trask: Correct.

Mr. Ako: Was right before the current owners. So where does Prudential and...so Coco Palms Ventures, doesn't even come into this?

Mr. Trask: No.

Ms. Hammerquist: They were their state license was terminated by DCCA in 12.

Mr. Ako: Right, but they never had the leases or the assignments.

Ms. Hammerquist: No. Their name was never approved by the Land Board to be on the lease. The last approved assignment by the Land Board was done for a developer before Coco Palms Ventures.

Mr. Trask: Yeah.

Ms. Hammerquist: ...and they supposedly made an assignment to Coco Palms Ventures, but they never got it perfected by the board.

Mr. Ako: Right so, but it did go to Coco Palms Ventures. The question is whether it was officially assigned to them or not.

Mr. Trask: If I can...

Ms. Hammerquist: No, it was not (inaudible).

Mr. Trask: I actually know the history.

Mr. Ako: Okay.

Mr. Trask: So, what it is was...

Mr. Ako: Help me please.

Mr. Trask: Coco Palms Ventures own the property. Okay, this is way before the instant permits.

Mr. Ako: Okay.

Mr. Trask: So, we're talking Coco Palms Ventures had it, I think, on or about the early 2000's. So, they were the holders of the property under I think 2006 permits when the subprime mortgage collapse happened. So, then Prudential 2, PR2 was the lending entity that foreclosed on them. Okay, nothing was moving at that time. What had happened was when Prudential...

Mr. Ako: They foreclosed on Coco Palms Ventures.

Mr. Trask: Ventures. What happened was when that...

Mr. Ako: How did Coco Palms Ventures get it?

Mr. Trask: They got it before.

Ms. Barzilai: They were the original permit holders, Commissioner, prior to Coco Palms Hui...

Mr. Ako: Coco Palms Ventures was the initial...

Ms. Barzilai: It's a completely unrelated entity.

Mr. Trask: Completely unrelated entity.

Ms. Hammerquist: But they never had a lease with the state.

Mr. Trask: Okay, wait. Hold on.

Ms. Barzilai: I think one thing that would be beneficial is to understand that this issue, if I understand it correctly, is limited to the intervention of your client, Hui, correct?

Mr. Trask: Correct.

Ms. Barzilai: We're not talking about the merits of the petition here.

Mr. Trask: No.

Ms. Barzilai: So, we're spending a lot of time on this issue, and I think it's fruitful, but we should probably move forward.

Mr. Trask: Just really quick though. I can explain it quickly. So, first it was Ventures as a private entity, Ventures, then got foreclosed on Prudential, Prudential had Ventures sign, an assignment to Prudential as first assignor, when then Hui bought it at foreclosure from Prudential, there was another assignment from Prudential to Hui as second assignor, all subject to the consent of the BLNR, because obviously none of this is good until the BLNR consents. So, when that went up and that was affected 2016, when that went up before the BLNR, and you have the agenda and the minutes, 2018 it was approved. And if you look at that preliminary approved assignment and consent letter, which was turned in, and this is Exhibit 27, if you...

Ms. Streufert: (Inaudible) I'm sorry, whose exhibit?

Mr. Trask: Our exhibit.

Ms. Streufert: Yours.

Mr. Trask: 27. If you read the text of it, it says whereas such and such consensus assignments have happened, affected as of 2016, so they actually roll it back to the private consent which is the document that Mr. DeCoursey was referring to as having the consent deeds in a safe. Okay, so it is complex, but again, we're talking about standing. We clearly have standing and none of this is within land use or zoning questions.

Ms. Streufert: Could I ask a question? Are we looking at standing of the...I don't even know the names, what to call you guys anymore. RP21 and FOM.

(Multiple people speaking at once)

Chair Apisa: Friends? No, we're looking at (inaudible).

Ms. Cox: Which one are we looking at?

(Multiple people speaking at once)

Ms. Barzilai: I think we're getting confused right now, we're talking about the right of Hui to intervene. You have several things before you.

Ms. Streufert: The right of Hui.

Ms. Barzilai: You have whether RP21 Coco Palms can intervene, whether Hui can intervene, and then you have the standing and the petition that you have to address.

Ms. Streufert: So, we're talking about...

Ms. Barzilai: Your question should broadly consider all of those things.

Ms. Streufert: So, we're just talking about whether RP21 has standing.

Ms. Cox: has standing.

Ms. Barzilai: Whether Coco Palms Hui LLC has the right to intervene in this matter.

Ms. Streufert: And who is Coco Palms LLC?

Mr. Trask: So, I represent...

Ms. Streufert: Versus RP21.

Mr. Trask: I represent Hui and RP21.

Ms. Streufert: So, it's one in the same or is it different?

Mr. Trask: No, there's two different entities, but they're both my clients because they both come under Reef Capital.

Ms. Streufert: So, the standing is for both, or for one, or for...

Mr. Trask: Well, for both because...

Ms. Barzilai: Both parties have moved to intervene.

Mr. Trask: Yeah, they (inaudible) because Hui's is the lessee because during the last mortgage foreclosure there was a springing management agreement that's when Mrs. Hammerquist talked about somebody else took over, so after Chad Waters and Tyler Green, who didn't deliver on the promises we took over and we did.

Ms. Streufert: Okay, so, it's RP21 and Coco Palms Hui, and whether they have standing, and that's all we're talking about right now.

Mr. Ako: I don't know, is it?

Chair Apisa: No.

Ms. Cox: That's a good question.

Chair Apisa: I think it's also if the other party has standing.

Ms. Streufert: No, but we can only do one at a time, right?

Ms. Barzilai: At this particular point, Commissioner, your questions can cover all subject matter, particularly the petition and the standing issues, so that you can be prepared either to make a decision on the record or enter executive session, that should be your focus at this time.

Ms. Hammerquist: And Madam Chair, in order to get a full record and really air the things that should be aired, like the Land Boards letter to us, advising that there is no proof lease and in existence, and one has to be prepared and approved by the Land Board in order to get that stuff before us. Could we please request a contested case? This is a complicated issue and if you believe it's appropriate, we would be more than happy to appear before an administrative law judge and let him peel the layers of this onion because there's quite a few, there were at least three entities amongst whom assignments of the state lease were made before Coco Palms Ventures ever appeared on the scene in 2006. Those were approved by the board. Nothing has been approved by the Land Board, and as Ms. Chang said, the Land Board owns the state land, they are responsible for it and they have to approve any assignment and that has not happened from Coco Palms Ventures forward. So, there's nobody that has had a valid lease or valid control of the lease since 2006, and that's our problem with the illegal issue of the permits in both 2015 and 2018, and I think it is something to put before an administrative law judge, it's really complicated, I agree with that.

Mr. Ako: Now, just for clarification in my mind, again, before we get to an evidentiary hearing, we need to decide on standings first, to see whether the petition can actually be accepted by this Commission, and if it is accepted by this Commission, then we need to rule on whether there's a failure to perform or not, and then if it's yes, there is a failure to perform, then the question is whether that is handled here at the Commission or goes over to hearings office.

Ms. Hammerquist: Okay.

Mr. Ako: Is that correct?

Ms. Barzilai: That's correct.

Mr. Ako: So, first in my mind, I'm trying to figure out, I need to decide on standings first.

Ms. Streufert: For who? That's the question.

Mr. Ako: For the three of them. All three parties.

Ms. Hammerquist: And there are declarants. There are declarations in for eight people, for at least three of them refer to the current activity disrupting their traditional and customary practices and their rights, both at the ocean, at the seashell area, as well as their right to all of

them to a helpful environment with the destruction of 75 coconut palms and the grading without permits on the property.

Chair Apisa: If we could please move on to questions from the Commissioners. I appreciate that, but if you could just stick with questions from the Commissioners here and we need to move on. Thank you.

Ms. Hammerquist: Thank you.

Mr. Ornellas: Mr. Trask, backing up a little bit. When is Coco Palms Hui getting a BLNR Chairs signature on the agreement (inaudible)?

Mr. Trask: So, the process is they've again, it was approved in 2018. We have the documents right now. They've been routed to, they've been signed off by the Prudential entity. So, first Prudential signs off, then they sent it to RP21 in Utah to sign off and RP21 sends it back to me, I'll walk it over to Alison and it's signed. If you look at Exhibit 27, it's already signed by Deputy AG Colin Lau. The last person to sign is going to be Dawn Chang, but it's already preliminary approved. That's not a proposed lease or consent to assignment or amendment. That's the approved thing that gets signed by the attorney. That's what got sent to us. As I told you in my declaration, it got sent to me on or about, or we picked it up on about February 29<sup>th</sup>, it's immediately been sent. So, all of this again, this was raised as part of the BLNR accusations against my client for failure to perform in the lease. Those weren't founded. If the DLNR didn't find those credible, it's not within your jurisdiction. It's already being signed. It's already been approved. They talk about we haven't had it for five years, we've had it for six, 2018, May.

Mr. Ornellas: What is the status of the tax clearances for...

Mr. Trask: Done.

Mr. Ornellas: ...Coco Palms Hui?

Mr. Trask: Paid last year, immediately cleared up. It was before the next, the May meeting, so, it was after the 14<sup>th</sup>, between the 14<sup>th</sup> and August, whatever that was done, all the defaults with this the lease, done.

Mr. Ako: So, Mr. Trask, right now are we still, we're still waiting on Dawn Chang's signature. If she never signs it...

Mr. Trask: No, the Board already approved.

Mr. Ako: Right.

Mr. Trask: So, she assigns, she needs to sign it to effectuate the finality of it.

Mr. Ako: Right. If she never signs it, what happens?

Mr. Trask: I don't think she can not sign it.

Mr. Ako: She hasn't signed it yet.

Ms. Hammerquist: That's (inaudible).

Mr. Trask: That's true, but it was approved in May.

Ms. Hammerquist: That's really not true.

Chair Apisa: No disruptions, please. Thank you.

Mr. Trask: I kindly request you look at Exhibit 6. Exhibit 6 is the minutes from May 25th, 2018. The motion was to approve the amendment and the consents. It was approved unanimously, so the board has spoken. The Chair effectuates the will of the board, just like if you guys make a decision today, in all due respect, Ms. Apisa cannot deny to sign that order.

Ms. Hammerquist: Can I please respond to that?

Mr. Ako: No, no.

Ms. Hammerquist: Mr. Tsuji, Russell Tsuji testified that it was never perfected because they never came in with proof of their tax payments.

Mr. DeGracia: Commissioners, may I interject real quick?

Ms. Barzilai: Yes, please.

Mr. DeGracia: I just have a concern is everything we're discussing at this point in time talking about the petition and whether or not failure to perform and, is it is everything pointing toward whether or not that applicant has failure to perform on conditions because I'm getting a little lost in this conversation and I guess I need to kind of find the direction and as far as us coming up with actual decision making.

Chair Apisa: Thank you very much. You know, again, stay focused on the parties having each, having a standing and then performing. So, if we could stay on track of what we're here for today.

Ms. Barzilai: Madam Chair, if the Commission is ready for executive session, we could terminate the questions and move toward that as well.

Chair Apisa: Do you have any other questions before we go to executive session?

Mr. Ako: Can we come back to questions after executive session?

Chair Apisa: Well, do you have more questions now?

Mr. Ako: Yes.

Chair Apisa: Okay, go ahead.

Ms. Streufert: But is it about standing, or are we talking about the...

Ms. Barzilai: You may ask questions on any subject related to all of these documents.

Ms. Streufert: Anything?

Ms. Barzilai: Yes.

Ms. Otsuka: Mr. Trask?

Mr. Trask: Yes.

Ms. Otsuka: You mentioned in one of these documents that the 2015 TIAR can be updated. So, and I understand it can be, but is there a more definite word that it will be done? And is there a deadline or no deadline?

Mr. Trask: So, we have to I believe it's well within one year of occupancy. There's a deadline and when I say it can be updated, the declaration of Mr. Day confirms we will update it. It's a required Commission, I mean condition. However, the allegation in the petition was that it cannot be updated. And functionally I'm saying, of course it can. It should. It was anticipated to be and that is why it's a condition to update it.

Ms. Otsuka: (Inaudible) I understand why you said (inaudible). Thank you.

Mr. Trask: Thank you.

Mr. Ako: Madam Chair, at this point I'm going to ask if we can go into executive session.

Chair Apisa: Okay. Were there any other questions, I think...

Mr. DeGracia: Actually, I have one question for Ms. Hammerquist.

Ms. Hammerquist: Yes.

Mr. DeGracia: For me to better understand standing and I believe your organization has members who have, you know, some declarations in your petition. Could you tell me a little bit about your organization and how it's tied into...because my understanding, Māhā'ulepū is located on the South Shore.

Ms. Hammerquist: Yes.

Mr. DeGracia: And you're involved in a project that is on another part of the island. Just help me understand the types.

Ms. Hammerquist: Yes, we actually have a by-law and a statement of purpose and after we were successful in stopping an industrial dairy 6/10 of a mile up slope from Māhā'ulepū Beach, we got into the issue of water and we were asked to assist on the east side with Wai'ale'ale and we formed Kia'i Wai, we were Co-founders of Kia'i Wai o Wai'ale'ale and we went before the Land Board for four years and finally got flow restored in Wai'ale'ale and the KIUC withdrew from

their RP 7340. So we work on the environment all over Kaua'i and that is what our mission statement says that we are dedicated because we have members from as far away as Hā'ena, Hanalei, and Kapa'a, and Hanamā'ulu, we're all over the island because our work is environmental primarily, and it is to keep a clean and healthful environment with recognition that our shoreline, our ocean, and our 'aina need protection and overdevelopment is costing the state, it's beauty and it's safety and it's clean water because of the coastal overgrowth. So, we don't just limit ourselves to the South Shore, although you're correct that's where we began, but there was an issue about water, they were going to give the dairy 3,000,000 gallons a day, so we looked into where it was to come from and it turns out the Kōloa ditch was to bring it from Wai'ale'ale. So, we've done quite a few projects now at Lawa'i to restore water flow there, we have that diversion significantly modified with the help and cooperation of (inaudible), and they credit us for that work and that's the west of us. So, we don't just limit ourselves to the South Shore.

Chair Apisa: Okay. Thank you. Now, do we have more questions that we can stay on track here?

Ms. Streufert: One more question for...

Mr. Ako: I think I'd like to go into executive session to figure out what the procedures we going be using to move forward from here. Not that we don't have any more questions.

Ms. Barzilai: We should probably...

Ms. Streufert: If we can have questions after the executive session that would be very helpful.

Mr. Ako: Yes.

Ms. Otsuka: Yes.

Ms. Barzilai: You'll need those in your decision making. I can't see why not. You can also exit and enter again if you had to, but I think if there are questions that will assist you in your decision making right now you should ask them.

Chair Apisa: Are there questions that...

Mr. Ako: Can I ask if we can, first ask questions regarding standards and after that portion of the question is done, which may go over and interlock with questions regarding failure to perform. So, we can kind of...

Ms. Barzilai: Commissioner Ako, did you want to ask questions of Miss Rossi or any of the declarants?

Mr. Ako: Yeah...

Ms. Barzilai: I think we only have Ms. Rossi here.

Mr. Ako: I think we're done with Ms. Rossi already; she's done.

Ms. Barzilai: Are the petitioners offering any of your other declarants that were attached to your petition?

Ms. Hammerquist: They signed sworn...

Ms. Barzilai: Claimed injury.

Ms. Hammerquist: They signed sworn declarations about their individual injuries with regard to this project, so I don't...

Ms. Barzilai: That's what the Commissioners have to rely upon right now and there's no one else here to take questions.

Ms. Hammerquist: That's right, none of the others could make it today because of work and other obligations. Yes.

Ms. Barzilai: Thank you.

Chair Apisa: All right, now we have more questions on standing.

Ms. Streufert: I will wait until after we have our executive session, as long as we can ask questions after the executive session.

Ms. Cox: I have a question but it's not on standing, so if we're only asking standing...

Ms. Barzilai: I would ask now, Commissioner.

Ms. Cox: Okay, one of the conditions that is alleged to be violated is the demolition Condition #17 and I just need clarification I guess just both from the department and from Mr. Trask about what is has, I mean I know that it says it's complete, but when you look at the building that's on the highway, it certainly doesn't look complete and also I question the pillars, the cement pillars that have been exposed to salt and water and so forth and there's rebar in there that I would think would rust and so I'm just wondering, I just need clarification, cause it certainly doesn't seem like it.

Chair Apisa: I think the county is going to answer that.

Mr. Hull: Yeah, and that's a good question, Commissioner, thanks. I know that (inaudible) create a lot of confusion, that the applicants just substantially complete the demolition work described in the existing demolition permits for the property by March 31st, 2017. So, that's not referencing the overall demolition permits we're talking about today, that they have secured to knock down other structures. In 2016, not once, not twice, but three times, the department attempted to revoke the subject permits and what came out of the first revocation proceedings was the agreement that the applicant would demolish certain buildings that had asbestos in it and go through asbestos with abatement. So, they say subject promises are talking about those asbestos abatement buildings and those buildings were brought down, the asbestos abated from outside. So, those subject permits are complete.

Ms. Cox: Okay. And so, Condition #17 was only referring to that demolition.

Mr. Hull: Correct.

Ms. Hammerquist: But it does provide vertical structures by June 30 of 21.

Chair Apisa: Commissioner Streufert, if you have a question.

Ms. Streufert: One of the issues that has come up consistently by several people is the Seashell Restaurant and Mr. Trask, I think in your, in one of these, and I can't tell you exactly where at this point that it is no longer or maybe it's in our, maybe it's in the Director's Report, that there, the Seashell Restaurant is not going to be built because the permits have lapsed. So, if it's not, if it doesn't come to...

Mr. Hull: I'll correct that, and I think we made that in our report that the building permits had lapsed, technically that the phrases that I should use, have been put on hold. There was never a shoreline determination made by our department and I want to be clear here though that pursuant to the Iniki Ordinance, whether we agree to it or not, and I'm a huge proponent of applying the Shoreline Setback Ordinance, we worked on drafting much of it, but under the Iniki Ordinance it exempted using these newer laws to make that analysis, however, it doesn't exempt the fact that determinations need to be made concerning where the shoreline is and so we put those building products on hold to determine whether or not a survey is necessary required for the establishment of that public interface with the Seashell Restaurant area.

Mr. Trask: Yes, and we just found that out, I think (inaudible) put the stop on it February 5th, so when I saw that in the report I immediately called Ka'aina and just asked him about it, got clarity on it and obviously we'll work with the department to, I think to allay their concerns, but if you look, and this is on RP21s exhibits. This is Exhibit 19 and 20 respectively. That Seashell Restaurant is built about 15 feet up on the hill and I believe it was where Guslanders old house, where, what's that guy? He was a famous singer from New Jersey...

Chair Apisa: Oh, Larry?

Mr. Trask: Frank Sinatra. That's the location, the old Sinatra house. So, it's covered in rip rap and boulders. I walked it the other day. I grew up over there, used to surf Horners all the time. It's well mauka of the shoreline. I have no problem aligning their concerns, and there's photos, if you look at the Exhibit 19 showing it from the 60s, you can see those nice little cars parked in that very shuttle turnaround. So, I'm sure it'll be fine.

Ms. Hammerquist: We took pictures just recently. That's part of the Exhibit 9, our declaration. We have current pictures of where the water comes.

Ms. Streufert: I move that we go into executive session.

Ms. Barzilai: We'll have to read the notices first. Thank you.

## **EXECUTIVE SESSION**

Pursuant to Hawaii Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session is for the Commission to consult with the County's legal counsel regarding powers, duties, privileges, and/or liabilities of the Planning Commission and as they relate to the following matters:

Ms. Barzilai: H.2. Madam Chair if you could read the specific notice.

Chair Apisa: Yes. Under executive session Agenda M.2.

In the Matter of the Petition of Friends of Māhā'ulepū To revoke Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1 and Special Management Area Use Permit SMA(U)-2015-6 issued to Coco Palms Hui, LLC for use at Wailua, Kaua'i ,Tax Map Keys 4-1-003: 004 (por.), 005, 007, 011, and 017 and 4-1-005: 014 and 017.

Chair Apisa: May I have a motion to enter executive session?

Ms. Streufert: I so move.

Mr. Ornellas: Second.

Chair Apisa: We have a motion to go into executive session. I Think we can...

Ms. Otsuka: Jerry seconded.

Chair Apisa: Yeah, we have a second.

Mr. Ornellas: Second.

Ms. Barzilai: Thank you, Chair. We'll take a roll call, Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: Motion carries. 7:0. We'll enter executive session. Thank you. We should be about 45 minutes to an hour.

The Commission recessed this portion of the meeting at 2:16 p.m.

The Commission entered into Executive Session at 2:29 p.m.

The Commission ended Executive Session at 3:52 p.m.

The Commission reconvened the meeting at 4:03 p.m.

Ms. Barzilai: You can reconvene, Chair.

Chair Apisa: The meeting is reconvened.

Ms. Barzilai: This is a mandatory statement under Sunshine Law, pursuant to SB 1513, enacted as Act 19, 2023: Relating to Public Agency Meetings, a board is required to report a summary of its discussion, or any final actions taken during an executive session, after reconvening to the public portion of the meeting. The Commission has concluded its executive session on item H.2. The item involved the discussion for the purpose stated on the agenda, disclosure of the discussion would defeat the purpose of convening the executive session which was held pursuant to HRS Section 92-5a4, the Commission's right to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities. No final action was taken during the executive session and this final discussion and action will now commence. We have an issue that was raised where Ms. Alison Neustein, who works for the DLNR, came here on her own volition and was brought in as a resource for the Commission to explain the DLNR process. I have been informed by Elizabeth Okinaka that she has made a complaint to OIP based on us inviting Ms. Neustein in because the public was not informed of the subject matter. With that regard, we would like Ms. Neustein to please explain what it is that she told the Commission and to answer the question that was posed to her by Mrs. Hammerquist.

Ms. Alison Neustein: Alison Neustein, DLNR Land Division, District Land Agent. I came in today, I wasn't requested to come here by any party. I came upon, on my own volition. No one asked or insinuated I should be here. I came to answer questions as it related to BLNR process and transferring of leases and easements and how the BLNR and Board of Natural Resources handles that. I believe Ms. Bridget has a question regarding tax clearances and has a relate to the transfer of our leases. The Land Board approved, I believe it was either 2016 or 2018, the assignment of these leases at the time one of the reasons that the paperwork was never fully consummated was because of a lack of tax clearances. After years had gone by because it fell through the cracks, once it was brought to my attention in the position I'm in, I issued a notice of default relating to one of the leases on the coconut palm property, the Coconut Grove and that

issue was resolved as far as the tax clearances and any other defaults that were listed at that time. If there's any other questions from anyone else regarding tax clearance issues or any other procedures, I'm more than happy to answer.

Ms. Barzilai: Would the Commissioners like clarification on anything that was discussed when Ms. Neustein came in as a resource before the Commission? Is there anything else that has to be clarified? Does that fairly summarize Ms. Neustein's comments to the Commission? You may ask that question, Chair.

Chair Apisa: Could you clarify that there is a lease and it's just a matter of getting a signatures and what the holdup was in getting those signatures.

Ms. Neustein: So, when it was initially Land Board approved, the property I believe was either going through a sale, there's was a change of owner, whether it's through the foreclosure process or the sale, I can't recall at this time without the paperwork. My predecessor at that time felt we should hold off on finishing the process of the paperwork. It was already drafted by our Attorney Generals, the assignment docs for these leases. He didn't have it signed because we knew that it was going to be a new entity coming in, so we held back, which then cause there to be a lack of tax clearances. Since then, once again, whatever transpired since that board approval till now, I can't really account for I haven't been with the agency that long and I've only been in my position for over a little over a year, but once I issued a notice of default relating to that lease, which included a lack of tax clearances, they provided those tax clearances and cleared up any of the other defaults that would have prevented a transfer of the lease.

Chair Apisa: And so, in other words, the lease is been transferred and the board has approved it, it's just a matter of getting the entity and everybody's signatures on it.

Ms. Neustein: Correct.

Chair Apisa: Thank you.

Mr. Ako: May I ask a question, Madam Chair? So, pretty much we're looking at the final signature of pretty much the Chair. Has the Chair ever not signed a document like this after it has gone through board approval or is there any reason why for this one that you would not sign?

Ms. Neustein: Not that I'm aware of, if they're in good standing, which once again they have to provide the tax clearances, they have to be in good standing with DCCA. I'm trying to think of another procedural issues that would prevent it from occurring at this time. I can't think of any.

Mr. Ako: Thank you.

Ms. Neustein: You're welcome.

Chair Apisa: Any other questions? And we really appreciate your volunteering to come down here and staying so long, so, thank you.

Ms. Neustein: Of course, no problem. Does anyone else have any questions?

Ms. Hammerquist: May I make a statement please?

Ms. Barzilai: Chair?

Chair Apisa: Is this...

Ms. Hammerquist: This is according to the Chair, and according to Mr. Tsuji, the party to which the discussion was about an assignment was the former Coco Palms Hui, Chad Waters and Tyler Green, it was not any of the entities that are currently before you. It was not RP21, and it was not the current Coco Palms Hui that foreclosed on the former Coco Palms Hui. They're not the same owners, they're not the same people. The taxes went unpaid for six years, so when we were before the Land Board in April of this year, Ms. Neustein had suggested to the board that they consider giving the lease and the RP's to the current owners and developers, the board acknowledge that there'd also been an application from the I Ola Wailuanui and Ms. Chang actually put on the record that it appeared the Land Board assumed the board would deliver it to RP21 and Coco Palms Hui, and she said that assumption is not accurate, we have to make a decision and we'll make a decision and the matter was initially continued into January and then into March and now was Ms. Neustein has told me it will probably be on an April agenda, but the board did make it clear, as did the various members of the Land Board that they will make a determination of whether or not to grant the lease to the applicant I Ola Wailuanui or to the applicants RP21 and Coco Palms Hui. It is not a done deal and all it takes to understand that is to read the minutes from the April 14th, 2023 meeting and the minutes from the December 15, 2023, meeting when they further clarified that the state will consider both applicants equally, and in fact I think Alison will acknowledge that Director Chang asked her to work with both applicants equally and present both applications to the board for their deliberation and approval, correct Allison?

Ms. Neustein: Relating to the two RP areas we already had a disposition granted by the Land Board on one of the RP areas. The other two RP areas I am going to be presenting options to the board for a direct lease to I Ola Wailuanui, as well as RP21, and yes, the Land Board will decide on the two RP area, one of them is attached to the Shell Restaurant for your reference and the other one is off of Kuamo'o Road, which is like a parking lot right now.

Ms. Hammerquist: And the third disposition was to I Ola Wailuanui and RP21 and Coco Palms Hui, jointly, correct?

Ms. Neustein: Not jointly. They were each granted access easements, which we're still having to clean up and address one of the access easements.

Chair Apisa: yeah, I don't want this to be a debate here.

Ms. Hammerquist: No, no. I'm not debating. I do feel it's important...

Ms. Barzilai: Commissioners. Excuse me, Madam Chair.

Ms. Hammerquist: ... (inaudible) record of the fact that we believe there's a Chapter 29092 violation.

Chair Apisa: Okay. Okay. Thank you.

Ms. Hammerquist: Ms. Neustein was not on the agenda and she said she came to speak to Chris Donahoe, so, someone called her. She didn't just drop out of the sky.

Ms. Neustein: I came to speak to Chris Donahoe.

Chair Apisa: Okay, thank you.

Ms. Barzilai: The meeting is broadcast on webcast, Chair, and Ms. Neustein came in as a resource at the request of the Commission. Is the Commission satisfied that what Ms. Neustein has stated now summarizes what she discussed in executive session?

Chair Apisa: Yes, I am satisfied and I think that was the purpose of you staying to clarify on record. So, I think, are we ready to dismiss...thank you very, very much. I really appreciate your coming down and sticking around to make it on record.

Ms. Neustein: Thank you everybody. No problem. Thank you.

Ms. Hammerquist: We would just offer that it's not an accurate record. The board has made it clear that they will be considering both applicants for the next time this is heard.

Chair Apisa: Thank you. Thank you.

Ms. Barzilai: Chair, first order of business would be to decide upon the interventions. If the Commission would like to discuss and then prepare a motion.

Chair Apisa: Okay. So, our first matter of business here is the intervener status of RP.

Mr. DeGracia: Commissioners, I'll start it off. I guess looking at the status of them, for me it's clear that they have intervener status, RP21 that we're starting off with, right.

Chair Apisa: Is the Commission in agreement with this?

Ms. Barzilai: We need a motion, Madam Chair, either a motion to admit RP21 Coco Palms as an intervener or motion to deny them as an intervenor.

Chair Apisa: I would entertain a motion, please.

Mr. DeGracia: I move to allow RP21 as an intervener on this agenda item.

Chair Apisa: Second?

Ms. Cox: Second.

Chair Apisa: Is there any discussion? I'll take a roll call please.

Ms. Barzilai: Motion to admit RP21 Coco Palms is intervener. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: Motion carries. 7:0. The next order of business, would be whether Coco Palms Hui LLC shall be admitted as an intervener.

Chair Apisa: Are we ready for...I would entertain a motion if we're ready to make a motion.

Ms. Streufert: It's been a little difficult to determine what's RP21 and Coco Palms Hui (inaudible) because we have one attorney who's representing both of them, but looking at the requirements for intervener status, I move that Coco Palms Hui be allowed in as an intervener.

Chair Apisa: A second?

Mr. Ako: I second that.

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

Ms. Barzilai: Motion on the floor is to admit Coco Palms Hui LLC as an intervener.  
Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Nay.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: Motion carries. 6:1. Next order of business is whether the Commission will issue an order to show cause and refer Friends petition to a hearings officer. If you would like to have discussion on that, Madam Chair.

Chair Apisa: Any discussion on that?

Ms. Cox: I have a couple of questions for Friends. One is, your petition alleges that there's a harm to the clear and healthful environment. Can you relate that to one of the conditions that you're saying is being violated? Thank you.

Ms. Hammerquist: Yes, there's 4 conditions that deal with the endangered seabirds, and they were directed to seek guidance from US Fish and Wildlife, and we can't find any record of that. The other is the fishpond is supposed to be preserved and kept in good order. There's no indication that either US Fish and Wildlife or SHPD have signed off on the new plan moving the cars and parking around the fishpond, as Mr. Trask suggested, that they could get, they could get permission to park them within the 20 foot buffer, we've not seen anything to suggest that the only paperwork we have said there must be a 20 foot buffer as part of the preservation plan. In addition, there's sea level rise that has occurred over this 30-year interval of non-development, non restoration and it's very real. They had to run pumps 24/7 in the parking garage of the old hotel, Val Ako and his son Ivan, who filed a declaration, worked on those pumps and know that the ocean came in then and took the oil and salt water and everything that was in the parking lot put it in the channel, deep channel ditch behind the hotel, went back to the river under Kuamo'o Road and out to sea. So, that's also an issue of contamination, current contamination of the shoreline and the ocean for the public and the members who are living in that area and who rely on a clean and healthful beach and ocean. I'm sure there are others. I think I mentioned earlier the felling of the coconut trees, which they are still under a notice of violation that has not been, they've not been relieved of with the Office of Coastal Land Management for Conservation of Coastal Land Management. I think that's a violation of the public's right to a clean and healthful

environment as well, and the fact that they're all piled on Koki Road and not being taken to the waste, the actual landfill that they're...Layton Construction agreed to take them to, and they've been sitting there since March of last year. So, they've been there now a year and that is a violation of a clean and healthful environment. It's not safe to have them all there. I don't believe there isn't any more cars. We've had several drone photographs taken of the property. I don't think that's a problem, but I think their use of heavy equipment without grubbing and grading permit is a violation and the we have documents from Public Works indicating they've never applied for one and they've never been given one. We know clearly Patrick Manning's article in the Garden Island admitted to widening the road, they graded the dirt road behind the hotel that is grading, and we filed pictures in our petition and our supplement to support the fact that grading has occurred, so those are all violations of the right to a clean and healthful environment that I can think of at the present time.

Ms. Cox: Thank you.

Mr. Trask: Am I allowed to respond to clarify those points?

Ms. Cox: It's up to the Chair.

Chair Apisa: I'm sorry. What was that?

Mr. Trask: I was asking if I may be allowed to respond to those points, real briefly.

Chair Apisa: Yes, I think that would be valuable.

Mr. Trask: Thank you. So, with regard to the endangered species' condition, that's Condition 28, I believe.

Ms. Hammerquist: There's four of them. The (inaudible).

Mr. Trask: And so, we did provide in Exhibit 30, two emails from 2016 between Hui and Fish and Wildlife and also you have a copy of the complete and updated October 2023 (inaudible), Avian Resources Assessment at Coco Palms Hotel and Training module. That was all done in consultation over time, over at the Fish and Wildlife as well as written guidance for the fishpond, again we are not proposing to change the parking at this time, that's a contingency plan. That is not in the plan. We are confident what we should get because we are providing public service on the Kuamo'o parcel and that's the primary aim, however, these are state lands, as was said in the application period in 2015, nothing's assured that was always understood. So, we wanted to make sure that we can still go forward, we can. With regard to sea level rise and that's an island wide problem. And with the coconut trees and the grading, those are both on lease land and the only reason why we can't we remove the remaining portion of the greenways on Koki Road is because we had a stop work order from OCCL, we literally can't do it. And then the grading, there was no grading, it was, we did widen the road and that was within the lease land and that would have been, that was dealt with, as Ms. Neustein said, under the alleged notice of default. That's all. Thank you.

Ms. Streufert: Can I ask the County Attorney? When you were identifying the criteria from Maui Electric, which was a Sierra Club case and you said that there were three criteria that need to be or that they had met.

Mr. Donahoe: Yes.

Ms. Streufert: Could you elaborate on those? Could you list those three, please?

Mr. Donahoe: Sure. So, under that Maui Electric Company case and just for the record, the site is 141, Hawaii 249, 2017 case. The court found that the Sierra Club, the environmental petitioners because one of the allegations that one of the petitioners reasons to grant standing was that they didn't have to assert any injury different, distinguishable from the public, and the court in Maui Electric agreed that they don't have to assert an injury that's different (inaudible) kind from any injury to the public generally, but they must still met the three-part test, which is, 1). The petitioner must have suffered an actual or threatened injury. 2). The injury must be fairly traceable to the defendants' actions, and 3). A favorable decision would likely provide relief for the plaintiffs' injury.

Ms. Streufert: Thank you.

Mr. Donahoe: You're welcome. Thank you, Commissioner.

Chair Apisa: Do we have any further questions from the Commissioners?

Mr. Ako: I have a question.

Chair Apisa: Okay.

Mr. Ako: Ms. Hammerquist, I know you mentioned about your mission statement being island wide, and yet I think when I look at your website, although there is no mention about a mission statement, there is a statement in there several times regarding...

Ms. Hammerquist: Preservation of the environment of Kaua'i.

Mr. Ako: I'm sorry.

Ms. Hammerquist: We do have that on the website.

Mr. Ako: I'm sorry, here it is. Yeah, that the Friends of Māhā'ulepū is comprised of a group of concerned citizens, local and beyond, who are contributing their time and talents to protect the natural beauty of this pristine coastal valley, and I know it's mentioned in there more than one time and it seems like it's a mission statement cause it kind of, it stands out there by itself. How does that fit in with the other mission statement that you had mentioned earlier?

Ms. Hammerquist: I think you'll also find Mr. Ako, on the website that we talked in terms of our goal to work toward the preservation of the environment of the island because we expanded years ago, and we've not limited ourselves to a particular valley. We're on record working on restoration of Wai'ale'ale, working on restoration of flow at the Lawa'i Stream, we've done

several projects. We've worked with the Land Use Commission on the Hokua Place, we appeared, we intervened in that proceeding and were able to bring before the board sufficient, to the Land Use Commission sufficient consideration, but the developer withdrew their application, so, that was over in, at the bypass in Kapa'a, so we've never limited in the last six years, we've not limited ourselves to any particular location. We are working on the environment of Kaua'i and have a record of that.

Mr. Ako: Yeah, and is that all on your website?

Ms. Hammerquist: Yes, there is. Those are all on your website. Yes, Sir.

Mr. Ako: Oh, okay. Sorry I missed it, (inaudible).

Ms. Hammerquist: That's okay. It's okay. It's a lot on that website.

Mr. Ako: Also, regarding...let me take this back. After this we'll hit the issues about failure to perform.

Chair Apisa: Well, first I'm going to ask for your position on the standing.

Mr. Ako: On the standing, okay. Okay, I'll hold off on this question.

Chair Apisa: Okay. If there are no further questions, Commissioners, I need to ask what is your position of Friends of Māhā'ulepū standing in accordance with the law? Do you want to discuss this? The position of the Friends of Māhā'ulepū standing in accordance with the law.

Ms. Barzilai: Chair, in order to send it out to OFC you have to find standing to grant (inaudible).

Chair Apisa: We have to find standing.

Ms. Barzilai: You can find standing and still deny the petition, but in order to issue the OFC you have to find standing, so that's why we (inaudible) to determine the position of the Commissioners, standing so that you can make the proper motion.

Chair Apisa: Are you at the position that the Friends has standing in accordance with the law?

Ms. Streufert: I'll start with this, I asked the County Attorney for the clarification of the three tests, if you will, and I don't see, I'm not clear that Friends of Māhā'ulepū have actually met the standards for each one of the three. I can see it for one, one is a possible but the third that whatever decision or whatever decision we do today will have the capability of correcting it, I don't see that as happening. So, on the basis of that, I'm not sure, and so I'm putting this out on the table for discussion because you can convince me one way or the other as to how, what you're thinking.

Chair Apisa: I'm somewhat sharing your position, I agree, so don't, I thank you for putting it out there, but I'd like to hear from others.

Ms. Cox: I actually, find that the third if you were actually doing 1, 2, 3, I actually see the third standard, which is that there could be resolution that I actually see that that does meet it. That was one of the reasons why I asked about that clean and healthful environment, because a number of those things, if they were, if we ended up granting the petition there would be a resolution. So, for me, all three meet the standard.

Ms. Barzilai: Just to clarify on the record, Chair, the clean and healthful environment standard is to allow the due process right for us to be participating in this proceeding right now, but the party still has to demonstrate standing. The standing test of is separate from the allegation of clean and healthful environment. I just want to clarify that.

Ms. Cox: But isn't, but based on what the clean and healthful environment concerns are, if they could be resolved through the petition, doesn't that go to the three categories of standing?

Ms. Barzilai: The way that I'm reading the case that Mr. Donahoe is talking about the first two prongs of that test still have to be met that there's an actual or threatened injury that is fairly traceable to the defendants actions or inactions, which today we're talking about the failure to perform that's alleged in the petition. That's what you're deciding now. I know it's a lot legal analysis, but you have to reach the standing issue so that you know whether to issue the order to show cause.

Chair Apisa: So, there will have to have been (inaudible) plaintiff would have to have had actually suffered an actual...

Ms. Barzilai: Or threatened (inaudible).

Chair Apisa: ...or threatened injury and there would be traceable to the defendants actions and only then would we be able to do something about it.

Ms. Cox: Right.

Ms. Streufert: Does that go back to the failure or failure to perform or not?

Chair Apisa: No, I think this is just not under that's another issue. Does anyone else have any comments about this?

Mr. Ako: I will share that on the issue of standing for Friends, I'm not real clear, and I'll be honest, I'm not clear about the kalo issue that we have there and how often kalo is growing there. I looked at the mission statements in my mind and there's two different mission statements going on. However, you know you do have represented and advocated I guess for issues, I guess now, as you mentioned not only on the south side so, I'm not clear on it I will say that because of courts being so liberal on allowing the standings, I would vote for yes to allow them to be, to have standings on this case here.

Chair Apisa: I'm open to discussion on it. I see that, I recall that it was several lots away and that they are still growing kalo on the property, but again please everyone.

Ms. Barzilai: I would prefer that we have a consensus of the Commission or at least the majority to know.

Chair Apisa: We need to hear from all the Commissioners to get a consensus.

Ms. Barzilai: We might want to move if it's not possible to...

Chair Apisa: Well, let's see if we can...

Mr. DeGracia: I'd just like to, you know, state that I'm not totally convinced. I am looking at the rules and it says, who are directly and immediately affected that's clearly distinguishable by the general public. I've heard a lot of stuff that brought up today. I've even asked if there's any conditions on there that had affected items within the declaration or within the petition, and from what I've gathered, I'm at the point where I don't really feel that they have clear standing. I hear a lot of, I hear the intent of their organization, I hear the sentiment of the community, but if I had to trip it so that I'm just looking at the rules and what was presented before me today, I'm not 100% convinced.

Chair Apisa: That was well stated, I mean I also I hear the sentiments and that, so I want to acknowledge that.

Mr. Ornellas: So, the definition of harm is relatively broad as pointed out by our County Attorney. I'm leaning towards them having standing. The issue of the merit of the petition is another question.

Ms. Barzilai: That would be a reasonable cause to believe that there is a current failure to perform. If you do not find that there's a failure to perform, you would have to deny the petition. That's the ultimate question that you need to decide so you can formulate your motion, a reasonable cause to believe that there is a current failure to perform as alleged in the petition. Based upon the allegations of the several conditions in the documents, if you do believe that there's a failure to perform, then you should issue the OSC and send it to the hearing officer. If you do not believe that there is a failure to perform, then you have to deny the petition.

Ms. Cox: So, we're no longer talking about standing because a minute ago I thought you wanted us to...

Ms. Barzilai: You need to reach standing if you're going to issue the OSC, you can deny standing and I'm sorry, if you deny standing you have to deny the petition, but if you deny standing, you cannot issue the OSC because you can't reach the merits of the petition.

Ms. Cox: Right, but we can, we can accept standing. We can approve standing and then discuss the merits of the petition. Can't we?

Ms. Barzilai: I'm not sure we came to a consensus; I think we moved on but...

Ms. Cox: No, we didn't. We didn't come to...I'm just saying, are we just moving on, we're no longer talking about standing because we didn't reach a consensus.

Ms. Barzilai: I would prefer, it would help me to have to allow you guys to make a motion, if you...

Mr. Ako: Could I make a motion on this then?

Ms. Barzilai: Yeah.

Mr. Ako: To understandings, is that appropriate right now?

Chair Apisa: Lori, do you have a comment?

Ms. Otsuka: All I'm thinking about is...

Ms. Barzilai: Well, I think we're going to have to go that route.

Ms. Otsuka: ...is personal injury.

Ms. Barzilai: I'm sorry, Commissioner.

Ms. Otsuka: It mentions direct personal injury and I agree with the fauna and the...and I agree with a lot of things they say and yet if it has to do with direct personal injury, I don't see a direct personal injury.

Ms. Hammerquist: Actual or threatened?

Ms. Streufert: And this is distinct from the general public.

Ms. Barzilai: It does not have to be distinct from the general public. The case law holds that it is the three-prong test that was cited by Mr. Donahoe. The rule has not caught up to the current state the case law. If you would like to make a motion, let's just go that route so we can reach the OSC or not.

Mr. Ako: Okay. I'd like to move that we allow the Friends of Māhā'ulepū to have standings and to accept their petition.

Ms. Barzilai: It's a motion to grant standing to Friends. Is there a second?

Ms. Cox: Second.

Chair Apisa: Is there any discussion? Definitely need a roll call.

Ms. Barzilai: Motion to grant standing to Friends of Māhā'ulepū. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Nay.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Nay.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: No.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Nay.

Ms. Barzilai: Motion fails. 3:4. There is no standing of this party. Therefore, the petition must be denied.

Unknown woman from audience: Who does have standing?

Ms. Barzilai: I think it's a matter for the courts to decide. Is there any final discussion before there is a motion to deny the order to show cause?

Ms. Streufert: Could I ask a question of the, of RP21 and Coco Palms Hui (inaudible)? Before we do that, I think one of the one of the problems that I have had with the status reports, is that it's very difficult to see whether anything has happened since the last status report because it's not very detailed. And so, we have to rely a lot on what people say and what we can see with our eyes, but we can't obviously go onto the property, so, it's what we can see from the road, which is not always complete. Is there any possibility that when the status report is presented in June that it be more detailed to indicate what has been done? The last status report to the current one, and make it very clear as to how that might affect any of the conditions that are listed in the permits.

Mr. Trask: Absolutely.

Ms. Streufert: I think it's also fair to say that although, we agree with the, or we support, or I support the department (inaudible) or the department's assessment of conditions and whether it has, whether you've met the conditions or at least you have not failed to perform. I think we're a little dismayed by the length of time it's taken to get anywhere on this, and it would be nice for us as well as for the community to see more progress to either get this thing going or to call it quits, whatever you want to do.

Mr. Trask: Commissioner Streufert, you will see tremendous progress. I guarantee it.

Chair Apisa: With the petition for standing denied, we need to follow up with a motion to deny the petition to revoke and then we cannot issue and OSC. I need a motion.

Ms. Barzilai: That is based on your finding that at this time there is not a reasonable cause to believe that there is (inaudible). You have denied standing and therefore, you have to deny the petition. Would anybody like to make a motion, Madam Chair?

Mr. DeGracia: I'll make the motion. It sounded like it was a little too (inaudible), so is the first part that the petition is denied because...

Ms. Barzilai: Motion to position for revocation is appropriate.

Chair Apisa: That's adequate.

Mr. DeGracia: Okay. Motion denied petition for revocation. I move.

Ms. Streufert: Second.

Chair Apisa: Any discussion?

Ms. Cox: Yes, I have a question. Are we really have no choice at this point, correct? I mean, don't we have to...

Ms. Barzilai: (Inaudible).

Ms. Cox: Yeah, don't I mean, you just said we have to deny it if there is no standing, and since our last vote was, there's no standing, we don't have a choice.

Chair Apisa: I think we just need a motion for the record.

Ms. Cox: Thank you. I just wanted to make sure that that's what we're doing.

Chair Apisa: Any other questions?

Mr. Ako: And I'd just like to clarify the fact that although we're going to be taking the motion to revoke that may not necessarily mean that there is a failure to perform though, although I think we may not even get into it, but just...

Chair Apisa: There is a petition to revoke the permits, we're denying that petition to revoke...

Ms. Barzilai: Commissioner...

Chair Apisa: (Inaudible) double negative.

Ms. Barzilai: If you found that there is no standing and you deny today, if you still believe that there is a failure to perform, you would have to bring your own Commissioners petition or you would have to request a petition from the department.

Chair Apisa: We're denying the petition to revoke it's to me like a double negative.

Mr. Ako: Yeah. Got it.

Ms. Barzilai: Motion to deny petition. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa? And I believe that Chair has a statement that she has prepared that she would like to read.

Chair Apisa: Okay, I and my statement is that the Commission has decided that petitioners have failed to show that the organization or its members have standing, as this is interpreted by the law. Petitioners have not alleged an injury to any member traceable to RP21's failure to perform under the several conditions alleged in the petition. Petitioners allege injury related to a hotel in general and complain of RP21 because they admittedly do not want a hotel at the current site, an issue that was decided by this Commission in 2015 without any intervention by a third party, including the petitioners, notwithstanding the Commission's decision at this time regarding the insufficiency of Friends standing because this matter is of great importance of significance to the public, the Commission will address the merits of the petition to revoke with an explanation on the record of why, in any case, the partition to revoke would be denied. Based upon filings, the exhibits of public testimony and the parties arguments, the Commission decides that the petitioners have failed to show that there is reasonable cause to believe that there is currently, that there currently is a failure to perform according to conditions imposed. Therefore, this Commission will not issue an order to show cause and set an evidentiary hearing on this petition and its opposition. The Commission is satisfied that applicant has either shown sufficient performance on the under the conditions alleged in the petition, or that the applicant is in the process of working towards reasonable compliance with all conditions. This does not preclude the Commission from addressing this matter at any time in the future, either through a Planning Department petitions for modification or of any other conditions, or on a separate motion or

petition of the Commission. The Commission understands the public's concern but does not at this time find the legal grounds to revoke the entitlements. The findings of fact and conclusion of law will be issued on this matter, which may be appealed to the courts. Thank you very much for your participation.

Mr. Trask: Mahalo, Chair.

Unknown woman from audience: You need to be ashamed of yourself.

Ms. Barzilai: Thank you. Next item please.

Unknown woman from audience: Shame, shame, shame, shame, shame.

Mr. Hull: Have some order. Thank you, Chair and members of the Commission, moving on to the next Agenda Item, H. General Business H.3.

In the Matter of the Petition of Friends of Māhā'ulepū and Save Koloa for  
Declaratory Orders Interpreting Kaua'i Planning Commission Rules for  
Intervention as Applied to Community Members Without Actual Notice of  
Applications Pending Before the Commission.

Mr. DeGracia: Mr. Clerk, I'd like to let the Commission know that I will be recusing myself from this agenda item as I have recused myself on the intervention that happened on, I believe, December 12th.

Mr. Hull: Thank you, Commissioner.

Commissioner DeGracia recused himself from this portion of the meeting at 4:47 p.m.

Chair Apisa: And then you will be back for the planning, the Subdivision Report. Thank you.

Mr. Hull: Before we turn it over to the Petitioners who are here, we don't have anybody signed up to speak from the general public. Is there any member of the public that would like to speak on this agenda item?

Ms. Barzilai: Actually, Mr. Clerk, we did have a list.

Mr. Hull: Oh, sorry.

Ms. Barzilai: Thank you.

Mr. Hull: First, we have signed up for this agenda item is Jennifer Cole. Jennifer Cole? Next, we have up Gabriella Taylor. Gabriella Taylor?

Ms. Hammerquist: She had to leave.

Mr. Hull: Next, we have signed up Elizabeth Okinaka. (Inaudible). Next, we have our Bridget Hammerquist.

Ms. Hammerquist: I'm here for the petition.

Mr. Hull: And lastly, we have signed up Terrie Hayes. Terrie Hayes? Terrie Hayes.

Ms. Hammerquist: I think she just left.

Mr. Hull: Okay. Having no one else on the list, is there anyone who didn't sign up but would like to speak on this agenda item? If so, you may approach the vacant microphone. Seeing none, I'll turn it over to Petitioners, I'm looking at you Laura, if you have any other protocol procedures?

Ms. Barzilai: Chair has something that she'd like (inaudible).

Mr. Hull: Okay. Let me turn it to the Chair first.

Chair Apisa: We will now consider item H.3 on our agenda, Petitioners, Friends of Māhā'ulepū and Save Koloa's Petition for Declaratory orders, regarding Chapter 4 intervention. This petition asks the Commission to issue an order regarding the application of Chapter four of the Commission's Rules of Practice and procedure governing intervention. At this time, we would like to take comments from the petitioners and again I ask you, please limit your discussion to 10 minutes.

Ms. Barzilai: So, Ms. Hammerquist, will you be representing yourself with regard to this petition? Or would you like to defer for when your attorneys can be present? It's entirely up to you. If you feel that you want to make your comments on the petition, this petition is basically a discussion of legal issues, so you don't have an adversary here, you're not defending a position. If you would like to just present and you want the Commission to move forward, that's fine. If you feel more comfortable having your attorneys here, it's entirely up to you and I can suggest a motion to defer.

Ms. Okinaka: Would that be for following (inaudible) or...?

Ms. Barzilai: It's really up to the Department, I don't set the agenda.

Ms. Hammerquist: No, I think we're okay because it's pretty straightforward and I did not see a comment by the Director in response to this petition. I didn't see any opposition filed and it's pretty straightforward. Our point is that the agenda comes out six days before you meet and if it's an item that doesn't require prior publication 30 days before the meeting, and there are many of those that don't. The public can't possibly file a petition to intervene, assuming they believe they have actual harm or threatened harm and they can't file it because it's just numerically not possible because the rule currently requires that a petition to intervene be filed seven days before you're hearing, and if we don't get the agenda until six days before the hearing, it's impossible to meet that seven-day requirements. So, we suggested that either the agenda notice come out earlier than seven days or the rule be changed to provide that petitions to intervene be filed five days before the hearing, something to give people a reasonable chance to file a petition once they've been notified of the agenda item. Hopefully I stated that in a way that was understandable.

Ms. Otsuka: Thank you.

Chair Apisa: Okay, thank you. Is there anything that the Department would like to add regarding this matter?

Ms. Otsuka: What is involved?

Mr. Hull: Yeah, Ms. Hammerquist is absolutely correct. The way that the rules are set up for intervention you need to file the six days, but that filing has happened prior to the agenda being posted, which in essence, if it's not an application of requires public notification of (inaudible) property owners or publications newspapers prior to the agenda being posted, technically, a potential intervener isn't aware of it and therefore can't file for it, so it's an issue that I know came up when the previous administration was drafting those rules. Which is why in the rule it also allows for the Planning Commission to waive that timeline for just cause brought, and the way I look at it is, you know if an intervener comes and says, this is a subdivision application or an amendment to a condition that didn't necessitate publication in the newspaper or notification of abutting property owners, there's that ability for the Planning Commission to waive that time requirement, which you know I'm neither here nor there. I think the rule could be amended, but in absence of a rule amendment, and I'll be honest, the department is looking at adjusting rules because there have been a fair amount of confusing situations because of the way the existing rules are structured. I have no problem restructuring or looking at proposing or restructuring those rules with you folks to Ms. Hammerquist's point, whether it's five or four days timeline, but the remedy in the current situation, at least my understanding is, is just it can be filed in less than six days and the Planning Commission has the authority within that rule to waive the six day timeline requirement for just cause and the lack of a publication that I generally would think is, but I would, I kind of defer to you folks and your attorney in the implementation of the specific rules. Because generally we, from my position standpoint generally we stand down, generally we stand down from a standing intervention standpoint like if the Commission feels like it then you know we're not objecting so.

Ms. Otsuka: So, it's per application that the Commission can waive it or?

Mr. Hull: Mm-hmm.

Ms. Otsuka: So, every application that comes forth or if someone is concerned about it, like...

Mr. Hull: No, so any...

Ms. Otsuka: At what point would we waive...

Mr. Hull: Any petition for intervention that could come after, right, so the agenda is posted, if it is a use permit or variance permit or shoreline setback application there's going to be either notification in the paper well in advance as well as notification to the abutting property owners, so those notifications have happened. I think when Ms. Hammerquist was talking, there are some applications that this Planning Commission reviews that don't necessitate notification of the papers or notification of abutting property owners prior to the agenda being published. So, what she's saying is, when the agenda gets posted, say for things like subdivisions, subdivisions aren't required to be noticed in the paper or notified the abutting property owners. So, some of these, a potential intervener is only going to know that it's on the agenda after that agenda has been posted, and so how would a potential intervenor get involved with this if the rule says you have

six days to submit your intervention petition and then she's right, except for the caveat which I think covers and you know, if there's a desire to initiate those rules on the next meeting, we absolutely can, but there is within, embedded within that rule right now the ability for the Commission to waive the six days.

Ms. Otsuka: So, just the Commission can make the decision? It doesn't have to go to council?

Mr. Hull: Yeah.

Ms. Cox: Hi. I actually think we should change the rule and the reason I think that is because I just had an experience myself, not with the Planning Commission or the Planning Department, but with testimony for the legislature and they tell you, you have to have testimony in 24 hours ahead and a couple of times I've just missed that deadline and I'm such a good rule fighter that I don't do it, even though again they have, they do say something about we will sometimes accept late testimony, but I'd rather have a rule that allow, that gives people the chance upfront, knowing that they have the information they need and the time they need rather than exception.

Ms. Streufert: I guess my question would be to Ms. Hammerquist, what would seem reasonable to you? Did you say five or four days?

Ms. Hammerquist: Yes, and I think, Mr. Hull will confirm that actually the intervention rule calls for seven days prior to the commissions meeting.

Mr. Hull: Correct.

Ms. Hammerquist: Correct?

Mr. Hull: Correct.

Ms. Hammerquist: Seven days.

Ms. Streufert: What would be reasonable to you?

Ms. Hammerquist: I think five or four would be reasonable because and even five is tough because you get the agenda it means you only get one day to do a petition to intervene, so, I would really appreciate four because I know we work as quickly as we can and that would be reasonable, but right now it says seven days before, so, it's never possible right now.

Ms. Streufert: I think right, I think we kind of recognize that and I'm looking for something that would...

Ms. Hammerquist: I think four days.

Ms. Streufert: Four days.

Ms. Hammerquist: If the rule would change to four days. Yes, Ma'am.

Ms. Streufert: Would that be something that the Department would consider to have it down to four days?

Mr. Hull: Definitely, we can look at that. I want to, there are much smarter and more proficient individuals in how the paperwork is spun up, so I definitely would look at it from a resource standpoint with the staff. Tentatively I can say, I don't have a problem with it, but let me go through that with staff, and I hear Commissioner Cox is saying, I would like this soon, so, getting a potential rule amendment before this body in the next few months will be one of our to do lists.

Ms. Streufert: And could be suggesting that we look at four days?

Mr. Hull: Absolutely.

Mr. Ako: Can we look at just one?

(Multiple Commissioners disagreeing)

Mr. Ako: You know like we had this morning. This guy came up with his, I guess he wanted to intervene, I guess in I'm my mind what he wanted to do it, he just wanted to bring in, make sure it comes in front of the Commission so...

Ms. Otsuka: That's too...we need to know.

Mr. Hull: Yeah, and (inaudible) I'm open to the whole idea, I get what Ms. Hammerquist's issues are. They're completely valid from the execution implementation of petitions and what have you and various parties involved. The serving of the positions to the parties that are involved. The serving of the petitions to the parties that are involved also is necessary. Let me go back to the staff and within two or three months we will have a proposal that we can vet out with you folks first. Any type of change to the administrative rules requires both action by the Commission and possibly it depends on how it's determined, but possibly the State Small Business Regulatory Review Board.

Mr. Ako: One more question, let's say whether it's five days, three days or one day that it is submitted to the department, do we as Commissioners get it, or do we get it on the day of the Commission hearing?

Mr. Hull: That will be an interesting aspect because of the fact that it was OIP that ruled on us that we cannot, there's was complaint on us transmitting the Commissioners communications, testimony being received after the agenda was posted. Now, much to the point of this discussion, testimony is not going to be posted until there's an agenda, and so we don't get much testimony prior to the agenda being published. So, there was a complaint made to OIP that we were submitting to you folks testimony that was being received after the agenda that was not publicly available, and we're saying we're going to be posting it online and it's going to be available at the meeting, but OIP didn't go down with a formal ruling, but (inaudible) told us you better change that policy and start holding that testimony and any communications subsequent to...holding off until the actual meeting, so that's that (inaudible) thing, so I think it's a perfectly valid question, Commissioner Ako, because of that issue, I can also say there's a bill at the state legislature, right now, trying to overcome this interpretation that OIP has on the transmittal communications to say we can still transmit communications within 48 hours to the Commissioners and two boards. So, it's a problem that I think a lot of boards are grappling with right now. Sorry, that's a long

winded way of saying, I don't have an answer for you yet, but we may have guidance from the state.

Mr. Ako: Cause to me you're not going to get it until the day of the meeting. It don't matter for me as a Commissioner...

Mr. Hull: Right.

Mr. Ako: But for you as a staff person, and I don't know what you do after you get. I don't know what you go through.

Ms. Otsuka: Yeah.

Mr. Ornellas: I felt bad this morning when we had to inform the crowd, the people here that there will be a 45-minute delay and I understand Ms. Hammerquist's concern, and I agree somewhat, but in all fairness, if can, is it enough timeline for us to review.

Ms. Otsuka: You mean like what we got this morning?

Mr. Ornellas: Yeah.

Ms. Otsuka: It's not fair to everyone.

Mr. Ornellas: The applicants.

Ms. Otsuka: The applicants, the intervener, yeah, it's not fair if we don't come...

Mr. Hull: I don't think it's fair to the Commissioners, I don't think it's fair to the people who wrote their testimony, and this was definitely conveyed to the Office of Information Practices when they essentially told us to rechange our policies of transmittals. It puts the Commissioners and the members of the public that drafted that at a somewhat of a net loss.

Ms. Otsuka: Disadvantage.

Mr. Ako: Chair, I have one more question. Ms. Hammerquist, you also mentioned about in the case of a preemptive petition to intervene with the commission, I'm not sur, but I don't even know what a preemptive petition to intervene is. What is that?

Ms. Hammerquist: Well, the in the case...I can give you an example that would maybe help in the case of Meridian Pacific, Mr. Pinkston's development on Kiahuna Plantation Drive, it was determined that the tentative subdivision approval was void because it went past many months past the one year and they didn't ask for an extension within one year, so, under the code, county code, the tentative subdivision approval is void if they don't request an extension, so we anticipate that they will file an application to have another tentative subdivision approval. They haven't done it yet to my knowledge, but we didn't want to be in a situation where we couldn't file in time with you, you know, for your consideration. So, we filed a petition to intervene when they do come forward with their application for tentative subdivision approval, and that's been determined one of the items the public can intervene on, so we've already filed the petition with

the Director's Office in anticipation of them making an application. So, that would be an example of a preemptive petition because it's not on an agenda yet, but we didn't want to have, you know, such an important filing not be accepted because the current rule says seven days before the Commission meets and we don't get the agenda until six days before the Commission meets.

Mr. Ako: Would you know if that's a common practice among other counties or other agencies?

Ms. Hammerquist: Are you asking me?

Mr. Ako: Yes, I'm sorry.

Ms. Hammerquist: Oh, I'm sorry. I don't see. I apologize. No, I've not really ever seen this before, where the filing time was by definition, before the public knew the item was on to be heard on that day. So, it kind of defeats, I mean what it does is it, it means that the public has to rely, every time.

Mr. Ako: No, I'm sorry.

Ms. Hammerquist: The Commission setting aside that rule and giving them, finding good cause for a late filing.

Mr. Ako: No, I wasn't really referring to the timing because I think I don't know, I'm hoping that we all agree that that don't work, yeah...

Ms. Hammerquist: Yeah, it's hard.

Mr. Ako: ...but if you're familiar with the practice of the preemptive petition filing among other agencies or other counties.

Ms. Hammerquist: No, I can't say that I am because I've not seen a rule like this before., Commissioner.

Mr. Ako: Okay, thank you very much.

Ms. Hammerquist: You're welcome.

Ms. Streufert: So, can we defer this until we until the department comes up with a rule or a suggestion for this?

Mr. Hull: We have no objections to that.

Ms. Streufert: No objection to the...

Mr. Hull: To a deferral.

Ms. Barzilai: I actually would interject that there are some legal issues that should probably be discussed here, so I...

Chair Apisa: I would like to call a short executive session.

Ms. Barzilai: ...suggest that we discuss in executive session.

Ms. Hammerquist: Can I offer, we don't object to the deferral either. We recognize the need to work on it.

Ms. Barzilai: I think that the petition goes beyond just a request for a clarification on that part of Rule 4., and I think that there are a couple of legal issues that the Commission might consider.

Ms. Cox: Okay.

Chair Apisa: Motion to go into executive session. It should not take very long.

Ms. Barzilai: It shouldn't take very long.

Ms. Otsuka: Motion to go into executive session.

Ms. Streufert: Second.

Ms. Barzilai: You can make a motion first and then I'll read the notice quickly.

Chair Apisa: All in favor? Aye (unanimous voice vote). 7:0.

Ms. Barzilai: We have to do it by roll call. I'm sorry.

Chair Apisa: We need a roll call.

Ms. Barzilai: Yes, we need a roll call. (Inaudible).

(Multiple people speaking at once)

Ms. Barzilai: Motion to enter into executive session on Petition for Declaratory Order. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: We'll enter a short executive session.

The Commission entered into Executive Session at 5:03 p.m.

The Commission ended Executive Session at 5:21 p.m.

The Commission reconvened the meeting at 5:23 p.m.

Chair Apisa: Thank you. We reconvene the general session. The Commission will grant the Petition for Declaratory Order and make the following findings, followed by written finding of fact and conclusion of law. The Commission recognizes a potential impossibility of filing a petition to intervene seven days prior to the commissions meeting if the petitioner's only means of discovering the sceptic matter is by way of a published agenda six days prior to the meeting. So, until Chapter 4 is amended, Petitions to Intervene may be filed no less than four days prior to the first agency hearing on the matter. The Commission acknowledges the definition of "good cause", as set forth in the common law of the State of Hawai'i in accordance with the law the Commission does not recognize a legal doctrine of "preemptive intervention". At this time, Commissioners, I made a motion to grant a Declaratory Order.

Ms. Streufert: I so move.

Ms. Cox: Second.

Chair Apisa: We have a motion on the floor. Is there any discussion? Roll call please.

Ms. Barzilai: Motion to grant...

Ms. Streufert: Could I say?

Ms. Barzilai: Yes, of course.

Ms. Streufert: I think it's, I want to thank Ms. Hammerquist for bringing up the issue because I think it's something that we need to correct and...

Ms. Hammerquist: Thank you.

Ms. Streufert: ...and we hope that this will be corrective to ensure that both the applicant, the petitioner, as well as the applicant, the petitioner for intervention, as well as the Planning Department has enough time to review it before it comes before commission.

Chair Apisa: Agreed. Thank you. It was clearly a deficiency. So, thank you.

Ms. Barzilai: The motion on the floor is to grant declaratory order. Is there a second and any discussion?

Ms. Cox: I already seconded. I seconded.

Ms. Barzilai: Thank you. Any (inaudible). Oh, we're at roll call.

Chair Apisa: We're at roll call.

Ms. Barzilai: Thank you. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. Hull: Absent.

Ms. Barzilai: Oh, he's not here, I'm sorry. Recused. Thank you. Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: Motion carries. Petition is granted. It will be followed by findings of fact and conclusion of law. Thank you, Ms. Hammerquist.

Ms. Hammerquist: Thank you, Madam Chair.

Mr. Hull: Let me call Francis back.

Commissioner DeGracia re-entered meeting at 5:26 p.m.

## **COMMUNICATIONS** (None)

Mr. Hull: Moving on to the next agenda item. We have no Communications for this meeting. So, we go on to J. Committee Reports, and I'll turn it over to the Subdivision Committee chair, Mr. DeGracia.

## **COMMITTEE REPORTS**

Mr. DeGracia: Alright, Commissioners Subdivision Committee met today on time at 8:30. Committee members, all members are present. Myself, Vice Chair Gerald Ako, and also Commissioner Ornellas. During the meeting we accepted minutes for November 14<sup>th</sup>, and January 9<sup>th</sup>, approved minutes, and then we also approved Preliminary Subdivision maps for two items. Voting was three on both and we had also approved request to terminate the subdivision application. So, that concludes my report.

Ms. Streufert: I move to accept the Subdivision Report.

Ms. Cox: Second. It's been moved and seconded.

Ms. Barzilai: Motion on the floor to accept the Subdivision Report.

Chair Apisa: All in favor of accepting the Subdivision Committee Report? Aye (unanimous voice vote). Motion passes. 7:0.

## **UNFINISHED BUSINESS (For Action)** (None)

Mr. Hull: Following that, we have no further Unfinished Business.

## **NEW BUSINESS (For Action)** (None)

Mr. Hull: We have no New Business. You folks have gone through Executive Session.

## **ANNOUNCEMENTS**

Mr. Hull: For future meetings, we anticipate the next meeting being held in the second week of April, second Tuesday of April, sorry. There are few subdivision extension requests, I believe and I think we have one or two SMA permits on the horizon, yeah. And with that, we are ready for adjournment.

Chair Apisa: First, I would like to acknowledge our Mayor.

Mayor Derek Kawakami: Madam Chair, Do you want me to come up?

Chair Apisa: Yes, please. Thank you for coming.

Mayor Kawakami: Oh, Madam Chair and Commissioners, through the Planning Department I just came home from my office to say thank you very much for the work that you folks do as a voluntary Commission that dedicates a lot of time and a lot of your mana'o. Many of you folks have been apart of this community for generations. Our Planning Department surely wouldn't be

able to do the job that they do, and I wouldn't be able to do the job that I'm able to do without your tremendous commitment to our island, so thank you very much and that's all I came down here is just to say that we appreciate you folks, and you know I wouldn't want to do your job.

Chair Apisa: And likewise, thank you for doing your job.

Mayor Kawakami: I love my job.

Ms. Otsuka: Thank you.

Mr. Ornellas: Thank you.

Mr. Ako: Thank you.

Ms. Streufert: Thank you.

Ms. Cox: Thank you.

Chair Apisa: Motion to adjourn.

Ms. Otsuka: Motion to adjourn.

Ms. Cox: Second.

Chair Apisa: All in favor? Aye (unanimous voice vote). Meeting is adjourned. 7:0.

Chair Apisa adjourned the meeting at 5:30 p.m.

Respectfully submitted by:

*Lisa Oyama*

Lisa Oyama,  
Commission Support Clerk

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

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

# The Shops at Kukui'ula Photovoltaic System & Employee Parking

Special Management Area Use Permit  
Class IV Zoning Permit Application  
Use Permit Application  
(4) 2-6-015:010 and (4) 2-6-015:011 (portion; Unit 4)

Prepared for:  
Kukui'ula Village LLC

Prepared by:



Z-IV-2024-4  
U-2024-4  
SMA(U)-2024-9

March 2024



# **THE SHOPS AT KUKUI'ULA**

## **Photovoltaic System & Employee Parking**

Special Management Area Use Permit Application  
Class IV Zone Permit Application  
Use Permit Application  
Koloa Ahupua'a, Kaua'i  
(4) 2-6-015:010 and (4) 2-6-015:011 (portion; Unit 4)

**APPLICANT:**  
Kukui'ula Village LLC

**PREPARED BY:**



March 2024



**The Shops at Kukui'ula Photovoltaic System & Employee Parking**  
Special Management Area Use Permit, Class IV Zoning Permit, and Use Permit  
Application

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## ACRONYMS

AIS	Archaeological Inventory Survey
ALISH	State of Hawai‘i Department of Agriculture’s Agricultural Lands of Importance to the State of Hawai‘i
BMPs	Best Management Practices
CDP	Census Designated Place
cfs	Cubic Feet per Second
CZM	Coastal Zone Management
CZO	Comprehensive Zoning Ordinance
DLNR	State of Hawai‘i Department of Land and Natural Resources
DOFAW	State of Hawai‘i DLNR Division of Forestry and Wildlife
DOH	State of Hawai‘i Department of Health
ESA	Endangered Species Act
FEMA	Federal Emergency Management Agency
FIRM	Flood Insurance Rate Map
HAR	Hawai‘i Administrative Rules
HRS	Hawai‘i Revised Statutes
KCC	Kaua‘i County Code
LSB	University of Hawai‘i Land Study Bureau
MBTA	Migratory Bird Treaty Act of 1918
NPDES	National Pollutant Discharge Elimination System
NRCS	U.S. Department of Agriculture Natural Resources Conservation Service
sf	square feet
SHPD	State of Hawai‘i DLNR – Historic Preservation Division
SMA	Special Management Area
USFWS	United States Fish and Wildlife Service

**The Shops at Kukui‘ula Photovoltaic System & Employee Parking**  
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# 1 INTRODUCTION

## 1.1 PROFILE SUMMARY

**Project Name:** The Shops at Kukui‘ula Photovoltaic System & Employee Parking  
(Throughout this application The Shops at Kukui‘ula Photovoltaic System & Employee Parking will be referred to as the “Improvements.”)

**Location:** Koloa Ahupua‘a, Kaua‘i, Hawai‘i.  
Figure 1 shows the location and surrounding uses.

**Address:** 2829 Ala Kalanikaumaka Street  
Koloa, Hawai‘i 96756

**Judicial District:** Koloa

**Tax Map Key:** (4) 2-6-015:010 and (4) 2-6-015:011 (portion; Unit 4)  
Figure 2 shows the TMK map  
Throughout this application:

- TMK (4) 2-6-015:010 is referred to as the “Shopping Center Parcel”
- TMK (4) 2-6-015:011 (portion; Unit 4) is referred to as the “Unit 4 Lot”
- Collectively TMK (4) 2-6-015:010 and TMK (4) 2-6-015:011 (portion; Unit 4) is referred to as the “Property”
- The area of the proposed improvements is referred to as the “Improvement Area”

**Area:**

- **Shopping Center**
- **Parcel:** 10.24 acres
- **Unit 4 Lot:** 3.13 acres
- **Property:** 13.35 acres
- **Improvement Area:** 1.01 acres

**Existing Use:** Shopping center, parking lot, and vacant land

**Proposed Improvement:** Parking lot with photovoltaic structures and storage building within the Improvement Area. No expansion of the shopping center.

**Land Use Designations:**

<b>State Land Use:</b>	Urban District (Figure 3)
<b>General Plan:</b>	Neighborhood Center and Residential Community (Figure 4)

**The Shops at Kukui‘ula Photovoltaic System & Employee Parking**  
Special Management Area Use Permit, Class IV Zoning Permit, and Use Permit  
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**County Zoning:** Neighborhood Commercial (CN) and Residential (R-4)

**Special Management Area**

**(SMA):** Within the SMA (Figure 5)

**Constraint District:** Not within Constraint Districts (Figure 6)

**Visitor Destination Area:** Within the VDA (Figure 7)

**Flood Zone:** Zone X, Zone XS, and Zone AE (Figure 8)

## **1.2 LANDOWNER & APPLICANT**

Kukui‘ula Village LLC owns the Property (including the Improvement Area) and is the Applicant for this application.

Kukui‘ula Village LLC  
822 Bishop Street  
Honolulu, Hawai‘i 96813

Please direct all communication for the Landowner and Applicant to:

Francisco Gutierrez  
Kukui‘ula Village LLC  
822 Bishop Street  
Honolulu, Hawai‘i 96813  
[fgutierrez@abhi.com](mailto:fgutierrez@abhi.com)  
(808) 525-6626

See

Appendix A for Deed of Ownership

## **1.3 PLANNER & AGENT**

PBR HAWAII & Associates, Inc. (PBR HAWAII) is Kukui‘ula Village LLC’s planner and agent.

PBR HAWAII & Associates, Inc.  
Tom Schnell, AICP  
1001 Bishop Street, Suite 650  
Honolulu, Hawai‘i 96813  
(808) 521-5631

Appendix B contains a letter authorizing PBR HAWAII to be Kukui‘ula Village LLC’s authorized agent for this application.

**The Shops at Kukui'ula Photovoltaic System & Employee Parking**  
Special Management Area Use Permit, Class IV Zoning Permit, and Use Permit  
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**1.4 SUMMARY OF PERMITS REQUIRED**

Permit/Approval	Responsible Agency
Special Management Area Use Permit	Kaua'i Planning Department/Kaua'i Planning Commission
Class III/IV Zoning Permit	Kaua'i Planning Department/Kaua'i Planning Commission
Use Permit	Kaua'i Planning Department/Kaua'i Planning Commission
Building Permit	Kaua'i Planning Department
Grading Permit	Kaua'i Department of Public Works



Q:\Kauai\The Shops at Kukui'ula Parking & PV SMAAGIS\Projects

DATE: 9/25/2023

**LEGEND** 2-6-015:010

-  TMK 6-015: 010
-  TMK 6-015: 011 (portion)(Unit 4) 2-6-015:011 unit 4
-  TMK Boundaries



**Figure 1 :**  
**Regional Location**  
**The Shops at Kukui'ula Photovoltaic System & Employee Parking**

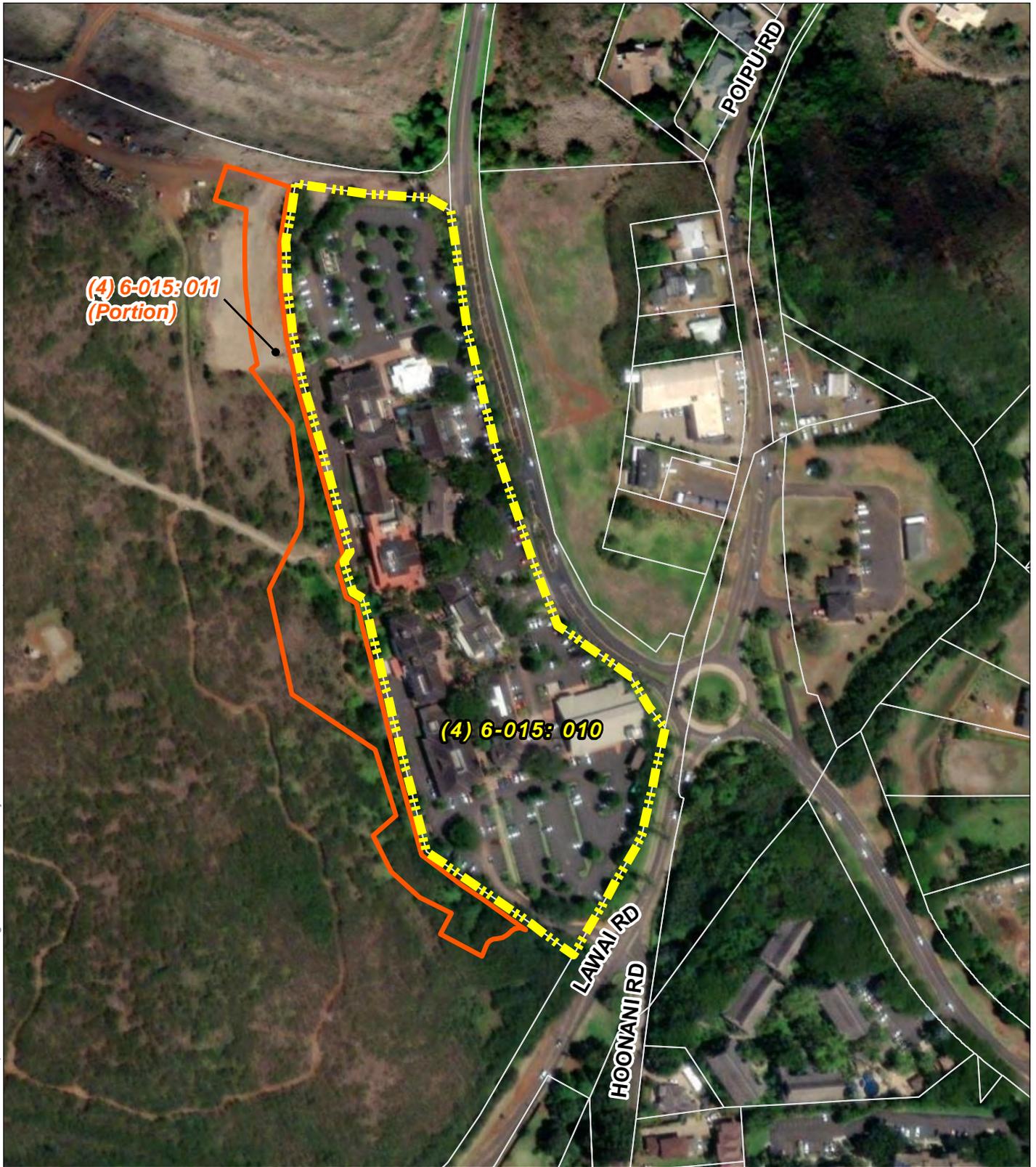
Kukui'ula Village LLC Island of Kauai

North Linear Scale (feet)

 0 725 1500

 PBR HAWAII ASSOCIATES, INC.

Source: County of Kauai, 2022.  
 Disclaimer: This graphic has been prepared for general planning purposes only and should not be used for boundary interpretations or other spatial analysis.



DATE: 9/25/2023

**LEGEND**

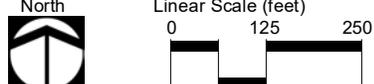
-  TMK 6-015: 010
-  TMK 6-015: 011 (portion)(Unit 4)
-  TMK Boundaries

**Figure 2 :**  
**Tax Map Key**  
**The Shops at Kukui'ula Photovoltaic System & Employee Parking**

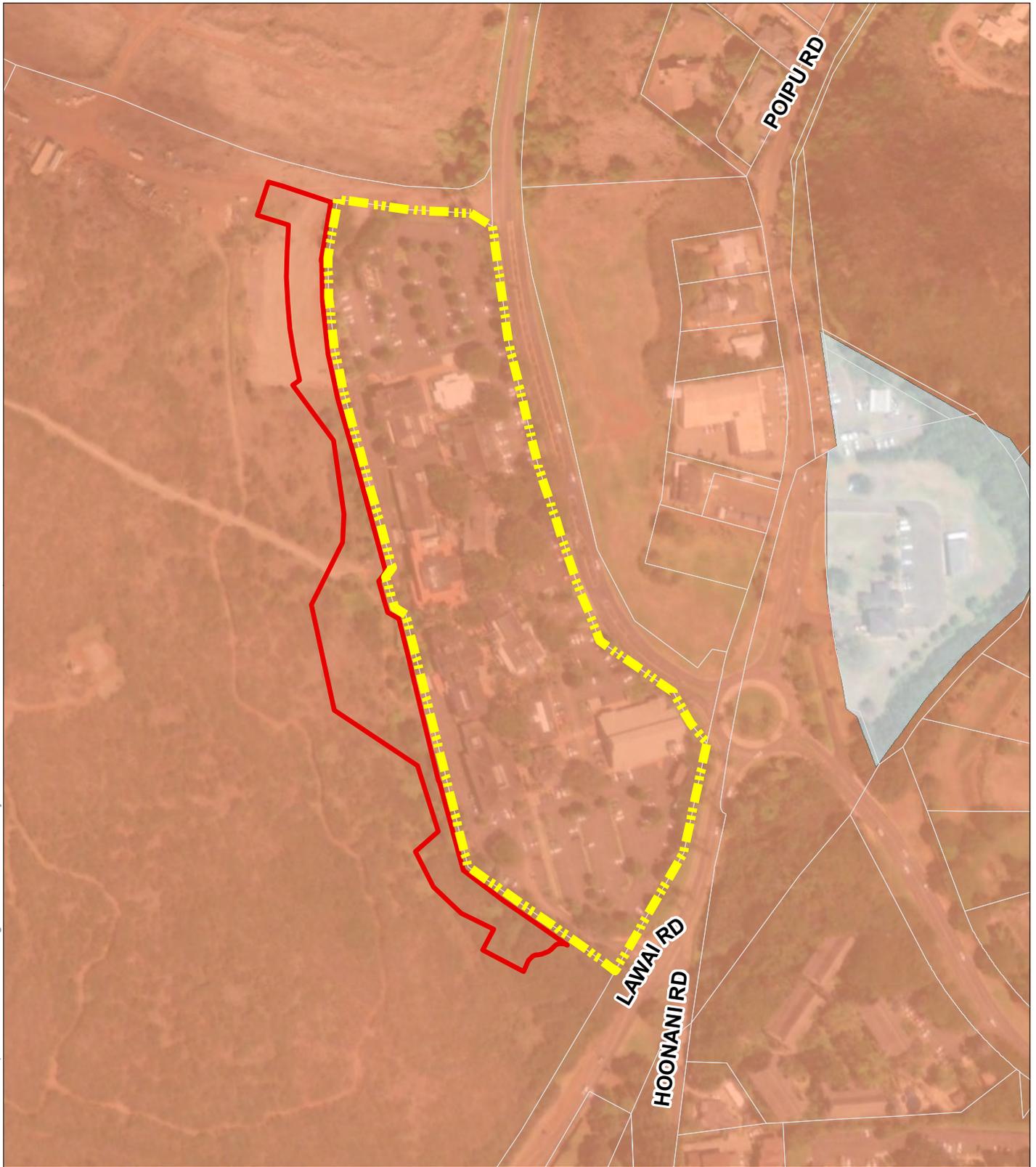
Kukui'ula Village LLC Island of Kauai

North Linear Scale (feet)

0 125 250




Source: County of Kauai, 2022.  
 Disclaimer: This graphic has been prepared for general planning purposes only and should not be used for boundary interpretations or other spatial analysis.



DATE: 9/25/2023

**LEGEND**

-  TMK 6-015: 010
-  TMK 6-015: 011 (portion)(Unit 4)
-  TMK Boundaries

**State Land Use District**

-  Agricultural
-  Urban

**Figure 3 :**  
**State Land Use District**  
**The Shops at Kuku'ula Photovoltaic System & Employee Parking**

Kuku'ula Village LLC Island of Kauai'

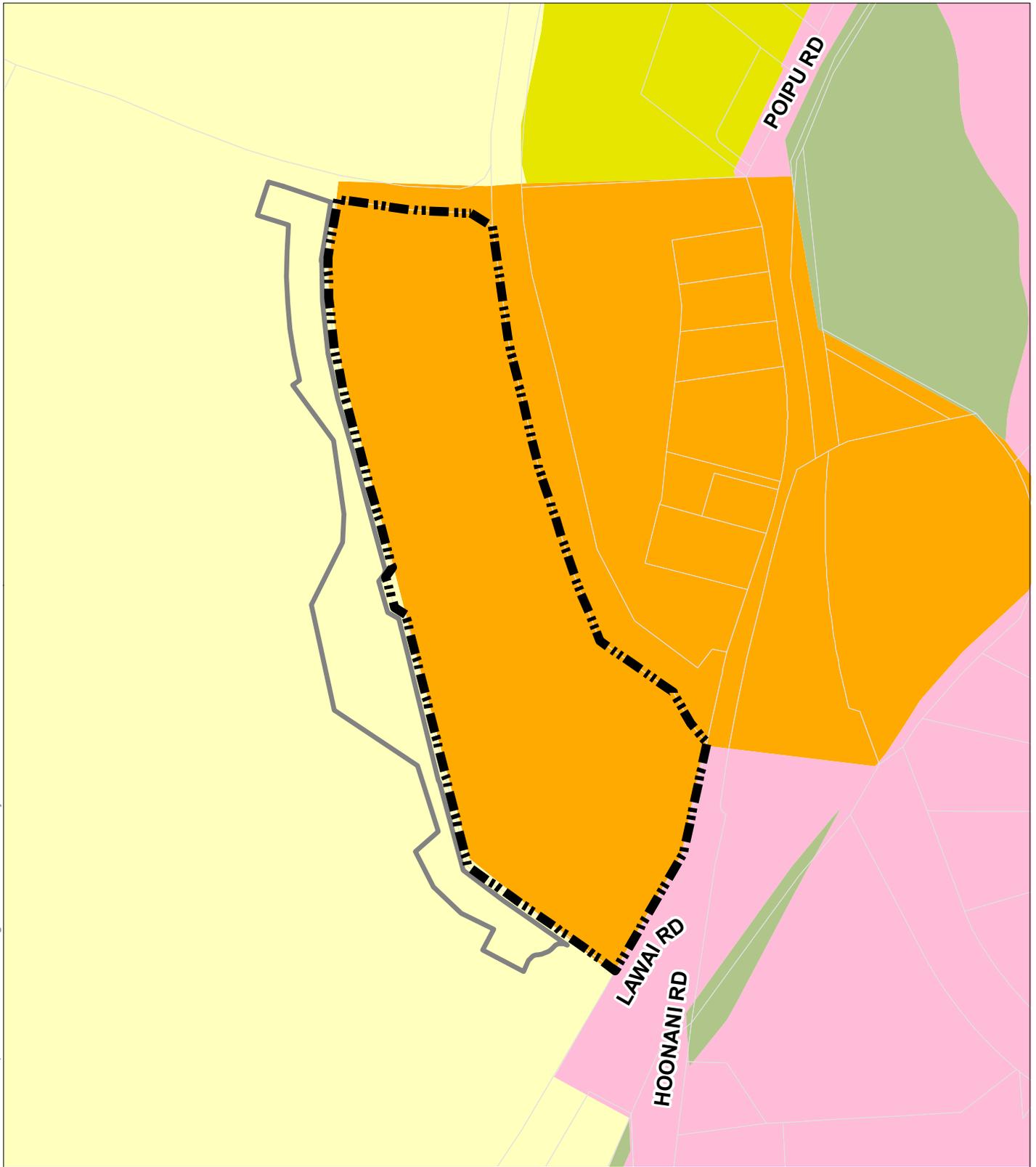
North Linear Scale (feet)

0 125 250




Source: State Land Use Commission, 2016. County of Kauai' 2022  
 Disclaimer: This graphic has been prepared for general planning purposes only and should not be used for boundary interpretations or other spatial analysis.

Q:\Kauai\The Shops at Kukui'ula Parking & PV SMAAGIS\Projects



**LEGEND**

-  TMK 6-015: 010
-  TMK 6-015: 011 (portion)(Unit 4)
-  TMK Boundaries

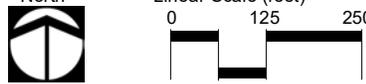
- Kauai General Plan**
-  Natural
  -  Neighborhood Center
  -  Neighborhood General
  -  Residential Community
  -  Resort

**Figure 4 :** DATE: 9/25/2023  
**Kaua'i County General Plan,**  
**South Kaua'i Land Use Map**  
**The Shops at Kukui'ula Photovoltaic**  
**System & Employee Parking**

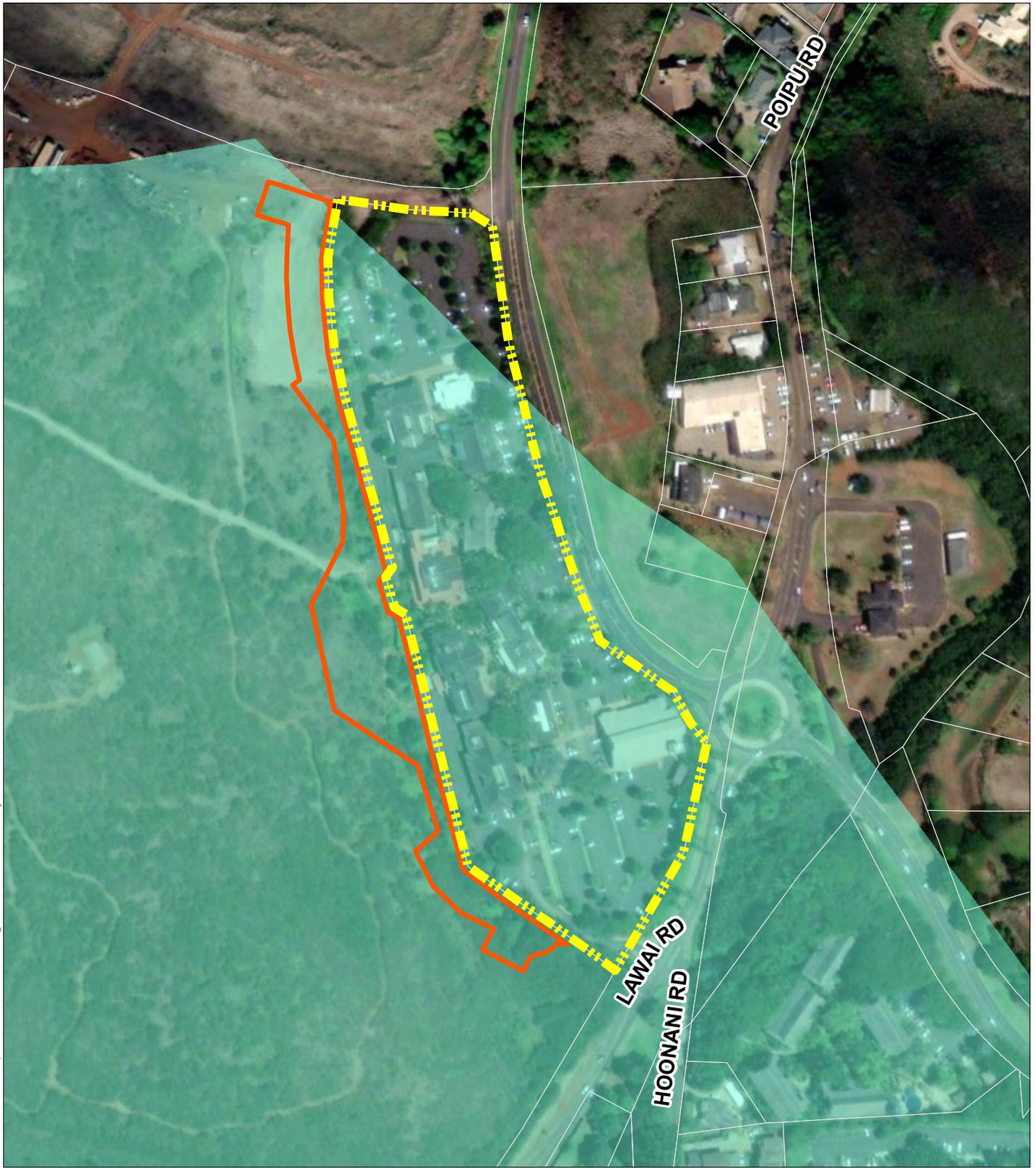
Kukui'ula Village LLC Island of Kaua'i

North

Linear Scale (feet)  
 0 125 250




Source: County of Kaua'i 2020 & 2022.  
 Disclaimer: This graphic has been prepared for general planning purposes only and should not be used for boundary interpretations or other spatial analysis.



DATE: 9/25/2023

**LEGEND**

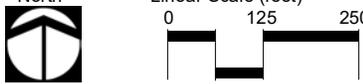
-  TMK 6-015: 010
-  TMK 6-015: 011 (portion)(Unit 4)
-  TMK Boundaries
-  Special Management Area

**Figure 5 :**  
**Special Management Area**  
**The Shops at Kukui'ula Photovoltaic System & Employee Parking**

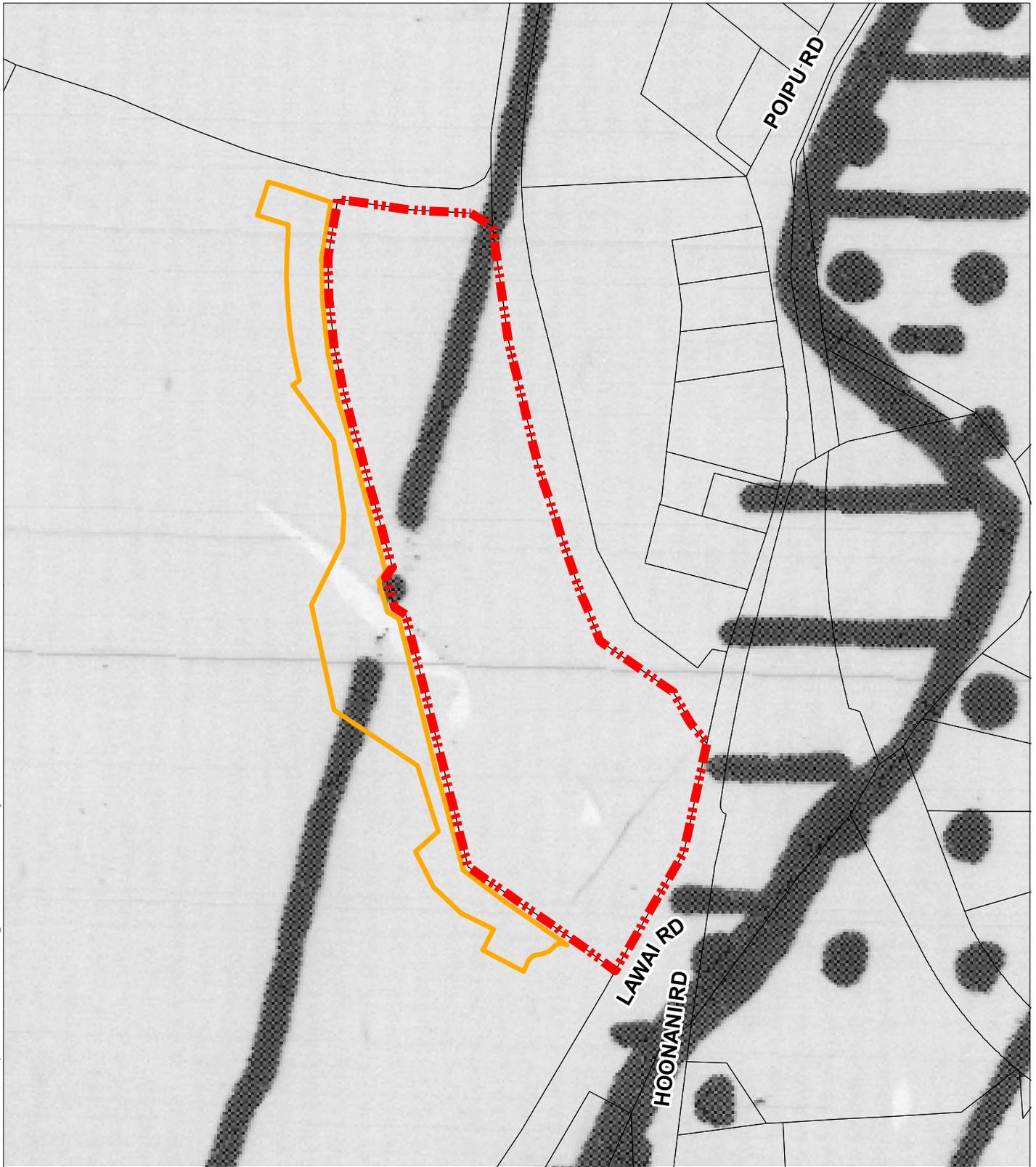
Kukui'ula Village LLC Island of Kauai

North Linear Scale (feet)

0 125 250




Source: County of Kauai 2022.  
 Disclaimer: This graphic has been prepared for general planning purposes only and should not be used for boundary interpretations or other spatial analysis.



DATE: 9/25/2023

**LEGEND**

- TMK 6-015: 010
- TMK 6-015: 011 (portion)(Unit 4)
- TMK Boundaries

**COUNTY CONSTRAINT DISTRICTS**

- |          |        |  |
|----------|--------|--|
| FLOOD    | S · FL |  |
| SOILS    | S · SO |  |
| SLOPE    | S · SL |  |
| TSUNAMI  | S · TS |  |
| DRAINAGE | S · DR |  |
| SHORE    | S · SH |  |

**Figure 6 :  
Constraint Districts  
The Shops at Kukui'ula Photovoltaic System & Employee Parking**

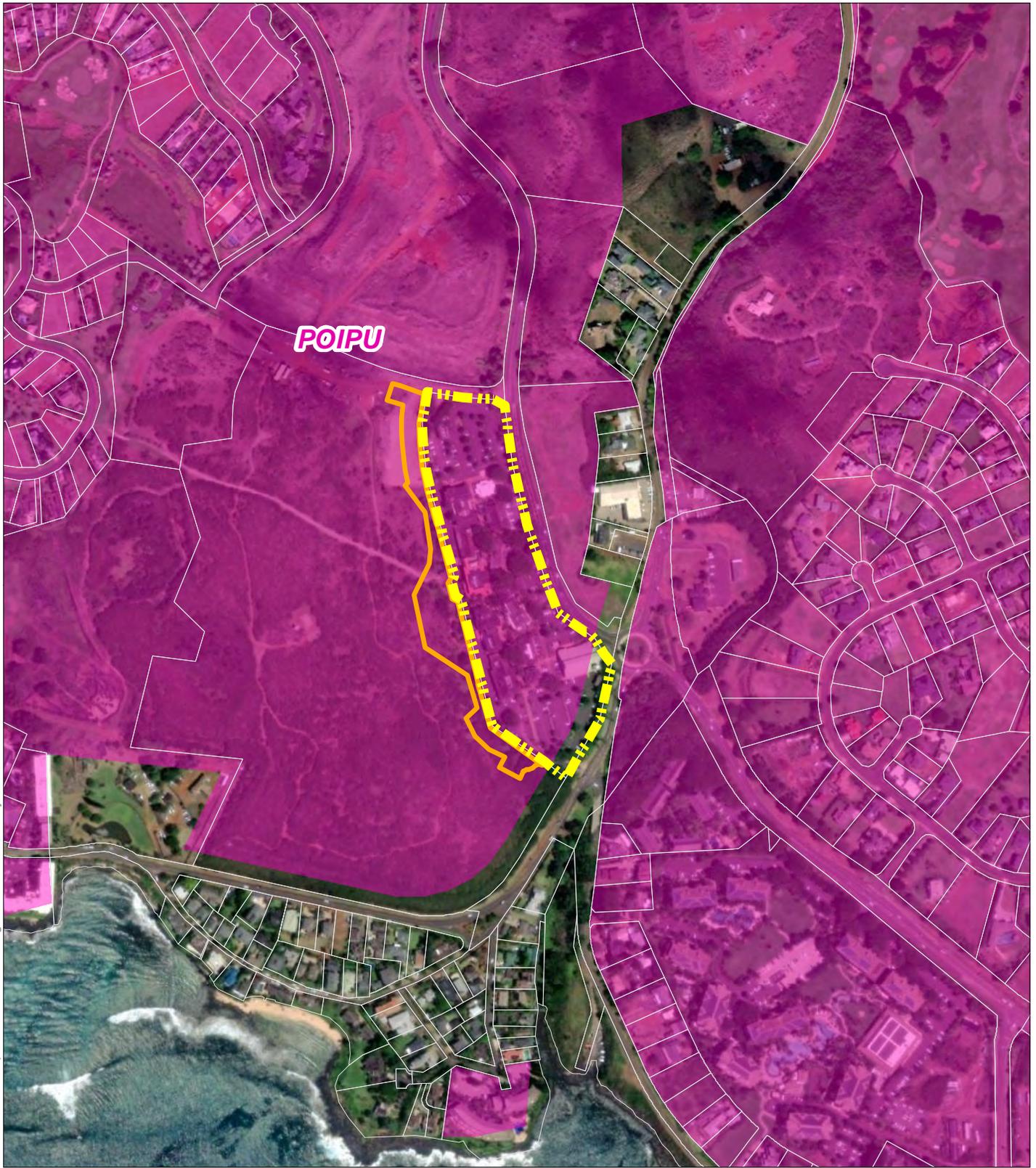
Kukui'ula Village LLC Island of Kauai

North Linear Scale (feet)

0 125 250

Source: County of Kauai 2022, County of Kauai, 2018, Scanned and Georeferenced constraints maps for Kauai, 2009  
Disclaimer: This graphic has been prepared for general planning purposes only and should not be used for boundary interpretations or other spatial analysis.





DATE: 9/25/2023

**LEGEND**

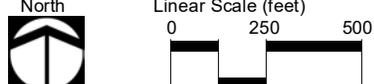
-  TMK 6-015: 010
-  TMK 6-015: 011 (portion)(Unit 4)
-  TMK Boundaries
-  Visitor Destination Areas

**Figure 7 :**  
**Visitor Destination Areas**  
**The Shops at Kukui'ula Photovoltaic System & Employee Parking**

Kukui'ula Village LLC Island of Kauai

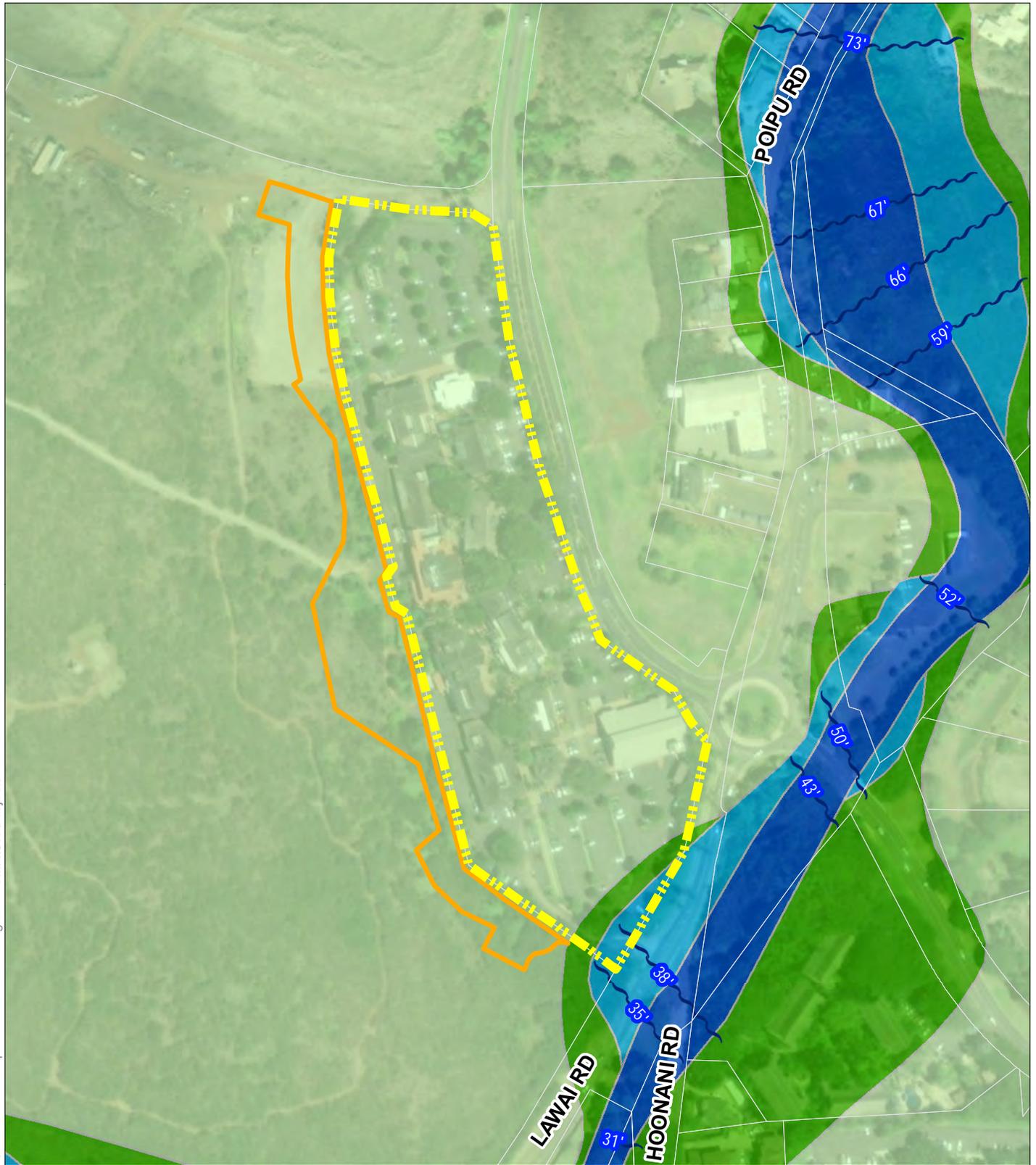
North Linear Scale (feet)

0 250 500




Source: County of Kauai 2022.

Disclaimer: This graphic has been prepared for general planning purposes only and should not be used for boundary interpretations or other spatial analysis.



DATE: 9/25/2023

**LEGEND**

-  TMK 6-015: 010
-  TMK 6-015: 011 (portion)(Unit 4)
-  Base Flood Elevation (BFE) Line

**Flood Insurance Rate Map**

-  AE: 1%-Annual-Chance Flood, with BFE
-  AEF: Floodway Areas in
-  XS: 0.2%-Annual-Chance Flood
-  X: Outside 0.2%-Annual-Chance Floodplain

**Figure 8 :**  
**Flood Insurance Rate Map**  
**The Shops at Kukui'ula Photovoltaic System & Employee Parking**

Kukui'ula Village LLC Island of Kauai'

North Linear Scale (feet)




Source: FEMA Flood Map Service Center, 2021. County of Kauai, 2022.

Disclaimer: This graphic has been prepared for general planning purposes only and should not be used for boundary interpretations or other spatial analysis.

**The Shops at Kukui'ula Photovoltaic System & Employee Parking**  
Special Management Area Use Permit, Class IV Zoning Permit, and Use Permit  
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## **2 THE SHOPS AT KUKUI‘ULA PHOTOVOLTAIC SYSTEM & EMPLOYEE PARKING DESCRIPTION**

### **2.1 BACKGROUND**

The Shops at Kukui‘ula was constructed in 2010 to serve the Po‘ipū community with a variety of commercial uses housed within approximately 86,100 square feet (sf) of retail space. The design was inspired by Kaua‘i’s rich agricultural history with architectural influences reminiscent of old Koloa Town, the former sugarcane plantations, and the diverse multi-cultural heritage of the area. The shopping center includes open gathering spaces and a pedestrian main street design to connect the commercial spaces to the surrounding area.

Surrounding and nearby uses include:

- Vacant land
- Residential (single family homes, condominiums, vacation rentals)
- Resorts/hotels (Whalers Cove Resort, Lawai Beach Resort, Sheraton Kauai Resort and others)
- Kiahuna Golf Club
- Restaurants, retail, and other commercial uses (Kukui‘ula Market, Eden Coffee, Da Crack Mexican Grinds, Seasport Divers, Endless Summer Surf School)
- Koloa Fire Station

The Kaua‘i County General Plan South Kaua‘i Land Use Map designates the Shopping Center Parcel as “Neighborhood Center” and the Unit 4 Lot as “Residential Community” (Figure 4).

The Shopping Center Parcel is zoned Neighborhood Commercial (C-N). The Unit 4 Lot is zoned Residential (R-4).

### **2.2 EXISTING CONDITIONS**

The Property includes a shopping center with parking facilities and landscaping and a vacant undeveloped area (Improvement Area) on the western portion of the Property. The shopping center, parking facilities and landscaping are located completely within the Shopping Center Parcel [TMK (4) 2-6-015:010]. The Unit 4 Lot [TMK (4) 2-6-015:011 (portion)] contains undeveloped vacant land and an unpaved parking area. The Improvement Area is in the north portion of the Unit 4 Lot and a small portion of the Shopping Center Parcel. See Figure 9

#### Shopping Center

The shopping center consists of eight (8) one- to two-story structures situated along a pedestrian main street design. Details of the shopping center are follows:

- Buildings: 8

**The Shops at Kukui‘ula Photovoltaic System & Employee Parking**  
Special Management Area Use Permit, Class IV Zoning Permit, and Use Permit  
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- Total floor area: 86,100 sf
- Height: 1-2 stories;
- Commercial space includes:
  - Retail shops, boutiques, clothing stores
  - Restaurants/bars
  - Grocery store (Living Foods)
  - Art galleries
  - Pharmacy (Longs Drugs)
  - Medical clinic (Clinic at Po‘ipū)
  - Bank (First Hawaiian Bank)
  - Office space (Kauai Made Films, Kukui‘ula Real Estate & Home Sales)
  - Storage and electrical rooms
  - Administrative offices

Other Features

The shopping center grounds include:

- Pedestrian Main Street/Courtyard/Walkways
- Landscaping
  - Landscaping typical of resort landscaping

Parking

The Shopping Center Parcel has a total of 473 parking spaces, including 6 ADA parking stalls, 8 loading stalls, and 2 electric vehicle (EV) parking spaces. Per Section 8-6.3(e)(3), Kaua‘i County Code (KCC), one (1) parking space for each 200 sf of gross floor space plus one (1) space for every three (3) employees is required. The shopping center currently has five (5) more parking spaces than required. **22 EVCS**

Figure 9 shows the existing conditions site plan. Figure 10 shows photographs of the Improvement Area.

Appendix C provides greater detail regarding existing conditions and topography within the Improvement Area.

## **2.3 PROPOSED IMPROVEMENTS**

The Applicant proposes to construct improvements in the Improvement Area to modernize and upgrade the facilities that support the commercial uses on the Shopping Center Parcel. The improvements will include:

- 1) Additional parking facilities
- 2) New photovoltaic (PV) system;
- 3) A new storage building; and
- 4) Landscaping

**The Shops at Kukui'ula Photovoltaic System & Employee Parking**  
Special Management Area Use Permit, Class IV Zoning Permit, and Use Permit  
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Throughout this application the area of the new parking facilities, new PV system, new storage building, and new landscaping is referred to as the “Improvement Area” and the proposed new facilities as the “Improvements” collectively.

New Parking Facilities

The new parking facilities will consist of:

- A new parking area with 90 new parking stalls inclusive of:
  - 81 new standard parking stalls
  - 7 new EV parking stalls
  - 4 new ADA parking stalls **14EVCS if total is 90**
- An irrigation system for landscaping
- Drainage system to collect and convey stormwater runoff
  - Total of 8 drainage inlets

The new parking lot on the Unit 4 Lot will be connected to the existing parking facilities through a driveway located just north of the structures comprising the shopping center. A driveway for connection to the future extension to Kaulu Street is also part of the design.

New Photovoltaic (PV) System

The new PV system will consist of:

- PV solar structures over four areas of the parking lot which will:
  - Generate solar energy for approximately 38% of the shopping center’s daily energy needs;
  - Offset the shopping center’s energy consumption; and
  - Provide shade over nearly all of the new parking spaces;
- An onsite electrical system to collect the power generated from the PV solar canopies and transfer it to the shopping center’s electrical system; and

The four PV solar canopy structures will range from: 1) approximately 23,500 to 24,460 sf in area; and 2) 16’ 7” to 23’ 9” in height. The support columns will be anchored to the ground with underground footers approximately 10’ long x 10’ wide and 4’ deep.

Energy generated by the new PV system will be used entirely by the shopping center and will not be used off site or sold to the Kaua’i Island Utility Cooperative (KIUC) system or other entities.

New Storage Building

The new storage building will be located near the new parking lot within the Unit 4 Lot to the south of the new parking area. The storage building will be approximately 33’ long, 13’9” wide, and 9’ high and will be located on a concrete pad (total land coverage area of 452 sf). The building will be used for storage of maintenance equipment and supplies utilized during special events at the shopping center.

Figure 11 shows the proposed site plan. Appendix C and Appendix D contain detailed plans.

**The Shops at Kukui'ula Photovoltaic System & Employee Parking**  
Special Management Area Use Permit, Class IV Zoning Permit, and Use Permit  
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***Construction Management***

The construction management plan for the Improvements includes designated on-site areas for construction parking, containers for construction materials storage, and dumpsters for demolition and construction debris. Appendix E contains the construction management plan.

During construction, parking for construction workers will be provided in designated areas within and/or near the Property, which will be established at different times over the course of construction phasing.

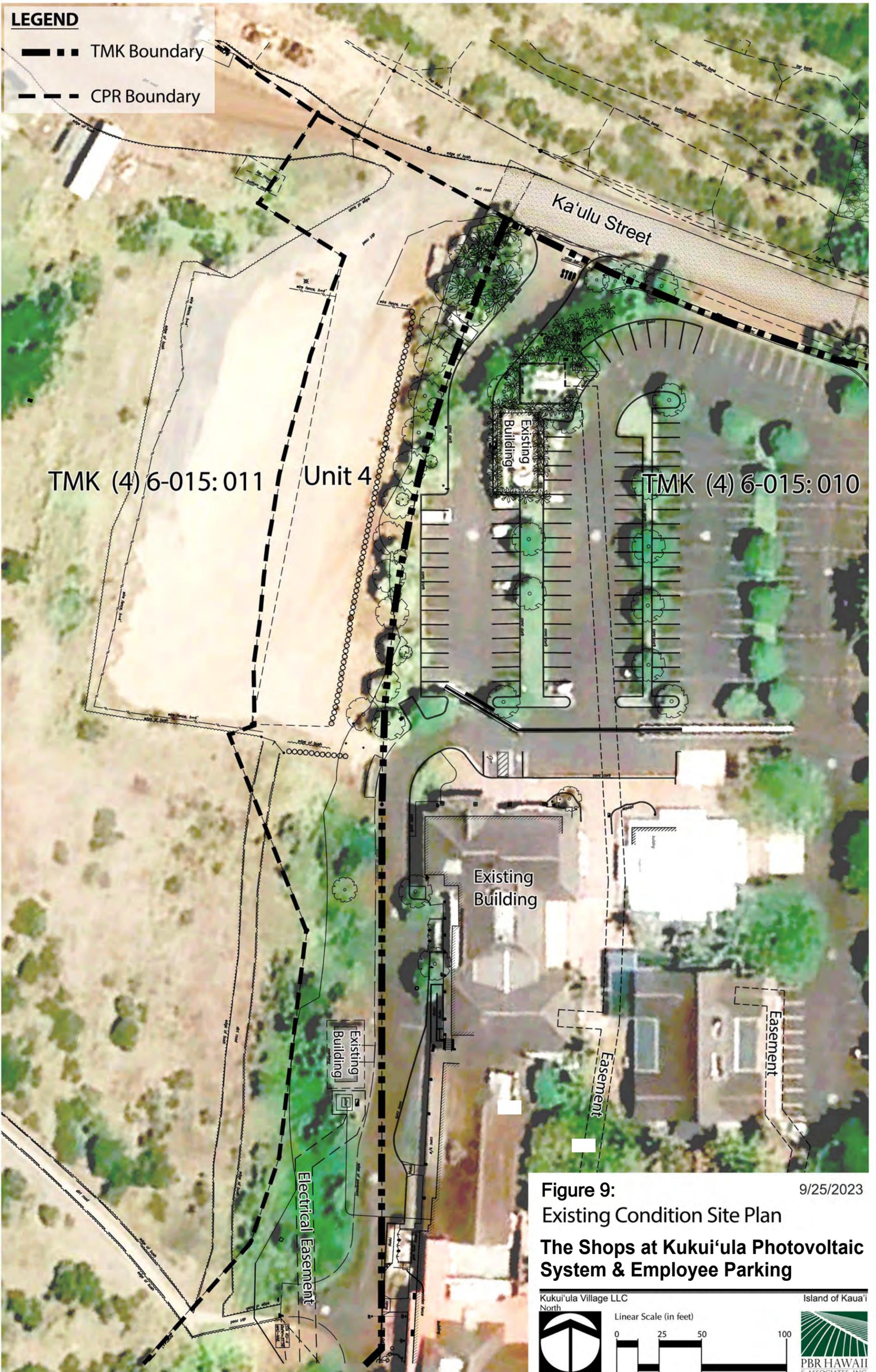
Demolition and construction necessary for improvements will generate demolition and construction debris. The contractor will use separate refuse collection bins for green waste, concrete, metal, cardboard, and other construction materials. A refuse hauler will pick up the debris and recycle cardboard and metal; other materials may be recycled as feasible. Demolition and construction debris that cannot be recycled will be disposed of at the Kakaha Landfill which accepts construction and demolition debris. As required by the Department of Public Works, construction and demolition debris will be cut into three feet or smaller sections.

The proposed improvements will require the removal of five (5) trees: two (2) trees located where the new driveway connects to the new parking lot and three (3) trees along the boundary of the Unit 4 Lot to accommodate new parking stalls. The Improvements will also require the removal of: two (2) existing light posts; four (4) existing metal posts; an existing gate; various wire fencing; and a drain line to be reconfigured to connect with the new drainage lines proposed within the new parking lot.

**LEGEND**

■ ■ ■ TMK Boundary

- - - CPR Boundary



**Figure 9:** 9/25/2023  
Existing Condition Site Plan  
The Shops at Kukui'ula Photovoltaic System & Employee Parking

Kukui'ula Village LLC  
North

Linear Scale (in feet)  
0 25 50 100

Island of Kauai  
PBR HAWAII & ASSOCIATES, INC.

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1. Improvement Area from Ka'ulu Street



2. Improvement Area from Existing Parking Lot



3. Improvement Area facing Existing Parking Lot



4. Improvement Area from Proposed Driveway Access



5. Improvement Area facing Shopping Center

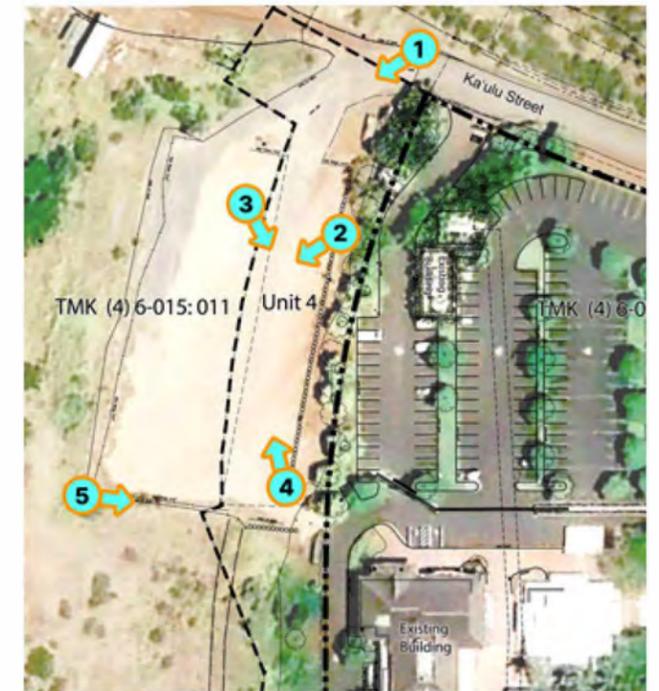


Figure 10: DRAFT 11/7/2023  
Site Photographs  
The Shops at Kukui'ula Photovoltaic System & Employee Parking



6. Improvement Area facing Existing Parking Lot



7. Location of Proposed Driveway Access



8. Location of Proposed ADA and EV Parking



9. Existing Drainage near Proposed Driveway Access



10. Existing Building near Proposed ADA and EV Parking

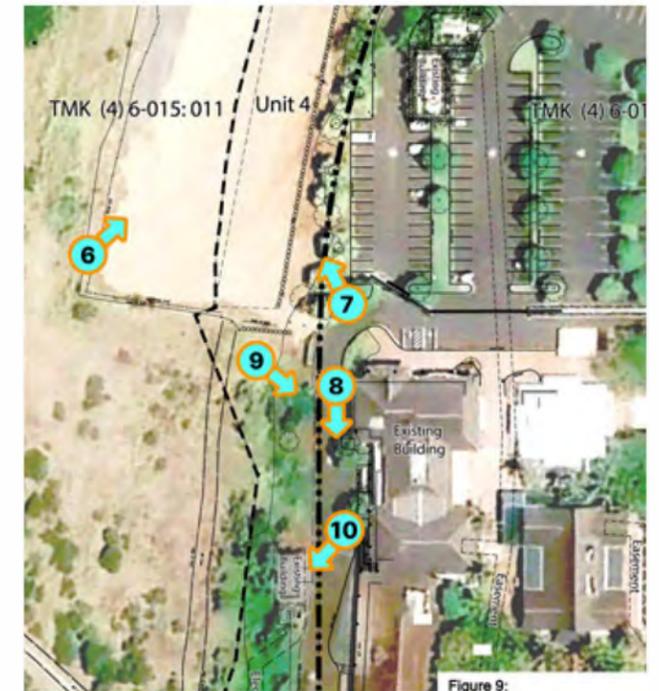


Figure 10: DRAFT 11/7/2023  
Site Photographs  
The Shops at Kukui'ula Photovoltaic System & Employee Parking



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## **2.4 SHORELINE SETBACK DETERMINATION**

The shoreline setback line is approximately 2,000 feet away from the Property, which is greater than 100 feet from the Certified Shoreline based on criteria set forth under Section 8-27.3, KCC. Therefore, a Shoreline Setback Determination (SSD) for the Property is not needed.

## **2.5 VISUAL ANALYSIS**

The improvements are not expected to have a significant impact on existing view planes and will maintain visual conditions similar to the existing conditions. The PV structures over the parking lot may partially obscure distant views of the ocean from vantage points of the existing parking lot serving the shopping center. The visual impact will be marginal and will significantly impact neighboring properties.

## **2.6 PUBLIC SHORELINE ACCESS**

The Property does not abut the shoreline and does not infringe on any public shoreline access.

## **2.7 VALUATION OF THE IMPROVEMENTS**

The value of the proposed Improvements will exceed \$500,000, thereby triggering the requirement for an SMA Use Permit under Section 205A-22, Hawai'i Revised Statutes (HRS) and Section 1.4.V, Kaua'i Planning Commission Rules.

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## **3 SITE ANALYSIS**

### **3.1 NATURAL ENVIRONMENT**

#### **3.1.1 Climate**

The Property is located along the southeastern portion of Kaua'i in the Po'ipū area, which has a tropical climate and tends to be relatively warm for most of the year. According to the Hawai'i Rainfall Atlas, the average annual rainfall across the entire region is around 44 inches with the wettest months being December through March. However, some years experience drought conditions while others see heavier than usual rain and rainfall patterns can be highly variable across the Koloa region. According to data collected at the nearby Koloa station, mean annual rainfall for the Property is approximately 56.78 inches.

In recent years, Koloa and other parts of Hawai'i have experienced more frequent and intense rainfall events, which are likely linked to climate change. In addition, sea level rise associated with climate change may exacerbate the impacts of heavy rainfall and flooding in coastal communities like Po'ipū. Under typical trade wind conditions, the winds blow in a northeasterly direction. The annual temperature in the Koloa region is approximately 74°F with average monthly temperatures generally very consistent and range from 70°F to 77°F. Winter months are only a few degrees cooler than summer. Humidity averages from around 80% in the morning to about 58 percent in the afternoon.

#### ***Potential Impacts and Mitigation Measures***

The improvements are not expected to have an effect on climatic conditions and no mitigation measures are planned.

#### **3.1.2 Topography and Soils**

##### ***Topography***

The topography of the Improvement Area ranges in elevation from approximately 56 to 69 feet. The lowest elevations are along the makai portion closer to the shoreline and slopes gradually toward the ocean.

Appendix C contains detailed information on topography for the Improvement Area.

##### ***Soils***

The U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) classifies the soils comprising the Improvement Area as Waikomo very rocky silty clay (Wt). The "Wt" soil type typically has a slope range between 2 to 6% with some areas up to 12% with rock outcrops covering 3 to 25% of the surface. Permeability is moderate while runoff is slow, and the erosion hazard is slight. NRCS notes this soil type is typically used for pasture, wildlife habitat and home sites. Figure 12 shows the NRCS soil survey map.

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***Potential Impacts and Mitigation Measures***

The Improvements will require grading of the Unit 4 Lot. See

Appendix C for the site grading plan. All grading will be done in compliance with all applicable Federal, State, and County regulations and rules for erosion control. Before issuance of a grading permit by the County of Kaua'i, an erosion control plan and Best Management Practices (BMPs) required for the National Pollutant Discharge Elimination System (NPDES) permit will be prepared describing the implementation of appropriate erosion control measures. A General NPDES permit or an Individual NPDES permit may be required depending on the timing of construction.

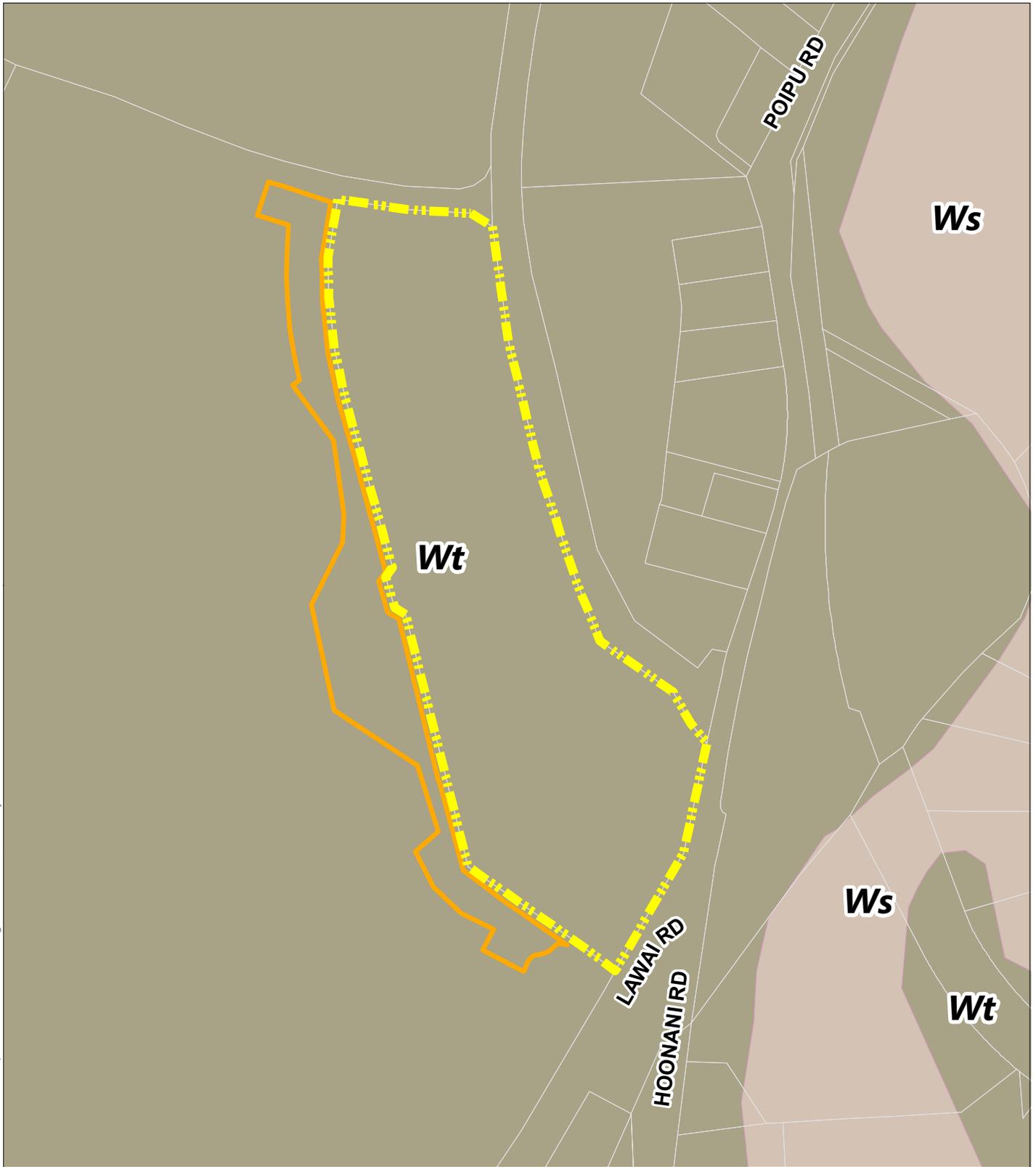
The NPDES permit will allow the Applicant or its contractors to perform erosion control measures to ensure that no discharge to the ocean occurs. The NPDES permit covers discharges composed entirely of storm water runoff associated with construction activities, including clearing, grading, excavation, and construction support activities (See Hawai'i Administrative Rules (HAR) Chapter 11-55). In accordance with the Department of Health (DOH) regulations and the requirements of the standard permit conditions, the Applicant or its contractors will design, install, and maintain erosion and sediment controls that minimize (i.e., reduce and/or eliminate to the extent achievable) the discharge of pollutants from earth-disturbing activities (see HAR Chapter 11-55). All storm water controls must be installed prior to earth-disturbance, and pollution prevention procedures must be identified and followed.

Appendix C contains a Site Grading Plan for the Unit 4 Lot. For details regarding drainage see Section 3.3.3.

**3.1.3 Coastal Waters, Wetlands, & Streams**

The State of Hawai'i classifies the ocean waters near the Property as Class A. The objective of Class A waters is that their use for recreational purposes and aesthetic enjoyment be protected (HAR §11-54-3(c)(2)).

The closest stream to the Property is the Waikomo Stream, located just east of the Shops at Kukui'ula across Lāwai Road. The Waikomo Stream runs generally north to south through the southeastern region of Kaua'i. Its watershed spans approximately 3.5 square miles, encompassing a diverse range of habitats, from lowland wet forests to coastal areas. The stream plays a crucial role in regulating water flow, especially during periods of heavy rainfall, mitigating the risk of flooding and soil erosion downstream. Its waters also replenish the island's groundwater aquifers, ensuring a sustainable supply of freshwater for both natural habitats and human consumption. Moreover, the riparian vegetation along the stream provides vital habitat for native flora and fauna, contributing to biodiversity conservation. The stream serves as a habitat for a variety of native species, including the Hawaiian freshwater goby (*Sicyopterus stimpsoni*) and the 'i'iwi bird (*Drepanis coccinea*).



**LEGEND**

-  TMK 6-015: 010
-  TMK 6-015: 011 (portion)(Unit 4)
-  TMK Boundaries

**NRCS Soil Classification**

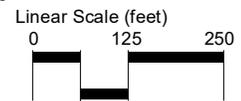
-  Ws: Waikomo stony silty clay
-  Wt: Waikomo very rocky silty clay

**Figure 12 :** DATE: 9/25/2023

**Natural Resources Conservation Service Soils Survey Map**

**The Shops at Kukui'ula Photovoltaic System & Employee Parking**

Kukui'ula Village LLC Island of Kauai'



Source: NRCS, 2017. County of Kauai' 2022.

Disclaimer: This graphic has been prepared for general planning purposes only and should not be used for boundary interpretations or other spatial analysis.

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***Potential Impacts and Mitigation Measures***

The improvements are not anticipated to significantly change the existing drainage conditions and therefore are not expected to impact coastal water quality, aquatic habitats, or coastal ecosystems. Construction activities will comply with all applicable Federal, State, and County regulations and rules for erosion control including the preparation of an erosion control plan and implementation of BMPs necessary for the NPDES permit (see Section 3.1.2 above).

Appendix C contains a Site Grading Plan for the Improvement Area. For details regarding drainage see Section 3.3.3.

**3.1.4 Flood Zones**

The Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map (FIRM) for the Koloa region designates nearly all of the Property as within Zone X. This designation identifies that the majority of the Property is an area outside the 0.2% annual chance (500-year) floodplain (Zone X areas are designated as General Flood Plain by the County). Zone X has moderate to low risk for flooding. The Improvement Area is completely within Zone X.

There is a small portion of the Property in the southeastern corner that is within Zone XS and Zone AE. This area abuts Lāwai Road and reflects floodplain conditions associated with Waikomo Stream on the opposite side of Lāwai Road from the Property. The area of the Property designated as Zone XS has a minimal flood risk with reduced or negligible flood hazards. This area is outside the 100-year floodplain and represents areas with a 1% chance of annual flood occurrence. The area designated as Zone AE is identified as having a moderate to high risk of flooding with a 1% chance of a flood event in any given year.

Figure 8 shows the FIRM.

***Potential Impacts and Mitigation Measures***

The Improvements are not anticipated to have any impact on flooding conditions and the area. All the Improvements are within Zone X and will include a new drainage system to convey all stormwater collected on impervious surfaces created by the Improvements.

Appendix C contains a Site Grading Plan for the proposed improvements. For details regarding drainage see Section 3.3.3.

**3.1.5 Constraint Districts and Sea Level Rise**

The Improvement Area is not within any areas designated as constraints districts. Figure 6 shows the Property and the Constraint Districts.

The *Kaua'i Climate Change and Coastal Hazards Assessment*, referenced in the *Kaua'i County General Plan* (County of Kaua'i 2018), includes a preliminary Sea Level Rise (SLR) Inundation Assessment and Needs Assessment for Kaua'i. According to the assessments, sea level around Kaua'i is currently rising at an average rate of 1.53 millimeter/year and is projected to continue to

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rise at an accelerated rate both globally and locally. Appendix D of the *Kaua'i County General Plan* includes inundation maps for one-foot, three-foot, and six-foot SLR scenarios for the areas in the vicinity of the Property. These maps provide a preliminary look at SLR and coastal flooding impacts, however the data used to make the maps does not specify the timing of inundation depths.

***Potential Impacts and Mitigation Measures***

The improvements are not expected to: 1) impact coastal water quality and aquatic habitats; or 2) exacerbate natural hazards or SLR.

To mitigate the threat of tsunamis, the design of the improvements may be subject to additional construction and development standards as provided in Section 15-1.5, KCC.

The Improvements are not within the 100-foot shoreline setback (based on criteria set forth under Section 8-27.3, KCC).

The Improvement Area is completely within the FIRM Zone X flood zone, which is an area determined to be outside the 0.2% annual chance (500-year) floodplain. A small portion of the site is within Zone XS and Zone AE, having a moderate to high risk of flooding with a 1% annual chance of flooding. It is noted that at some point: 1) FEMA may revise the FIRM for the area as the frequency and severity of flooding events increase with SLR; and 2) the County may: a) adopt requirements for flood hazard mitigation/adaptation requirements that account for SLR hazards and are above and beyond the FIRM flood zones; and b) revise the shoreline setback ordinance as new SLR information and projections become available.

As noted in Section 3.2 of the *Kaua'i General Plan*:

*Responding to climate change will require a comprehensive approach with actions that cut across many sectors. Since the rate and extent of climate change is uncertain, an "adaptive management" approach is best suited to deal with the inherent uncertainties. Also needed is a framework to address the impacts of climate change. Adaptive management is dependent on the constant and thorough monitoring of climate change variables, building and revising different scenarios, and developing flexible response mechanisms and actions. One recent County action was to revise the shoreline setback ordinance by an additional 20 feet to account for sea level rise and associated impacts. The shoreline setback ordinance should be revisited over time as new sea level rise information and projections become available.*

**3.1.6 Flora**

The Property is vegetated predominantly with both native and non-native tropical plants used for ornamental purposes. There is no critical habitat for floral species as defined and designated by the United States Fish and Wildlife Service (USFWS). While most of the plants found on the Property are non-native, there are some endemic plants blended within the landscaping. None of the endemic species are threatened or endangered (listed, proposed, or candidate) by the Federal and/or State governments, nor considered rare.

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The Property contains an existing unpaved parking lot and is an area with both naturally occurring and transplanted flora.

***Potential Impacts and Mitigation Measures***

The Improvements will not impact any threatened or endangered plant species as none are present on the Property. The proposed improvements will require the removal of five (5) trees: two (2) trees located where the new driveway connects to the new parking lot and three (3) trees along the boundary of the Unit 4 Lot to accommodate new parking stalls.

**3.1.7 Fauna**

***Avian Species***

No avian species listed or proposed as threatened or endangered species under the federal Endangered Species Act (ESA) or the State of Hawai'i endangered species statute (Chapter 195D, HRS) are known to inhabit the Property; however native and indigenous species are likely in the general region and these species may frequent open spaces in the vicinity and/or traverse across the Property.

Indigenous, migratory birds may transit over the Property while flying between the ocean and nesting sites in the mountains during their breeding season (March through November). Birds transiting the Property might include the 'Ua'u kani or Wedge-tailed Shearwater<sup>1</sup> (*Puffinus pacificus*), the endangered 'Ua'u or Hawaiian Petrel<sup>2</sup> (*Pterodroma sandwichensis*), and threatened 'A'o or Newell's Shearwater<sup>3</sup> (*Puffinus auricularis newelli*). These birds are protected under the Migratory Bird Treaty Act (MBTA), which makes it illegal to pursue, hunt, capture, or kill any listed bird. In addition, under Hawai'i law it is illegal to catch, injure, or kill any indigenous birds, and it is also illegal to "remove, damage, or disturb the nest of any indigenous, endangered or threatened species" (HAR § 13-124-3).

***Mammalian Species***

No mammalian species listed or proposed for listing under federal or state endangered species laws are known to inhabit the Property. The Ōpe'ape'a or Hawaiian hoary bat (*Lasiurus cinereus semotus*) is known to be present on Kaua'i and it is possible that the bat could forage for insects on the Property or within the general region. No rodents have been observed on the Property, but it is likely that non-native rodent populations use resources found on the Property.

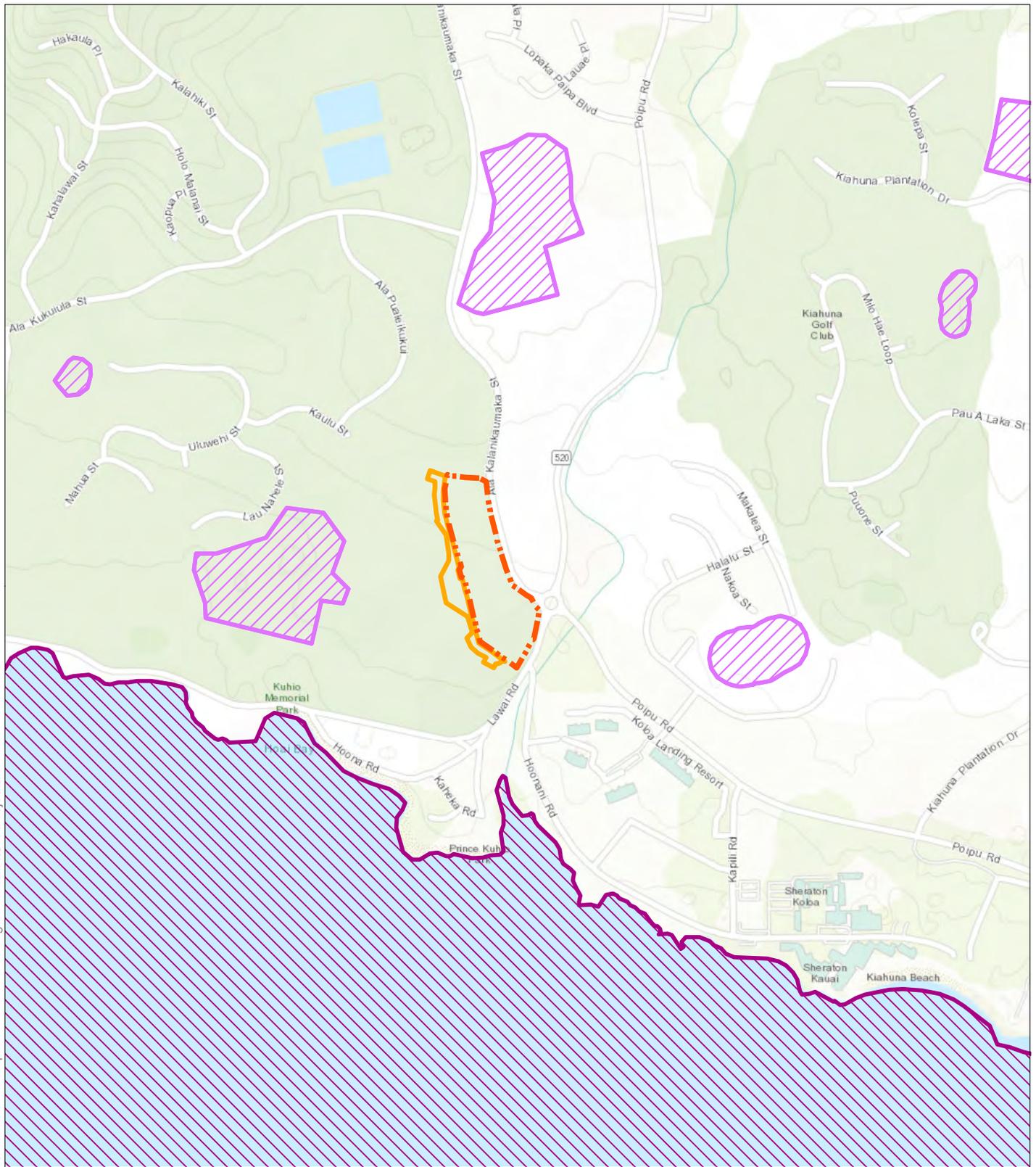
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<sup>1</sup> The Wedge-tailed Shearwater not listed as an endangered or threatened species under the federal ESA or under Hawai'i's endangered species statute (Chapter 195D, HRS), but it is listed with the State of Hawai'i Department of Department of Land and Natural Resources (DLNR) Division of Forestry and Wildlife (DOFAW) as a Species of Greatest Conservation Need.

<sup>2</sup> The Hawaiian Petrel is listed as endangered under the federal ESA and the State of Hawai'i endangered species statute Chapter 195D, HRS

<sup>3</sup> The Newell's Shearwater is listed as threatened under the federal ESA and the State of Hawai'i endangered species statute Chapter 195D, HRS

Q:\Kauai\The Shops at Kukui'ula Parking & PV SMA\GIS\Projects



DATE: 9/25/2023

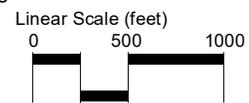
**LEGEND**

-  TMK 6-015: 010
-  TMK 6-015: 011 (portion)(Unit 4)
-  NOAA Hawaiian Monk Seal Critical Habitat
-  USFWS Animals & Plants Critical Habitat

**Figure 13:  
Critical Habitat**

**The Shops at Kukui'ula Photovoltaic System & Employee Parking**

Kukui'ula Village LLC Island of Kauai



Source: ESRI Online Basemaps, 2016. USFWS, 2022. NOAA, 2022. County of Kauai, 2022

Disclaimer: This graphic has been prepared for general planning purposes only and should not be used for boundary interpretations or other spatial analysis.

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***Invertebrate Species***

The Property does not contain any critical habitats areas for arachnid species. However, there are identified critical habitat locations nearby the Property for the Kaua'i cave wolf spider (*Adelocosa anops*) and the Kaua'i cave amphipod (*Spelaeorchestia koloana*) (Figure 13), which are listed as endangered species by the USFWS. The Kaua'i cave spider is exclusively found in the Koloa region on the island of Kaua'i in subterranean lava tube caves, where they have evolved over millennia to thrive without eyesight. The Kaua'i cave amphipod is also exclusively found in lava tube caves and has only been found in the Koloa basin. These species are protected through conservation policies to prevent habitat degradation and destruction caused by human activities, such as land development. Due to the limited and unique habitat that could be compromised by exposure, it is imperative that the caves in the region are not disturbed.

AECOS conducted a field survey of the Improvement Area in February 2024. This effort produced no signs of depressions or openings in the ground indicative of larger voids beneath the survey area. AECOS notes that: 1) the Property previously been surveyed for biological resources by several investigators prior to the construction of the Shopping Center and appurtenances associated with it; and 2) the Improvement Area is currently being used for employee parking and has been previously bulldozed and graded using heavy equipment.

See Appendix F for the cave survey report for the Kaua'i cave spider and Kaua'i cave amphipod.

***Potential Impacts and Mitigation Measures***

Most of Property is developed and the Improvements are not expected to significantly change existing conditions relative to impacts to fauna. In particular, the Improvements are not anticipated to increase impacts or potential impacts to indigenous, migratory birds that may transit over the Property. It is also unlikely that the Improvements will impact the protected Kaua'i cave wolf spider or the Kaua'i cave amphipod as the Improvement Area does not include any area identified as a critical habitat location or any known subterranean lava tube caves. According to the cave survey, the closest point of the Improvement Area is located approximately 725 feet from federally designated critical habitat and there are no indications of depressions or openings to subsurface voids in the Improvement Area.

Although construction is not anticipated to create any openings to undetected lava tube habitat, the survey included recommendations to mitigate unforeseen impacts. If a void is created during construction, the Applicant will cease all work in the immediate area and cover the void to prevent further impacts. The Applicant will then contact the State of Hawai'i Office of Historical Preservation and certified biologists to assess the area for historical artifacts and species habitats and determine appropriate actions to preserve and protect the site if needed.

To mitigate potential impacts to avian species during construction and after completion of the improvements all exterior lights will be fully shielded (completely opaque), downward facing full-cut off fixtures with the lowest light emission possible to minimize seabird distraction and disorientation. In addition, no artificial light will be directed toward the shoreline and ocean waters, except as allowed under Section 205A-30.5(b), HRS. Further, in the unlikely event that night-time

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construction would be necessary, any lighting for night-time construction will be minimized during fledgling season (September to December).

If any indigenous bird nests, young birds, or eggs are discovered at the Property, the Applicant or its contractors will consult the State of Hawai'i Department of Land and Natural Resources (DLNR) and USFWS to ensure compliance with §13-124-3, HAR.

### **3.1.8 Air**

Regional and local climate, together with amount and type of human activity, generally dictate the air quality of a given location. In Koloa, the predominant winds are trade winds from the northeast, which provide good ventilation most of the time. The annual mean wind speed on the Property averages 7.15 miles per hour (mph). Daily wind speeds typically vary between about 5 and 11 mph. During the winter, occasional storms may generate strong winds from the south (Kona winds) for brief periods. When the trade winds or Kona winds are weak or absent, landbreeze-seabreeze circulations may develop.

Existing air quality in the vicinity of the Property is mainly affected by emissions from natural, industrial, agricultural, and/or motor vehicle sources. Air quality monitoring data from the Kukui'ula station (about eight miles northwest of the Property) suggests that air quality standards are currently being met. The monitoring station, which has been in operation since April 2011, has recorded a few readings of sulfur dioxide that exceed standards. However, air quality in the Po'ipū area is believed to be good at the present time.

#### ***Potential Impacts and Mitigation Measures***

It is not anticipated that any state or federal air quality standards will be violated during or after construction associated with the Improvements. Long-term negative impacts related to air quality are not anticipated. The only anticipated issues related to air quality are short-term direct and indirect impacts that could potentially occur during construction.

To minimize fugitive dust impacts during construction, all construction activities will comply with all applicable provisions of Title 11, Chapter 59, HAR related to Ambient Air Quality Standards and Section 11-60.1-33, HAR related to Fugitive Dust.

### **3.1.9 Noise**

Noise on the Property is related to general sounds from human activity and motorized transportation consistent with the use of the Property for commercial uses and associated parking facilities. The Property is also exposed to sound from wind, the ocean, and human activities along the nearby roadways.

#### ***Potential Impacts and Mitigation Measures***

Noise associated with the Improvements will relate to construction activities, which will be temporary and confined to the period of construction. Noise following construction is expected to

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remain consistent with the current use of the Property for commercial uses and the Improvements will not contribute toward any noise impacts compared to existing conditions.

Pursuant to Chapter 11-46, HAR, all improvement activities must comply with all community noise controls and seek permits if required from the DOH. Increased noise activity due to construction will be limited to daytime hours and persist only during the construction period. The use of pile drivers, hoe rams, jack hammers 25 pounds or heavier, and high-pressure sprayers are not expected to be needed, but if required, will be restricted to 8:00 a.m. to 5:00 p.m., Monday through Friday. Construction equipment and on-site vehicles or devices requiring exhaust of gas or air must be equipped with mufflers. In addition, construction activities must satisfy the DOH's vehicle noise requirement.

## **3.2 ARCHAEOLOGICAL & CULTURAL RESOURCES**

### **3.2.1 Archaeological Resources**

The Improvement Area has been previously disturbed and graded and contains no known archaeological sites.

Cultural Surveys Hawaii conducted an archaeological inventory survey (AIS) in 1988 as part of the Kukui'ula Planned Community Final Environmental Impact Statement. The AIS evaluated an approximately 1,000-acre area stretching from Poipu Road to the Lawai Valley and included the Improvement Area. While the AIS found 58 archeological sites in the broader area, no archaeological sites were found within the 1.01-acre Improvement Area. The State Historic Preservation Officer reviewed the survey and concurred with the adequacy of the survey. Since the 1988 AIS was completed, several additional archaeological investigations have been conducted in the greater area, including archaeological preservation plans. However, none of the additional archaeological work included the Improvement Area.

#### ***Potential Impacts and Mitigation Measures***

Because the Improvement Area has been previously disturbed and graded and contains no known archaeological sites, no impacts to archaeological resources are anticipated. In addition, the Improvements are not anticipated to adversely affect any sites not yet identified.

Should any archaeological materials be identified during construction, archeological monitoring will be conducted to ensure appropriate mitigation measures and appropriate treatment of such materials are taken. The archaeological monitoring program will include an archaeological monitoring plan (AMP) that will contain design details regarding: 1) areal and vertical extent of construction ground disturbance; and 2) types of construction activities proposed. Specific details will be formalized in the AMP, in consultation with SHPD.

The Applicant will comply with all state and county laws and rules regarding preservation of archaeological and historic sites. Should historic sites such as walls, platforms, pavements and

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mounds, or remains such as artifacts, burials, concentrations of shell or charcoal be inadvertently encountered during the construction activities, work will cease immediately in the immediate vicinity of the find and the find will be protected. The contractor shall immediately contact the SHPD, which will assess the significance of the find and recommend appropriate mitigation measures, if any

### **3.2.2 Native Hawaiian Traditional and Customary Practices**

Honua Consulting conducted a Ka Pa‘akai Analysis in February 2024 to assess compliance with the required criteria set forth below. Legal rulings in the State of Hawai‘i have established an analytical framework in an effort to effectuate the State’s obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing private interests (cf. *Ka Pa‘akai o Ka‘aina v. Land Use Commission*, State of Hawai‘i 2000). This means applicants before boards and commissions should, at a minimum, make specific findings and conclusions as to 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 to reasonably protect native Hawaiian rights if they are found to exist.

There are no identified cultural resources or traditional or customary practices in the Improvement Area, although practitioners identified practices in the surrounding area. The Improvement Area has been disturbed and graded for the present use as a dirt employee parking area for the shopping center.

See Appendix G for the Ka Pa‘akai Analysis memorandum summarizing the assessment.

In addition, previously Cultural Surveys Hawai‘i conducted a Cultural Impact Assessment (CIA) and analysis regarding Native Hawaiian cultural practices related to the Property in December 2002. This analysis was conducted for the larger Kukui‘ula area and included the Improvement Area.

#### ***Potential Impacts and Mitigation Measures***

The grading required for the Improvements will have minimal impact on subsurface features and the structures proposed are not anticipated to have an impact on any traditional and customary native Hawaiian practices.

Native Hawaiian cultural practices conducted in the area include fishing and traditional farming practices. While there are cultural practices conducted in the surrounding region, there are no specific customary practices within the Improvement Area and the project will not impede any

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cultural practices in the nearby areas. In addition, the analysis of Koloa's mo'olelo found that there were no specific stories of significance identified for the Property.

The extent to which the proposed action will impact cultural practices is negligible. However, best management practices will be implemented by the Applicant to ensure that any potential impacts to cultural resources in the surrounding areas are mitigated to greatest extent possible. The Applicant will provide conditions that will allow for cultural practitioners to identify any unforeseen impacts to traditional and customary practices.

Based on evidence gathered during the previous assessment and the most recent analysis, there are no cultural resources currently occurring within the Property or the abutting parcels to the west of the Property. The Improvement Area is currently utilized as a dirt parking lot and has also been subject to an archaeological survey in the past.

While there are cultural practices related to fishing and marine resource gathering in the coastal areas makai of the Property, public access to these cultural resources is available by way of Lawa'i Beach Road and would not be infringed by the improvements proposed by this project.

### **3.3 INFRASTRUCTURE**

Goto Engineering, LLC prepared plans detailing existing and proposed infrastructure related to the Property and the improvements. The information from the plans is summarized below.

Appendix C contains the complete Improvement Area civil engineering plans: 1) demolition plan; 2) grading and drainage plan; 3) utility plan; and 4) details for storm drains and utility trenches.

#### **3.3.1 Water**

The Property contains water service infrastructure for the existing shopping center with connections from the existing County main within the Ala Kalanikaumaka Street right-of-way. The undeveloped Unit 4 Lot does not have water service or infrastructure.

#### ***Potential Impacts and Proposed Improvements***

New waterlines with connections from the existing water lines in the Shopping Center Parcel will be added to the Improvement Area to provide irrigation for the new landscaping around the new parking lot. Fire service access for the Improvement Area is sufficient due to the close proximity of fire hydrants currently serving the existing shopping center. The closest existing fire hydrant is located beside the proposed storage building. See Appendix C.

#### **3.3.2 Wastewater**

The Property contains existing infrastructure below grade serving the existing shopping center with connections from the County sewer main within the Ala Kalanikaumaka Street right-of-way.

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The undeveloped Unit 4 Lot does not have wastewater service or infrastructure and there is no wastewater infrastructure within the Improvement Area.

***Potential Impacts and Proposed Improvements***

No additional wastewater infrastructure is needed or planned for the proposed improvements as the uses will be exclusively for parking and electrical power generation.

**3.3.3 Drainage**

Goto Engineering conducted a drainage study of the Improvement Area and the impacts of the Improvements.

The topography of the Improvement Area comprises mild, gentle slopes extending north to south across the Improvement Area proposed for the new parking lot and PV structures. The slope extends from approximately 69 feet in elevation on the north end of the parcel to approximately 57 feet in elevation on the south end. Drainage across the existing dirt parking lot flows in a southwestern direction toward an undeveloped parcel abutting the Improvement Area.

***Potential Impacts and Proposed Improvements***

Under the proposed conditions, drainage patterns will follow existing conditions with all runoff discharging toward the undeveloped parcel to the south and west. The hydrologic analysis shows that peak flows will increase by 2.17 cubic feet per second (cfs) from the existing 1.26 cfs to 3.43 cfs under the proposed conditions with the improvements. However, the increase generated by new impervious surfaces will be sufficiently captured by the new drainage system.

The new drainage system comprises drainage lines below grade extending along the Improvement Area and supporting infrastructure to capture stormwater collected. The proposed plan includes: five new drainage inlets and bubblers, one planter drain inlet, and a concrete gutter to collect stormwater runoff within the new parking area and convey stormwater through a new drainage pipeline. The drainage study concludes that the Improvements will not impact, alter, or cause any adverse effects to downstream properties. See Appendix C for the detailed drainage plans and Appendix H for the drainage study.

**3.3.4 Electrical, Telephone, and Telecommunications**

There are no electric, telephone, or telecommunication services or infrastructure within the undeveloped Unit 4 Lot. The Shopping Center Parcel is served by the KIUC.

***Potential Impacts***

The proposed improvements include a new PV system. The new PV system will generate solar energy for the existing shopping center with a capacity of 443 kw DC and offset approximately 38% of the shopping center’s current energy consumption from the KIUC system. Energy generated by the new PV system will be used by the Shops at Kukui‘ula and not be used off site

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or sold to the KIUC system or other entities. The Improvements are not anticipated to increase demands for telephone and telecommunication services.

### **3.3.5 Solid Waste**

Solid waste generated by the shopping center is collected from the various merchants throughout the Property and held at an on-site location. Solid waste from Property is collected by private hauler and transported to the Kekaha Landfill.

#### ***Potential Impacts and Mitigation Measures***

Demolition and construction necessary for Improvements will generate demolition and construction debris. The contractor will use separate refuse collection bins for green waste, concrete, metal, cardboard, and other construction materials. A refuse hauler will pick up the debris and recycle cardboard and metal; other materials may be recycled as feasible. Demolition and construction debris that cannot be recycled will be disposed of at the Kekaha Landfill which accepts construction and demolition debris. As required by the Department of Public Works, construction and demolition debris will be cut into three feet or smaller sections.

After completion, the Improvements will not impact existing conditions concerning solid waste.

### **3.3.6 Traffic and Roadways**

#### ***Existing Roadways and Access***

Existing access to the Property is provided directly to arterial roadways serving the Po'ipū community with two driveways that intersect with Ala Kalanikaumaka Street to the east and Lāwai Road to the southeast. The access driveway intersecting with Lāwai Road also forms the western output of the Lāwai Road/Ho'onani Road intersection.

#### ***Potential Impacts and Mitigation Measures***

The Improvements are not anticipated to have any impact on existing traffic or roadway conditions in the surrounding community. The improvements may contribute to making the shopping center more appealing to the community and therefore could have a marginal increase in the number of visitors to the shopping center. An additional driveway with direct access to the new parking lot will connect to an unfinished private road (Kaulu Street) once the roadway is developed in the future.

## **3.4 POTENTIAL SECONDARY IMPACTS**

### **3.4.1 Jobs and Employment**

Between 2017 and 2021, unemployment in the Po'ipū Census Designated Place (CDP) averaged 2.8%. In 2017, Kaua'i County had an unemployment rate of 4.4%. The following industries provide employment to those 466 people in Po'ipū who are employed civilians 16 years of age and older (U.S. Census Bureau, 2021):

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Industry	Number	Percent
Arts, entertainment, and recreation, and accommodation and food services	70	15.50%
Educational services, and health care and social assistance	66	14.60%
Professional, scientific, and management, and administrative and waste management services	61	13.50%
Finance and insurance, and real estate and rental and leasing	57	12.60%
Construction	44	9.70%

The median household income for the Po‘ipū CDP between 2017 and 2021 was \$109,875, which is more than the U.S. median income of \$69,021 (*ibid.*). Median income during that same time period for Kaua‘i County was \$86,287 (*ibid.*).

***Potential Impacts and Mitigation Measures***

The Improvements are not expected to negatively impact jobs and employment and may increase jobs and employment in the area.

In the short-term the Improvements will create construction-related jobs and expenditures and related indirect multiplier effects on the local economy.

In the long-term, the Improvements may make the shopping center more appealing and result in an overall increase in revenue and spending from tourists visiting the shopping center and other commercial stores in the community. This may lead to more employment opportunities at the shopping center, positive economic impacts to the County from increased taxes, and indirect positive impacts to the community and the County from the multiplier effect of increased employment, income generation, and taxes.

**3.4.2 Compatibility with Surrounding Uses**

Surrounding and nearby uses (see Figure 7) **Error! Reference source not found.**include:

- Vacant land
- Residential (single family homes, condominiums, vacation rentals)
- Resorts/hotels (Whalers Cove Resort, Lawai Beach Resort, Sheraton Kauai Resort and others)
- Kiahuna Golf Club
- Restaurants, retail, and other commercial uses (Kukui‘ula Market, Eden Coffee, Da Crack Mexican Grinds, Seasport Divers, Endless Summer Surf School)
- Koloa Fire Station

The Kaua‘i County General Plan South Kaua‘i Land Use Map designates the Shopping Center Parcel as “Neighborhood Center” and the Unit 4 Lot as “Residential Community” (Figure 4).

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The Shopping Center Parcel is zoned Neighborhood Commercial (C-N). The Unit 4 Lot is zoned Residential (R-4).

***Potential Impacts and Mitigation Measures***

The Improvements are compatible with the surrounding land uses and designation of the Property. The Improvements are appropriate and compatible with the intent of the County Neighborhood Commercial zone (CN) and “Neighborhood Center” under the Kaua‘i County General Plan South Kaua‘i Land Use Map.

As the Shopping Center Parcel is designated and zoned for commercial uses (with the Unit 4 Lot designated for residential uses):

- The existing use of the Property for commercial use is appropriate and the Improvements designed for parking and energy generation as appropriate to support the commercial use;
- The existing shopping center and parking facilities are compatible with the surrounding uses as will be Improvements as appropriate to support the commercial use; and
- The Improvements will be compatible with existing and surrounding uses and will not lead to incompatible uses.

**3.4.3 Population and Housing**

***Population***

According to the 2017 and 2021 American Community Survey, the Po‘ipū CDP (of which the Property is a part) has a population of 1,008 people (U.S. Census Bureau, 2021). As of 2021, Kaua‘i County has a resident population of 73,247 people with a 2019 de facto population of 96,244, which includes tourists and military personnel (Department of Business, Economic Development & Tourism, 2018). Average household size reported in the Po‘ipū CDP was 2.04 people. Demographic information for Po‘ipū is included below:

<b>Race</b>	<b>Number</b>	<b>Percent</b>
White	680	67.50%
Black or African American	2	.20%
American Indian and Alaska Native	7	.70%
Asian	134	13.30%
Native Hawaiian and Other Pacific Islander	18	1.80%
Some Other Race	30	3.00%
Two or More Races	137	13.60%

<b>Age</b>	<b>Number</b>	<b>Percent</b>
Under 5 years	21	2.10%
5 to 9 years	27	2.70%
10 to 14 years	47	4.70%
15 to 19 years	30	3.00%
20 to 24 years	37	3.70%

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25 to 34 years	56	5.60%
35 to 44 years	54	5.40%
45 to 54 years	91	9.00%
55 to 59 years	104	10.30%
60 to 64 years	120	11.90%
65 to 74 years	312	31.00%
75 to 84 years	80	7.90%
85 years and over	29	2.90%

According to the State Department of Business and Economic Development, the:

- Resident population of Kaua‘i is projected to increase to 78,000 by 2025, 84,300 by 2035, and 90,000 by 2045 (Department of Business, Economic Development & Tourism, 2018).
- De facto population of Kaua‘i is projected to increase to 103,800 by 2025, 113,100 by 2035, and 121,800 by 2045 (Department of Business, Economic Development & Tourism, 2018).

***Potential Impacts and Mitigation Measures***

The Improvements are not expected to negatively impact jobs and employment and may increase jobs and employment at the shopping center.

In the long-term, the Improvements may make the shopping center more appealing and result in an increase in revenue or occupancy or at the shopping center, increase in visitor spending at the shopping center and throughout the community. This may lead to more employment opportunities at the shopping center, positive economic impacts to the County from increased taxes, and indirect positive impacts to the community and the County from the multiplier effect of increased employment, income generation, and taxes.

In the short-term the Improvements will create construction-related jobs and expenditures and related indirect multiplier effects on the local economy.

***Housing***

According to five-year estimates for 2017-2021 from US Census data, the median home values of owner-occupied housing units in Kaua‘i County was \$632,900. The home value price of owner-occupied housing units for the same timeframe in the Po‘ipū CDP was \$965,700 (US Census Bureau, 2023).

***Potential Impacts and Mitigation Measures***

The Improvements are not expected to have any impact on housing in the community or the County as a whole.

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## **4 LAND USE CONFORMANCE**

The improvements will not affect the maintenance of waters in their natural state, the protection of domestic water use, the protection of water in the exercise of Native Hawaiian and traditional and customary rights, or the reservation of water enumerated by the State Water Code. Nor will it harm any other public natural resources (See Hawai'i Constitution, Article XI, Section 1).

The improvements have been designed with consideration toward the conservation and protection of Hawai'i's natural beauty and all natural resources, and to the extent that the improvements will utilize natural resources compared to the existing use of the Property, that use is consistent with the principles of conservation and self-sufficiency of the State.

### **4.1 STATE LAND USE DISTRICT**

The Property is within the State Land Use Urban District and Agricultural District (Figure 3). The use of the Property for a roadway is consistent with uses permitted in the Urban District.

### **4.2 SPECIAL MANAGEMENT AREA AND COASTAL ISSUES**

The Property is located within the Special Management Area (SMA) (Figure 5) as designated by the State Coastal Zone Management (CZM) Program. Therefore, an SMA Use Permit is required. In accord with SMA permit requirements, an evaluation follows of the proposed improvements in relation to the objectives and policies of the State's CZM Act (Chapter 205A, HRS) and the SMA guidelines (Section 205A-26, HRS, as adopted by the Kaua'i Planning Commission under Section 4 of the SMA Rules and Regulations of the County of Kaua'i (Kaua'i SMA Rules)).

#### **4.2.1 Coastal Zone Management Act (Chapter 205A, HRS)**

The National Coastal Zone Management (CZM) Program was created through passage of the Coastal Zone Management Act of 1972. Hawai'i's CZM Program, adopted as Chapter 205A, HRS, describes objectives, policies, laws, standards, and procedures to guide and regulate public and private uses in the CZM area.

The objectives and policies of the CZM Program encompass broad concerns such as impact on recreational resources, historic and archaeological resources, coastal scenic resources and open space coastal ecosystems, coastal hazards, and the management of development.

The CZM Area, as defined in Chapter 205A, HRS, includes all the lands of the State. As such, the Property is within the CZM Area. Furthermore, the State legislature determined that special controls within an area along the shoreline are necessary to avoid permanent losses of valuable resources and the foreclosure of management options, and to ensure that adequate access, by dedication or other means, to public owned or used beaches, recreation areas, and natural reserves is provided. This area is called the Special Management Area (SMA). Under Section 205A-23, each of the Counties is instructed to set the boundaries of the SMA. The Property is within the SMA boundaries set by the County of Kaua'i.

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Under the CZM Program, the policy of the State of Hawai'i is to "preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawai'i." Special controls on development within the shoreline areas are necessary "to avoid permanent losses of valuable resources and the foreclosure of management options, and to ensure that adequate access, by dedication or other means, to public owned or uses beaches, recreation areas, and natural reserves is provided." (See Section 205A-21, HRS).

The objectives and policies of the Hawai'i CZM Program, as set forth in Section §205A-2, HRS, along with discussion of how the improvements conform to the objectives and policies, are discussed below.

**(1) Recreational resources;**

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

**Policies**

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

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**Discussion:** The Improvements will not impact or impede any recreational resources related to the CZM area as the Property is not near the shoreline.

**(2) Historic resources;**

**Objective:** *Protect, preserve, and, where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.*

**Policies**

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

**Discussion:** There are no known archaeological resources within the Improvement Area and no impacts are expected. The Improvement Area has been previously disturbed. However, if potential impacts are identified during construction, appropriate steps will be taken to preserve and protect historic resources.

**(3) Scenic and open space resources;**

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

**Policies**

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

**Discussion:** The Improvements are not expected to have an impact on scenic resources in the coastal area as the Property is not near the shoreline. The PV canopies over the parking lot may partially obscure distant views of the ocean from the vantage point of the existing parking lots serving the shopping center currently. However, the Improvements will not significantly impact views in the surrounding area.

**(4) Coastal ecosystems;**

**Objective:** *Protect valuable coastal ecosystems, including reefs, beaches, and coastal dunes, from disruption and minimize adverse impacts on all coastal ecosystems.*

**Policies**

- (A) *Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;*
- (B) *Improve the technical basis for natural resource management;*

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- (C) *Preserve valuable coastal ecosystems of significant biological or economic importance, including reefs, beaches, and dunes;*
- (D) *Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and*
- (E) *Promote water quantity and quality planning and management practices that reflect the tolerance of fresh water and marine ecosystems and maintain and enhance water quality through the development and implementation of point and nonpoint source water pollution control measures;*

**Discussion:** The Improvements are not anticipated to significantly change the existing drainage conditions and therefore are not expected to impact coastal water quality, aquatic habitats, or coastal ecosystems. A new drainage system will be designed as part of new parking facilities on the Unit 4 Lot for adequate conveyance of stormwater runoff collected on impervious surfaces. Construction activities will comply with all applicable Federal, State, and County regulations and rules for erosion control including the preparation of an erosion control plan and implementation of BMPs necessary for the NPDES permit.

**(5) *Economic uses;***

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

**Policies**

- (A) *Concentrate coastal dependent development in appropriate areas;*
- (B) *Ensure that coastal dependent development and coastal related development are located, designed, and constructed to minimize exposure to coastal hazards and adverse social, visual, and environmental impacts in the coastal zone management area; and*
- (C) *Direct the location and expansion of coastal development to areas designated and used for that development and permit reasonable long-term growth at those areas, and permit coastal development outside of designated areas when:*
  - (i) *Use of designated locations is not feasible;*
  - (ii) *Adverse environmental effects and risks from coastal hazards are minimized; and*
  - (iii) *The development is important to the State's economy;*

**Discussion:** The Improvements are expected to result in positive economic impacts for the community by creating a more appealing facility to support the commercial uses in the shopping center. The Improvements may also have a positive impact on employment opportunities at the shopping center, increased taxes accrued to the County, and indirect positive impacts to the community and the County from the multiplier effect of increased employment, income generation, and taxes. Generating electrical energy on-site for the shopping center could also alleviate the financial burden on public utility facilities for maintenance of electrical infrastructure.

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**(6) Coastal hazards;**

**Objective:** *Reduce hazard to life and property from coastal hazards.*

**Policies**

- (A) *Develop and communicate adequate information about the risks of coastal hazards;*
- (B) *Control development, including planning and zoning control, in areas subject to coastal hazards;*
- (C) *Ensure that developments comply with requirements of the National Flood Insurance Program; and*
- (D) *Prevent coastal flooding from inland projects;*

**Discussion:** The FEMA FIRM for the Koloa region designates most of the Property as within Zone X. This designation identifies that the majority of the Property (and all of the Improvement Area) is an area outside the 0.2% annual chance (500-year) floodplain (Zone X areas are designated as General Flood Plain by the County). Zone X has moderate to low risk for flooding.

The Improvements are not anticipated to significantly change the existing drainage conditions and therefore are not expected to impact coastal water quality, aquatic habitats, or coastal ecosystems. A new drainage system will be incorporated within the design of new parking facilities on the Unit 4 Lot for adequate conveyance of stormwater runoff collected on impervious surfaces. Construction activities will comply with all applicable Federal, State, and County regulations and rules for erosion control including the preparation of an erosion control plan and implementation of BMPs necessary for the NPDES permit.

**(7) Managing development;**

**Objective:** *Improve the development review process, communication, and public participation in the management of coastal resources and hazards.*

**Policies**

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

**Discussion:** This SMA Use Permit Application details the short- and long-term impacts of the Improvements.

**(8) Public participation;**

**Objective:** *Stimulate public awareness, education, and participation in coastal management.*

**Policies**

- (A) *Promote public involvement in coastal zone management processes;*
- (B) *Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and*

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*organizations concerned with coastal issues, developments, and government activities; and*

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

**Discussion:** This SMA Use Permit Application will be subject to: 1) agency and public review and comment; and 2) the Kaua'i Planning Commission review and approval, which will take place at a public hearing where public comments and testimony can be received.

**(9) Beach protection and coastal dune protection;**

**Objective:** (A) *Protect beaches and coastal dunes for:*

- i. Public use and recreation;*
- ii. The benefit of coastal ecosystems; and*
- iii. Use as natural buffers against coastal hazards; and*

(B) *Coordinate and fund beach management and protection*

**Policies**

- (A) *Locate new structures inland from the shoreline setback to conserve open space, minimize interference with natural shoreline processes, and minimize loss of improvements due to erosion;*
- (B) *Prohibit construction of private shoreline hardening structures, including seawalls and revetments, at sites having sand beaches and at sites where shoreline hardening structures interfere with existing recreational and waterline activities;*
- (C) *Minimize the construction of public shoreline hardening structures, including seawalls and revetments, at sites having sand beaches and at sites where shoreline hardening structures interfere with existing recreational and waterline activities;*
- (D) *Minimize grading of and damage to coastal dunes*
- (E) *Prohibit private property owners from creating a public nuisance by inducing or cultivating the private property owner's vegetation in a beach transit corridor; and*
- (F) *Prohibit private property owners from creating a public nuisance by allowing the private property owner's unmaintained vegetation to interfere or encroach upon a beach transit corridor;*

**Discussion:** The Improvements will not have an impact on beaches or coastal dunes as the Property is not near the shoreline.

**(10) Marine and coastal resources;**

**Objective:** *Promote the protection, use, and development of marine and coastal resources to assure their sustainability.*

**Policies**

- (A) *Ensure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial;*
- (B) *Coordinate the management of marine and coastal resources and activities to improve effectiveness and efficiency;*

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- (C) *Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone;*
- (D) *Promote research, study, and understanding of ocean and coastal processes, impacts of climate change and sea level rise, marine life, and other ocean resources to acquire and inventory information necessary to understand how coastal development activities relate to and impact ocean and coastal resources; and*
- (E) *Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.*

**Discussion:** The Improvements are not anticipated to significantly change the existing drainage conditions and therefore are not expected to impact marine and coastal resources. A new drainage system will be incorporated within the design of new parking facilities on the Unit 4 Lot for adequate conveyance of stormwater runoff collected on impervious surfaces. Construction activities will comply with all applicable Federal, State, and County regulations and rules for erosion control including the preparation of an erosion control plan and implementation of BMPs necessary for the NPDES permit.

#### **4.2.2 Special Management Area Guidelines**

Hawai'i's CZM Program designates shoreline areas as SMAs and delegates the authority over the SMA to the county planning commissions. Section 205A-26, sets forth Special Management Area Guidelines to be adopted by county planning commissions for the review of developments proposed in the SMA. The County of Kaua'i's SMA Guidelines are set forth in Section 4.0 of the Kaua'i SMA Rules. A discussion of those guidelines and how the improvements conform to the guidelines, is provided below. Note the points below are taken out of order from the order set forth in Section 4.0 of the Kaua'i SMA Rules.

- B. *No development shall be approved unless the Planning Director or the Planning Commission has first 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.*
  - 2) *The development is consistent with the objectives and policies, as enumerated in Chapter 205A, HRS, and as recited in Section 3.0 of the Kaua'i SMA Rules, and Special Management Area Guidelines set forth in Section 4 of the Kaua'i SMA Rules.*
  - 3) *The development is consistent with the County General Plan and zoning ordinances.*

**Discussion:** The Improvements will not have a substantial, adverse environmental or ecological effect itself, or cumulatively. As defined under the Kaua'i SMA Rules, Section 7.4, a "significant adverse effect" is found when a project may have a major adverse effect on the quality of the environment or may adversely affect the economic or social welfare of an area, or would be contrary to the objectives, policies and guidelines of the Kaua'i SMA Rules, the applicable County General Plan, Development Plan, zoning and subdivision ordinances, or the Hawai'i State Plan.

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This SMA Use Permit Application detail the short and long-term impacts of the improvements, including impacts related to grading, and runoff. The improvements have been designed, and will be constructed to minimize adverse social, visual, and environmental impacts in the CZM Area as demonstrated throughout this Application. The improvements are not anticipated to significantly change existing conditions relative to the nature of the Property or in context with the greater resort-designated surrounding properties.

(1) Section 4.0(B)(1) of the Kaua'i SMA Rules state that no development shall be approved unless the Planning Director or the Planning Commission has first found that the development will not have any substantial, adverse effects. Examples of what may constitute a significant adverse effect on the environment (as defined in the SMA Rules, Section 7.4) include proposals that:

*A. Involve an irrevocable commitment to loss or destruction of any natural or cultural resources, including but not limited to historic sites, Special Treatment Districts, view planes or scenic corridors as outlined in the Development Plans, and recreation areas and resources.*

The Property is not located within a Special Treatment District and does not contain any natural or cultural resources that will be lost or destroyed due to the improvements. The improvements will not impact existing view planes and recreation resources.

*B. Curtail the range of beneficial uses of the environment.*

The Improvements are not anticipated to curtail any beneficial uses of the environment. Alternatively, the new PV system will contribute toward broader goals to utilize renewable energy sources that will have a beneficial impact on the environment.

*C. Conflict with the County's or the State's long-term environmental policies of goals.*

All aspects of the improvements will adhere to current County and State regulations.

*D. Substantially affect the economic or social welfare and activities of the community, County or State.*

The economic and social welfare of the County or State are expected to experience positive impacts from the improvements in the form of employment opportunities by generating construction jobs, and indirect positive impacts to the community and the County from the multiplier effect of increased employment, income generation, and taxes.

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*E. Involve substantial secondary impacts, such as population changes and effects on public facilities.*

The Improvements are not anticipated to have any significant impact on population changes or public facilities.

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

The Improvements will have no significant or cumulatively adverse effect on the environment. Alternatively, the proposed PV system will provide a renewable energy source for the shopping center that will help mitigate adverse impacts of carbon emissions on the environment.

*G. Substantially affects a rare, threatened or endangered species of animal or plant or its habitat.*

The Improvements will not significantly impact threatened or endangered animal or plant species or its habitat. The Property does not contain any critical habitat areas as defined and designated by the USFWS (see Figure 13). A survey of the Improvement Area was conducted and determined that there is no observable habitats for the endangered Kaua'i cave wolf spider or Kaua'i cave amphipod. The Improvements are not anticipated to have an impact on the habitats of these endangered species found in the lava tube caves of the surrounding region. If any subterranean void is discovered during construction and excavation, mitigation measures will be implemented in accordance with the recommendations of the cave survey (Appendix F).

*H. Detrimentially affects air or water quality or ambient noise levels.*

The Improvements will not detrimentally affect air and water quality and noise levels. Impacts during construction will be temporary and sufficient measures will be taken to mitigate any impacts.

*I. Affects an environmentally sensitive area, such as flood plain, shoreline, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal water.*

The Improvements do not affect any environmentally sensitive areas described above.

2. *The development is consistent with the objectives and policies, as enumerated in Chapter 205A, HRS, and as recited in Section 3.0 of the Kaua'i SMA Rules, and Special Management Area Guidelines set forth in Section 4 of the Kaua'i SMA Rules.*

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As discussed above, the Improvements are consistent with the objectives and policies found under HRS 205A-2. The consistency of the Improvements with the guidelines under Kaua'i SMA Rules Section 4 is discussed throughout this section.

3. *The development is consistent with the County General Plan and zoning ordinances.*

The Improvements are consistent with the Kaua'i County General Plan and zoning, as more fully discussed below.

- A. *All development in the Special Management Area shall be subject to reasonable terms and conditions set by the Director or the Planning Commission to insure that:*
1. *Adequate access, by dedication or other means, to publicly owned or used beaches, recreation areas, and natural reserves is provided to the extent consistent with sound conservation principles;*
  2. *Adequate and properly located public recreation areas and wildlife preserves are reserved;*
  3. *Provisions are made for solid and liquid waste treatment, disposition, and management that will minimize adverse effects upon special management area resources; and*
  4. *Alterations to existing land forms and vegetation, except crops, and construction of structures shall cause minimum adverse effect to water resources and scenic and recreational amenities and minimum danger of floods, wind damage, storm surge, landslides, erosion, siltation, or failure in the event of earthquake.*

**Discussion:** The improvements will not:

1. Impede public access to the shoreline;
2. Impact public shoreline recreation areas;
3. Result in adverse effects upon SMA resources regarding solid and liquid waste treatment, and disposition; and
4. Cause adverse effects to water resources and scenic and recreational amenities or increase the danger of floods, wind damage, storm surge, landslides, erosion, siltation, or failure in the event of earthquake.

- (C) *The Director or the Planning Commission shall seek to minimize, where reasonable:*
1. *Dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough, or lagoon.*
  2. *Any development that would reduce the size of any beach or other area usable for public recreation.*
  3. *Any development that would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the Special Management Area and the mean high tide line where there is no beach.*
  4. *Any development which would substantially interfere with or detract from the line of sight toward the sea from the state highway nearest the coast; and*

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5. *Any development which would adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, or potential or existing agricultural uses of land.*

**Discussion:** The improvements will not:

1. Involve the dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough, or lagoon.
2. Reduce the size of any beach, as the improvements do not include new structures or development in the shoreline setback area.
3. Reduce or impose restrictions upon public access to tidal and submerged lands and beaches as the improvements will not change existing shoreline public access routes through the Property;
4. Interfere with or detract from the line of sight toward the sea as from:
5. Adversely affect
  - o Water quality;
  - o Open water visual resources;
  - o Fisheries and fishing grounds;
  - o Wildlife habitats; or
  - o Agricultural land uses.

### **4.3 KAUA'I COUNTY GENERAL PLAN**

The Kaua'i County General Plan, with the most recent version adopted in March 2018, is the primary policy governing comprehensive, long-range development, use, and allocation of land and water resources within the County. Pursuant to Section 46-4(a), HRS, all zoning is required to be accomplished within the framework of the Kaua'i General Plan. By utilizing the findings and analysis of the Kaua'i County General Plan, Chapter 8, KCC establishes several land districts and delineates the respective types of permitted uses and development that can take place in those districts (see Chapter 8, KCC (preamble)).

The Kaua'i County General Plan sets forth in graphics and text, polices to govern the future physical development of the County. The General Plan is a direction-setting, policy document. It is not intended to be regulatory. It is intended to be a guide for future amendments to land regulations and to be considered in reviewing specific zoning amendment and development applications (see Section 7-1.2, KCC (2018)<sup>4</sup>). All actions and decisions undertaken by County departments, agencies, Boards and Commissions shall be guided by the vision statement, policies, and the implementing actions of the General Plan (see Section 7-1.4 KCC).

The Property is designated for Neighborhood Center and Residential Community uses on the Kaua'i County General Plan South Kaua'i Land Use Map (Figure 4). The Kaua'i County General Plan Heritage Resources Maps highlight important historic sites, historic cultivation areas, priority

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<sup>4</sup> Although the General Plan is not intended to be regulatory in the sense of a zoning code or other land use regulation, because the improvements are within the SMA, under HRS §205A-26(2), the proposed development must be consistent with the County General Plan and zoning. The SMA analysis is provided in Section 4.2 of this Application.

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public access points, ahupua'a and moku boundaries and also include streams, waterbodies, coral reefs, and critical habitat. The South Kaua'i Heritage Resources Map (Figure 14) denotes the presence of "traditional cultivation areas" on a small portion of the Property. These are associated with the previous use of the region for agricultural uses.

The Kaua'i County General Plan policies directly applicable to the improvements, along with a discussion of how the improvements conform to the policies, are provided below.

**1.4 POLICIES TO GUIDE GROWTH**

**Policy 1: Manage Growth To Preserve Rural Character**

*Preserve Kauai's rural character by limiting the supply of developable land to an amount adequate for future needs. Prohibit development not adjacent to towns. Ensure new development occurs inside growth boundaries and is compact and walkable.*

**Discussion:** The Improvement Area is located within an existing developed area and therefore will contribute to maintaining the rural character of Kaua'i and managing growth in a way that is sustainable.

**Policy 3: Recognize The Identity of Kauai's Individual Towns and Districts**

*Kaua'i's towns and planning districts are distinct, each with its own character, opportunities, and needs. This uniqueness must be celebrated, protected in Community Plans, and reinforced in development standards.*

**Discussion:** The Improvements are consistent with the character of Po'ipū and will not have a significant impact on the identity of Kaua'i's towns and districts.

**Policy 8: Protect Kauai's Scenic Beauty**

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

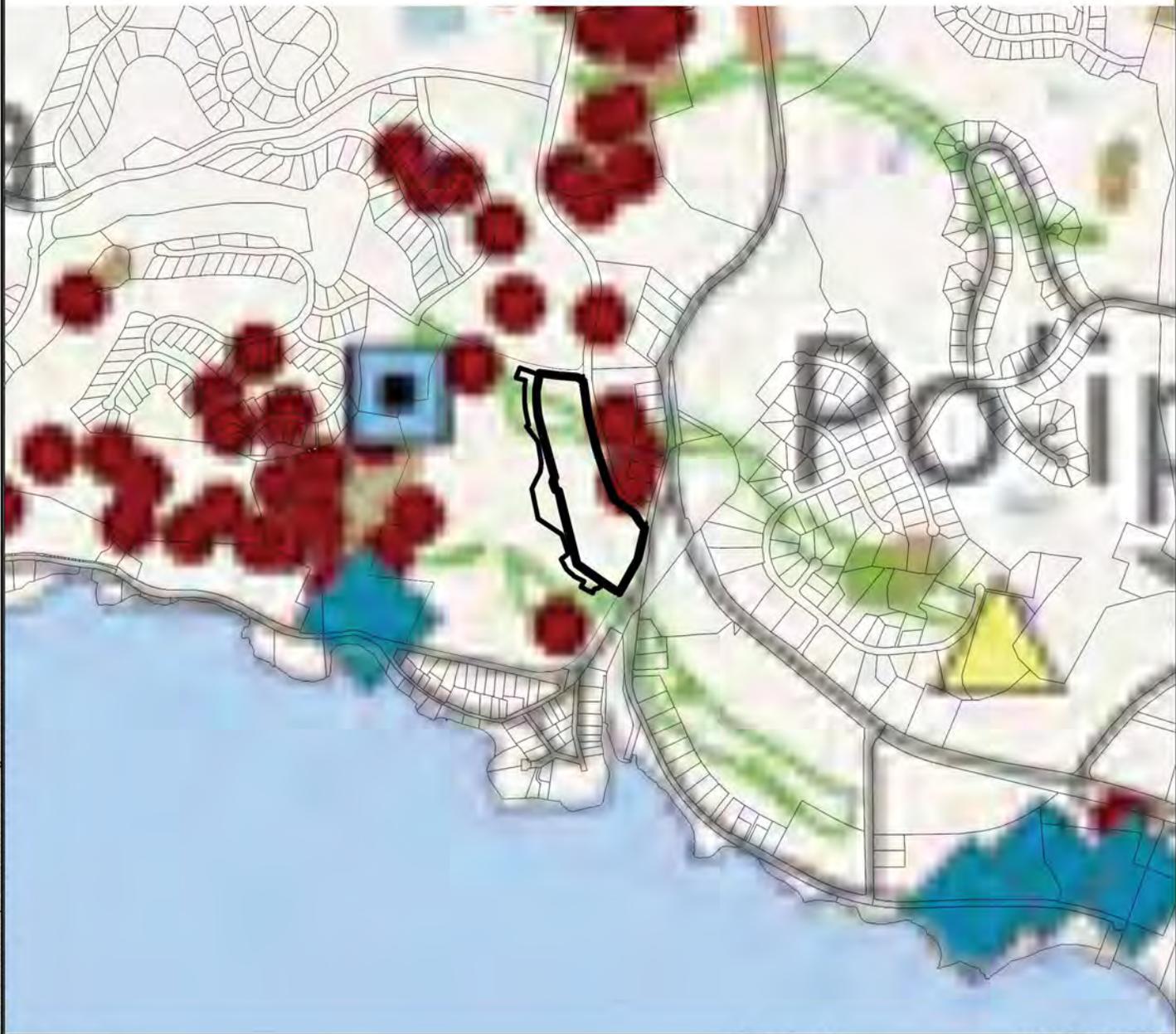
**Discussion:** The Improvements will not have a significant impact on open space and views between towns as the Property is within an existing developed town.

**Policy 10: Help Business Thrive**

*Create and foster thriving commercial areas in Town Centers through improved infrastructure, civic space, streetscapes, updated zoning standards, and streamlined approval processes.*

**Discussion:** The Improvements will directly support the shopping center by offering an on-site renewable energy source to sustain the economic vitality of an existing commercial center that is integral to the Po'ipū community.

- |                                  |                              |  |
|----------------------------------|------------------------------|--|
| <b>Registered Historic Sites</b> | — Kōloa Scenic Byway         | ■ Reservoirs                               |
| ■ State                          | — Trails                     | ■ Traditional Cultivation Areas            |
| ■ National                       | □ Planning District Boundary | ■ Sand Dunes                               |
| ■ State & National               | □ Ahupua'a Boundaries        | ■ Open Space Acquisition Priorities        |
| ● Cultural Features              | ■ Wetlands                   | ■ Critical Habitat                         |
| ▲ Priority Public Access Points  | ■ Coral Reefs                | <b>Threatened &amp; Endangered Species</b> |
| ◆ Fish Ponds                     | ■ Regulated Fishing Areas    | ▨ High Density                             |
| — Streams & Waterbodies          | ■ State & County Parks       | ▨ Very High Density                        |
| — Major Roads                    | ■ Preserves                  |  |
| — Roads                          |                              |  |



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**LEGEND**

- TMK 6-015: 010 &
- TMK 6-015: 011 (portion)(Unit 4)

**Figure 14:** DATE: 9/25/2023  
**Kaua'i County General Plan,**  
**South Kaua'i Heritage Resources Map**  
**The Shops at Kukui'ula Photovoltaic System & Employee Parking**

Kukui'ula Village LLC Island of Kaua'i

North Linear Scale (feet)

0 500 1000

Source: County of Kaua'i 2020 & 2022.  
 Disclaimer: This graphic has been prepared for general planning purposes only and should not be used for boundary interpretations or other spatial analysis.

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**Policy 12: Protect Our Watersheds**

*Act with the understanding that forests, biodiversity, and water resources are fragile and interconnected. Restore and protect our watershed from mauka to makai.*

**Discussion:** The drainage improvements proposed within the Improvement Area will mitigate adverse environmental impacts to coastal water quality, aquatic habitats, or coastal ecosystems.

**Policy 13: Complete Kauai's Shift to Clean Energy**

*Mitigate climate change and reduce system-wide carbon emissions by at least 80 percent by 2050 through deep reductions in energy use and by transforming electricity, transportation, and infrastructure systems toward the use of clean energy.*

**Discussion:** The Improvements will directly contribute toward the County's clean energy goals of reducing greenhouse gas emissions by offering an alternative renewable energy source for the shopping center.

**Policy 14: Prepare For Climate Change**

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

**Discussion:** The Improvements support the County's goals to address climate change by generating renewable energy to help mitigate the island's reliance on carbon-based energy sources.

## **4.4 COUNTY OF KAUA'I ZONING ORDINANCE**

The improvements will be in compliance with all applicable provisions of Chapter 8, KCC, Kaua'i's Comprehensive Zoning Ordinance (CZO), including the provisions discussed below.

The Kaua'i County General Plan South Kaua'i Land Use Map designates the Property as "Neighborhood Center" and "Residential Community" (Figure 4). The large majority of the Property is in the County Neighborhood Commercial zone (CN), with the Unit 4 Lot in the County Residential (R-4) zone.

### **4.4.1 Zoning Districts**

Based on confirmation from the County Planning Department, TMK (4) 2-6-015:010 (Shopping Center Parcel) is located within the C-N zoning district and TMK (4) 2-6-015:011 (portion; Unit 4 Lot) is within the Residential (R-4) zoning district.

#### Neighborhood Commercial (C-N)

The purpose of the Neighborhood Commercial zone is to encompass "uses and services which are frequently required and utilized by residents of all ages and which can be compatibly located in close proximity to residential districts." The Improvements are consistent with these uses as it will support the existing shopping center serving the residents of the surrounding area and visitors to the area.

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Residential (R-4)

The intent of the residential districts is to regulate “the number of people living in a given area by specifying the maximum allowable number of dwelling units that may be developed on any given parcel of land.” In this case, the allowable dwelling units per parcel in this zoning district would be four (4) units. While the Improvements do not include residential dwellings, the improvements proposed are intended to support the existing shopping center adjacent to the Unit 4 Lot zoned Neighborhood Commercial, which will ultimately serve the residential uses in the surrounding area.

**4.4.2 Development Standards in Commercial District**

Section 8-6.3, KCC establishes development standards for structures within the Commercial zone. The applicable development standards for the Property are as follows:

**Setbacks**

- (a) The minimum distance of any building from the right-of-way line of a public or private street or the pavement line of a driveway or parking lot used by the public shall be five feet unless the building is entered from that side by motor vehicles in which case the minimum distance shall be 15 feet.*

The Improvements are in compliance with the setback requirements set forth under Section 8-6.3(b), KCC, which provide that the minimum:

- Setback is 5 feet from the right of way line of a public or private street
- Setbacks are 10 feet from side property lines
- Rear setback is 10 from the rear property line

The Improvements are in compliance with all front, side, and rear setback requirements. shows the existing conditions and proposed Improvements on the Property including the distance of the Improvements from the side Property lines.

**Driveways and Parking Areas**

- (e) Driveways and Parking Areas. Driveways and parking areas shall be as follows:*
- (1) The minimum driveway width in Commercial Districts shall be twenty (20) feet if there is two-way traffic and fourteen (14) feet if there is one-way traffic.*
- (2) Parking areas shall conform to standards of design and construction established by the County Engineer, provided that:*
- (A) No parking lot pavement edge may be located closer than five (5) feet from the right-of-way line of a public street;*
- (B) No part of parked vehicles shall protrude into that setback;*
- (C) All parking lots shall be screened from public thoroughfares by a fence, wall or plant screen not less than four (4) feet high, provided that the*

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*screening height shall be lowered to the standards as required under the County Traffic Code or to the standards of the Department of Public Works, at street corners, driveway intersections, and other locations. The setback area between the parking area paving and the public right-of-way shall be planted and shall not be paved.*

*(3) Off-Street Parking. The following requirements shall apply to commercial development in the Commercial District and any other district in which such uses are permitted or allowed:*

*(A) General retail sales and services where sales or business transactions normally involve the presence of consumers but do not establish capacity by seating: one (1) parking space for each three hundred (300) square feet of gross floor space plus one (1) space for every three (3) employees, but not less than four (4) spaces shall be required. This category includes, but is not limited to, grocery stores, drug stores, clothing stores, gift and sundry stores, banks, personal and household services.*

The Improvements are in compliance with requirements set forth under Section 8-6.3(e), KCC, which provide that:

- The minimum driveway width for access to the proposed parking area is 20 feet.
- The parking area pavement edge is 5 feet from the public street right of way
- Parked will not protrude into the setback areas
- The proposed parking lot will be screened from public thoroughfares by landscaping plants not less than 4 feet in height
- Off-street parking for the Property will comprise a total of 562 stalls, exceeding the required total of 468 stalls. This includes a total of 10 ADA stalls, 8 loading stalls, and 9 EV stalls (exceeding the requirement for 8 ADA stalls and 6 loading stalls).

## **Heights**

*(f) Height Limitations. Height limitations shall be as follows:*

*(2) No building within a Neighborhood Commercial District shall exceed thirty-five (35) feet in height measured from the ground level of the primary building entrance nor shall the building contain more than two (2) stories*

The existing structures on the Property are in compliance with the building height requirements set forth under Section 8-6.3(f), KCC, and do not exceed thirty-five (35) feet.

The Improvements are in compliance with building height requirements set forth under Section 8-6.3(f), KCC as follows:

- The three PV solar canopy structures will range in height from 16' 7" to 23' 9"
- The new storage facility building will be approximately 9 feet in height.

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**Lot Coverage**

*(g) Lot Coverage. Lot coverage shall be as follows:*

*(1) The amount of land coverage created, including buildings and pavement, shall not exceed eighty percent (80%) of the lot or parcel area within a Neighborhood Commercial District.*

*(4) All uncovered areas shall be landscaped with living plant material.*

With the Improvements, the land coverage will be approximately 33% of the Unit 4 Lot (1.01 acres), which is well under the maximum land coverage of 80% as allowed under Section 8-6.3(g), KCC. The Improvements will include landscaping for all uncovered areas with living plants in compliance with Section 8-6.3(g), KCC.

Appendix C (General Plan) shows the location of the new parking facilities, new PV solar canopy structures, and the new storage building.

Appendix C contains a site plan prepared by Goto Engineering, LLC showing land coverage with the Improvements.

Appendix I shows the landscape site plan and selected plant palette.

**4.4.3 Constraint Districts**

The Improvement Area is not within any areas designated as constraints districts. Figure 6 shows the Property and the Constraint Districts.

**4.4.4 Project Development Use Permit**

KCC Section 8-10.2 provides that “Any land area designated as Urban District by the State Land Use Commission may be developed in accordance with a Use Permit issued pursuant to this Article if the land area is under one ownership...” In addition, KCC Section 8-10.6 provides that “An applicant who desires a joint development over abutting lots without consolidating the lots may apply for a Use Permit to undertake a joint development.”

A Use Permit may be granted only if the Planning Commission finds that the use meets the following criteria:

*a. The use must be a compatible use;*

The Improvement Area is within the Urban District, as designated by the State Land Use Commission, and the proposed improvements are compatible with uses permitted in the Urban District.

*b. The use must not be detrimental to persons or property in the area;*

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The Improvements are not anticipated to be detrimental to surrounding properties as detailed in Section 3.4.2.

*c. The use must not cause substantial environmental consequences; and*

The Improvements will not cause substantial environmental consequences. See Section 3.1 for more detail.

*d. The use must not be inconsistent with the intent of the Comprehensive Zoning Ordinance (CZO) and General Plan.*

The Improvements are consistent with the intent of the C-N zoning district under the Comprehensive Zoning Ordinance and consistent with the General Plan designation of Neighborhood Center. See Sections 4.3, 4.4.1, and 4.4.2.

## **5 ALTERNATIVES**

One alternative was considered: 1) no action.

### **5.1 NO-ACTION**

Under the no-action alternative the Unit 4 Lot would remain in its current undeveloped state. The shopping center would not benefit from additional parking area and renewable energy generated by a new PV system.

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# **Appendix A:**

## **Deed of Ownership**



NG



R-532 STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
NOV 08, 2007 11:00 AM  
Doc No(s) 2007-194398



/s/ CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

20 1/12 Z9

CTax (30): \$13500.00

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail  Pickup  To:

FAM

Kukui'ula Village LLC  
7600 E. Doubletree Ranch Rd #300  
Scottsdale AZ 85258

2851441

Total Pages: 9

Tax Map Key No.: (4) 2-6-015-010

**DEED WITH COVENANTS**

THIS INDENTURE, made this 31<sup>st</sup> day of OCTOBER, 2007, by and between KUKUI'ULA DEVELOPMENT COMPANY (HAWAII), LLC, a Hawaii limited liability company, whose post office address is P.O. Box 280, Koloa, Kaua'i, HI 96756, hereinafter called "Grantor", and KUKUI'ULA VILLAGE LLC, a Delaware limited liability company, whose address is 7600 E. Doubletree Ranch Road, Suite 300, Scottsdale, AZ 85258, hereinafter called "Grantee";

**WITNESSETH:**

That Grantor, in consideration of TEN DOLLARS (\$10.00) and other valuable consideration to it paid by Grantee, receipt whereof is hereby acknowledged by Grantor, and of the terms, covenants and agreements hereinafter set forth does hereby grant and convey unto Grantee, in fee simple, and Grantee's successors and assigns, forever, the property described in Exhibit A attached hereto and hereby made a part hereof (the "Property").

TO HAVE AND TO HOLD the Property, together with all of the estate, right, title and interest of Grantor, both at law and in equity, in the reversionary remainders, rents, issues and profits thereof, the improvements thereon, and the tenements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith unto Grantee, according to the estate hereinabove set forth, forever, but subject to the terms of this Indenture.

AND Grantor does hereby for itself and its successors, covenant with Grantee, Grantee's successors and assigns, that it is lawfully seised in fee simple of the Property and has good right to grant, sell and convey the Property in the manner aforesaid; that the Property is free and clear of all encumbrances on title made by, through or under Grantor or suffered by Grantor, except for those matters listed as permitted title exceptions as set forth on Exhibit A attached hereto and hereby made a part hereof or as herein set forth; and that it will and its successors shall WARRANT AND DEFEND the same unto Grantee, Grantee's successors and assigns, forever, against the lawful claims and demands of all persons claiming by, through or under Grantor, except as aforesaid.

#### Grantee's Covenants

AND ALSO, in consideration of the foregoing, Grantee, for Grantee, and Grantee's successors and assigns, does hereby covenant and agree as follows:

1. Condition of Property. Grantee understands and acknowledges that Grantee is acquiring the Property "AS IS", in its present state and condition, and Grantor expressly disclaims any other representation or warranties whatsoever concerning the Property, including without limitation, its condition or fitness or suitability for its intended use. Grantee understands that the current plans and development schedule for the use and development of all or any portion of Kukui'ula project and surrounding areas may change at any time without notice to Grantee, and that Grantor reserves the right to relocate lot lines and uses within the Kukui'ula project (other than the lot lines and uses of the lots comprising the Property) and to extend or shorten the development period. Grantee accepts the risk of such changes and agrees that Grantor shall have no responsibility to Grantee for such changes.

2. Covenants Running with the Land; Duration. Except as otherwise expressly provided herein, each and all of Grantor's reservations and Grantee's covenants, agreements and conditions contained above are perpetual and intended to run with the land in favor of Grantor, its successors and assigns, and are expressly binding upon the Property, and each portion thereof, and each successive owner of the Property and each person having any right, title or interest in the Property or any portion thereof, unless and until Grantor shall relinquish and permanently waive any of its rights, but only with respect to the specific rights waived, as evidenced by the recordation of a written notice of such waiver in the Bureau of Conveyances of the State of Hawaii.

#### Mutual Covenants

1. The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural

number, individuals, partnerships, trustees or corporations and their and each of their respective heirs, personal representatives, successors, successors in trust and assigns, according to the context thereof. 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 elsewhere herein.

2. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the parties hereto have executed this Indenture as of the day and year first above written.

KUKUI'ULA DEVELOPMENT COMPANY  
(HAWAII), LLC, a Hawaii limited liability  
company

BY: DMB Kukui'ula LLC, an Arizona limited  
liability company, its Managing Member

By: DMB Communities II LLC, an  
Arizona limited liability company,  
its sole Member

By: DMB Associates, Inc., an  
Arizona corporation,  
its Manager

By: Mary S. Alexander  
Its: Vice President  
Grantor

KUKUI'ULA VILLAGE LLC, a Delaware limited  
liability company

By: DMB Associates (Hawaii), Inc., a Hawaii  
corporation  
Its Manager

By: [Signature]  
Its: \_\_\_\_\_  
Grantee

STATE OF ARIZONA )  
COUNTY OF Maricopa ) SS.

On this 29th day of October, 2009, before me personally appeared Mary S. Alexander, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Jill K. Johnson  
Print Name: Jill K. Johnson  
Notary Public, State of Arizona  
My Commission expires: Oct. 14, 2010

STATE OF ARIZONA )  
COUNTY OF Maricopa ) SS.

On this 29th day of October, 2009, before me personally appeared Andrew Beans, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Jill K. Johnson  
Print Name: Jill K. Johnson  
Notary Public, State of Arizona  
My Commission expires: Oct. 14, 2010

Exhibit A

LOT 10

KUKUI'ULA LARGE-LOT SUBDIVISION, III

BEING A PORTION OF LOT A OF KUKUI'ULA LARGE LOT SUBDIVISION II, BEING ALSO PORTIONS OF ROYAL PATENT 6714, LAND COMMISSION AWARD 7714-B, APANA 2 TO M. KEKUIWI NO. M. KEKUANAOA, ROYAL PATENT 4236, LAND COMMISSION AWARD 5314 TO KAPA, AND ROYAL PATENT 6448, LAND COMMISSION AWARD 5482 TO INO.

SITUATE AT KOLOA MAKAI, KOLOA, KONA, KAUAI, HAWAII

BEGINNING AT THE SOUTH CORNER OF THIS PARCEL OF LAND, BEING ALSO THE SOUTHEAST CORNER OF LOT 11 OF KUKUI'ULA LARGE LOT SUBDIVISION III, AND ON THE NORTHWEST SIDE OF LAWAI ROAD THE COORDINATES OF SAID POINT OF BEGINNING REFERRED TO GOVERNMENT SURVEY TRIANGULATION STATION "WAHIAWA" BEING 10,587.33 FEET SOUTH AND 20,399.61 FEET EAST, AND RUNNING BY AZIMUTHS MEASURED CLOCKWISE FROM TRUE SOUTH:

1. 124° 40' 00" 328.50 FEET ALONG LOT 11 OF KUKUI'ULA LARGE LOT SUBDIVISION III;
2. 165° 06' 00" 458.56 FEET ALONG LOT 11 OF KUKUI'ULA LARGE LOT SUBDIVISION III;
3. 164° 03' 30" 424.65 FEET ALONG LOT 11 OF KUKUI'ULA LARGE LOT SUBDIVISION III;

THENCE ALONG LOT 11 OF KUKUI'ULA LARGE LOT SUBDIVISION III, ON A CURVE TO THE RIGHT WITH A RADIUS OF 830.00 FEET THE CHORD AZIMUTH AND DISTANCE BEING:

4. 177° 43' 30" 392.21 FEET;

THENCE ALONG LOT 11 OF KUKUI'ULA LARGE LOT SUBDIVISION III, ON A CURVE TO THE LEFT WITH A RADIUS OF 1200.00 FEET THE CHORD AZIMUTH AND DISTANCE BEING:

5. 275° 34' 23" 263.44 FEET;

THENCE ALONG LOT 19 OF KUKUI'ULA LARGE LOT SUBDIVISION III, ON A CURVE TO THE LEFT WITH A RADIUS OF 1230.00 FEET THE CHORD AZIMUTH AND DISTANCE BEING:

6. 351° 10' 29" 304.76 FEET;

7. 344° 03' 30" 391.11 FEET ALONG LOT 19 OF KUKUI'ULA LARGE LOT SUBDIVISION III;

THENCE ALONG LOT 19 OF KUKUI'ULA LARGE LOT SUBDIVISION III, ON A CURVE TO THE LEFT WITH A RADIUS OF 360.00 FEET THE CHORD AZIMUTH AND DISTANCE BEING:

8. 318° 47' 48" 307.26 FEET;

THENCE ALONG THE LOT 19 OF KUKUI'ULA LARGE LOT SUBDIVISION III ON A CURVE TO THE RIGHT WITH A RADIUS OF 40.00 FEET THE CHORD AZIMUTH AND DISTANCE BEING:

9. 323° 07' 10.5" 39.50 FEET;

THENCE ALONG LOT 19 OF KUKUI'ULA LARGE LOT SUBDIVISION III ON A CURVE TO THE LEFT WITH A RADIUS OF 100.00 FEET THE CHORD AZIMUTH AND DISTANCE BEING:

10. 334° 53' 33" 61.18 FEET;

11. 14° 52' 00" 159.88 FEET ALONG THE NORTHWEST SIDE OF LAWAI ROAD;

THENCE ALONG NORTHWEST SIDE OF LAWAI ROAD ON A CURVE TO THE RIGHT WITH A RADIUS OF 1000.00 FEET THE CHORD AZIMUTH AND DISTANCE BEING:

12. 22° 48' 30" 276.33 FEET TO THE POINT OF BEGINNING AND CONTAINING AN AREA OF 10.459 ACRES.

TOGETHER WITH ANY AND ALL RIGHTS TO AND FOR THE USE OF WATER RELATING TO OR APPURTENANT TO THE PROPERTY, INCLUDING WITHOUT LIMITATION TO THE GENERALITY OF THE FOREGOING, ANY AND ALL CORRELATIVE, RIPARIAN OR APPURTENANT RIGHTS TO AND FOR THE USE OF WATER, AND THE RIGHT TO USE ON THE PROPERTY THE PORTIONS OF THE WATERS WHICH FLOW INTO, ARE IMPOUNDED AND FLOW OUT OF THE HANINI RESERVOIR, THE HUINAWAI RESERVOIR, THE AEPO RESERVOIR, THE AEPOALUA RESERVOIR, THE AEPOEKOLU RESERVOIR, THE AEPOEHA RESERVOIR, THE KUAPALE RESERVOIR, THE KUAMANO RESERVOIR AND THE MANUHONUHONU RESERVOIR IN AMOUNTS CONSISTENT WITH THE HISTORICAL AGRICULTURAL

AND IRRIGATION USAGE; AS SET FORTH IN LIMITED WARRANTY DEEDS RECORDED MARCH 31, 2003 AND MARCH 31, 2005 AS REGULAR SYSTEM DOCUMENT NOS. 2003-058405 AND 2005-062345, RESPECTIVELY, OF OFFICIAL RECORDS.

BEING A PORTION OF THE PREMISES CONVEYED BY THE FOLLOWING:

(1) LIMITED WARRANTY DEED RECORDED MARCH 31, 2003 AS REGULAR SYSTEM DOCUMENT NO. 2003-058405 OF OFFICIAL RECORDS.

GRANTOR: KDC, LLC, A HAWAII LIMITED LIABILITY COMPANY

GRANTEE: KUKUI'ULA DEVELOPMENT COMPANY (HAWAII), LLC, A HAWAII LIMITED LIABILITY COMPANY

(2) LIMITED WARRANTY DEED RECORDED MARCH 31, 2005 AS REGULAR SYSTEM DOCUMENT NO. 2005-062345 OF OFFICIAL RECORDS.

GRANTOR: MCBRYDE SUGAR COMPANY, LIMITED, A HAWAII CORPORATION, AND ALEXANDER & BALDWIN, INC., A HAWAII CORPORATION

GRANTEE: KUKUI'ULA DEVELOPMENT COMPANY (HAWAII), LLC, A HAWAII LIMITED LIABILITY COMPANY

TMK(S): (4) 2-6-015-010-0000

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Title to all mineral and metallic mines reserved to the State of Hawaii.
2. All customary and traditional rights, of native Hawaiians as provided for by law, for subsistence, cultural and religious purposes, which rights may involve access to the subject property.
3. Water rights, claims or title to water, whether or not shown by the public records.
4. Limitations contained in that certain unrecorded Contribution Agreement dated April 25, 2002, as disclosed by Limited Warranty Deed recorded March 31, 2003 as Regular System Document No. 2003-058405 of Official Records.
5. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Limited Warranty Deed recorded March 31, 2003 as Regular System Document No. 2003-058405 of Official Records.

Limited to those certain covenants and conditions affecting Lot 10.

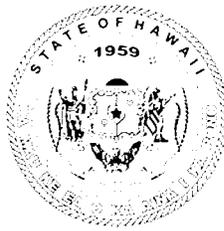
6. A Grant of Easement for utility purposes, in favor of Kauai Island Utility Cooperative, recorded March 18, 2005 as Regular System Document No. 2005-054267 of Official Records, and as shown on the survey prepared by Dennis M. Esaki, Licensed Professional Land Surveyor No. 4383 dated July 30 and August 2, 2007, revised September 7, 2007.
7. The terms and provisions contained in the Agreement, made by and between Kukui'ula Development Company (Hawaii), LLC, a Hawaii limited liability company, Alexander & Baldwin, Inc., a Hawaii corporation, and McBryde Sugar Company, Limited, a Hawaii corporation, collectively as "Owner", and the County of Kauai Planning Department, a political subdivision of the State of Hawaii, recorded April 22, 2005 as Regular System Document No. 2005-080268 of Official Records.

Note: Terms and provisions of the foregoing Agreement are effective if and when Lot 10 is further subdivided.

8. Restriction of rights of vehicular access into and from Lot 19 (Ala Kalanikaumaka) of the Kukui'ula Large Lot Subdivision, III and Lawai Road over and across Courses 7, 9, 10, 11, and portion of Courses 6, 8, and 12, described as per survey dated May 4, 2006 of Erik S. Kaneshiro, Licensed Professional Land Surveyor No. 9826, and as disclosed and being more particularly described in that certain instrument recorded August 2, 2006 as Regular System Document No. 2006-140562 of Official Records, and as shown on the survey prepared by Dennis M. Esaki, Licensed Professional Land Surveyor No. 4383 dated July 30 and August 2, 2007, revised September 7, 2007.
9. Reservation of a strip of land (10 feet wide) for future roadway widening, described as per survey dated May 4, 2006 of Erik S. Kaneshiro, Licensed Professional Land Surveyor No. 9826, and as disclosed and being more particularly described in that certain instrument recorded August 2, 2006 as Regular System Document No. 2006-140562 of Official Records, and as shown on the survey prepared by Dennis M. Esaki, Licensed Professional Land Surveyor No. 4383 dated July 30 and August 2, 2007, revised September 7, 2007.
10. Matters shown on the ALTA/ACSM Land Title Survey dated July 30 and August 2, 2007, last revised September 7, 2007, prepared by Dennis M. Esaki, Licensed Professional Land Surveyor No. 4383, to-wit:
  - a. Guy wires on southeast side.
  - b. Easement 14 for access, sewer line and utility purposes.
11. The terms and provisions contained in the Waiver, Release and Indemnity Agreement for TMK: (4) 2-6-015:001 (por.)(Kukui'ula Village), recorded September 24, 2007 as Regular System Document No. 2007-169452 of Official Records.

12. Any and all leases, subleases and/or tenancy agreements, the rights thereunder and encumbrances thereto.





STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

April 15, 2021 11:08 AM  
Doc No(s) A - 77750837

Doc 1 of 2  
Pkg 11751935 KEO

/s/ LESLIE T KOBATA  
REGISTRAR

Conveyance Tax: \$10.00

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Return by Mail (X) Pickup ( ) To:

Kukuiula Village LLC  
822 Bishop Street  
Honolulu, Hawaii 96813

Document contains 11 pages.

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UNIT NO. 4

TMK NO. (4) 2-6-015-011 (por.)

LIMITED WARRANTY UNIT DEED WITH RESERVATIONS AND COVENANTS

THIS LIMITED WARRANTY UNIT DEED WITH RESERVATIONS AND COVENANTS (this "Deed") is entered into as of March 26, 2021 by and between **KUKUI'ULA DEVELOPMENT COMPANY (HAWAII), LLC**, a Hawaii limited liability company, having a principal place of business and post office address at 2700 Ke Alauala, Suite B, Koloa, Hawaii 96759 ("Grantor"), and **KUKUI'ULA VILLAGE LLC**, a Delaware limited liability company, whose mailing address is 822 Bishop Street, Honolulu, Hawaii 96813 ("Grantee").

**WITNESSETH:**

That in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns, forever, all of their right, title and interest in and to the property situated in the County of Kauai, State of Hawaii, and described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**"), subject, however, to the terms of this Deed, and the matters set forth in such Exhibit A attached hereto (the terms of this Deed, and the matters set forth on Exhibit A are collectively called herein the "**Encumbrances**");

EXCEPTING AND RESERVING, HOWEVER, UNTO GRANTOR, its successors and assigns, all easements and rights reserved unto Grantor as Declarant under the Parcel X CC&Rs, Covenant to Share Costs and Zoning Declaration (as such terms are defined in said Exhibit A).

SUBJECT, HOWEVER, TO: current real property taxes, special taxes (including the CFD Assessment as defined in Exhibit A) and other current assessments; and all covenants, conditions, restrictions, reservations, easements and declarations, encumbrances, liens, obligations, liabilities or other

matters which are set forth herein or in Exhibit A or other matters of record or to which reference is made in the public record.

TO HAVE AND TO HOLD the same unto Grantee, Grantee's successors and assigns, forever, together with all of the estate, right, title and interest of Grantor in and to any and all buildings and improvements located on the Property, all rights, licenses, permits, privileges, and easements held or enjoyed in connection therewith, all rents, issues and profits therefrom, or appurtenant thereto. The Property and improvements located thereon are being conveyed in an "as is" condition and Grantee acknowledges that it has inspected the Property and accepts it with all existing conditions, flaws or defects.

AND, in consideration of the premises, Grantor does hereby covenant with Grantee that except for the Encumbrances and any lien of real property taxes in connection with the Property not yet by law required to be paid, the Property is free and clear of and from all liens and encumbrances created by, through or under the Grantor except; that the Grantor has authority to sell and convey its right, title and interest in and to the Property; and, that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons claiming by, through or under the Grantor.

Grantee does hereby covenant and agree, on behalf of itself and its successors and assigns, to observe, perform, comply with, and abide by all of the covenants, conditions, restrictions, and provisions contained in the Declaration and the Bylaws (each as defined in Exhibit A attached hereto), as each may be amended from time to time, and to pay so long as Grantee owns the Property, all dues, assessments and impositions as required by the Declaration and Bylaws. Thereafter, all subsequent owners of the Property, or any portion thereof, shall observe and perform all of the terms and conditions contained in this Deed, the Declaration, and Bylaws to pay all dues, assessments, and impositions as required therein whether or not the deed or other instrument conveying the Property (including the subdivided lots or condominium units located within the Property) to such owner contains a covenant of the owner to so observe and perform.

Grantee, for itself, and Grantee's heirs, devisees, personal representatives, successors and assigns, as applicable, hereby acknowledges and confirms that Grantor has advised and disclosed that the Property and other portions of the Property, are adjacent to, nearby or in the general vicinity of lands that were, are or in the future may be actively used for the growing, harvesting and/or processing of sugarcane, coffee and other agricultural products (collectively, the "**Agricultural Activities**"), which Agricultural Activities may from time to time result in smoke, dust, noise, heat, agricultural chemicals, particulates and/or similar substances and nuisances (collectively the "**Agricultural By-Products**") being brought upon the Property. The foregoing acknowledgement and confirmation of disclosure shall constitute a covenant running with the land. Further, the aforesaid acknowledgement and confirmation of disclosure regarding Agricultural Activities and the resulting Agricultural By-Products shall be binding upon, and all references to the "Grantee" shall mean Grantee, and Grantee's heirs, devisees, personal representatives, successors, successors in trust and assigns, as applicable, and all persons or entities now or hereafter acquiring any right, title or interest in or to the Property or occupying all or any portion of the Property (including subdivided lots or condominium units comprising the Property). By accepting any right, title or interest in the Property or by occupying all or any portion of the Property, Grantee and each such other person automatically shall be deemed to have received the aforesaid disclosure regarding Agricultural Activities on the adjacent and nearby lands and of the resulting Agricultural By-Products arising from such Agricultural Activities.

Grantor and Grantee hereby acknowledge and agree that this conveyance is intended to be a sale of units in bulk pursuant to §§ 514B-51(b)(3) and 514B-81(a)(5) of the Hawaii Revised Statutes and that Grantee intends to develop and sell the Property conveyed herein. Accordingly, Grantee does hereby

covenant and agree to comply with all provisions of Chapter 514B of the Hawaii Revised Statutes, including, but not limited to, the requirement to register the Property pursuant to §514B-56 of the Hawaii Revised Statutes prior to any sale of units to the public.

The rights and obligations of the Grantor and the Grantee shall be binding upon and inure to the benefit of their respective estates, heirs, personal representatives, successors and assigns.

The conveyance herein set forth and the warranties of the Grantor concerning the same are expressly declared to be in favor of the Grantee, its successors and assigns.

The terms "Grantor" and "Grantee," 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, corporations, or limited liability companies and their and each of their respective successors, heirs, personal representatives and assigns, according to the context thereof.

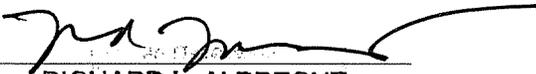
The parties hereto agree that this Deed may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this Deed, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

[Signature pages follow.]

IN WITNESS WHEREOF, the Grantor and the Grantee have executed these presents as of the day and year first above written.

**GRANTOR:**

KUKUI'ULA DEVELOPMENT COMPANY (HAWAII), LLC,  
a Hawaii limited liability company

By:   
Name: RICHARD L. ALBRECHT  
Title: PRESIDENT

**GRANTEE:**

KUKUI'ULA VILLAGE LLC

By: KKV Management LLC  
Its Manager

By: A & B Properties Hawaii, LLC, Series R,  
a Series of a Delaware limited liability company  
Its Manager

By: \_\_\_\_\_  
Name: Jeffrey W. Pauker  
Its: Vice President, Series R

By: \_\_\_\_\_  
Name: Charles W. Loomis  
Its: Assistant Secretary, Series R

IN WITNESS WHEREOF, the Grantor and the Grantee have executed these presents as of the day and year first above written.

**GRANTOR:**

KUKUI'ULA DEVELOPMENT COMPANY (HAWAII), LLC,  
a Hawaii limited liability company

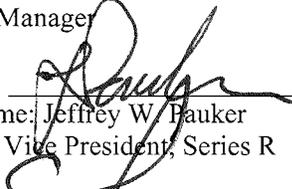
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

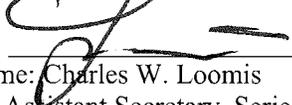
**GRANTEE:**

KUKUI'ULA VILLAGE LLC

By: KKV Management LLC  
Its Manager

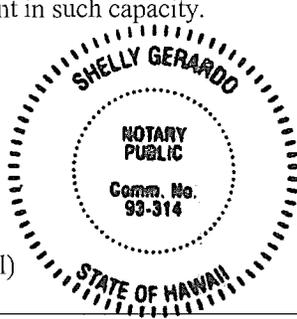
By: A & B Properties Hawaii, LLC, Series R,  
a Series of a Delaware limited liability company  
Its Manager

By:  \_\_\_\_\_  
Name: Jeffrey W. Hauker  
Its: Vice President, Series R

By:  \_\_\_\_\_  
Name: Charles W. Loomis  
Its: Assistant Secretary, Series R

STATE OF HAWAII )  
 ) SS:  
COUNTY OF KAUAI )

On this 16<sup>th</sup> day of February, 2021, before me personally appeared RICHARD L. ALBRECHT, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



(Official Stamp or Seal)

Shelly Gerardo  
Notary Public, State of Hawaii  
Printed Name: **SHELLY GERARDO**  
My commission expires: 12/25/23

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Unit Deed with Reservations and Covenants

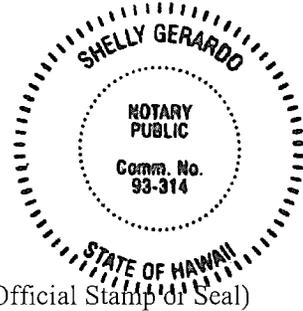
Doc. Date: \_\_\_\_\_ or  Undated at time of notarization.

No. of Pages: 10 Jurisdiction: Fifth Circuit  
(in which notarial act is performed)

Shelly Gerardo 2/16/21  
Signature of Notary Date of Notarization and  
Certification Statement

**SHELLY GERARDO**

Printed Name of Notary



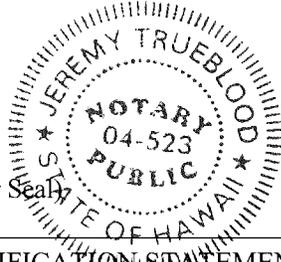
(Official Stamp or Seal)

STATE OF HAWAII )  
 ) SS:  
CITY AND COUNTY OF HONOLULU )

On this 17 day of Feb, 2024, before me personally appeared **Jeffrey W. Pauker**, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Notary Public, State of Hawaii  
Printed Name: **JEREMY TRUEBLOOD**  
My commission expires: **EXPIRATION: September 12, 2024**



(Official Stamp or Seal)

**NOTARY CERTIFICATION STATEMENT**

Document Identification or Description: Unit Deed with Reservations and Covenants

Doc. Date: \_\_\_\_\_ or  Undated at time of notarization.

No. of Pages: 10 Jurisdiction: First Circuit  
(in which notarial act is performed)

Signature of Notary

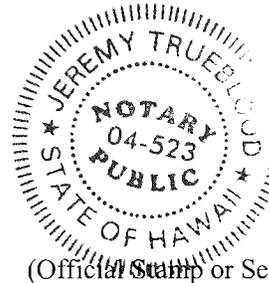


Date of Notarization and Certification Statement

2-17-2024

Printed Name of Notary

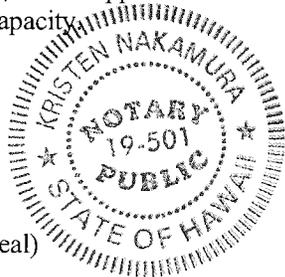
JEREMY TRUEBLOOD



(Official Stamp or Seal)

STATE OF HAWAII )  
 ) SS:  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of FEB 17 2021, 20\_\_, before me personally appeared **Charles W. Loomis**, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



(Official Stamp or Seal)

A handwritten signature in black ink, appearing to read 'Kristen Nakamura', written over a horizontal line.

Notary Public, State of Hawaii  
Printed Name: **KRISTEN NAKAMURA**  
My commission expires: **EXPIRATION: November 24, 2023**

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Unit Deed with Reservations and Covenants

Doc. Date: \_\_\_\_\_ or  Undated at time of notarization.

No. of Pages: 10 Jurisdiction: First Circuit  
(in which notarial act is performed)

A handwritten signature in black ink, appearing to read 'Kristen Nakamura', written over a horizontal line.

Signature of Notary

**FEB 17 2021**

Date of Notarization and  
Certification Statement

**KRISTEN NAKAMURA**

Printed Name of Notary



(Official Stamp or Seal)

EXHIBIT A

FIRST: Unit No. 4 (the “Unit”) of that certain condominium project known as “Kukui‘ula Parcel X Condominium” (the “Project”), as established by that certain Declaration of Condominium Property Regime of the Kukui‘ula Parcel X Condominium dated February 14, 2021, recorded in the Bureau of Conveyances of the State of Hawaii (the “Bureau”) as Document No. A-77180601, as amended from time to time (the “Declaration”), and as shown on Condominium Map No. 6185 filed in the Bureau, as amended from time to time (the “Condominium Map”);

TOGETHER with appurtenant easements as follows:

- (a) Non-exclusive easement in the common elements designed for such purposes for ingress to, egress from, utility services for and support of said unit; in the other common elements for use according to their respective purposes;
- (b) Easements to use other limited common elements appurtenant thereto designated for its use by the Declaration;

SECOND: An undivided **6.89%** interest in all common elements of the project and in the land on which said Project is located, as established for said Unit by the Declaration, or such other percentage interest as hereinafter established for said Unit by any amendment of the Declaration, as tenant in common with the other owners and tenants thereof.

The land upon which the Project is located is more particularly described in the Declaration.

Being a portion of the premises conveyed to Grantor by the following:

1. LIMITED WARRANTY DEED dated March 31, 2003, recorded as Document No. 2003-058405;
2. LIMITED WARRANTY DEED dated March 31, 2005, recorded as Document No. 2005-062345; and
3. QUITCLAIM DEED dated June 2, 2012 and recorded as Document No. A-46190939.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and water rights of any nature.
2. Deed dated March 31, 2003, recorded in the Bureau as Document No. 2003-058405.
3. Declaration of Conditions recorded November 5, 2003 in the Bureau as Document No. 2003-244116.
4. Grant dated March 11, 2005, recorded in the Bureau as Document No. 2005-054267.
5. Agreement dated November 9, 2004, recorded in the Bureau as Document No. 2005-080268.
6. Waiver, Release and Indemnity Agreement for TMK: (4) 2-6-015-001 (POR.)(KUKUI‘ULA VILLAGE) dated August 6, 2007, recorded in the Bureau as Document No. 2007-169452.
7. Deed with Covenants dated October 31, 2007, recorded in the Bureau as Document No. 2007-194398.

8. Grant dated October 31, 2007, recorded in the Bureau as Document No. 2007-194399.  
  
Said Grant was amended by instrument dated June 28, 2012, recorded as Document No. A-45800601.
9. Kukui'ula Trail System Declaration dated February 28, 2008, recorded in the Bureau as Document No. 2008-034082.
10. Waiver, Release and Indemnity Agreement FOR TMK: (4) 2-6-015-011 (ELECTRICAL ENCLOSURES FOR KUKUI'ULA VILLAGE) dated June 18, 2008, recorded in the Bureau as Document No. 2008-115168.
11. Grant dated October 14, 2008, recorded in the Bureau as Document No. 2008-172462.
12. Conveyance of Water Facility for TMK (4) 2-6-15: 010 dated November 5, 2008, recorded in the Bureau as Document No. 2009-126467.
13. Certificate of Formation of County of Kaua'i Community Facilities District No. 2008-1 (Kukui'ula Development Project) dated September 22, 2010, recorded in the Bureau as Document No. 2010-143092.
14. Restriction of vehicle access into and from Lawai Road, as shown on the map prepared by Erik S. Kaneshiro, Land Surveyor, with Austin, Tsutsumi & Associates Inc., dated February 2, 2011, last revised August 3, 2011, approved by the Planning Department, County of Kauai, on September 13, 2011, and set forth in AFFIDAVIT OF ERIK S. KANESHIRO dated September 20, 2011, recorded as Document No. 2011-154371.
15. Designation of EASEMENT "SA" for sewer and access purposes as shown on the map prepared by Erik S. Kaneshiro, Land Surveyor, with Austin, Tsutsumi & Associates Inc., dated February 2, 2011, last revised August 3, 2011, approved by the Planning Department, County of Kauai, on September 13, 2011, and described in AFFIDAVIT OF ERIK S. KANESHIRO dated September 20, 2011, recorded as Document No. 2011-154371.
16. Declaration of Covenants, Conditions and Restrictions For PM-2004-370 Zoning Map Modifications dated February 14, 2021 recorded in the Bureau as Document No. A-77170975, as amended from time to time (the "**Zoning Declaration**").
17. Condominium Map.
18. The terms and provisions contained in the Declaration.
19. Bylaws of the Association of Unit Owners of the Kukui'ula Parcel X Condominium dated February 14, 2021 recorded in the Bureau as Document No. A-77180602, as amended from time to time (the "**Bylaws**").
20. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

21. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
22. Declaration of Easement (Access) dated February 18, 2021 recorded in the Bureau as Document No. A-77230493.

END OF EXHIBIT A



# **Appendix B:** Authorization Letter



**AFFIDAVIT OF OWNERSHIP AND AUTHORIZATION  
TO FILE SPECIAL MANAGEMENT AREA AND SHORELINE SETBACK  
APPLICATIONS**

Francisco Gutierrez, being first duly sworn on oath, deposes and states that:

- I. I am an authorized signatory for Kukui'ula Village LLC.
- II. Kukui'ula Village LLC owns parcels of land situated in the District of Koloa, Island of Kauai, County of Kauai, State of Hawaii, bearing Tax Map Key (TMK) Numbers (4) 2-6-015:010 and (4) 2-6-015:011 (portion; Unit 4) (the "Property").
- III. Kukui'ula Village LLC does hereby authorize: PBR HAWAII & Associates, Inc., including Tom Schnell, to:
  - A. File and prosecute, for and on behalf of Kukui'ula Village LLC, any and all applications, plans, reports, and the like that may be required for the development of the Property under:
    1. Section 7.0 of the County of Kauai Special Management Area Rules, for a Special Management Area Use Permit;
    2. Section 2, Chapter 8, Article 27, Kauai County Code 1987, for a Shoreline Setback Determination; and
  - B. Sign on our behalf on matters relating to the subject applications.

FURTHER AFFIANT SAYETH NAUGHT.

KUKUI'ULA VILLAGE LLC

By KKV Management LLC,  
Its Manager

By A & B Properties Hawaii, LLC, Series R  
Its Manager

By: 

Francisco Gutierrez  
Vice President

STATE OF HAWAII )  
 ) SS:  
CITY & COUNTY OF HONOLULU )

Subscribed and sworn to or affirmed before me this 28<sup>th</sup> day of August, 2023, by  
FRANCISCO GUTIERREZ.



Signature: *Cheryl A. Onishi*  
Print Name: CHERYL A. ONISHI  
Notary Public, State of Hawaii  
My commission expires: APR 17 2025

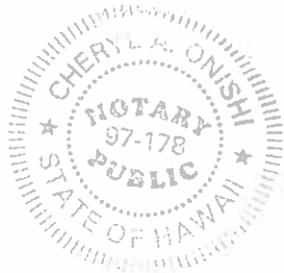
**NOTARY CERTIFICATE** (Hawaii Administrative Rules §5-11-8)  
Document Identification or Description: Affidavit + Authorization

No. of Pages: 2      Doc. Date: undated  
Jurisdiction: First Circuit  
*Cheryl A. Onishi*      8/28/23

Signature of Notary      Date of Certificate  
CHERYL A. ONISHI

Printed Name of Notary

My commission expires: **APR 17 2025**



# **Appendix C:**

## **Civil Engineering Assessment and Plans**







**HISTORICAL PRESERVATION NOTES**

1. SHOULD HISTORICAL REMAINS SUCH AS ARTIFACTS, BURIALS, CONCENTRATIONS OF SHELL OR CHARCOAL BE ENCOUNTERED DURING CONSTRUCTION ACTIVITIES, WORK SHALL CEASE IMMEDIATELY IN THE IMMEDIATE VICINITY OF THE FIND. THE CONTRACTOR SHALL IMMEDIATELY NOTIFY THE PLANNING DEPARTMENT AND THE STATE HISTORIC PRESERVATION DIVISION AT (808) 742-7033, WHICH WILL ASSESS THE SIGNIFICANCE OF THE FIND AND RECOMMEND THE APPROPRIATE MITIGATION MEASURES, IF NECESSARY.

**TEMPORARY DUST CONTROL MEASURES FOR GRADING**

1. THE GRADED OR PROJECT SITE THAT IS CLEARED OF VEGETATION SHALL BE KEPT DAMP WITH WATER CONTINUOUSLY FOR SEVEN (7) DAYS A WEEK. AT THE END OF EACH DAY, THE SITE SHALL BE SUFFICIENTLY DAMPENED WITH WATER ON A CONTINUAL BASIS SO THAT THE SITE WILL REMAIN MOISTENED DURING THE NIGHT.
2. THE CONTRACTOR SHALL CONDUCT HIS OPERATIONS SO THAT EXCAVATION, EMBANKMENT, AND IMPORTED MATERIAL SHALL BE DAMPENED WITH WATER ON A CONTINUAL BASIS TO PREVENT DUST PROBLEMS.
3. IN APPLYING FOR A GRADING PERMIT, THE CONTRACTOR SHALL SUBMIT PLANS, SCHEDULES AND/OR WRITTEN MEASURES WHICH PROVIDES FOR DUST CONTROL. THE DUST CONTROL MEASURES SHALL CONTAIN POSITIVE STATEMENTS WHICH REQUIRE ACTIONS OR WORK THAT PREVENT DUST PROBLEMS. NO PERMITS WILL BE ISSUED UNLESS THE COUNTY IS ASSURED THAT DUST AND EROSION PROBLEMS WILL BE MINIMIZED.

**TEMPORARY EROSION CONTROL MEASURES FOR GRADING**

1. TEMPORARY VEGETATIVE COVER SHALL BE PLANTED WITHIN A PERIOD OF 30 CALENDAR DAYS AFTER THE SITE HAS BEEN GRADED OR BARED OF VEGETATION OR IF THE SITE WILL BE SUSPENDED FOR MORE THAN 30 CALENDAR DAYS.
2. TEMPORARY VEGETATIVE COVER SHALL CONSIST OF 40 LBS. COMMON RYE GRASS SEED PER ACRE, 400 LBS. PER ACRE 10-10-10 OR EQUIVALENT FERTILIZER WORKED INTO THE SEED BED BEFORE PLANTING. TEMPORARY SPRINKLER SYSTEM IS TO BE INSTALLED CONCURRENTLY WITH ALL PLANTINGS, PLANTING AND MAINTENANCE OF GRASS SHALL CONFORM TO THE "HAWAII STANDARD SPECIFICATIONS FOR ROADS AND BRIDGE CONSTRUCTION, 2005" AND ITS AMENDMENTS.

**PERMANENT EROSION CONTROL MEASURES FOR GRADING**

1. THE CONTRACTOR SHALL GRASS WITH BERMUDA GRASS SPRIGS OR LANDSCAPE AND PAVE THE ENTIRE PROJECT SITE. THE GRASS SHALL BE PLANTED, FERTILIZED, AND MAINTAINED IN ACCORDANCE WITH THE "HAWAII STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION, 2005" AND ITS AMENDMENTS.
2. THE CONTRACTOR SHALL GRASS OR LANDSCAPE AND PAVE ALL EXPOSED AREAS THAT HAVE BEEN CONSTRUCTED TO FINAL GRADES WITHIN A PERIOD OF 30 CALENDAR DAYS.
3. IN LIEU OF GRASS SPRINGS (NOTE 1), THE CONTRACTOR MAY USE HYDROMULCH WITH SEEDINGS.

**ENVIRONMENTAL CONTROL NOTES FOR GRADING**

1. IN ACCORDANCE WITH CHAPTER 11-60.1, AIR POLLUTION CONTROL, TITLE 11, STATE ADMINISTRATIVE RULES, THE PROPERTY OWNER/DEVELOPER SHALL BE RESPONSIBLE FOR ENSURING THAT EFFECTIVE CONTROL MEASURES ARE PROVIDED TO MINIMIZE OR PREVENT ANY VISIBLE DUST EMISSION CAUSED BY THE CONSTRUCTION WORK FROM IMPACTING THE SURROUNDING AREAS INCLUDING THE OFF-SITE ROADWAYS USED TO ENTER/EXIT THE PROJECT. THESE MEASURES INCLUDE BUT ARE NOT LIMITED TO THE USE OF WATER WAGONS, SPRINKLER SYSTEMS, DUST FENCES, ETC.
2. IN ACCORDANCE WITH CHAPTER 11-55, WATER POLLUTION CONTROL AND CHAPTER 11-54, WATER QUALITY STANDARDS, TITLE 11, STATE ADMINISTRATIVE RULES, THE PROPERTY OWNER/DEVELOPER SHALL BE RESPONSIBLE FOR ENSURING THAT THE BEST MANAGEMENT PRACTICE (BMP) TO MINIMIZE OR PREVENT THE DISCHARGE OF SEDIMENTS, DEBRIS AND OTHER WATER POLLUTANT INTO STATE WATERS ARE PROVIDED AT ALL TIMES.
3. IN ACCORDANCE WITH CHAPTER 11-58 SOLID WASTE MANAGEMENT CONTROL, TITLE 11, STATE ADMINISTRATIVE RULES, THE PROPERTY OWNER/DEVELOPER SHALL BE RESPONSIBLE FOR ENSURING THAT GRUB MATERIAL, DEMOLITION WASTE AND CONSTRUCTION WASTE GENERATED BY THE PROJECT ARE DISPOSED OF IN A MANNER OR AT A SITE APPROVED BY THE STATE DEPARTMENT OF HEALTH. DISPOSAL OF ANY OF THESE WASTES BY BURNING IS PROHIBITED.
4. THE PROPERTY OWNER/DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL APPLICABLE PERMITS FROM THE DEPARTMENT OF HEALTH INCLUDING BUT NOT LIMITED TO NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES), NOTICE OF INTENT AND GENERAL PERMIT FOR STORM WATER, HYDROSTATIC TEST AND DEWATERING DISCHARGES PRIOR TO COMMENCING CONSTRUCTION. NPDES PERMIT SHALL BE REQUIRED PRIOR TO GRADING OR GRUBBING WORK OVER AN AREA OF ONE ACRE OR MORE.
5. THE CONTRACTOR SHALL REMOVE ALL SILT AND DEBRIS RESULTING FROM THIS WORK AND DEPOSITED IN DRAINAGE FACILITIES, ROADWAYS AND OTHER AREAS. THE COST INCURRED FOR ANY NECESSARY REMEDIAL ACTION BY THE COUNTY ENGINEER SHALL BE PAYABLE BY THE CONTRACTOR.
6. BEST MANAGEMENT PRACTICE (BMP'S) SHALL BE EMPLOYED AT ALL TIMES TO THE MAXIMUM EXTENT PRACTICABLE PREVENT DAMAGE BY SEDIMENTATION, EROSION OR DUST TO STREAMS, WATERCOURSES, NATURAL AREAS AND THE PROPERTY OF OTHERS.

**ENVIRONMENTAL NOTES**

1. IN ACCORDANCE WITH CHAPTER 11-60.1, AIR POLLUTION CONTROL, TITLE 11, STATE ADMINISTRATIVE RULES, THE CONTRACTOR SHALL BE RESPONSIBLE FOR ENSURING THAT EFFECTIVE CONTROL MEASURES ARE PROVIDED TO MINIMIZE OR PREVENT ANY VISIBLE DUST EMISSION CAUSED BY THE CONSTRUCTION WORK FROM IMPACTING THE SURROUNDING AREAS INCLUDING THE OFF-SITE ROADWAYS USED TO ENTER/EXIT THE PROJECT. THESE MEASURES INCLUDE BUT ARE NOT LIMITED TO THE USE OF WATER WAGONS, SPRINKLER SYSTEMS, DUST FENCES, ETC.
2. IN ACCORDANCE WITH CHAPTER 11-55, WATER POLLUTION CONTROL AND CHAPTER 11-54, WATER QUALITY STANDARDS, TITLE 11, STATE ADMINISTRATIVE RULES, THE CONTRACTOR SHALL BE RESPONSIBLE FOR ENSURING THAT THE BEST MANAGEMENT PRACTICE (BMP) TO MINIMIZE OR PREVENT THE DISCHARGE OF SEDIMENTS, DEBRIS AND OTHER WATER POLLUTANT INTO STATE WATERS IS PROVIDED AT ALL TIMES.
3. IN ACCORDANCE WITH CHAPTER 11-58, SOLID WASTE MANAGEMENT CONTROL, TITLE 11, STATE ADMINISTRATIVE RULES, THE CONTRACTOR SHALL BE RESPONSIBLE FOR ENSURING THAT GRUB MATERIAL, DEMOLITION WASTE AND CONSTRUCTION WASTE GENERATED BY THE PROJECT ARE DISPOSED OF IN A MANNER OR AT A SITE APPROVED BY THE STATE DEPARTMENT OF HEALTH. DISPOSAL OF ANY OF THESE WASTES BY BURNING IS PROHIBITED.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL APPLICABLE PERMITS FROM THE DEPARTMENT OF HEALTH INCLUDING BUT NOT LIMITED TO NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES), NOTICE OF INTENT AND GENERAL PERMIT FOR STORM WATER, HYDROSTATIC TEST AND DEWATERING DISCHARGES PRIOR TO COMMENCING CONSTRUCTION. NPDES PERMIT SHALL BE REQUIRED PRIOR TO GRADING OR GRUBBING WORK OVER AN AREA OF ONE ACRE OR MORE.
5. THE CONTRACTOR SHALL REMOVE ALL SILT AND DEBRIS RESULTING FROM THIS WORK AND DEPOSITED IN DRAINAGE FACILITIES, ROADWAYS AND OTHER AREAS. THE COST INCURRED FOR ANY NECESSARY REMEDIAL ACTION BY THE COUNTY ENGINEER SHALL BE PAYABLE BY THE CONTRACTOR.
6. BEST MANAGEMENT PRACTICES (BMP'S) SHALL BE EMPLOYED AT ALL TIMES TO THE MAXIMUM EXTENT PRACTICABLE PREVENT DAMAGE BY SEDIMENTATION, EROSION OR DUST TO STREAMS, WATERCOURSES, NATURAL AREAS AND THE PROPERTY OF OTHERS.

**GRADING NOTES**

1. ALL GRADING WORK SHALL CONFORM TO SEDIMENT AND EROSION CONTROL ORDINANCE NO. 808, COUNTY OF KAUAI.
2. NO CONTRACTOR SHALL PERFORM ANY GRADING OPERATION SO AS TO CAUSE FALLING ROCKS, SOIL OR DEBRIS IN ANY FORM TO FALL, SLIDE OR FLOW ONTO ADJOINING PROPERTIES, STREETS OR NATURAL WATERCOURSES. SHOULD SUCH VIOLATIONS OCCUR, THE COSTS INCURRED FOR ANY REMEDIAL ACTION BY THE COUNTY ENGINEER SHALL BE PAYABLE BY THE CONTRACTOR.
3. THE CONTRACTOR, AT HIS OWN EXPENSE, SHALL KEEP THE PROJECT AND SURROUNDING AREA FREE FROM DUST NUISANCE. THE WORK SHALL BE IN CONFORMANCE WITH THE AIR POLLUTION CONTROL STANDARDS AND REGULATIONS OF THE STATE DEPARTMENT OF HEALTH AND THE SEDIMENT AND EROSION CONTROL ORDINANCE OF THE COUNTY OF KAUAI.
4. THE UNDERGROUND PIPES, CABLES OR DUCTLINES KNOWN TO EXIST BY THE ENGINEER FROM HIS SEARCH OF RECORDS ARE INDICATED ON THE PLANS. THE CONTRACTOR SHALL VERIFY THE LOCATIONS AND DEPTHS OF THE FACILITIES AND EXERCISE PROPER CARE IN EXCAVATING IN THE AREA. WHEREVER CONNECTIONS OF NEW UTILITIES ARE SHOWN ON THE PLANS, THE CONTRACTOR SHALL EXPOSE THE EXISTING LINES AT THE PROPOSED CONNECTIONS TO VERIFY THEIR LOCATIONS AND DEPTHS PRIOR TO EXCAVATION FOR THE NEW LINES.
5. ADEQUATE PROVISIONS SHALL BE MADE TO PREVENT SURFACE WATERS FROM DAMAGING THE CUT FACE OF AN EXCAVATION OR THE SLOPED SURFACES OF A FILL. FURTHERMORE, ADEQUATE PROVISIONS SHALL BE MADE TO PREVENT SEDIMENT-LADEN RUNOFF FROM LEAVING THE SITE.
6. ALL SLOPES AND EXPOSED AREAS SHALL BE SODDED OR PLANTED AS SOON AS FINAL GRADES HAVE BEEN ESTABLISHED. PLANTING SHALL NOT BE DELAYED UNTIL ALL GRADING WORK HAS BEEN COMPLETED. GRADING TO FINAL GRADE SHALL BE CONTINUOUS, AND ANY AREA WITHIN WHICH WORK HAS BEEN INTERRUPTED OR DELAYED SHALL BE PLANTED.
7. THE COUNTY SHALL BE INFORMED OF THE LOCATION OF THE BORROW/DISPOSAL SITE FOR THE PROJECT WHEN THE APPLICATION FOR A GRADING PERMIT IS MADE. THE BORROW/DISPOSAL SITE MUST ALSO FULFILL THE REQUIREMENTS OF THE GRADING ORDINANCES.
8. NO GRADING WORK SHALL BE DONE ON SATURDAYS, SUNDAYS AND HOLIDAYS AT ANY TIME WITHOUT PRIOR NOTICE TO THE COUNTY OF KAUAI DEPARTMENT OF PUBLIC WORKS.
9. THE LIMITS OF THE AREA TO BE GRADED SHALL BE FLAGGED BEFORE THE COMMENCEMENT OF THE GRADING WORK.
10. ALL GRADING OPERATIONS SHALL BE PERFORMED IN CONFORMANCE WITH THE APPLICABLE PROVISIONS OF THE WATER POLLUTION CONTROL AND WATER QUALITY STANDARDS CONTAINED IN HAWAII ADMINISTRATIVE RULES, CHAPTER 11-55, "WATER POLLUTION CONTROL" AND CHAPTER 11-54, "WATER QUALITY STANDARDS" AND IF APPLICABLE, THE NPDES PERMIT FOR THE PROJECT.
11. IF THE GRADING WORK INVOLVES CONTAMINATED SOIL, THEN ALL GRADING WORK SHALL BE DONE IN CONFORMANCE WITH APPLICABLE STATE AND FEDERAL REQUIREMENTS.
12. NON-COMPLIANCE TO ANY OF THE ABOVE REQUIREMENTS SHALL MEAN IMMEDIATE SUSPENSION OF ALL WORK, AND REMEDIAL WORK SHALL COMMENCE IMMEDIATELY. ALL COSTS INCURRED SHALL BE BILLED TO THE CONTRACTOR AND/OR GRADING PERMIT APPLICANT. FURTHERMORE, VIOLATORS SHALL BE SUBJECT TO ADMINISTRATIVE, CIVIL AND/OR CRIMINAL PENALTIES.
13. FILL SLOPE BANKS SHALL NOT EXCEED 2:1 AND CUT BANKS SHALL NOT EXCEED 2:1 UNLESS OTHERWISE NOTED.
14. THE CONTRACTOR SHALL DISPOSE OF ALL GRUB MATERIAL AT THE KUKUI'ULA SITE WITHIN ½ MILE OF THE PROJECT WITHIN ADJACENT PROPERTY, TMK: 2-6-04:38.

**EARTHWORK SUMMARY**

EXCAVATION	=	X,XXX CY
EMBANKMENT	=	X,XXX CY
GRADED AREA	=	X,XXX AC

**NOTES:**

1. QUANTITIES ARE SHOWN FOR PERMIT PURPOSE ONLY AND ARE NOT TO BE USED FOR BIDDING PURPOSES.
2. CONTRACTOR IS RESPONSIBLE TO COMPLETE THE GRADING WORK TO THE GRADES AND DIMENSIONS SHOWN ON THE PLANS. GRADES SHOWN ARE FINISHED GRADES. CONTRACTOR TO COORDINATE WITH LANDSCAPE DRAWINGS TO ALLOW FOR PLACEMENT OF TOPSOIL.
3. IF IMPORTED MATERIALS ARE REQUIRED TO OBTAIN FINISHED GRADES, CONTRACTOR IS REQUIRED TO IMPORT SUITABLE MATERIAL AS SPECIFIED AT THE CONTRACTOR'S EXPENSE.



ALEXANDER & BALDWIN  
 ALEXANDER & BALDWIN BUILDING  
 822 BISHOP STREET  
 HONOLULU, HAWAII 96813  
 TELEPHONE: 808-525-6611



GOTO ENGINEERING LLC  
 PO BOX 283238  
 HONOLULU, HAWAII 96828  
 TELEPHONE: 808-392-6538



*Kevin T. Goto*  
 EXP OF LICENSE - 04/30/2024

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION AND CONSTRUCTION OF THIS PROJECT WILL BE UNDER MY OBSERVATION

ISSUE:		

JOB #	2322
DRAWN BY	GE
CHECKED BY	GE

**THE SHOPS AT KUKUI'ULA EMPLOYEE PARKING LOT**  
 KOLOA, HAWAII  
 TMK 2-6-015:010 & 011

**NOTES**

**C0.02**

SHEET	
SCALE	
DATE	09-15-2023





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FOR  
 REFERENCE  
 PURPOSES  
 ONLY

ISSUE:


JOB # 2322

DRAWN BY GE

CHECKED BY GE

THE SHOPS AT  
 KUKUI'ULA EMPLOYEE  
 PARKING LOT

KOLOA, HAWAII

TMK 2-6-015:010 & 011

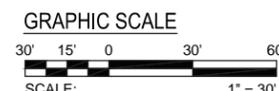
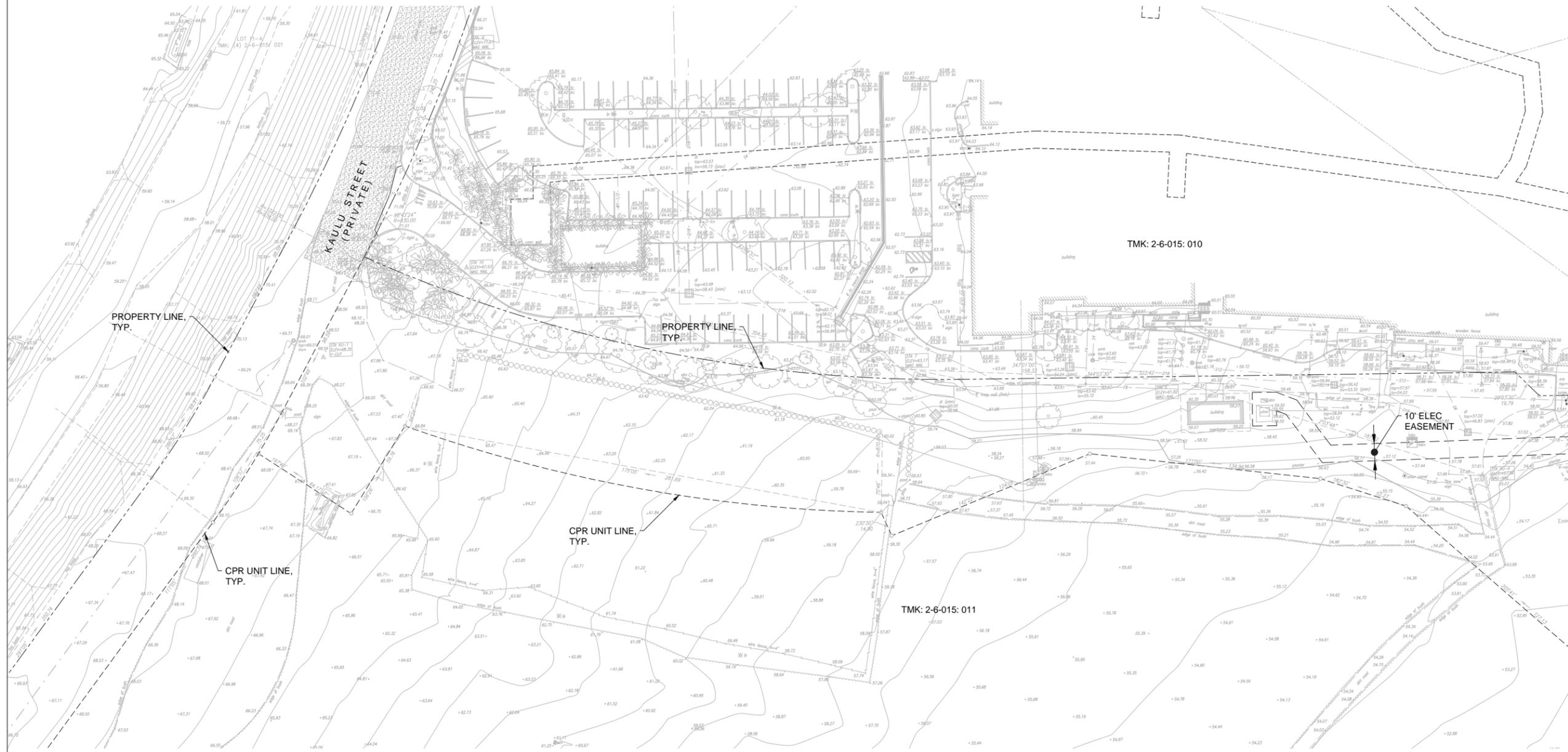
EXISTING CONDITION  
 PLAN

C0.03

SHEET

SCALE

DATE 09-15-2023



EXISTING CONDITION PLAN  
 SCALE: 1" = 30'









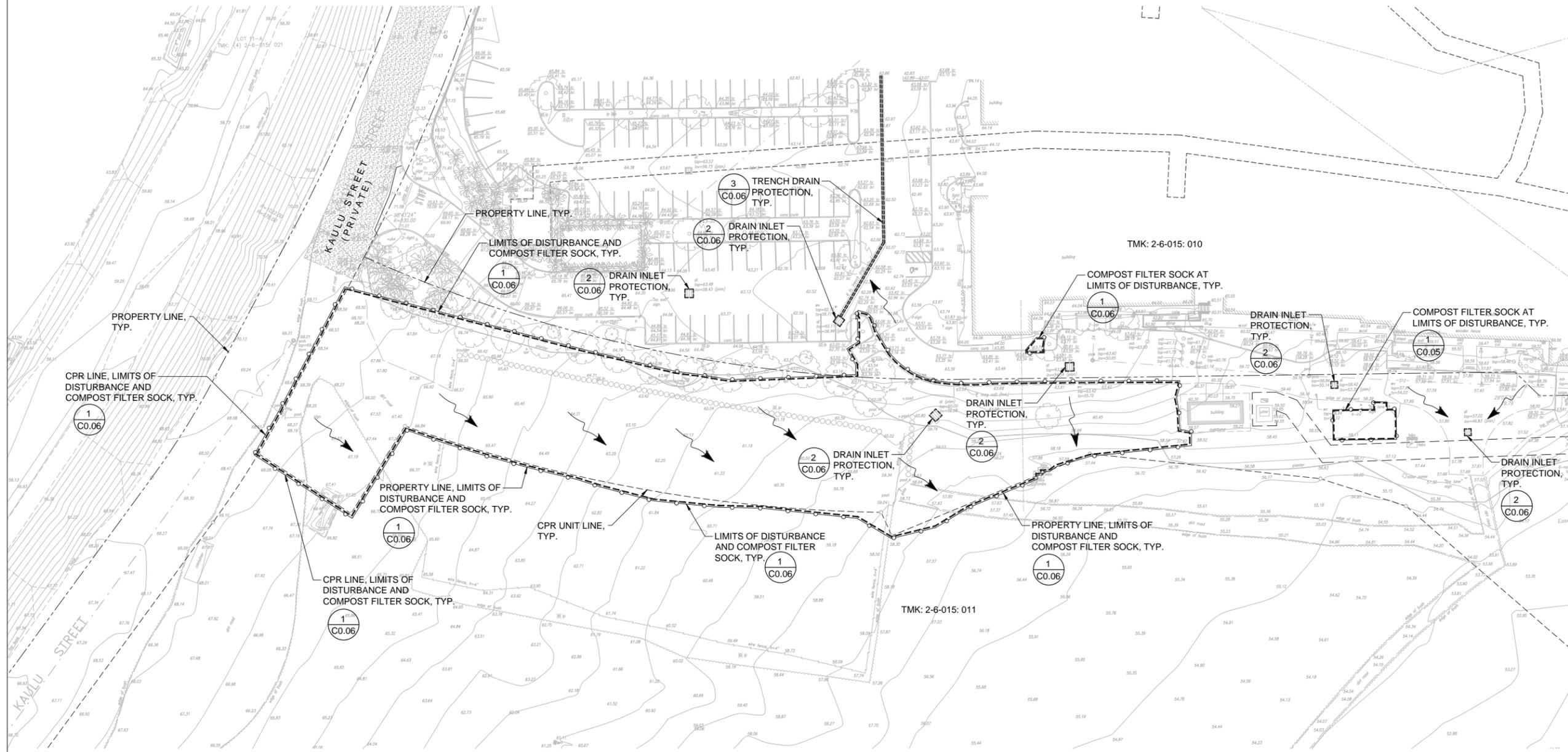
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KEVIN T. GOTO  
 LICENSED PROFESSIONAL ENGINEER  
 No. 14778-C  
 HAWAII, U.S.A.  
 EXP OF LICENSE - 04/30/2024  
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- LEGEND:**
- PROPERTY LINE
  - LIMITS OF DISTURBANCE
  - COMPOST FILTER SOCK
  - DRAIN INLET PROTECTION
  - FLOW ARROW



**EROSION AND SEDIMENT CONTROL PLAN**  
 SCALE: 1" = 30'

ISSUE:

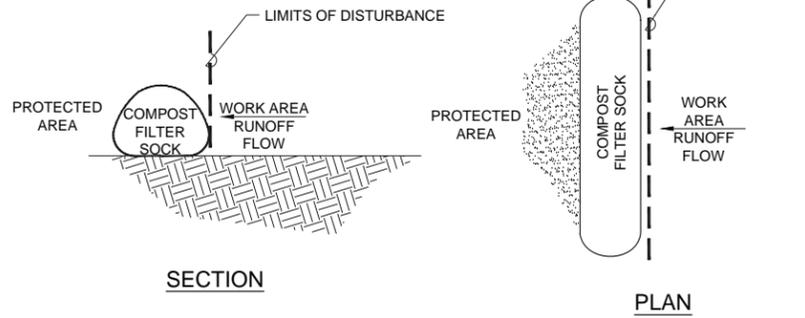

JOB #	2322
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<b>THE SHOPS AT KUKUI'ULA EMPLOYEE PARKING LOT</b>	
KOLOA, HAWAII	
TMK 2-6-015:010 & 011	

**EROSION AND SEDIMENT CONTROL PLAN**

**C0.05**

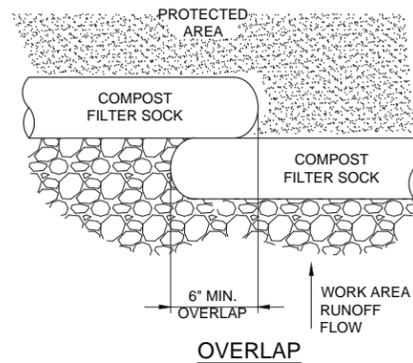
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SCALE	
DATE	09-15-2023





SECTION

PLAN

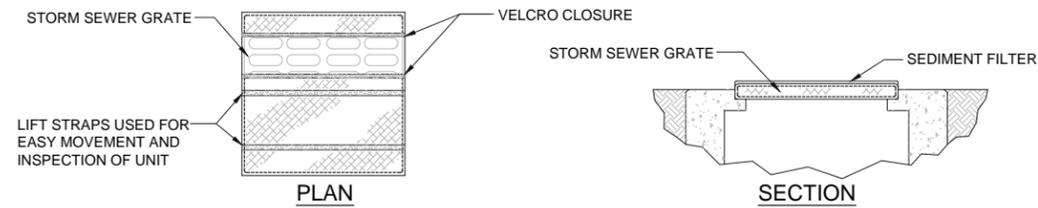


OVERLAP

**NOTES:**

1. COMPOST USED FOR BIOSOCK FILTER MATERIAL SHALL NOT CONTAIN ANY BIOSOLIDS AND SHALL COMPLY WITH ALL EPA GUIDELINES.
2. BIOSOCK COMPOST FILTER SOCK OR APPROVED EQUAL (DIA=12").
3. STAKING OF THE COMPOST FILTER SOCK IS NOT REQUIRED.

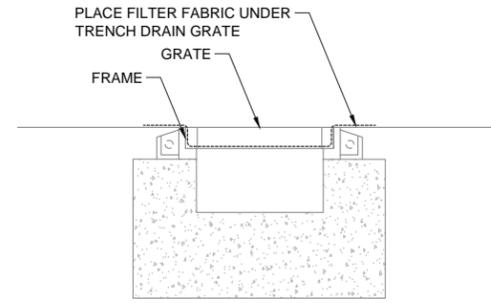
**1 COMPOST FILTER SOCK**  
C0.06 NOT TO SCALE



PLAN

SECTION

**2 DRAIN INLET PROTECTION**  
C0.06 NOT TO SCALE



**3 TRENCH DRAIN PROTECTION**  
C0.06 NOT TO SCALE



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*Kevin T. Goto*  
EXP OF LICENSE - 04/30/2024  
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ISSUE:


JOB # 2322  
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THE SHOPS AT KUKUI'ULA EMPLOYEE PARKING LOT  
KOLOA, HAWAII  
TMK 2-6-015:010 & 011

EROSION AND SEDIMENT CONTROL PLAN DETAILS

**C0.06**

SHEET  
SCALE  
DATE 09-15-2023





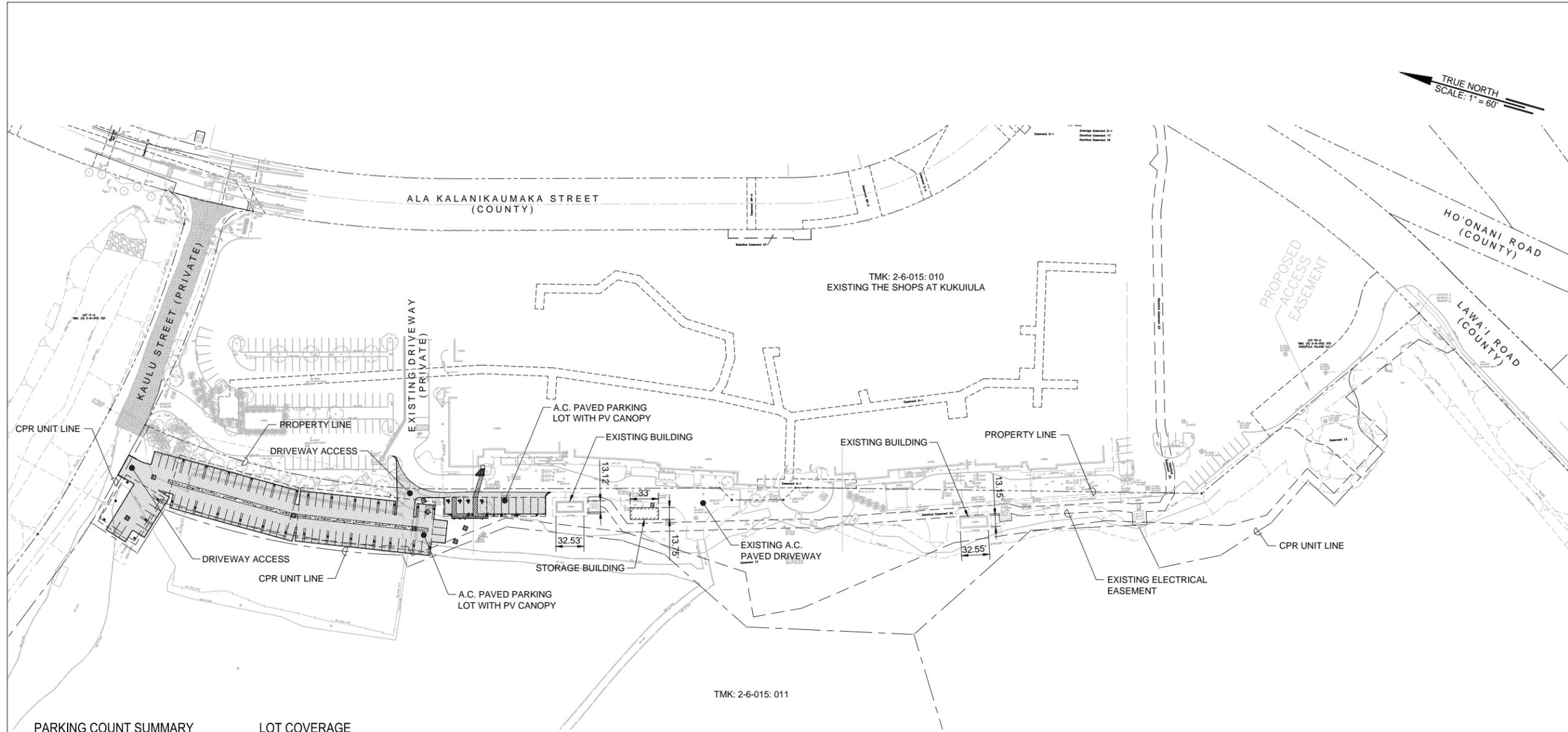
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**PARKING COUNT SUMMARY**

REQUIRED STANDARD = 454  
 REQUIRED LOADING = 6  
 REQUIRED ADA = 8  
 REQUIRED EV = N/A  
 REQUIRED TOTAL = 468

EXISTING STANDARD = 457  
 EXISTING LOADING = 8  
 EXISTING ADA = 6  
 EXISTING EV = 2  
 EXISTING TOTAL = 473

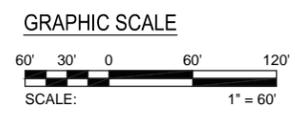
EXISTING STANDARD TO REMAIN = 456  
 EXISTING LOADING TO REMAIN = 8  
 EXISTING ADA TO REMAIN = 6  
 EXISTING EV TO REMAIN = 2  
 EXISTING TOTAL TO REMAIN = 472

NEW STANDARD = 81  
 NEW LOADING = 0  
 NEW ADA = 4  
 NEW EV = 7 (2 COMBINED WITH ADA)  
 NEW TOTAL = 90

GRAND TOTAL STANDARD = 537  
 GRAND TOTAL LOADING = 8  
 GRAND TOTAL ADA = 10  
 GRAND TOTAL EV = 9 (2 COMBINED WITH ADA)  
 GRAND TOTAL = 562

**LOT COVERAGE**

CPR UNIT 4 AREA = 3.129 ACRES  
 BUILDING AND PAVEMENT AREA IN UNIT 4 = 1.01 ACRES  
 COVERAGE = 33%  
 REQUIRED MAXIMUM COVERAGE = 80%



**GENERAL PLAN**  
 SCALE: 1" = 60'

ISSUE:


JOB #	2322
DRAWN BY	GE
CHECKED BY	GE

**THE SHOPS AT KUKUI'ULA EMPLOYEE PARKING LOT**  
 KOLOA, HAWAII  
 TMK 2-6-015:010 & 011

**GENERAL PLAN**  
  
**C1.00**

SHEET	
SCALE	
DATE	09-15-2023













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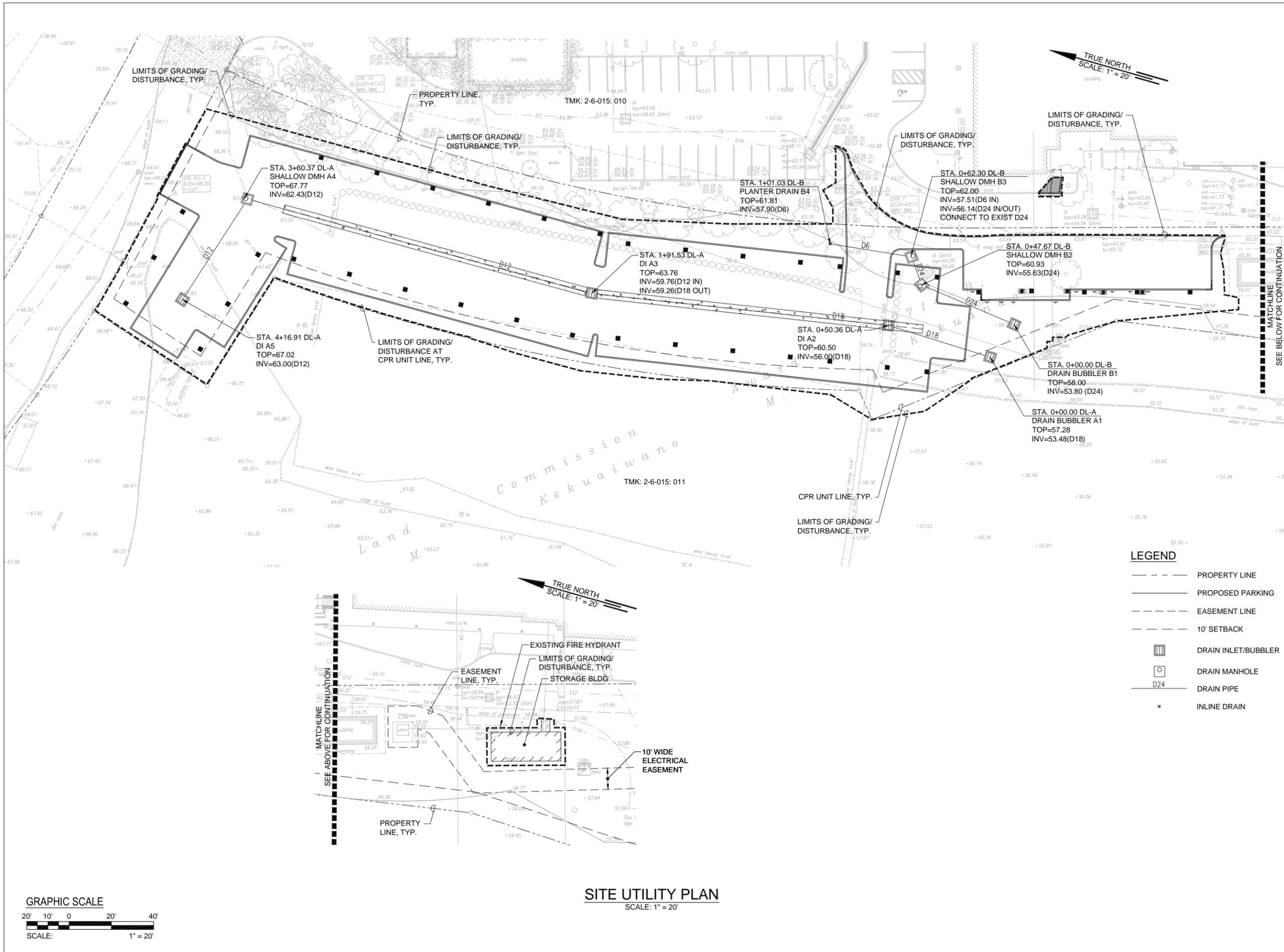
ISSUE:


JOB #	2322
DRAWN BY	GE
CHECKED BY	GE
<b>THE SHOPS AT KUKUI'ULA EMPLOYEE PARKING LOT</b>	
KOLOA, HAWAII	
TMK 2-6-015:010 & 011	

**SITE UTILITY PLAN**

**C3.01**

SHEET	
SCALE	
DATE	09-15-2023



TRUE NORTH  
SCALE: 1" = 20'

TRUE NORTH  
SCALE: 1" = 20'

- LEGEND**
- PROPERTY LINE
  - PROPOSED PARKING
  - EASEMENT LINE
  - 10' SETBACK
  - DRAIN INLET/BUBBLER
  - DRAIN MANHOLE
  - D24 DRAIN PIPE
  - INLINE DRAIN



**SITE UTILITY PLAN**  
SCALE: 1" = 20'





ALEXANDER & BALDWIN  
 ALEXANDER & BALDWIN BUILDING  
 822 BISHOP STREET  
 HONOLULU, HAWAII 96813  
 TELEPHONE: 808-525-6611



GOTO ENGINEERING LLC  
 PO BOX 283238  
 HONOLULU, HAWAII 96828  
 TELEPHONE: 808-392-6538



KEVIN T. GOTO  
 LICENSED PROFESSIONAL ENGINEER  
 No. 14778-C  
 HAWAII, U.S.A.  
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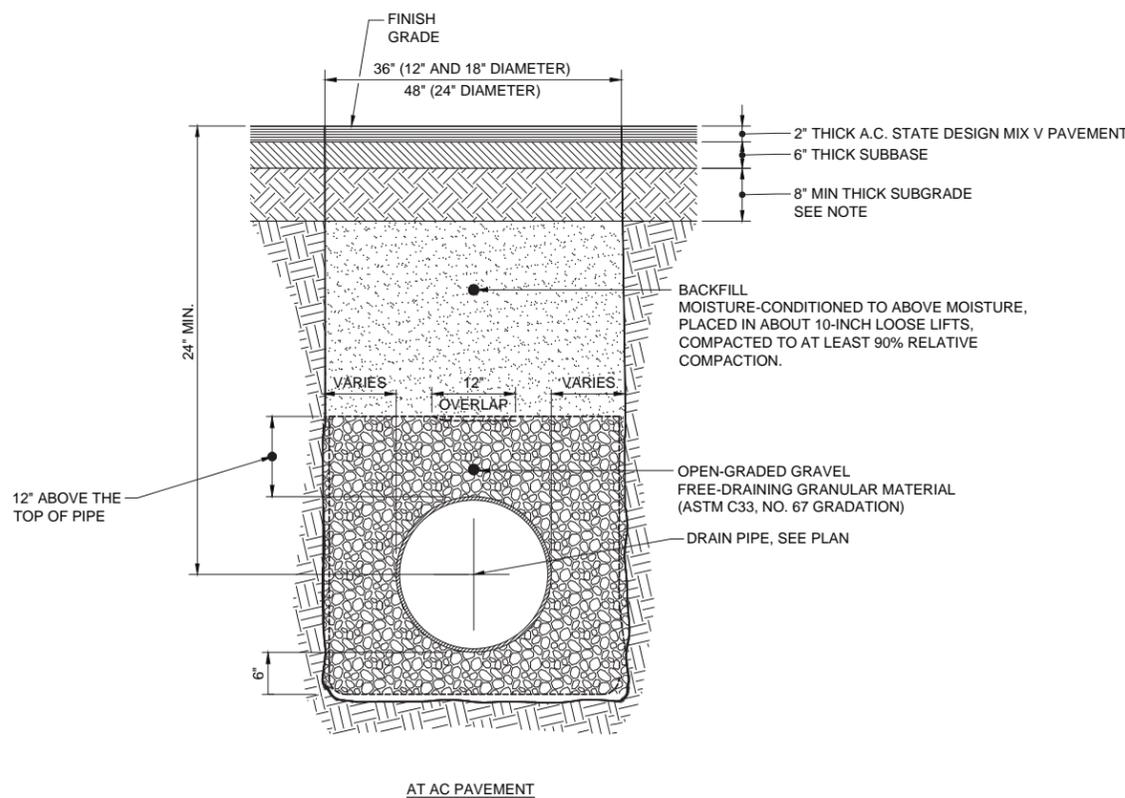
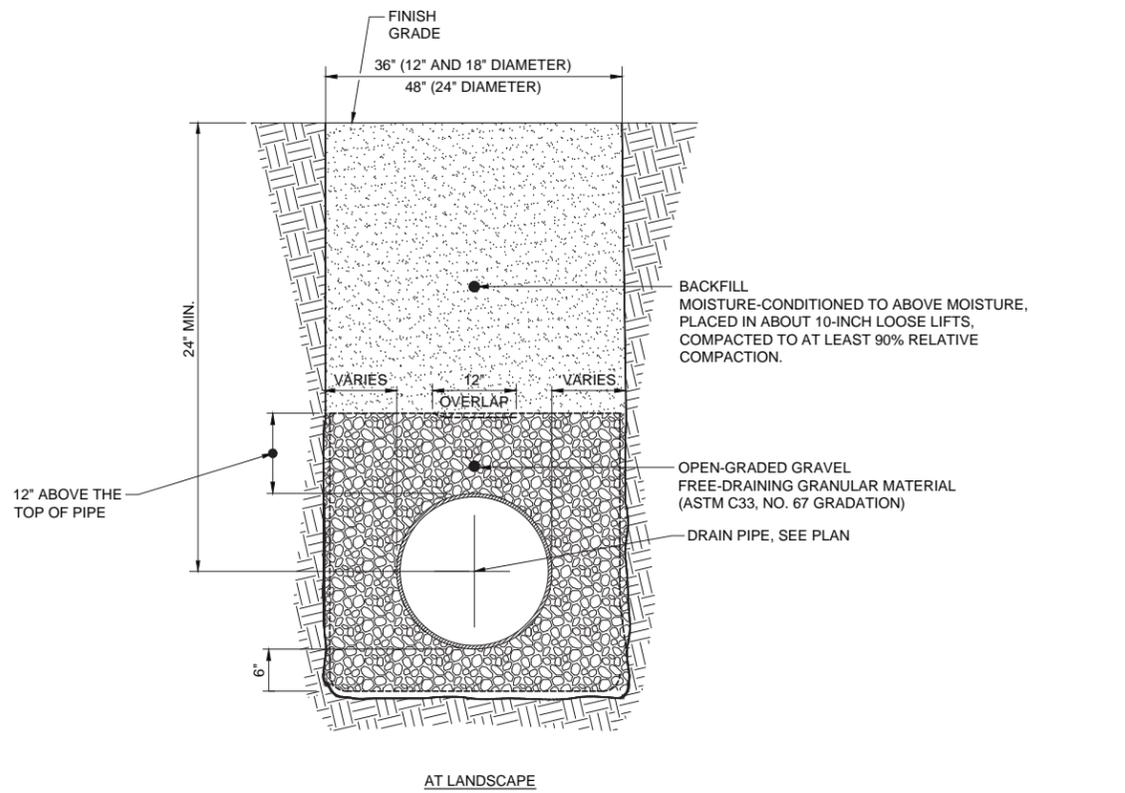

JOB # 2322  
 DRAWN BY GE  
 CHECKED BY GE

THE SHOPS AT KUKUI'ULA EMPLOYEE PARKING LOT  
 KOLOA, HAWAII  
 TMK 2-6-015:010 & 011

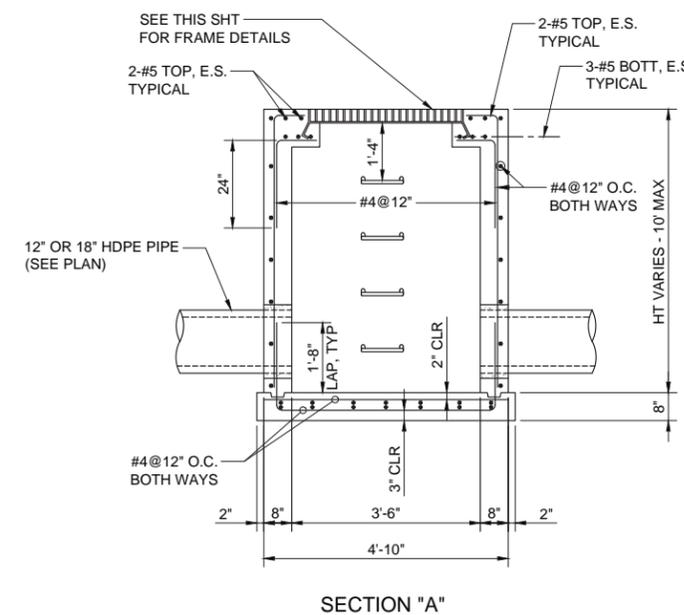
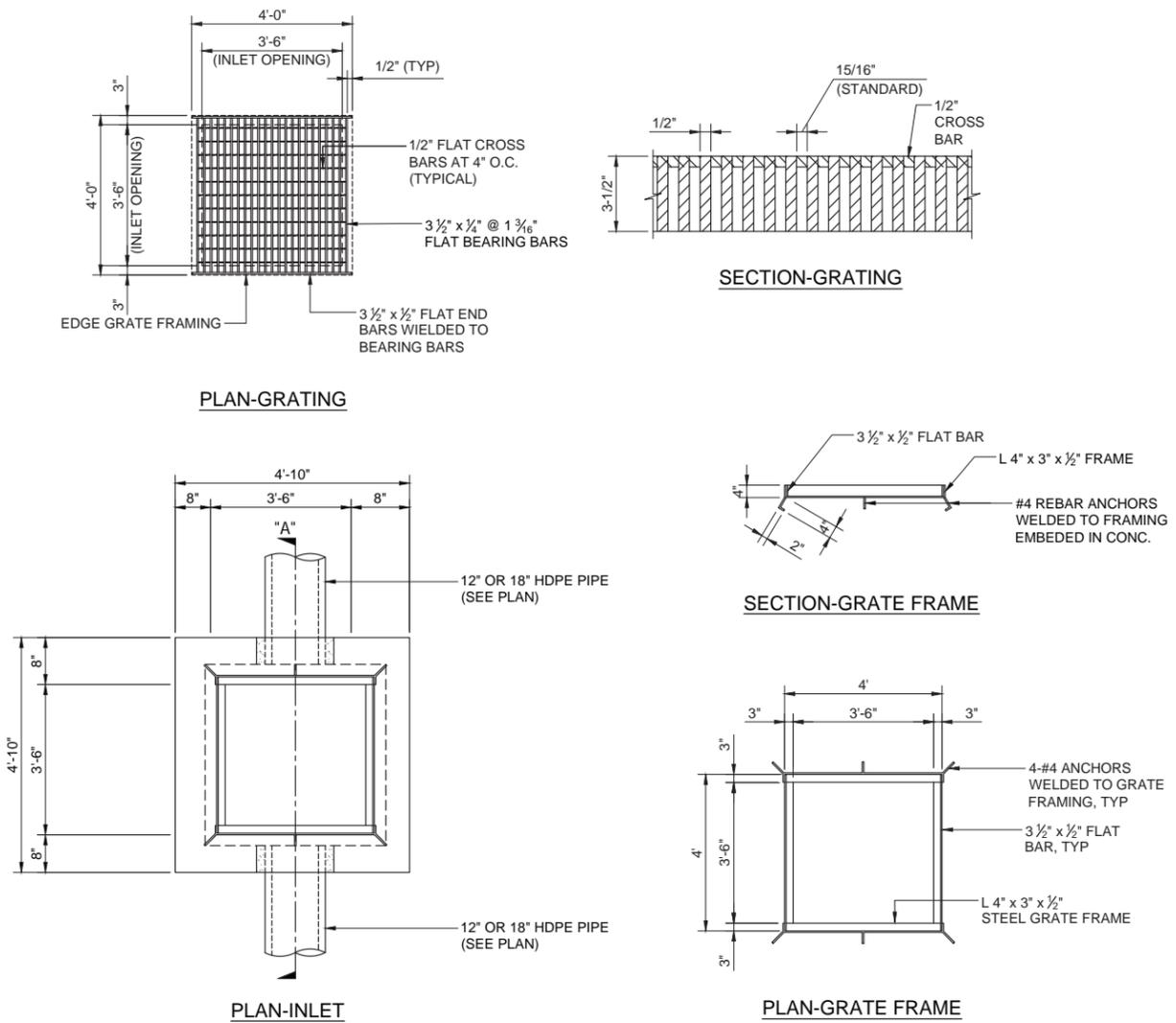
DRAINAGE DETAILS - 1

C4.01

SHEET  
 SCALE  
 DATE 09-15-2023



1 DRAIN LINE TRENCH  
 C4.01 NOT TO SCALE



2 FLAT DRAIN INLET  
 C4.01 NOT TO SCALE





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ISSUE:

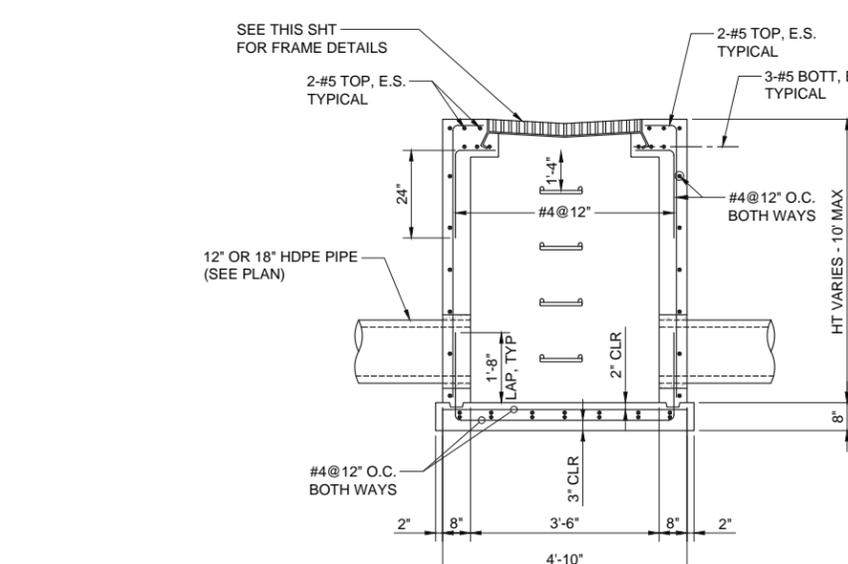
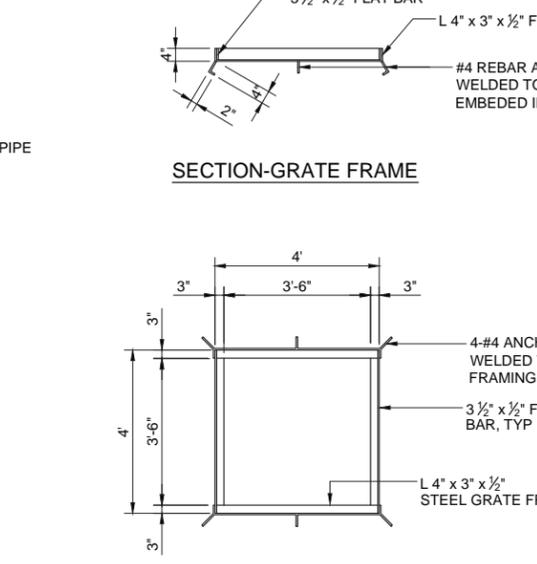
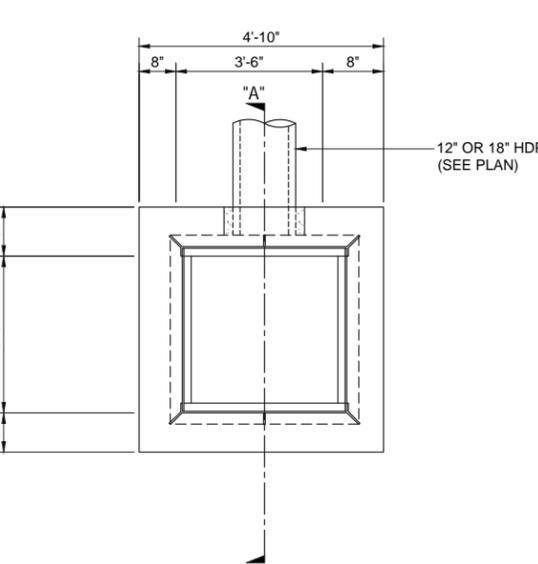
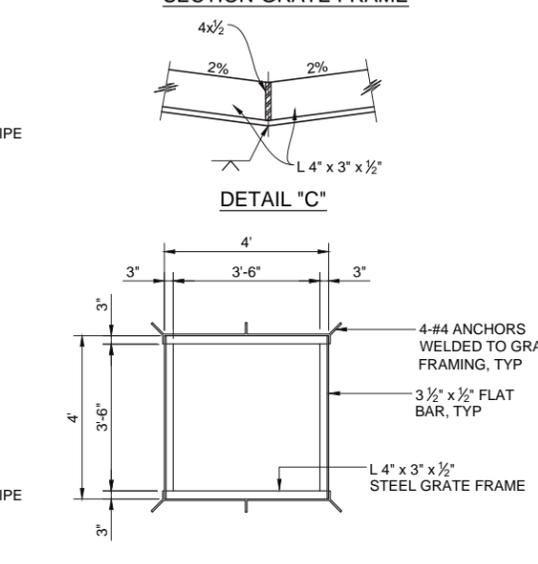
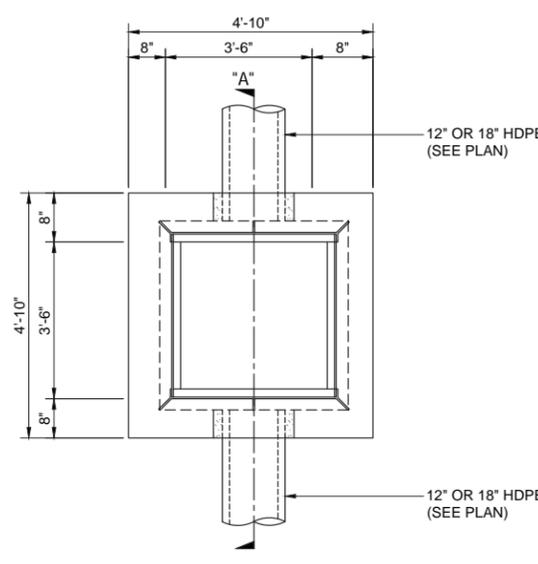
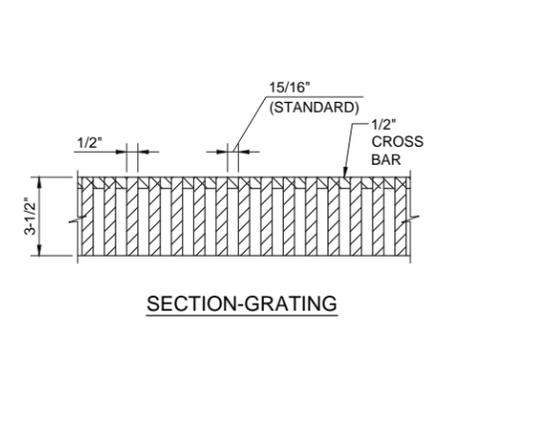
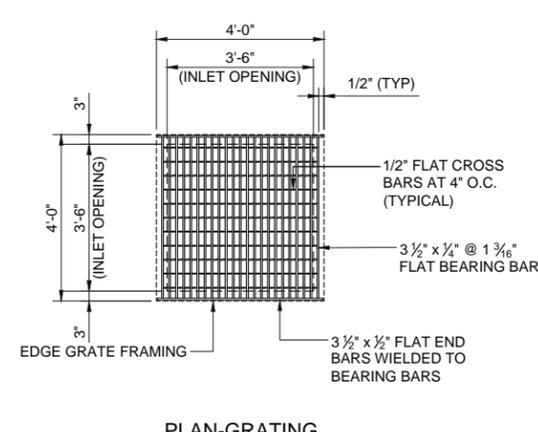
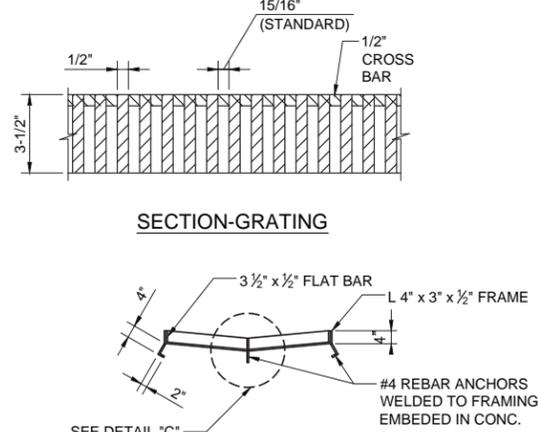
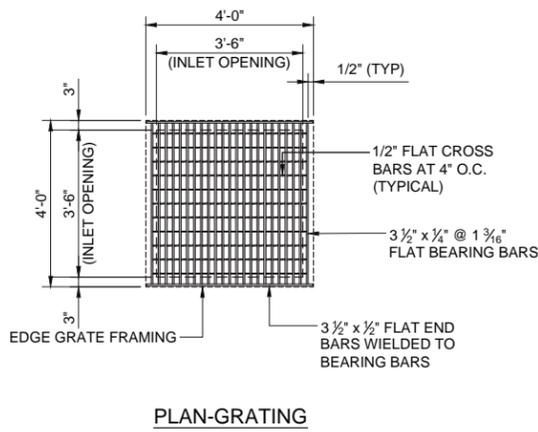

JOB # 2322  
 DRAWN BY GE  
 CHECKED BY GE

THE SHOPS AT KUKUI'ULA EMPLOYEE PARKING LOT  
 KOLOA, HAWAII  
 TMK 2-6-015:010 & 011

DRAINAGE DETAILS - 2

C4.02

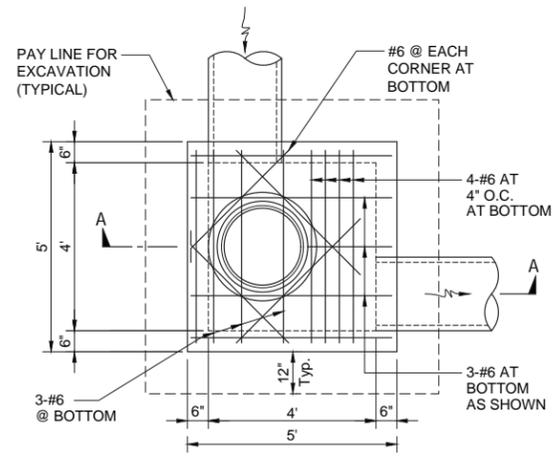
SHEET  
 SCALE  
 DATE 09-15-2023



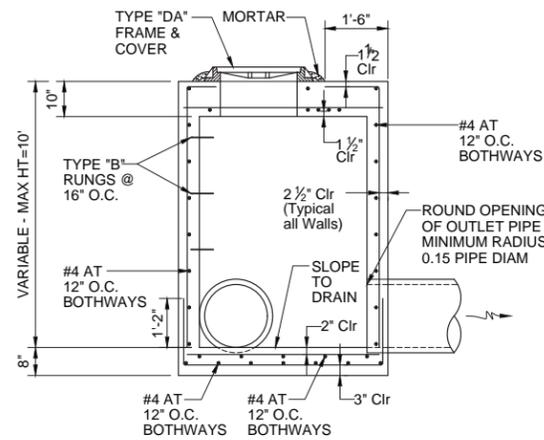
1 SWALE DRAIN INLET  
 C4.02 NOT TO SCALE

3 DRAIN BUBBLER  
 C4.02 NOT TO SCALE





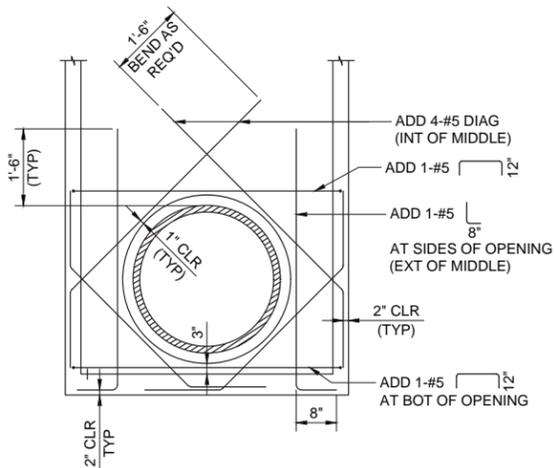
PLAN



SECTION A-A

**1 SHALLOW DRAIN MANHOLE**

C4.03 NOT TO SCALE

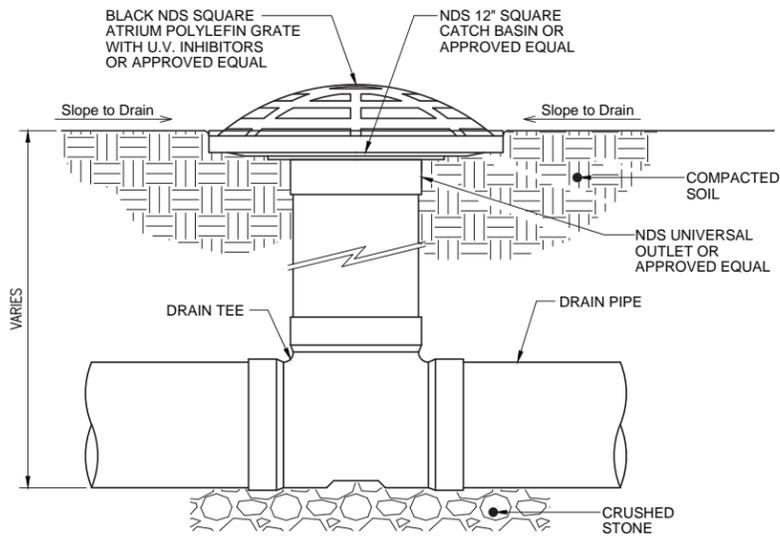


**2 TYPICAL REINFORCEMENT AT PIPES**

C4.03 NOT TO SCALE

**NOTES:**

1. OPENING SHALL BE 3" CLEAR AROUND PIPE AND SHALL BE GROUTED W/ NON-SHRINK GROUT AFTER PIPE IS INSTALLED.
2. PROVIDE MINIMUM 3" CLEARANCE BETWEEN PIPE OPENING AND ANY INSIDE WALL CORNER.
3. CHANNELIZE DRAIN MANHOLE INVERT WITH CONCRETE TO ENSURE POSITIVE DRAINAGE.



**3 PLANTER DRAIN INLET**

C4.03 NOT TO SCALE



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ALEXANDER & BALDWIN BUILDING  
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HONOLULU, HAWAII 96813  
TELEPHONE: 808-525-6611



GOTO ENGINEERING LLC  
PO BOX 283238  
HONOLULU, HAWAII 96828  
TELEPHONE: 808-392-6538



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No. 14778-C  
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ISSUE:	

JOB #	2322
DRAWN BY	GE
CHECKED BY	GE

THE SHOPS AT  
KUKUI'ULA EMPLOYEE  
PARKING LOT  
KOLOA, HAWAII  
TMK 2-6-015:010 & 011

DRAINAGE DETAILS -  
3

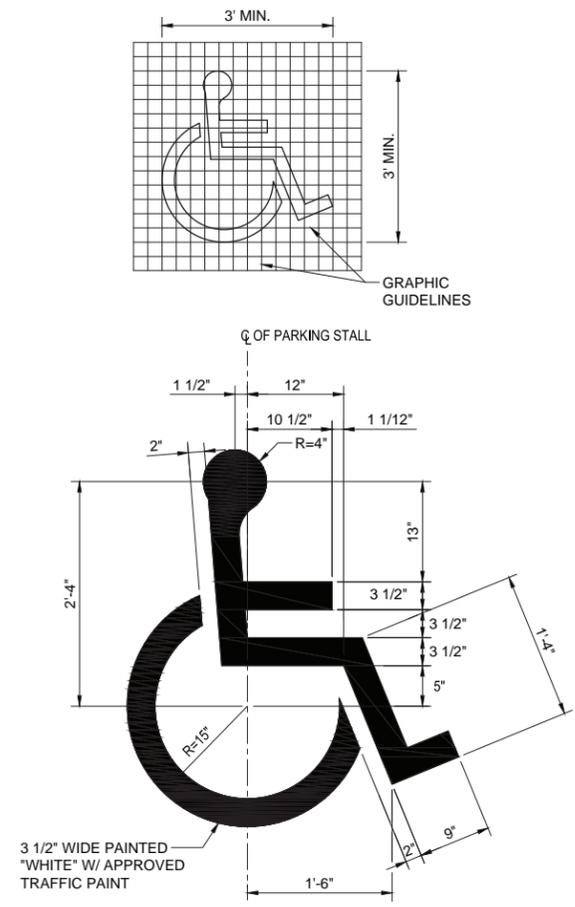
**C4.03**

SHEET	
SCALE	
DATE	09-15-2023









**1 ACCESSIBLE PAVEMENT MARKING**  
C5.02 NOT TO SCALE



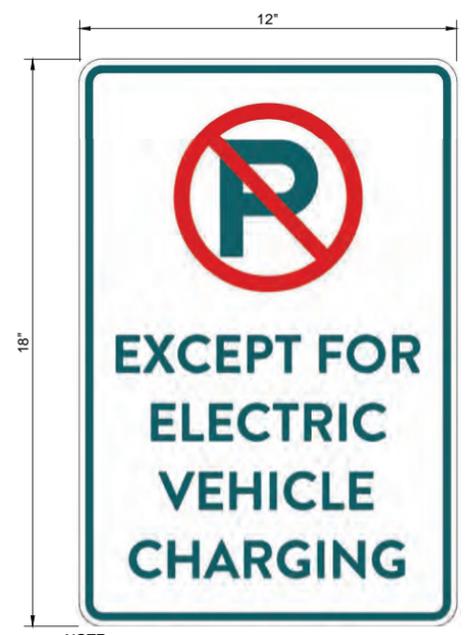
**2 ADA STALL SIGN**  
C5.02 NOT TO SCALE



**SIGN NOTES:**

- SIGNS SHALL CONFORM TO THE LATEST EDITION OF FHWA PUBLICATIONS "MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES FOR STREETS AND HIGHWAYS", "STANDARD ALPHABETS FOR HIGHWAY SIGNS", AND THE AMERICANS WITH DISABILITIES ACCESSIBILITY GUIDELINES (ADAAG) SECTION 4.30, AND AS AMENDED.
- SIGNS SHALL BE ALUMINUM T6061 SHEET COVERED WITH ENGINEERING GRADE REFLECTIVE SHEETING.
- ALL SIGNS SHALL HAVE 3/8" Ø BOLT HOLES PRE-DRILLED AT APPROPRIATE LOCATIONS.
- SIGN LETTERING SHALL BE UPPERCASE LETTERS OF THE TYPE APPROVED BY THE FEDERAL HIGHWAY ADMINISTRATION.

**3 ACCESS AISLE SIGN**  
C5.02 NOT TO SCALE



**NOTE:**  
ELECTRIC VEHICLE SIGN TO MATCH EXISTING ELECTRIC VEHICLE SIGNS IN SHOPPING CENTER

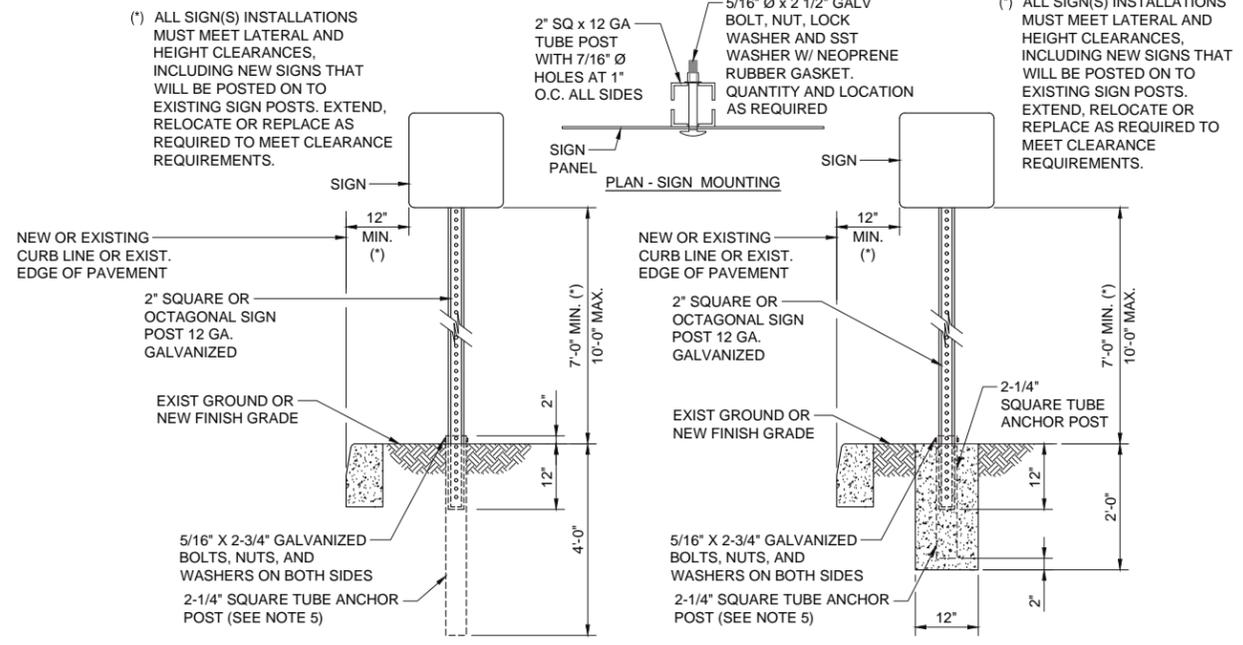
**4 EV STALL SIGN**  
C5.02 NOT TO SCALE



**5 VAN ACCESSIBLE EV STALL SIGN**  
C5.02 NOT TO SCALE

**ANCHOR POSTS NOTES**

- KEEP INSIDE OF 2-1/4" ANCHOR POST FREE FROM IMPEDIMENTS THAT MAY PREVENT PROPER SEATING OF 2" SIGN POST.
- SQUARE TUBING SIGN POST SHALL BE TELESCOPING TYPE WITH 7/16" DIA. HOLES AT 1" O.C. ON FOUR SIDES.
- OCTAGON SIGN POST SHALL BE TELESCOPING TYPE WITH 7/16" DIA. HOLES AT 1" O.C. ON TWO SIDES.
- USE 5/16" X 2-3/4" BOLTS TO SECURE THE OCTAGONAL AND SQUARE TUBING POST ONTO THE 2-1/4" SQUARE TUBE ANCHOR POST.



**6 INSTALLATION OF SIGN POST WITH ANCHOR POST, WITHOUT CONCRETE FOOTING**  
C5.02 NOT TO SCALE

**7 INSTALLATION OF SIGN POST WITH CONCRETE FOOTING**  
C5.02 NOT TO SCALE



**ALEXANDER & BALDWIN**  
ALEXANDER & BALDWIN BUILDING  
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**GOTO ENGINEERING LLC**  
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HONOLULU, HAWAII 96828  
TELEPHONE: 808-392-6538



*Kevin T. Goto*  
EXP. OF LICENSE: 04/30/2024  
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ISSUE:

NO.	DATE	DESCRIPTION

JOB # 2322  
DRAWN BY GE  
CHECKED BY GE

**THE SHOPS AT KUKUI'ULA EMPLOYEE PARKING LOT**  
KOLOA, HAWAII  
TMK 2-6-015:010 & 011

MISCELLANEOUS DETAILS - 2

**C5.02**

SHEET  
SCALE  
DATE 09-15-2023





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 ALEXANDER & BALDWIN BUILDING  
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ISSUE:

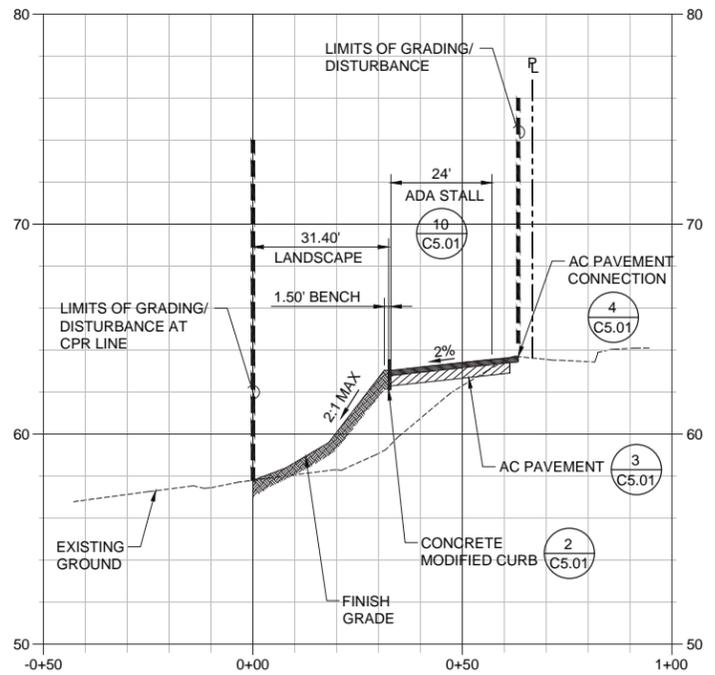

JOB #	2322
DRAWN BY	GE
CHECKED BY	GE

THE SHOPS AT  
 KUKUI'ULA EMPLOYEE  
 PARKING LOT  
 KOLOA, HAWAII  
 TMK 2-6-015:010 & 011

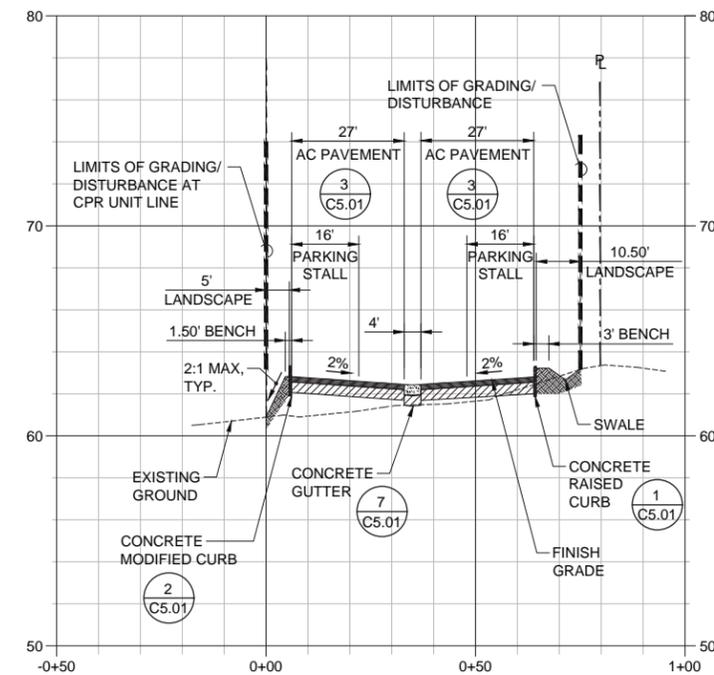
SITE SECTIONS

**C6.01**

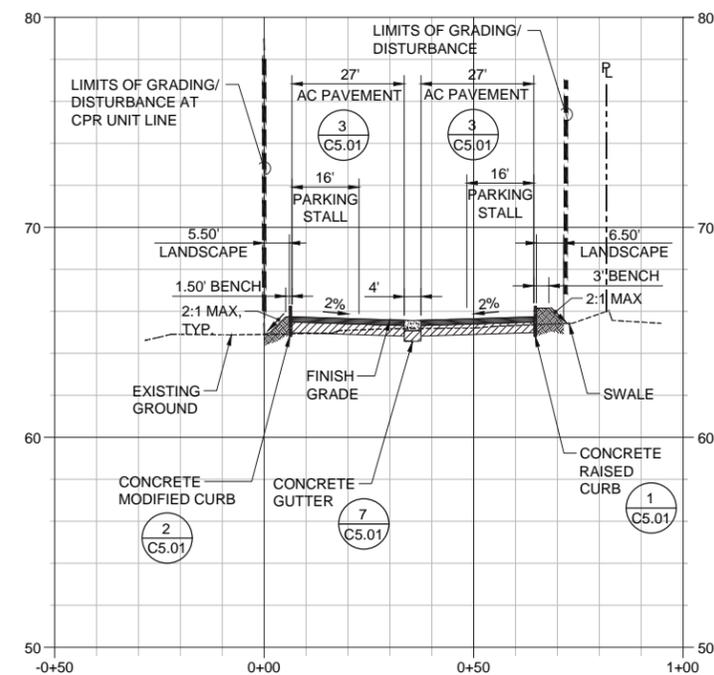
SHEET
SCALE
DATE 09-15-2023



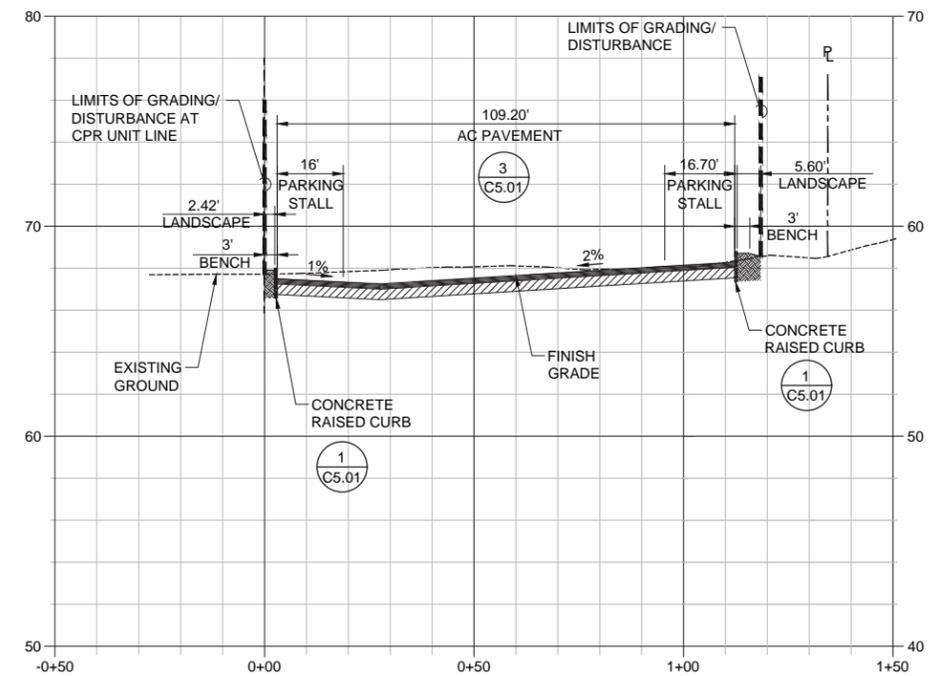
**SECTION A-A**  
 SCALE: 1" = 20' (H)  
 1" = 4' (V)



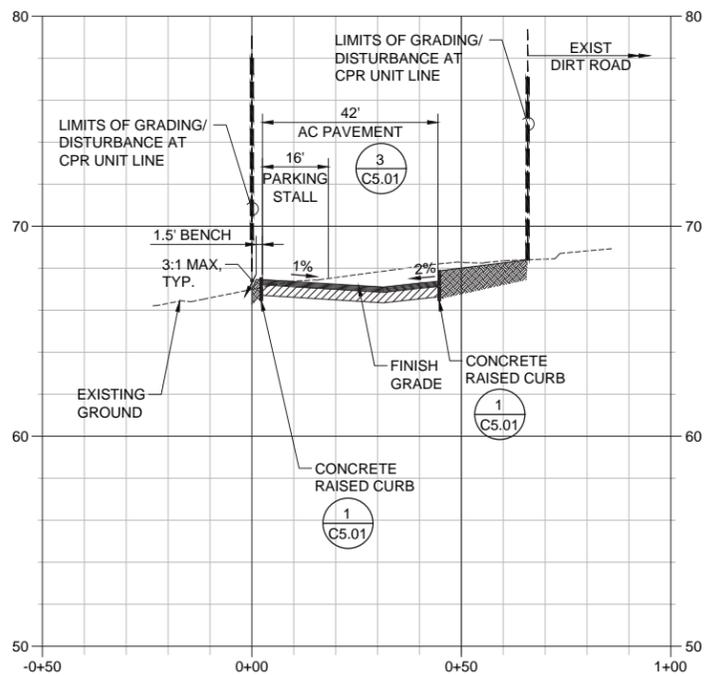
**SECTION B-B**  
 SCALE: 1" = 20' (H)  
 1" = 4' (V)



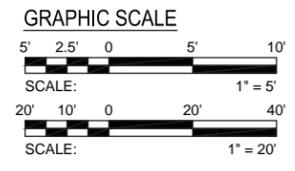
**SECTION C-C**  
 SCALE: 1" = 20' (H)  
 1" = 4' (V)



**SECTION D-D**  
 SCALE: 1" = 20' (H)  
 1" = 4' (V)



**SECTION E-E**  
 SCALE: 1" = 20' (H)  
 1" = 4' (V)







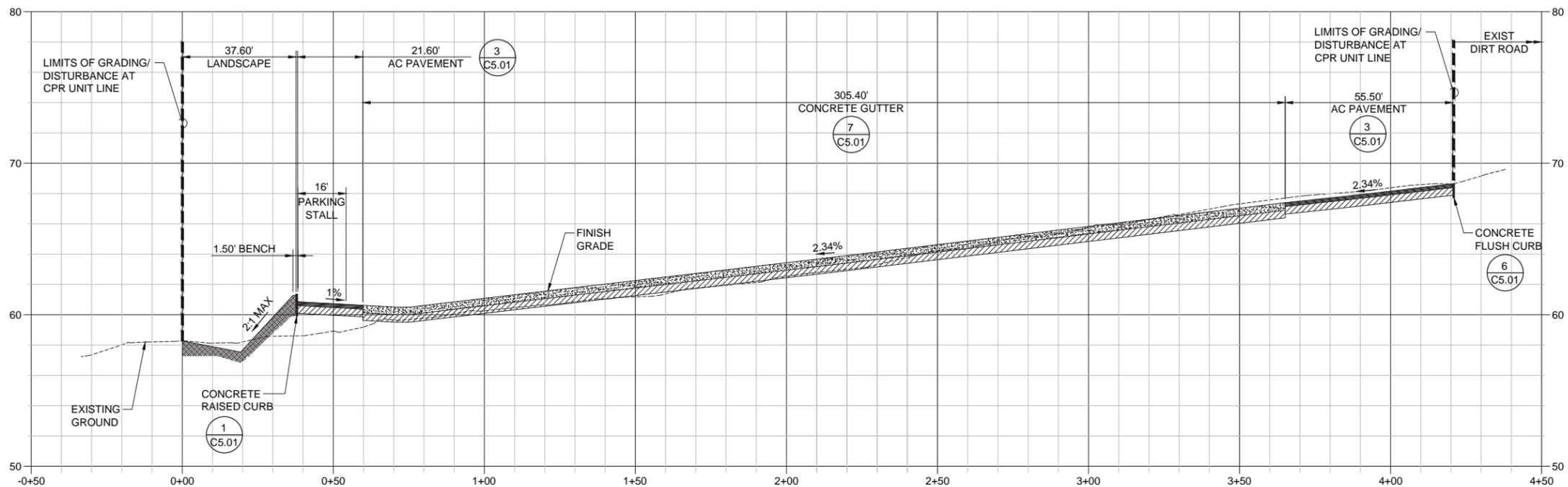
ALEXANDER & BALDWIN  
 ALEXANDER & BALDWIN BUILDING  
 822 BISHOP STREET  
 HONOLULU, HAWAII 96813  
 TELEPHONE: 808-525-6611



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 HONOLULU, HAWAII 96828  
 TELEPHONE: 808-392-6538

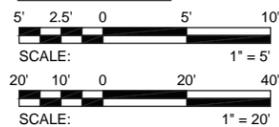


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SECTION F-F  
 SCALE: 1" = 20' (H)  
 1" = 4' (V)

GRAPHIC SCALE



ISSUE:	

JOB #	2322
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THE SHOPS AT  
 KUKUI'ULA EMPLOYEE  
 PARKING LOT  
 KOLOA, HAWAII  
 TMK 2-6-015:010 & 011

SITE SECTIONS

C6.01

SHEET	
SCALE	
DATE	09-15-2023





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 ALEXANDER & BALDWIN BUILDING  
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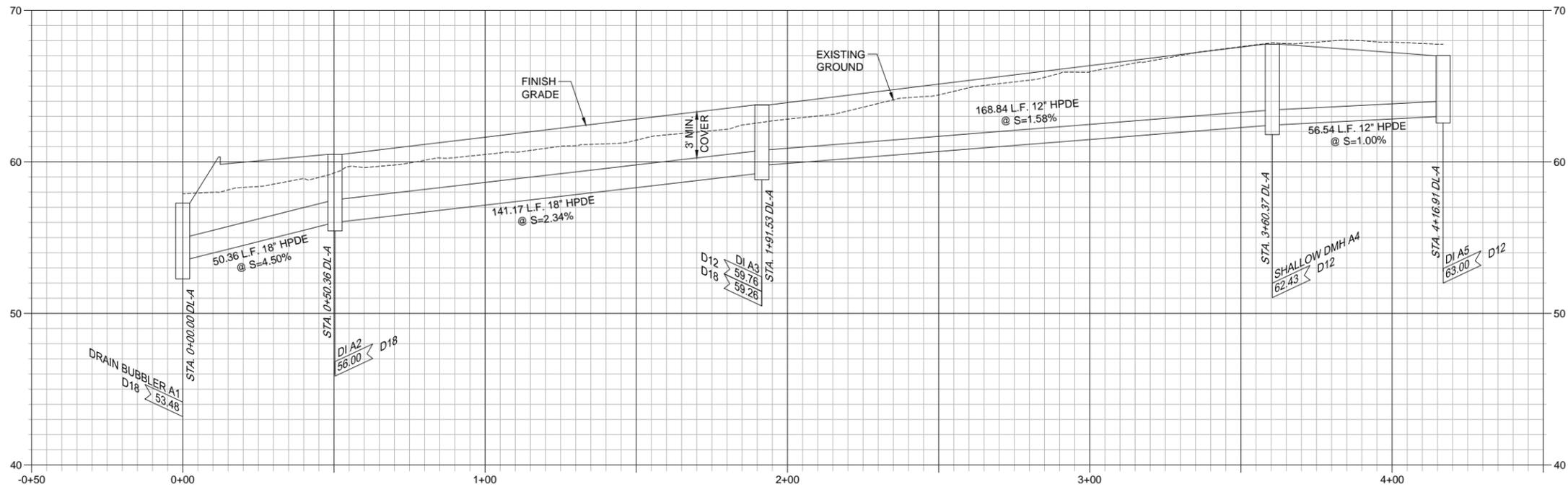

JOB #	2322
DRAWN BY	GE
CHECKED BY	GE

THE SHOPS AT  
 KUKUI'ULA EMPLOYEE  
 PARKING LOT  
 KOLOA, HAWAII  
 TMK 2-6-015:010 & 011

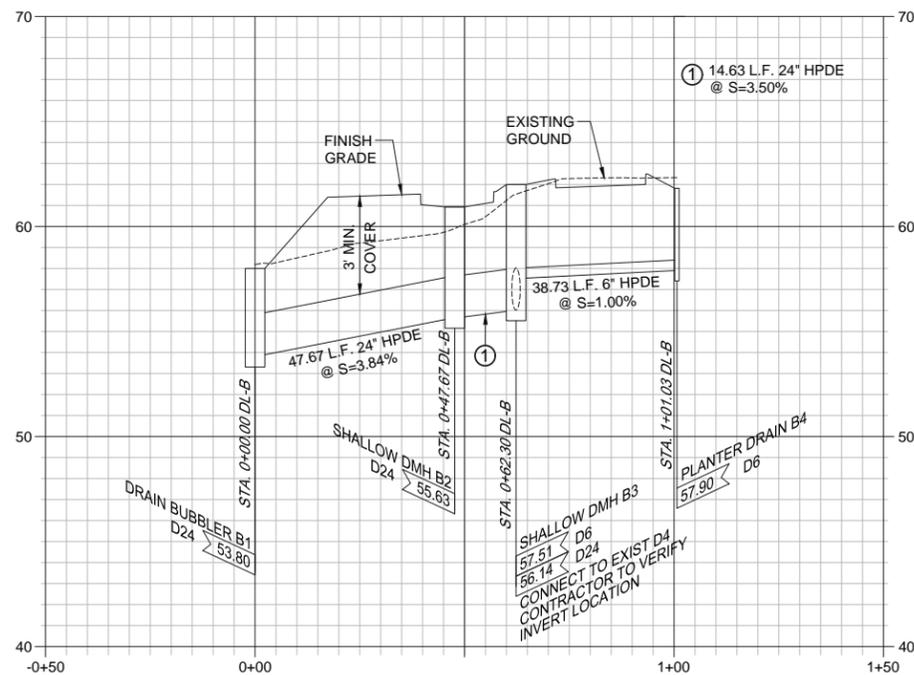
DRAIN PROFILES

C7.01

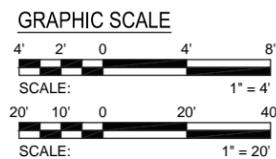
SHEET
SCALE
DATE 09-15-2023



1 DRAIN PROFILE - DL-A (PRIVATE)  
 C7.01 SCALE: 1" = 20' (H)  
 1" = 4' (V)



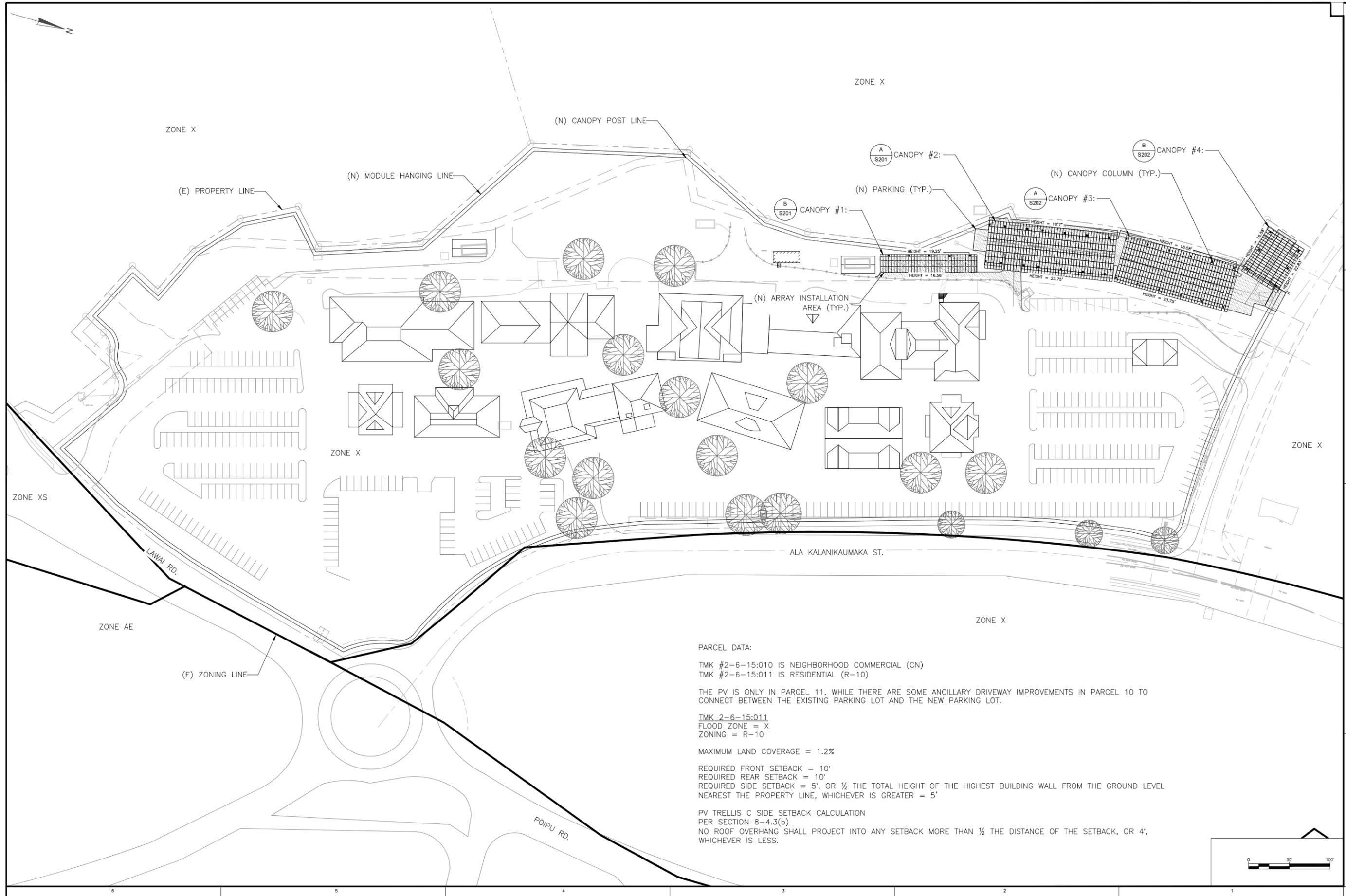
2 DRAIN PROFILE - DL-B (PRIVATE)  
 C7.01 SCALE: 1" = 20' (H)  
 1" = 4' (V)





# **Appendix D:** Structure Plans and Elevations





PARCEL DATA:

TMK #2-6-15:010 IS NEIGHBORHOOD COMMERCIAL (CN)  
 TMK #2-6-15:011 IS RESIDENTIAL (R-10)

THE PV IS ONLY IN PARCEL 11, WHILE THERE ARE SOME ANCILLARY DRIVEWAY IMPROVEMENTS IN PARCEL 10 TO CONNECT BETWEEN THE EXISTING PARKING LOT AND THE NEW PARKING LOT.

TMK 2-6-15:011  
 FLOOD ZONE = X  
 ZONING = R-10

MAXIMUM LAND COVERAGE = 1.2%

REQUIRED FRONT SETBACK = 10'  
 REQUIRED REAR SETBACK = 10'  
 REQUIRED SIDE SETBACK = 5', OR 1/2 THE TOTAL HEIGHT OF THE HIGHEST BUILDING WALL FROM THE GROUND LEVEL NEAREST THE PROPERTY LINE, WHICHEVER IS GREATER = 5'

PV TRELLIS C SIDE SETBACK CALCULATION  
 PER SECTION 8-4.3(b)  
 NO ROOF OVERHANG SHALL PROJECT INTO ANY SETBACK MORE THAN 1/2 THE DISTANCE OF THE SETBACK, OR 4', WHICHEVER IS LESS.



PROJECT TITLE:  
**THE SHOPS AT KUKUI'ULA**  
 2829 ALA KALANIKAUMAKA ST.  
 KOLOA, HI 96756  
 TMK: 2-6-015:010 , 2-6-015-011

ENGINEER'S STAMP  
 PRELIMINARY  
 NOT FOR  
 CONSTRUCTION

**Tritium3**  
 125 MERCHANT ST., SUITE 102  
 HONOLULU, HI 96813  
 JOB NUMBER: 1210

NO.	DATE	ISSUE
01	23-JAN-23	PRELIM DRAWINGS
02	02-FEB-23	UPDATED LAYOUT OPTION-2
03	05-FEB-23	UPDATED LAYOUT OPTION-2
07	22-MAR-23	UPDATED PLANS
08	14-APR-23	UPDATED PLANS
09	25-APR-23	SMA PERMIT PRELIM SET

PAPER SIZE: ARCH D  
 DRAWN BY: NATRON  
 CHECKED BY: SSH  
 APPROVED BY: JHA

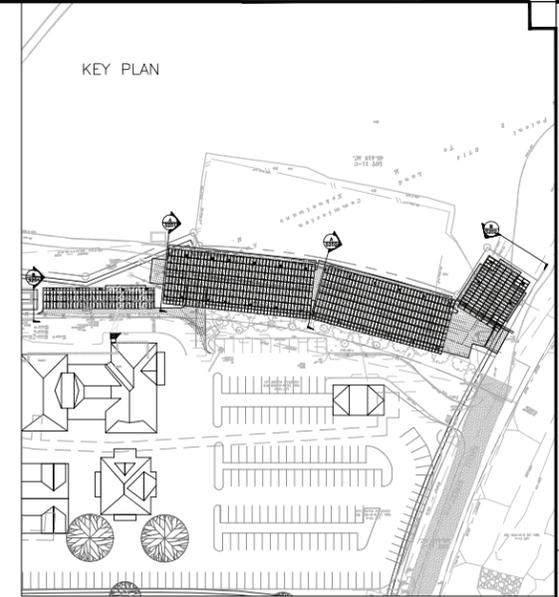
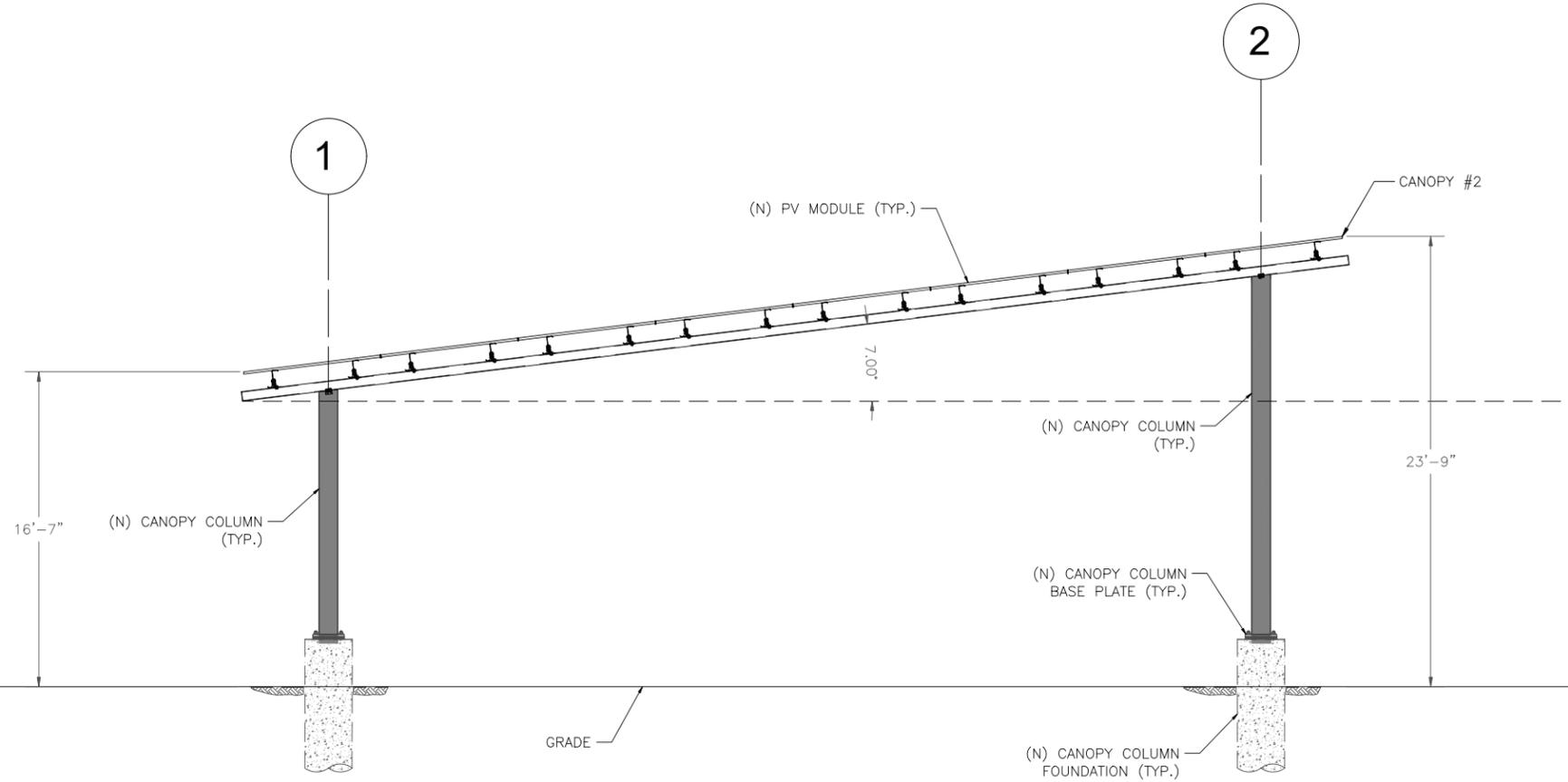
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SHEET TITLE:  
**SMA SITE PLAN**

SHEET #:  
 S100



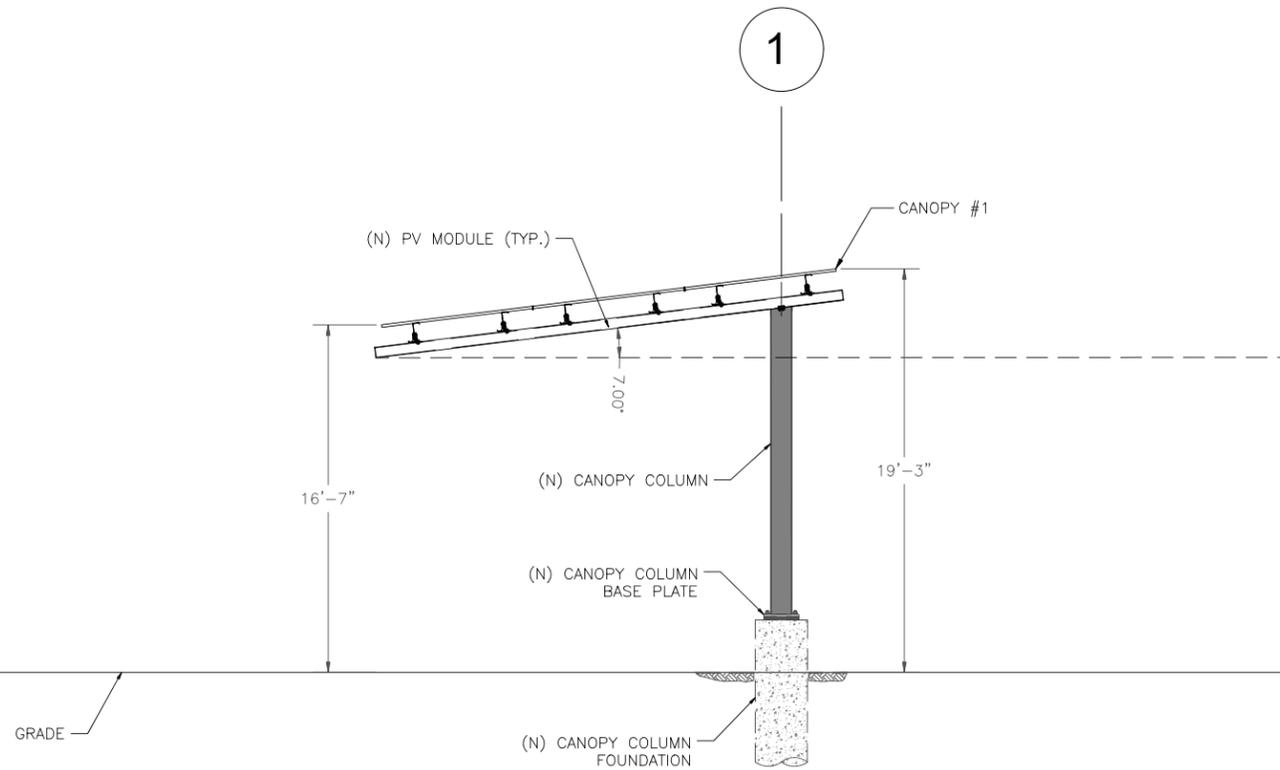
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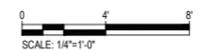
A CANOPY ELEVATION (TYP.)  
SCALE: 1/4"=1'-0"



NOTE: DIMENSIONS FOR REFERENCE ONLY, STRUCTURAL SHEETS SHALL GOVERN.



B CANOPY ELEVATION (TYP.)  
SCALE: 1/4"=1'-0"



PROJECT TITLE:  
**THE SHOPS AT KUKUI'ULA**  
2829 ALA KALANIKAUMAKA ST.  
KOLOA, HI 96756  
TMK: 2-6-015:010 , 2-6-015-011

ENGINEER'S STAMP  
**PRELIMINARY  
NOT FOR  
CONSTRUCTION**

**Tritium3**  
125 MERCHANT ST., SUITE 102  
HONOLULU, HI 96813  
JOB NUMBER: 12110

#	DATE	ISSUE
01	23-JAN-23	PRELIM DRAWINGS
02	02-FEB-23	UPDATED LAYOUT OPTION-2
03	05-FEB-23	UPDATED LAYOUT OPTION-2
07	22-MAR-23	UPDATED PLANS
08	14-APR-23	UPDATED PLANS
09	25-APR-23	SMA PERMIT PRELIM SET

PAPER SIZE: ARCH D  
DRAWN BY: NATRON  
CHECKED BY: SSH  
APPROVED BY: JHA

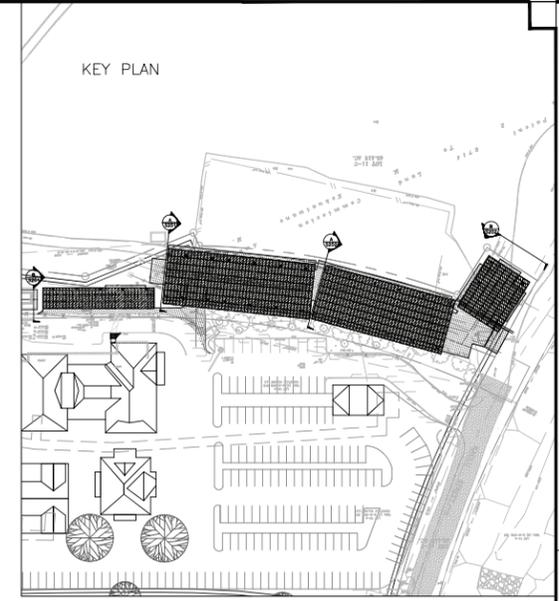
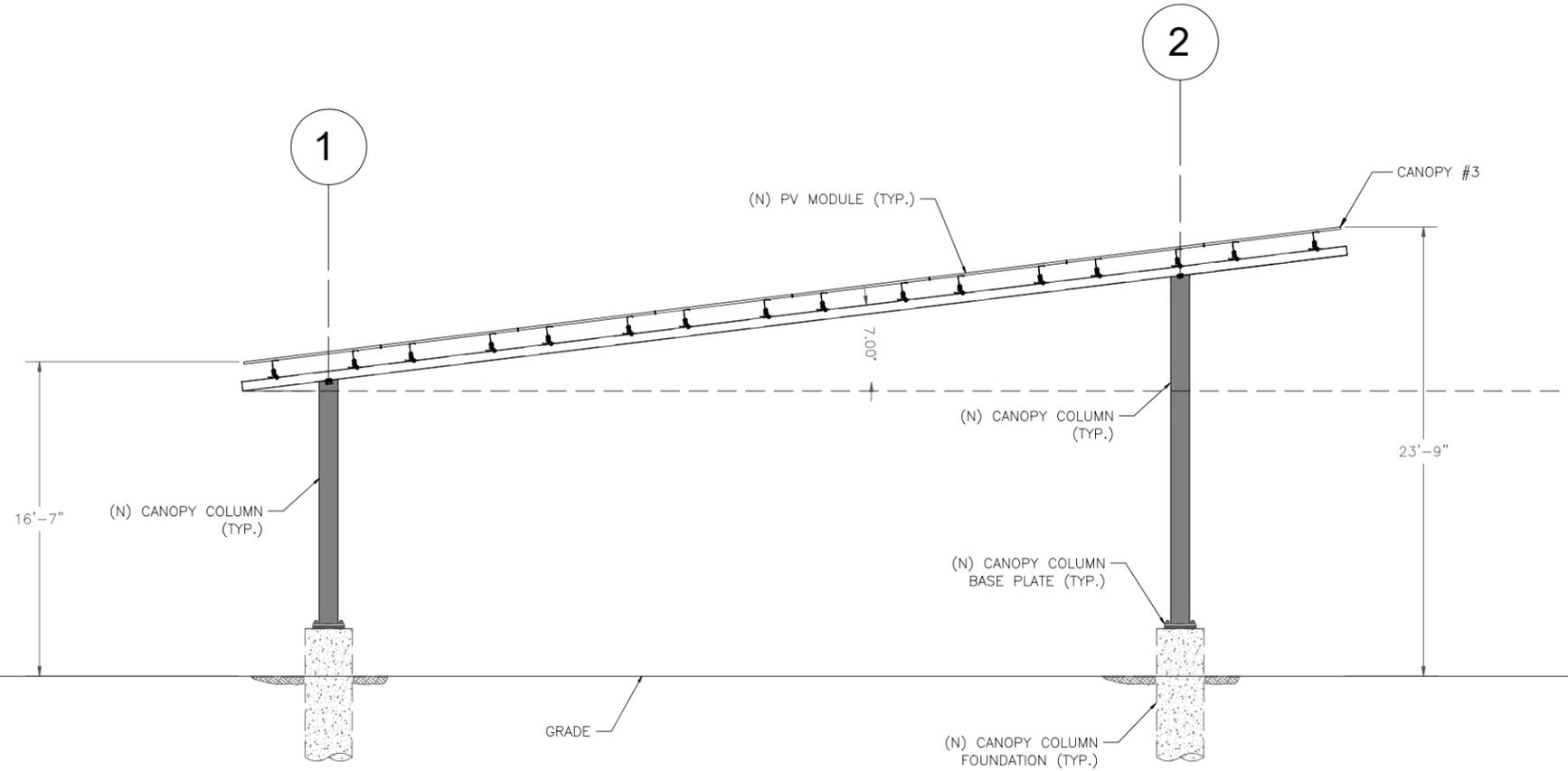
SCALE:  
1/4"=1'-0"

SHEET TITLE:  
**SMA  
PERMIT  
ELEVATIONS  
- 1**

SHEET #:  
S201



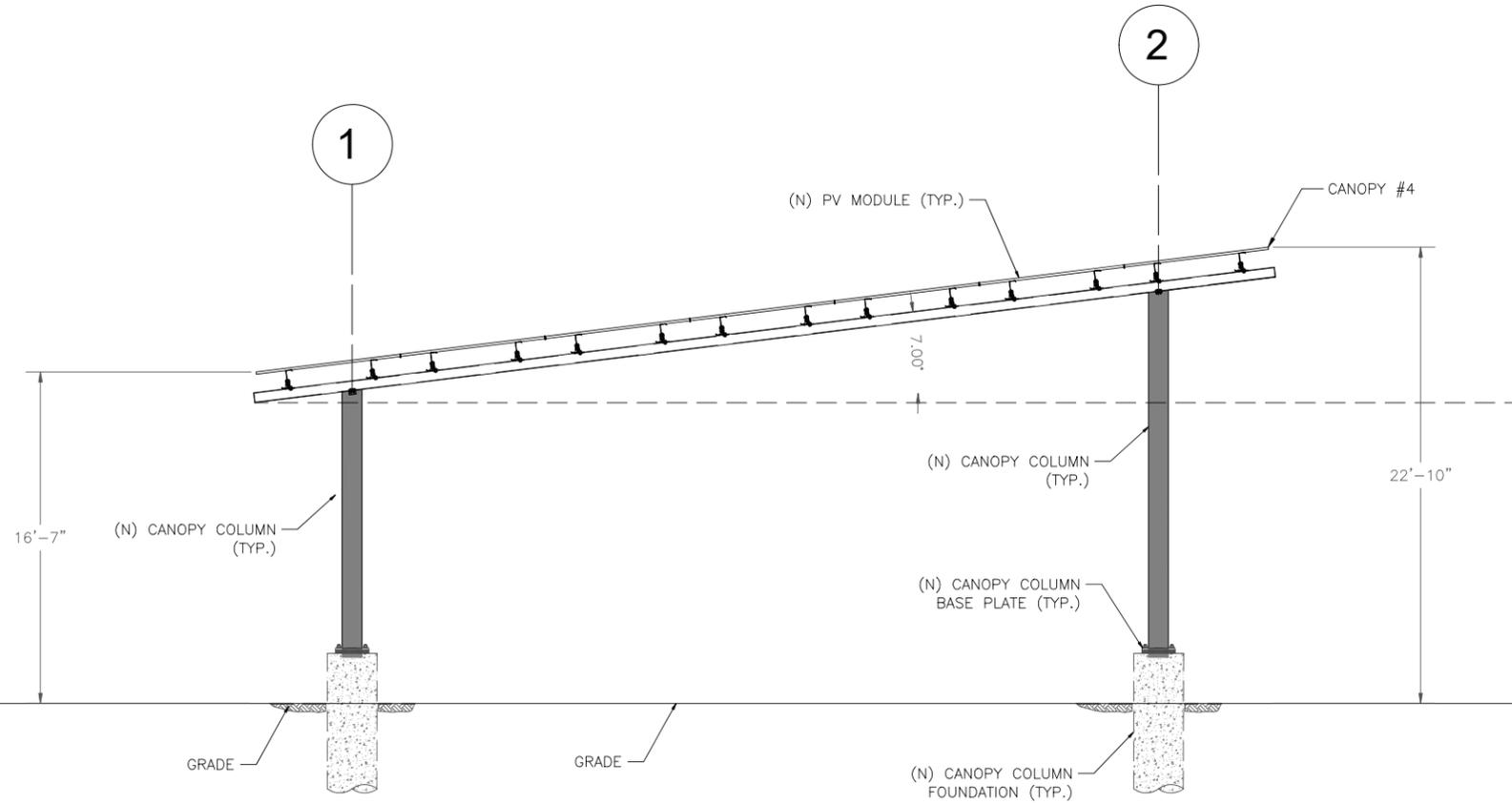
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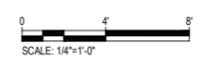
**A** CANOPY ELEVATION (TYP.)  
SCALE: 1/4"=1'-0"



NOTE: DIMENSIONS FOR REFERENCE ONLY, STRUCTURAL SHEETS SHALL GOVERN.



**B** CANOPY ELEVATION (TYP.)  
SCALE: 1/4"=1'-0"



PROJECT TITLE:  
**THE SHOPS AT KUKUI'ULA**  
2829 ALA KALANIKUMAUKA ST.  
KOLOA, HI 96756  
TMK: 2-6-015:010 , 2-6-015-011

ENGINEER'S STAMP  
**PRELIMINARY  
NOT FOR  
CONSTRUCTION**

**Tritium3**  
125 MERCHANT ST., SUITE 102  
HONOLULU, HI 96813  
JOB NUMBER: 12110

#	DATE	ISSUE
01	23-JAN-23	PRELIM DRAWINGS
02	02-FEB-23	UPDATED LAYOUT OPTION-2
03	05-FEB-23	UPDATED LAYOUT OPTION-2
07	22-MAR-23	UPDATED PLANS
08	14-APR-23	UPDATED PLANS
09	25-APR-23	SMA PERMIT PRELIM SET

PAPER SIZE: ARCH D  
DRAWN BY: NATRON  
CHECKED BY: SSH  
APPROVED BY: JHA

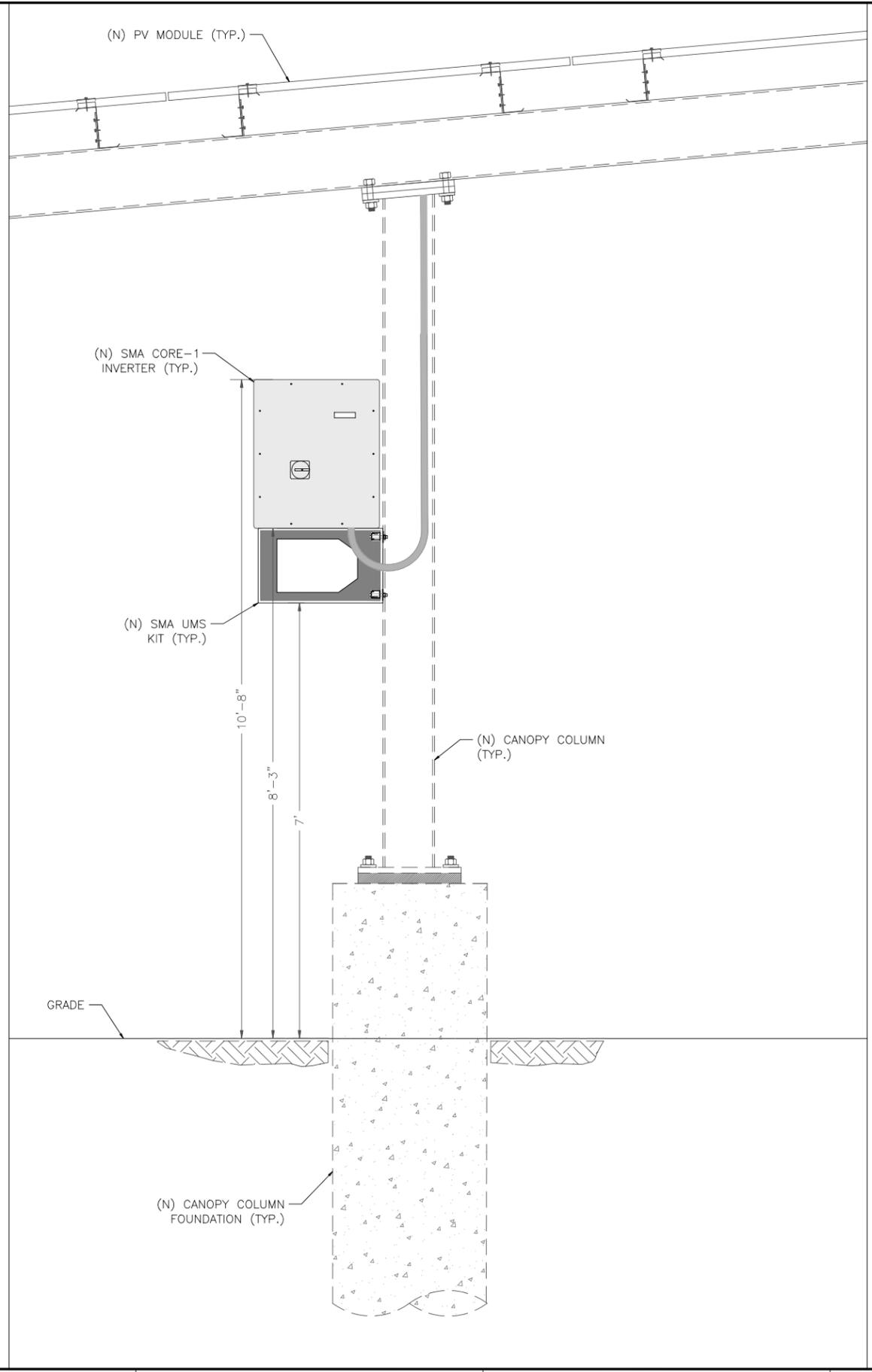
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SHEET TITLE:  
**SMA  
PERMIT  
ELEVATIONS  
-2**

SHEET #:  
S202



NOTE: DIMENSIONS FOR REFERENCE ONLY,  
STRUCTURAL SHEETS SHALL GOVERN.



**A** INVERTER MOUNTING DETAILS (TYP.)  
SCALE: NTS

PROJECT TITLE:  
THE SHOPS AT KUKUI'ULA  
2829 ALA KALANIKUMAUMAKA ST.  
KOLOA, HI 96756  
TMK: 2-6-015:010 , 2-6-015-011

ENGINEER'S STAMP  
**PRELIMINARY  
NOT FOR  
CONSTRUCTION**

**Tritium3**  
125 MERCHANT ST., SUITE 102  
HONOLULU, HI 96813  
JOB NUMBER: 12110

#	DATE	ISSUE
01	23-JAN-23	PRELIM DRAWINGS
02	02-FEB-23	UPDATED LAYOUT OPTION-2
03	05-FEB-23	UPDATED LAYOUT OPTION-2
07	22-MAR-23	UPDATED PLANS
08	14-APR-23	UPDATED PLANS
09	25-APR-23	SMA PERMIT PRELIM SET

PAPER SIZE: ARCH D  
DRAWN BY: NATRON  
CHECKED BY: SSH  
APPROVED BY: JHA

SCALE:  
NTS

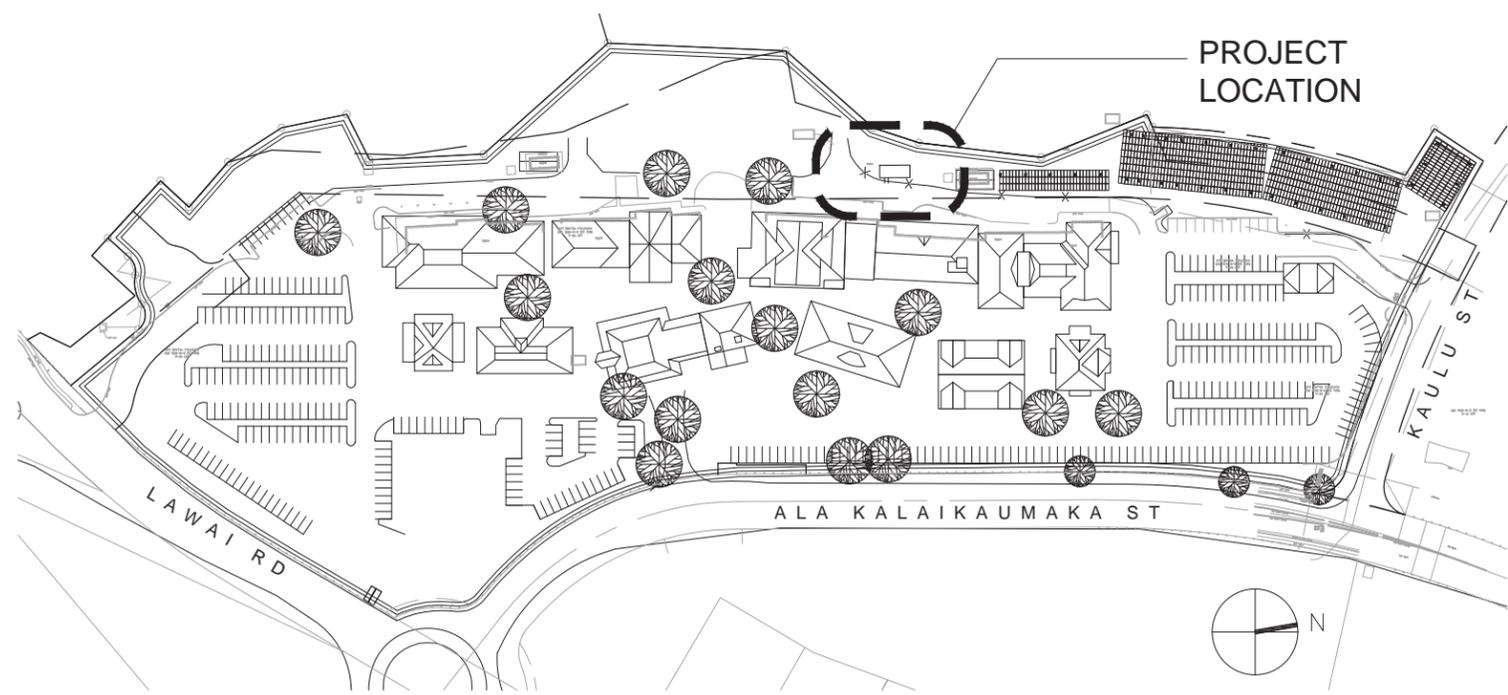
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SMA  
PERMIT  
MOUNTING  
DETAILS

SHEET #:  
S300

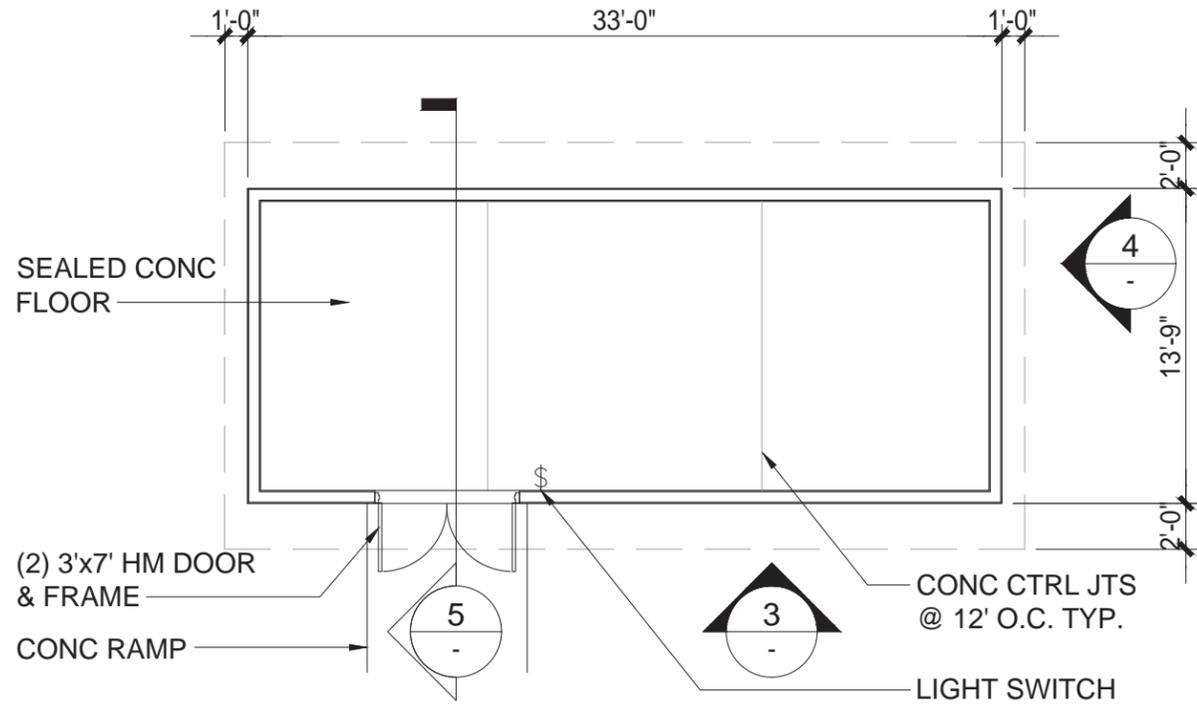




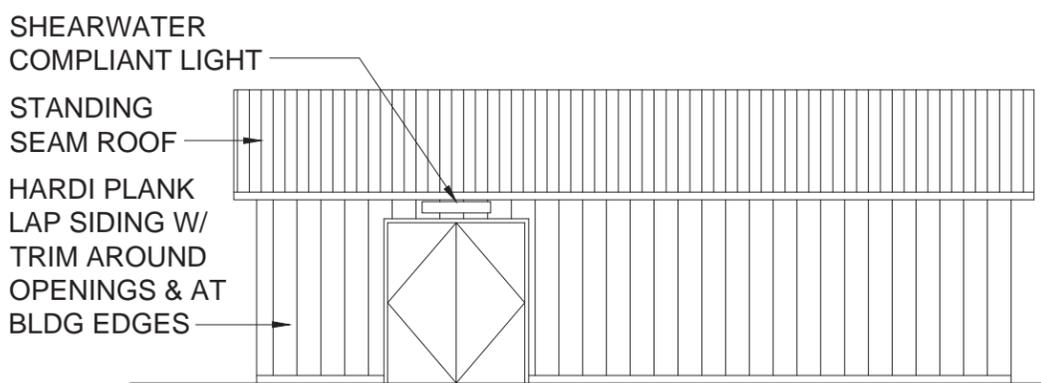
ALEXANDER & BALDWIN  
PARTNERS FOR HAWAII



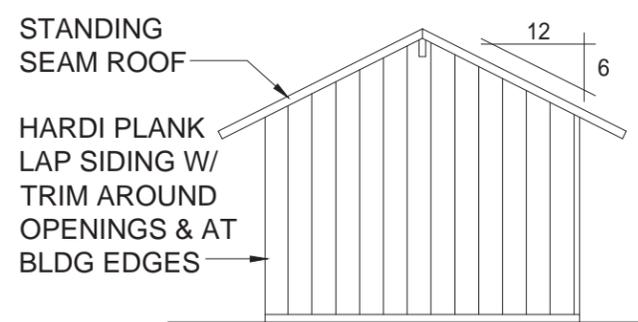
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SCALE: 1" = 200'



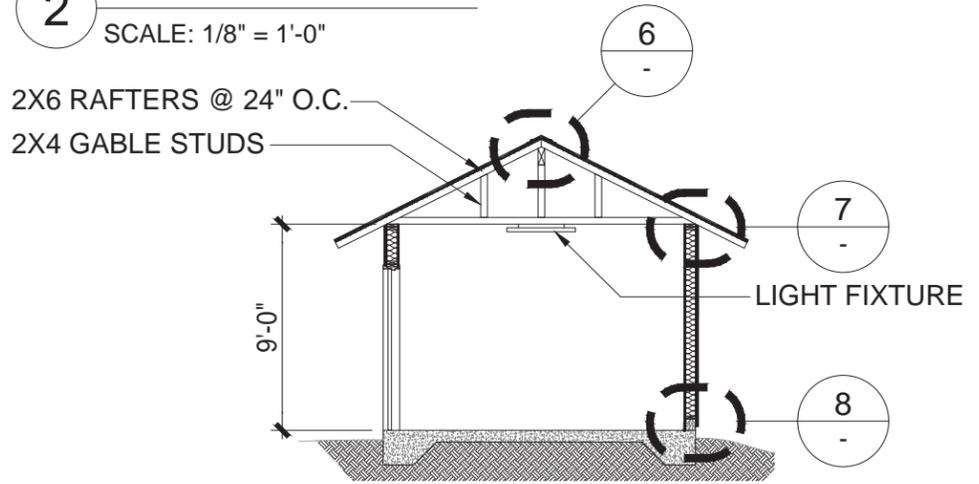
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SCALE: 1/8" = 1'-0"



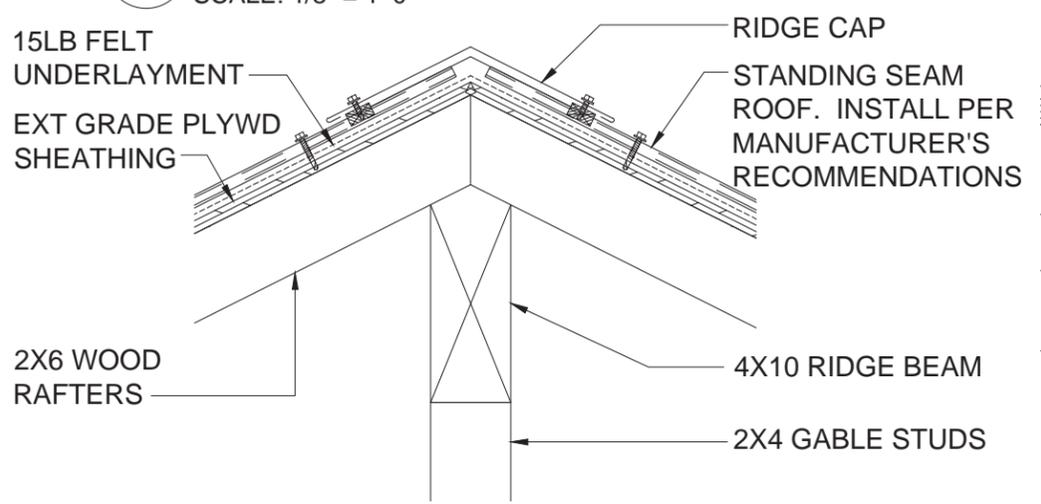
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SCALE: 1/8" = 1'-0"



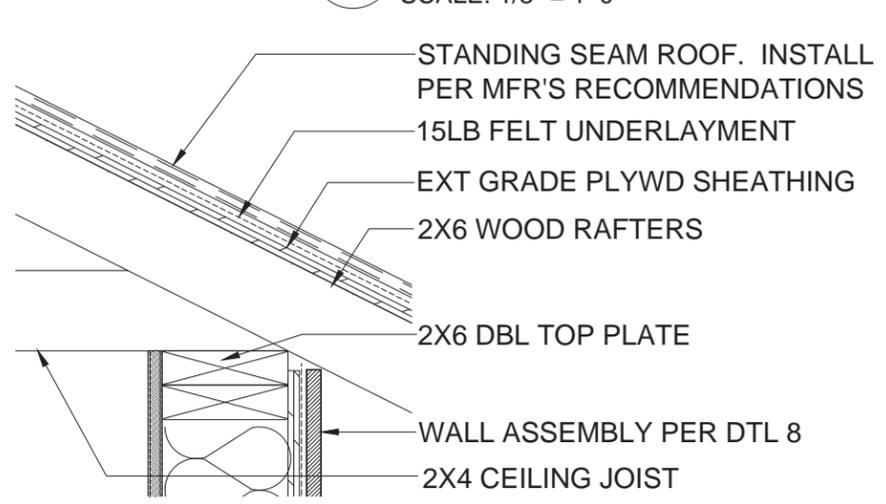
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SCALE: 1/8" = 1'-0"



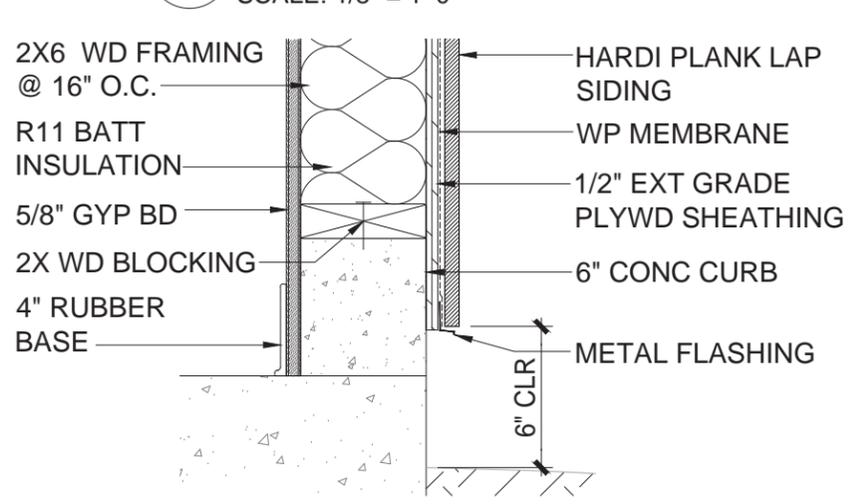
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SCALE: 1/8" = 1'-0"



**6 DETAIL**  
SCALE: 1 1/2" = 1'-0"



**7 DETAIL**  
SCALE: 1 1/2" = 1'-0"



**8 DETAIL**  
SCALE: 1 1/2" = 1'-0"

**THE SHOPS AT KUKUI'ULA**  
2829 Ala Kalanikaumaka St, Koloa, HI 96756  
TMK: (4) 2-6-015:010

SHEET TITLE:

**STORAGE SHED**

SHEET NUMBER:

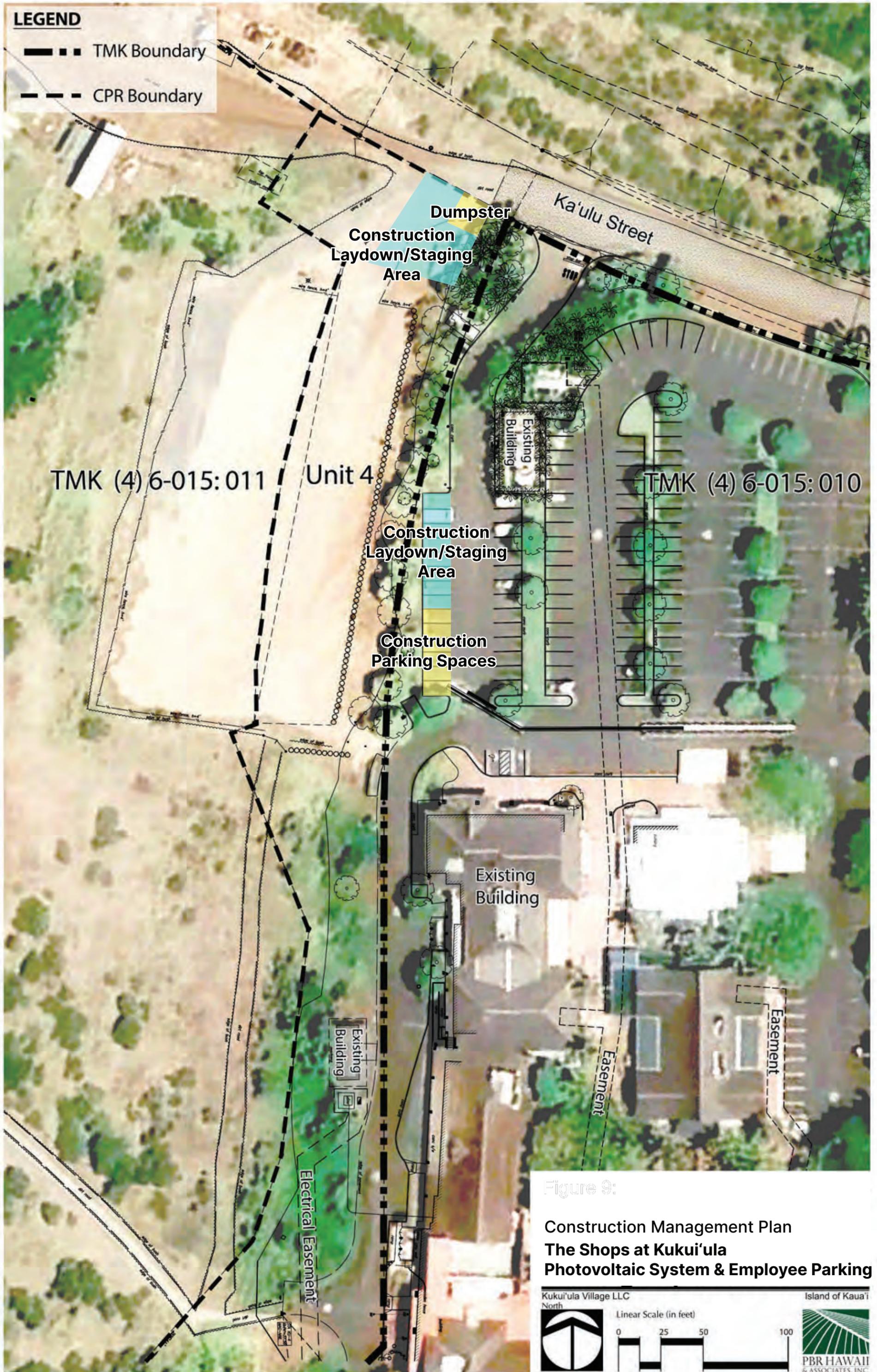
**LL-1**



# **Appendix E:**

## **Construction Management Plan**







## **Appendix F:**

Cave Survey Report for  
Kauai Cave Wolf Spider and  
Kauai Cave Amphipod





## AECOS, Inc.

◆ 45-939 Kamehameha Highway, Suite 104  
◆ Telephone: (808) 234-7770

◆ Kāneohe HI 96744  
◆ Email: [aecos@aecos.com](mailto:aecos@aecos.com)

January 2, 2024

Brady Jencks  
Alexander & Baldwin  
[bjencks@abhi.com](mailto:bjencks@abhi.com)

### **SUBJECT: Cave Survey and Report Services at The Shops at Kukui‘ula, Kaua‘i**

Dear Brady,

The purpose of this letter is to present survey results and assessment of the risk to two endangered cave species: the Kauai cave wolf spider (*Adelocosa anops*) and the Kauai cave amphipod (*Spelaeorchestia koloana*) that might result from the proposed paving of a parking lot at the The Shops at Kukui‘ula. Both the Kauai cave wolf spider or *Pe‘e pe‘e maka‘ole* and the Kauai cave amphipod are obligate cave dwellers (so-called troglobites) and unable to survive outside of the deep cave habitat or if part of that habitat is compromised by creating openings to the above ground environment. As endangered species, both are protected by federal law. The spider is notable for a lack of eyes and is known only from lava tubes in the Koloa area of southern Kaua‘i; the amphipod also lacks eye facets and occurs in some of the same caves as the cave spider on Kaua‘i. The project site, at its closest point, is 725 ft (220 m) east of “Unit 3” of federally designated Critical Habitat for these two invertebrates.

On February 1, 2024, AECOS conducted a field survey of the proposed parking lot expansion immediately west of the existing north parking lot at The Shops at Kukui‘ula. We undertook a pedestrian survey of an existing, unpaved parking area, the margins of the graded lot area, and an extension south (including a vehicle track through dense grass) to the resort walking path. This effort produced no signs of depressions or openings in the ground indicative of larger voids beneath the survey area. The existing parking lot is graded flat and covered by a layer of crushed limestone rock (see Figure 1). The margins of this lot are vegetated in herbaceous, mostly weedy species with scattered trees (*koa haole* on the north and west; planted ornamentals on the east in a narrow strip between the project area and a paved parking lot for Kukui‘ula Shopping Center. To the south, Guinea grass predominates along a vehicle track, as it does beyond our survey area on the west, and beyond a construction access road on the north.

No practical way exists to determine whether voids are present beneath the proposed site to be paved other than observing surface connections to an underground cave feature. No surface openings were detected in our survey. Concern then, is that the proposed project

will result in creating openings to undetected or unknown lava tube habitat (the listed troglobites may inhabit very small voids in the lava, voids connected to caves at greater depth or beyond the project area). The area has been previously surveyed for biological resources by a number of investigators prior to the construction of the shopping center and appurtenances associated with it. The survey area is currently being used for employee parking and has been previously bulldozed and graded using heavy equipment. During that early phase of construction of the shopping center no subterranean voids were broken into (AECOS biologist, Reginald David, pers. comm.; Mr. David and myself were biological monitors of the site preparations using heavy equipment). Presently a portion of the gravel-covered lot is regularly used for 40-cu yard roll-off dumpsters and traversed by dumpster delivery trucks (empty and fully loaded; Figure 2). Because this site is already prepared, the addition of paving will not entail equipment heavier than that which has regularly traversed this ground.

However, if during construction for this project a void is created, several steps must be taken immediately to minimize to the maximum extent possible harm occurring to the listed species or their habitat. Realize that any obvious void or depression may be indicative of a larger void at depth. Therefore, the following actions must be implemented:

- Cease all work in the immediate area.
- Cover the hole with Geotextile cloth.
- Cover the Geotextile cloth with 1/2-inch plywood.
- Cover the plywood with another layer of Geotextile cloth.
- Cover the entire “bandage” with soil to ensure that no further debris, or dry, oxygen-rich air gets into the void (both dry surface air and loose soil can be harmful to the cave habitat).
- Call the State of Hawaii Office of Historical Preservation and notify them of the breakthrough (caves may contain ancient artifacts) .
- Call AECOS, Inc. biologists.

A team will visit the breakthrough to determine if there are historical artifacts in the void and to assess the likelihood that the void was/is suitable habitat for the arthropods of concern. The construction contractor must follow the combined recommendations of the archaeology/biology team assessments before any work can continue in the vicinity of the new opening.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Guinther', written in a cursive style.

Eric Guinther, ecologist  
AECOS Inc.

**Figure 1. Area proposed for paving.**



**Figure 2. Current use of a part of the graded area.**





**Appendix G:**  
Ka Pa'akai Analysis Memorandum

## MEMORANDUM

**To:** Kaaina Hull, Planning Director, County of Kauai  
**Fr:** Trisha Kehaulani Watson, J.D., Ph.D.  
Honua Consulting, LLC  
**Re:** *Ka Pa'akai* Analysis Memo  
**Date:** Feburary 2024 (revised and updated May 2024)

---

### Executive Summary

Kukui'ula Village LLC is proposing to install an employee parking lot with solar panels on CPR lot 4 (Unit 4), which is a portion of TMK 2-6-015: 010, 011 and adjacent to TMK (4) 2-6-015:010, which parcel where the existing The Shops at Kukui'ula shopping center is built. The project area is current a previously disturbed gravel parking lot. The project area includes a portion of tax map key (TMK) (4) 2-6-015:011 [CPR lot 4 (Unit 4)]. This TMK is located in the 'ili 'āina of Lawa'i and Kamalaula, both in the ahupua'a of Koloa, within the moku (district) of Kona, on the Island (mokupuni) of Kaua'i.

A full *Ka Pa'akai* analysis was completed for this parcel. There were no cultural resources (archaeological resources) identified in the discrete project area where the parking lot is located and where the solar panels are to be installed. The area is currently utilized as an active parking lot, primarily for overflow parking, and has previously been subject to an archaeological survey. There were no historic resources identified on this parcel during this comprehensive archaeological survey.

The parking lot parcel has been previously disturbed and graded. Based on extensive research, presented herein and conducted as part of the preparation of this memo, and consultation with area practitioners, there were also no traditional or customary practices identified within the boundaries discrete project area, although research and practitioners identified practices in the surrounding area. Best management practices should be implemented to ensure that no unanticipated affects to cultural resources occur to resources or practices that may take place in the surroudning areas and that there is a mechanism in place for practitioners to report any such potential occurrences to the project.

It is appropriate to note that the parcel is currently part of a larger area TMK inclusive of surrounding parcels. A *Ka Pa'akai* analysis for the larger TMK is pending, but it has not yet been started. As noted above, the larger Koloa area continues to enjoy cultural resources and practices, although development in the region has had a cumulative adverse and indirect impact on these resources and activities. Therefore, while this discrete project is unlikely to impact cultural resources or customary practices, additional analysis of the larger parcel and

future entitlements under *Ka Pa‘akai* for potential impacts, including, specifically, potential cumulative and/or indirect impacts is appropriate and may result in a different finding based on that analysis and future consultation with area practitioners.

# Ka Pa'akai Analysis Memo

## 1.0 Proposed Action

Alexander and Baldwin is proposing to install an employee parking lot with solar panels on their existing shopping center parcel. The project area is current a previously disturbed gravel parking lot.

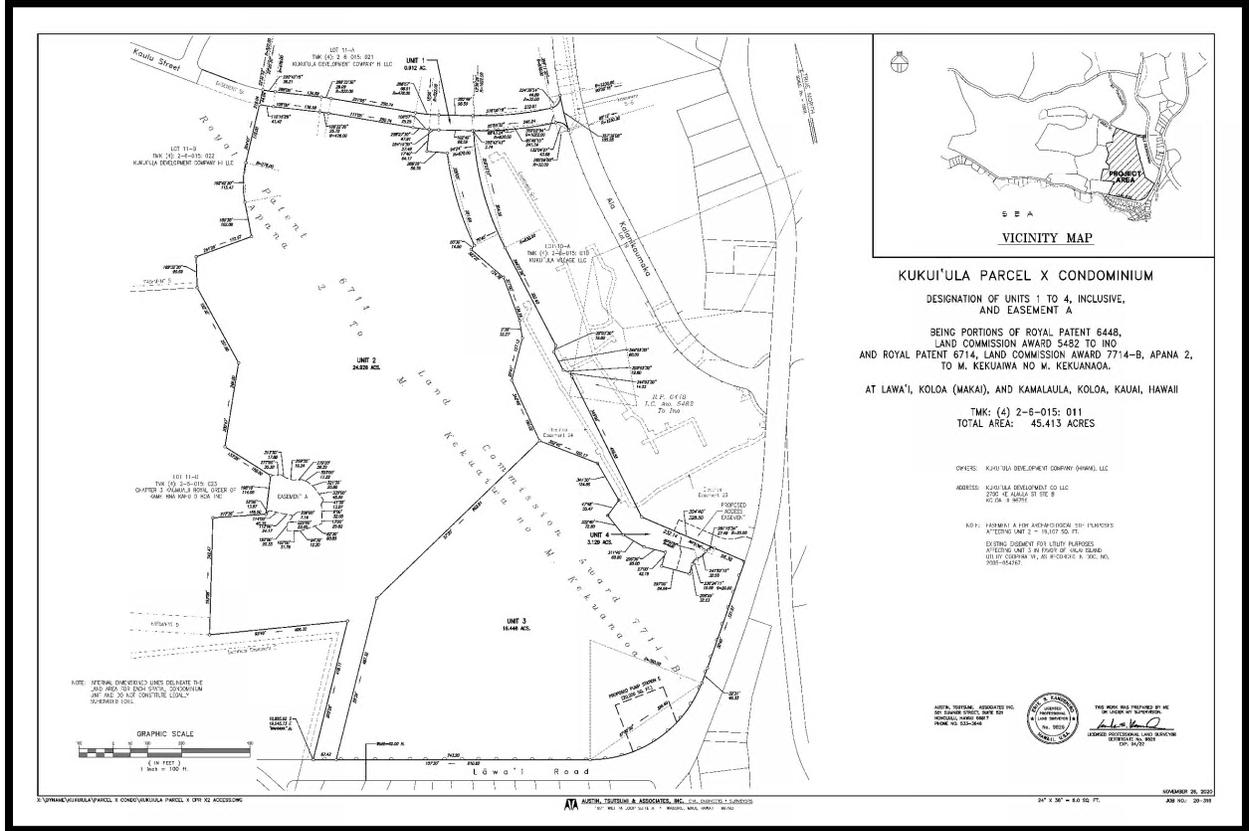


Figure 1. Project Site Location

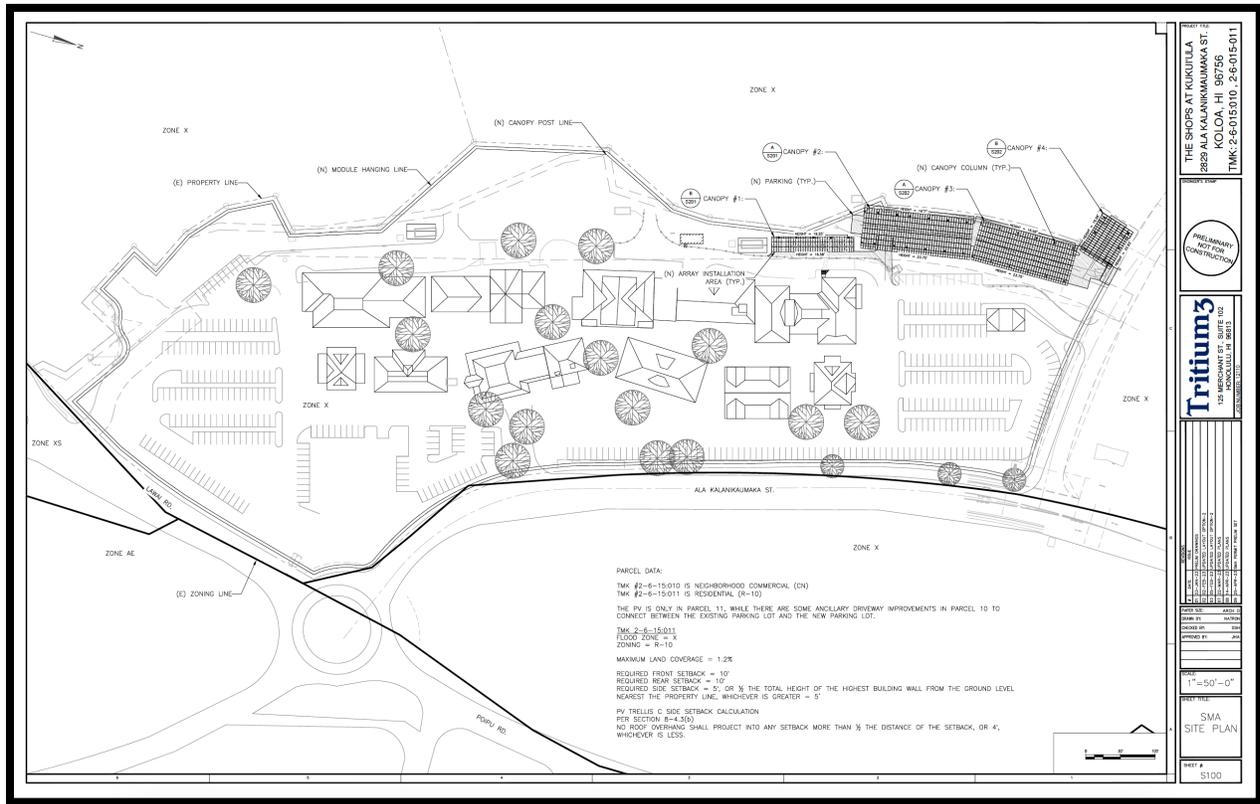


Figure 2. Project Site Location

## 2.0 Background and Compliance Standards

The State and its agencies have an obligation to preserve and protect Native Hawaiians' customarily and traditionally exercised rights to the extent feasible.<sup>1</sup> State law further recognizes that the cultural landscapes provide living and valuable cultural resources where Native Hawaiians have and continue to exercise traditional and customary practices, including hunting, fishing, gathering, and religious practices. In *Ka Pa'akai*, the Hawai'i Supreme Court provided government agencies an analytical framework to ensure the protection and preservation of traditional and customary Native Hawaiian rights while reasonably accommodating competing private development interests. This is accomplished through:

- 1) The identification of valued cultural, historical, or natural resources in the project area, including the extent to which traditional and customary Native Hawaiian rights are exercised in the project 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

<sup>1</sup> Article XII, Section 7 of the Hawai'i State Constitution, *Ka Pa'akai O Ka 'Āina v. Land Use Commission*, 94 Haw. 31 [2000](*Ka Pa'akai*), Act 50 HSL 2000.

- 3) The feasible action, if any, to be taken to reasonably protect Native Hawaiian rights if they are found to exist.

The appropriate information concerning Koloa ahupua‘a was collected, focusing on areas near or adjacent to the project area.

### 3.0 Methodology

The approach to developing the ethnographic survey and *Ka Pa‘akai* analysis is as follows:

- 1) Gather Best Information Available
  - a) Gather historic cultural information from stories and other oral histories about the affected area to provide cultural foundation for the report;
  - b) Inventory as much information as can be identified about as many known cultural, historic, and natural resources, including previous archaeological inventory surveys, CIAs, etc. that may have been completed for the possible range of areas; and
  - c) Update the information with interviews with cultural or lineal descendants or other knowledgeable cultural practitioners.
- 2) Identify Potential Impacts to Cultural Resources
- 3) Develop Reasonable Mitigation Measures to Reduce Potential Impacts
  - a) Involve the community and cultural experts in developing culturally appropriate mitigation measures; and
  - b) Develop specific Best Management Practices (BMPs), if any are required, for conducting the project in a culturally appropriate and/or sensitive manner as to mitigation and/or reduce any impacts to cultural practices and/or resources.

While numerous studies have been conducted on this area, few have utilized Hawaiian language resources and Hawaiian knowledge. This appears to have impacted modern understanding of this location, as many of the relevant documents are native testimonies given by Kanaka Hawai‘i (Hawaiians) who lived on this land.

While hundreds of place names and primary source historical accounts (from both Hawaiian and English language narratives) are cited on the following pages, it is impossible to tell the whole story of these lands in any given manuscript. A range of history, spanning the generations, has been covered. Importantly, the resources herein are a means of connecting people with the history of their communities—that they are part of that history. Knowledge of place will, in turn, promote appreciation for place and encourage acts of stewardship for the valued resources that we pass on to the future.

OEQC (now ERP) provides guidance on properly scoping the range of cultural practices. In their guidance documentation, they explain:

In scoping the cultural portion of an environmental assessment, the geographical extent of the inquiry should, in most instances, be greater than the area over which the proposed action will take place. This is to ensure that cultural practices which may not occur within the boundaries of the project area, but which may nonetheless be affected, are included in the assessment. Thus, for example, a proposed action that may not physically alter gathering practices but may affect access to gathering areas would be included in the assessment. An ahupua'a is usually the appropriate geographical unit to begin an assessment of cultural impacts of a proposed action, particularly if it includes all of the types of cultural practices associated with the project area. In some cases, cultural practices are likely to extend beyond the ahupua'a and the geographical extent of the study area should take into account those cultural practices (OEQC 2012: 11).

Background research for the literature review was conducted using materials obtained from the State Historic Preservation Division (SHPD) library in Kapolei and the Honua Consulting LLC. report library. On-line materials consulted included the Ulukau Electronic Hawaiian Database ([www.ulukau.com](http://www.ulukau.com)), Papakilo Database ([www.papakilodatabase.com](http://www.papakilodatabase.com)), the State Library on-line (<http://www.librarieshawaii.org/Serials/databases.html>), and Waihona 'Āina Māhele database (<http://www.waihona.com>). Hawaiian terms and place names were translated using the on-line Hawaiian dictionaries (Nā Puke Wehewehe 'Ōlelo Hawai'i) ([www.wehewehe.com](http://www.wehewehe.com)), *Place Names of Hawai'i* (Pukui et al. 1974), and *Hawai'i Place Names* (Clark 2002). Historic maps were obtained from the State Archives, State of Hawai'i Land Survey Division website (<http://ags.hawaii.gov/survey/map-search/>), UH-Mānoa Maps, Aerial Photographs, and GIS (MAGIS) website (<http://guides.library.manoa.hawaii.edu/magis>). Maps were geo-referenced for this report using ArcGIS 10.3. GIS is not 100% precise and historic maps were created with inherent flaws; therefore, geo-referenced maps should be understood to have some built-in inaccuracy.

While conducting the research, primary references included, but were not limited to: land use records, including the Hawaiian L.C.A. records from the Māhele 'Āina (Land Division) of 1848; the Boundary Commission Testimonies and Survey records of the Kingdom and Territory of Hawai'i; and historical texts authored or compiled by: David Malo (1987); Samuel M. Kamakau (1964, 1991, 1992); records of the American Board of Commissioners of Foreign Missions (A.B.C.F.M.) (1820–1860); Charles Wilkes (1845); Alexander & Preston (1892–1894); Abraham Fornander (1916–1919); and many other native and foreign writers. The study also includes several native accounts from Hawaiian language newspapers (primarily

compiled and translated from Hawaiian to English by K. Maly), and historical records authored by nineteenth century visitors, and residents of the region.

Historical and archival resources were located in the collections of the Hawai‘i State Archives, Survey Division, Land Management Division, Survey Division, and Bureau of Conveyances; the Bishop Museum Library and Archives; the Hawaiian Historical Society and the Hawaiian Mission Children’s Society Library; University of Hawai‘i-Hilo Mo‘okini Library; the National Archives and Records Administration (NARA), Maryland; the Library of Congress, Washington D.C.; the National Oceanic and Atmospheric Administration National Library, Maryland; the Smithsonian Institution Natural History and National Anthropological Archives libraries, Washington, D.C.; the Houghton Library at Harvard; the United States Geological Survey (USGS) Library, Denver; the Paniolo Preservation Society and Parker Ranch collections; private family collections; and in the collection of Kumu Pono Associates LLC. This information is generally cited in categories by chronological order of the period depicted in the narratives.

M. P. Nogelmeier (2010) discusses the adverse impacts of methodology that fails to properly research and consider Hawaiian language resources. He strongly cautions against a mono-rhetorical approach that marginalizes important native voices and evidence from consideration, specifically in the field of archaeology. For this reason, Honua Consulting consciously employs a poly-rhetorical approach, whereby all data, regardless of language, is researched and considered. To fail to access these millions of pages of information within the Hawaiian language cache could arguably be a violation of Act 50, as such an approach would fundamentally fail to gather the best information available, especially considering the voluminous amounts of historical accounts available for native tenants in the Hawaiian language.

Hawaiian culture views natural and cultural resources as largely being one and the same: without the resources provided by nature, cultural resources could and would not be procured. From a Hawaiian perspective, all natural and cultural resources are interrelated, and all natural and cultural resources are culturally significant. Kepā Maly (2001), ethnographer and Hawaiian language scholar, points out, “In any culturally sensitive discussion on land use in Hawai‘i, one must understand that Hawaiian culture evolved in close partnership with its natural environment. Thus, Hawaiian culture does not have a clear dividing line of where culture ends and nature begins” (Maly 2001:1). As a leading researcher and scholars on Hawaiian culture, Maly, along with his wife, Onaona, have conducted numerous ground-breaking studies on cultural histories throughout Hawai‘i. A substantial part of the archival research utilized in this study was previously compiled and published by Kepā and Onaona Maly, who have granted their permission to use this important work and are identified properly as associated authors and researchers to this study.

This study also specifically looks to identify intangible resources. Tangible and intangible heritage are inextricably linked (Bouchenaki 2003). Intangible cultural resources, also identified as intangible cultural heritage (ICH), are critical to the perpetuation of cultures globally. International and human rights law professor Federico Lenzerini notes that, “At present, we are aware on a daily basis of the definitive loss—throughout the world—of language, knowledge, knowhow, customs, and ideas, leading to the progressive impoverishment of human society” (Lenzerini 2011:12). He goes on to warn that:

[t]he rich cultural variety of humanity is progressively and dangerously tending towards uniformity. In cultural terms, uniformity means not only loss of cultural heritage—conceived as the totality of perceptible manifestations of the different human groups and communities that are exteriorized and put at the others’ disposal—but also standardization of the different peoples of the world and of their social and cultural identity into a few stereotyped ways of life, of thinking, and of perceiving the world. Diversity of cultures reflects diversity of peoples; this is particularly linked to ICH, because such a heritage represents the living expression of the idiosyncratic traits of the different communities. Preservation of cultural diversity, as emphasized by Article 1 of the UNESCO Universal Declaration on Cultural Diversity, ‘is embodied in the uniqueness and plurality of the identities of the groups and societies making up humankind’. Being a ‘source of exchange, innovation and creativity’, cultural diversity is vital to humanity and is inextricably linked to the safeguarding of ICH. Mutual recognition and respect for cultural diversity—and, *a fortiori*, appropriate safeguarding of the ICH of the diverse peoples making up the world—is essential for promoting harmony in intercultural relations, through fostering better appreciation and understanding of the differences between human communities. (Lenzarini 2011:103)

Therefore, tradition and practice, as elements of Hawaiian ICH, are essential to the protection of Hawaiian rights and the perpetuation of the Hawaiian culture.

### 3.1 Identifying Traditional or Customary Practices

It is within this context that traditional or customary practices are studied. The concept of traditional or customary practices can often be a challenging one for people to grasp. Traditional or customary practices can be defined as follows:

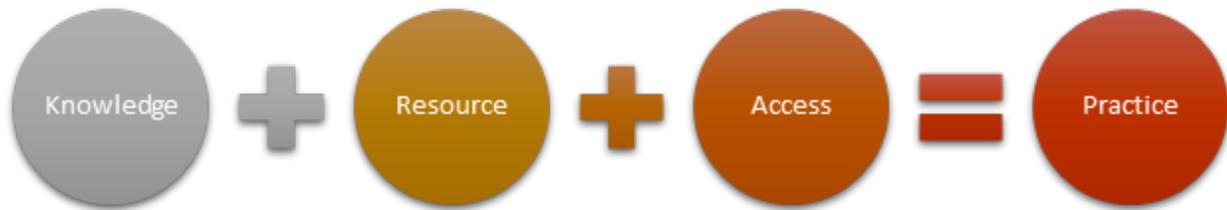


Figure 3. Diagram of elements that contribute to traditional or customary practices (Honua Consulting)

The first element is knowledge. This has been referred to as traditional ecological knowledge (TEK), Indigenous local knowledge (ILK), or ethnoscience. In the context of this study, it is the information, data, knowledge, or expertise Native Hawaiians or local communities possessed or possess about an area's environment. In a traditional context, this would have included information Hawaiians possessed in order to have the skills to utilize the area's resources for a range of purposes, including, but not limited to, travel, food, worship or habitation. This element is largely intangible.

The second element are the resources themselves. These are primarily tangible resources, either archaeological resources (i.e., habitation structures, walls, etc.) or natural resources (i.e., plants, animals, etc.). These can also be places, such as a sacred or culturally important sites or wahi pana. Sometimes these wahi pana are general locations, this does not diminish their importance or value. Nonetheless, it is important to recognize that potential eligibility as a "historic site" on the National Register of Historic Places (NRHP) would require identifiable boundaries of a site.

The third element is access. The first two elements alone are not enough to allow for traditional or customary practices to take place. The practitioners must have access to the resource in order to be able to practice their traditional customs. Access does not just mean the ability to physically access a location, but it also means access to resources. For example, if a particular plant is used for medicinal purposes, there needs to be a sufficient amount of that plant available to practitioners for use. Therefore, an action that would adversely impact the population of a particular plant with cultural properties would impact practitioners' ability to access that plant. By extension, it would adversely impact the traditional or customary practice.

Traditional or customary practices are, therefore, the combination of knowledge(s), resource(s) and access. Each of these individual elements should be researched and identified in assessing any potential practices or impacts to said practices.

### 3.2 Traditional Knowledge, or Ethnoscience, and the Identification of Cultural Resources

The concept of ethnoscience was first established in the 1960s and has been defined “the field of inquiry concerned with the identification of the conceptual schemata that indigenous peoples use to organize their experience of the environment” (Roth 2019). Ethnoscience includes a wide range of subfields, includes, but is not limited to, ethnoecology, ethnobotany, ethnozoology, ethnoclimatology, ethnomedicine and ethnopedology. All of these fields are important to properly identify traditional knowledge within a certain area.

Traditional Native Hawaiian practitioners were scientists and expert natural resource managers by necessity. Without modern technological conveniences to rely on, Hawaiians developed and maintained prosperous and symbiotic relationships with their natural environment for thousands of years. Their environments were their families, their homes, and their laboratories. They knew the names of every wind and every rain. The elements taught and inspired. The ability of Indigenous people to combine spirituality and science led to the formation of unique land-based mythologies that spurred unsurpassed innovation. Therefore, identifying significant places requires a baseline understanding of what made places significant for Hawaiians.

Hawaiians were both settlers and explorers. In *Plants in Hawaiian Culture*, B. Krauss explains: “Exploration of the forests revealed trees, the timber of which was valuable for building houses and making canoes. The forests also yielded plants that could be used for making and dying tapa, for medicine, and for a variety of other artifacts” (Krauss 1993). Analysis of native plants and resource management practices reveals the depth to which Hawaiians excelled in their environmental science practices:

[Hawaiians] demonstrated great ability in systematic differentiation, identification, and naming of the plants they cultivated and gathered for use. Their knowledge of the gross morphology of plants, their habits of growth, and the requirements for greatest yields is not excelled by expert agriculturists of more complicated cultures. They worked out the procedures of cultivation for every locality, for all altitudes, for different weather conditions and exposures, and for soils of all types. In their close observations of the plants they grew, they noted and selected mutants (spores) and natural hybrids, and so created varieties of the plants they already had. Thus over the years after their arrival in the Islands, the Hawaiians added hundreds of named varieties of taro, sweet potatoes, sugarcane, and other cultivated plants to those they had brought with them from the central Pacific (Krauss 1993).

Thus, Native Hawaiians reinforced the biodiversity that continues to exist in Hawai‘i today through their customary traditional natural resource management practices.

The present analyses of archival documents, oral traditions (oli or chants, mele or songs, and/or hula dances and ha‘i mo‘olelo or storytelling performances), and Hawaiian language

sources including books, manuscripts, and newspaper articles, are focused on identifying recorded cultural resources present on the landscape, including: Hawaiian and non-Hawaiian place names; landscape features (ridges, gulches, cinder cones); archaeological features (kuleana parcel walls, house platforms, shrines, heiau [places of worship], etc.); culturally significant areas (viewsheds, unmodified areas where gathering practices and/or rituals were performed); and significant biological, physiological, or natural resources. This research also looks to document the wide range of Hawaiian science that existed within the geographic extent.

### 3.3 Mo‘olelo ‘Āina: Native Traditions of the Land

Among the most significant sources of native mo‘olelo are the Hawaiian language newspapers which were printed between 1838 and 1948, and the early writings of foreign visitors and residents. Most of the accounts that were submitted to the papers were penned by native residents of areas being described and noted native historians. Over the last 30 years, Kepā Maly has reviewed and compiled an extensive index of articles published in the Hawaiian language newspapers, with particular emphasis on those narratives pertaining to lands, customs, and traditions. Many traditions naming places around Hawai‘i are found in these early writings. Many of these accounts describe native practices, the nature of land use at specific locations, and native mo‘olelo (history, narrative, story). Thus, these resources are a means of understanding how people related to their environment and sustained themselves on the land.

### 3.4 Historic Maps

There are also numerous, informative historic maps for the region. Surveyors of the eighteenth and nineteenth centuries were skilled in traversing land areas and capturing important features and resources throughout Hawaii’s rich islands. Historic maps were carefully studied, and the features detailed therein were aggregated and categorized to help identify specific places, names, features, and resources throughout the study area. From these, among other documents, new maps were created that more thoroughly capture the range of resources in the area.

### 3.5 Consultation

Information from lineal and cultural descendants is instrumental in procuring information about the project area’s transformation over time and its changing uses. The present analyses of archival documents, oral traditions (including oli or chants, mele or songs), and/or hula dance), and Hawaiian language sources including books, manuscripts, and newspaper articles, are focused on identifying recorded cultural and archaeological resources present on

the landscape, including: Hawaiian and non-Hawaiian place names; landscape features (ridges, gulches, cinder cones); archaeological features (kuleana parcel walls, house platforms, shrines, heiau or places of worship, etc.); culturally significant areas (viewsheds, unmodified areas where gathering practices and/or rituals were performed); and significant biocultural resources. Additionally, consultation was done with area practitioners to support the research conducted for this analysis.

#### 4.0 Research Results

The purpose of this section is to present the results of the implemented methodology described above and characterize the Hawaiian cultural landscape within which the Project Area(s) is/are located, which is the ahupua‘a of Kōloa. This includes a description of Kōloa’s relevant and representative inoa ‘āina (place names), mo‘olelo (oral-historical accounts), wahi pana (legendary places), and other natural and cultural resources. The purpose of this is to identify traditional or customary practices that may have occurred in the project area or surrounding area and evidenced through the historic research.

#### 4.1 Traditional Period

Kaua‘i is “the oldest geologically of the major islands of the Hawaiian chain” (Handy et al. 1972: 391). This difference in geological time accounts for notable differences between Kauai in comparison to the other inhabited islands, specifically “[its] interior mountains are less rugged and its streams have carved out real river beds” (Handy et al. 1972:391).

Kōloa is in the Kona moku (district) of Kaua‘i, which include fourteen (14) ahupua‘a. Handy et al. describe Kōloa and its neighboring areas as:

... Pa‘a is very dry. Breadfruit, yams, and bananas were planted in the gulches.

Weliweli is about like Pa‘a. Both of these narrow land sections lie on a slight seaward promontory, Makahuena Point. W.C. Bennett (1931, p. 118) found an irrigation ditch and terraces, indicating that there used to be some wet taro grown in the area which is now dry. Desiccation may have been partly caused by clearing the woodland when the first sugar plantation on Kauai was established there.

Koloa had a stream which at its seaward end was called Waikomo (Hidden-water), suggesting that the stream much have gone underground. Three streams in upper Koloa may have watered some taro terraces, since they flow through relatively flat land, although a kama‘aina told us he knew of none. However, there were a few terraced areas, whose names we obtained, in localities now dry because the water is diverted upstream for sugar-cane irrigation. There were extensive terraces on land now planted

with sugar cane near what is now Kuhio Park, seaward of Koloa Valley. There were fresh-water ponds in both Weliweli and Koloa. Possibly this was why Koloa was so named, for koloa means duck, and duck were attracted to fresh water (Handy et al. 1972: 427-428).

Handy et al. identify two important impacts of early contact in Kōloa: desiccation from clearing vegetation and water diversion.

#### 4.1.1 Mo‘olelo

Mo‘olelo (traditional narratives, stories, history) were once passed down through oral tradition and later recorded in print upon the arrival of the printing press in the 1830s. One of the beautiful elements of Hawaiian storytelling is that many versions of mo‘olelo exist, told from the perspective of storytellers who are native to varying areas. By collecting and celebrating the multiple versions of mo‘olelo, the depth and breadth of Kānaka ‘Ōiwi perspective about ‘āina can be understood. Information about culture, language, and places are held within those stories, and can continue to live on through those mo‘olelo.

Portions of many famous mo‘olelo take place in the Kōloa area, some sections of which will be presented in this section in order to demonstrate the cultural significance of this ‘āina. It should be noted that this is not a comprehensive list of mo‘olelo, but a selection of mo‘olelo to demonstrate the use of this practice in the region.

Kōloa is long-standing traditional name that has been retained into the present, while other place names in the region have largely been lost in the rapid development of mass agricultural plantations at the beginning of the 20<sup>th</sup> century when Hawai‘i became a U.S. Territory. Kōloa has a rich and interesting cultural history, and there are some mele and mo‘olelo associated with this region. Kōloa alternatively means long sugar cane [stalk(s)] or to make a long roaring sound. One mo‘olelo says the region “was named for a steep rock called Pali-o-kō-loa [cliff of long sugar cane]” (Pukui, Elbert, and Mookini 1974: 116). Koloa is also the name of a native Hawaiian duck (*Anas wyvilliana*) now called koloa maoli to distinguish it from foreign and introduced duck species which are also called koloa. Koloa were prevalent on Kaua‘i and their presence is suggested in the kaona (poetic referencing) of this inoa ‘āina (place name). Pīwai is one species of ducks common to the Kōloa area (Wichman 1998: 40). Multiple interpretations of Hawaiian place names are not only common, they are sometimes intentional because of the Hawaiian penchant for kaona. As H. Kekahuna observed:

The literal translation of the name Ko-loa is Long (loa) Sugarcane (ko). The name of the Hawaiian duck is koloa pronounced as a single word with a lighter o. The full-sounded word ko means success, or to succeed, as well as sugarcane, which is symbolic of success. With the same full sound the word also means the movement of

a wind or current, or the drawing of the tide (ko' ke au). Thus, through the astonishing versatility and flexibility of the Hawaiian language there is for a project in Ko-loa an augury of success (ko') that is long-enduring (loa), like the moving of a current (ko') that flows afar (loa). (Kekahuna 1959: 2)

The traditional knowledge imbedded in place names reveals the history of place, people, and the depth of their traditions. Although fragmented, the surviving place names describe a rich culture. On these lands are found many place names that have survived the passing of time. The occurrence of place names demonstrates the broad relationship of the natural landscape to the culture and practices of the Hawaiian people. In *A Gazetteer of the Territory of Hawaii*, J. W. Coulter observed that Hawaiians had place names for all manner of features, ranging from “outstanding cliffs” to what he described as “trivial land marks” (1935:10). In 1902, W.D. Alexander, former Surveyor General of the Kingdom (and later Government) of Hawai‘i, wrote an account of “Hawaiian Geographic Names.” Under the heading “Meaning of Hawaiian Geographic Names” he observed:

It is very difficult, if not impossible, to translate most of these names, on account of their great antiquity and the changes of which many of them have evidently undergone. It often happens that a word may be translated in different ways by dividing it differently. Many names of places in these islands are common to other groups of islands in the South Pacific, and were probably brought here with the earliest colonists. They have been used for centuries without any thought of their original meaning. (395)

Moreover, historically named locations were significant in past times and it has been observed that “Names would not have been given to [or remembered if they were] mere[ly] worthless pieces of topography” (Handy et al. 1972: 412).

In traditional (pre-western contact) culture, named localities served a variety of functions, informing people about: (1) places where the gods walked the earth and changed the lives of people for good or worse; (2) heiau or other features of ceremonial importance; (3) triangulation points such as ko‘a (fishing markers) for fishing grounds and fishing sites (4) residences and burial sites; (5) areas of planting; (6) water sources; (7) trails and trail side resting places (o‘io‘ina), such as a rock shelter or tree shaded spot; (8) the sources of particular natural resources/resource collections areas, or any number of other features; or (9) notable events which occurred at a given area. Through place names knowledge of the past and places of significance was handed down across countless generations. There is an extensive collection of native place names recorded in the mo‘olelo (traditions and historical accounts) published in Hawaiian newspapers. The mo‘olelo provided below is only a very small sample of the larger body of work created by k naka about K loa.

#### 4.1.1.1 Pele and Hi‘iakaikapoliopele

In the famous epic tale of the two sisters, Pele, the renowned goddess of the volcano, sends her youngest Hi‘iaka sister, Hi‘iakaikapoliopole, on a journey across the island chain to fetch the young lover that Pele discovers in a dream, the handsome chief of Kaua‘i named Lohi‘auipo. On her journey, Hi‘iaka grows into her goddess nature by facing many obstacles including mo‘o or dangerous reptilian water guardians, lethal storms, and countless other challenges, only to find that she must revive her sister’s lover using her powers to bring him back to life.

Kōloa serves as part of the setting for the mo‘olelo of Kapunohu, who was a chief from Hawai‘i Island. Kapunohu was famed for possessing a spear said to have magical powers called Kanikawi. Kapunohu was also the brother of Konahuanui, who was the wife of the O‘ahu chief Olopana. Kapunohu travels to O‘ahu to meet with his sister. Olopana, upon seeing Kapunohu and the powers held by Kanikawi, recruits Kapunohu to be one of his warriors and sets out to battle Kakuhihewa. Kapunohu defeats Kakuhihewa, after which all of O‘ahu is ruled by Olopana (Fornander 1918).

A make o Olopana, haalele iho la o Kapunohu ia Oahu nei, holo aku la ia ma ka waa a pae ma Poki i Waimea, Kauai, hele aku la ia malaila aku, a hiki i Wahiawa, malaila aku a Lawai i Koloa noho. I laila o Kemamo kahi i noho ai, he koa ia, he kanaka ikaika i ka maa ala, aohe ona lua ma ia hana o ka lima hema kona oi loa, e hiki ia ia ke maa i ka ala hookahi, i na mile eono, a i ka hiku o ka mile, pio ka ikaika o ka ala. Aole he kanaka aa o Kauai, e hakaka me Kemamo aole alii, aole koa. Nolaila, ua makau loa ia ka hele ana mai Koloa aku a Nawiliwili, aole hiki i ko Koolau ke hele mai maanei o Nawiliwili a pela ko Kona nei, aole hiki ke hele aku ma o o Koloa. No ka mea, e noho ana o Kemamo ma waena o Koloa a me Nawiliwili, me kana wahine o Waialeale.

A hiki o Kapunohu i laila, moe iho la ia a ao ae, i kau hale kamaaina, hoeu ac la o Kapunohu e hele, olelo mai kamaaina: “Mai hele oe, o make auanei oe i ke koa o makou nei.” Ninau aku o Kapunohu: “Owai ia koa?” “O Kemamo.” “Pehea kona ikaika?” “He maa ala kona ikaika, aole e hala ka ala ke lele mai, aole hoi e nawaliwali i na mile elima, nolaila mai hele oe, o make auanei.” I aku o Kapunohu: “Aole hoi ha he ikaika, he mea paani ka maa ala, na ko makou kamalii mai lewalewa, a he mea ikaika ole no.” No keia olelo a Kapunohu, kaulana aku la ia a lohe o Kemamo, i iho o Kemamo: “Ae, akahi mea nana i hoole kuu maa, oia, ina he manao kona e hele mai e hoike i na ikaika o maua, e hele mai no.” A lohe o Kapunohu, hele aku la ia a hiki, i mai la o Kemamo: “Ea! O oeke kanaka nana i hoole kuu ala?” I aku o Kapunohu: “Ae, owau no, no ka olelo mai a lakou nei, he ikaika oe i ka maa i ka ala. Nolaila, olelo aku au, he mea paani ia na ko makou kamalii mai lewalewa.”

A lohe o Kemamo, huhu iho la ia ia Kapunohu, a olelo mai la: “E! Heaha kau pili,ekamalihini?” I aku o Kapunohu: O na iwi ka’u pili.” Ae mai o Kemamo: “Ae, a heaha

hou ae?" I aku keia: "O ka waiwai iho la no ia a kamahela o na iwi, ina wau e eo, alaila make au, a ina hoi oe e eo, make oe ia'u." Ae mai la o Kemamo: "Ae ua mau ia pili ana." Olelo aku o Kemamo: "O ka pahu a kua, e ku ai a maa, mai Koloa a Moloaa i Koolau ka pahu ia ma waena o laila ka kua hana, a i puka ma o o Moloaa eo kekahi o kua." Ae aku la o Kapunohu. I aku nae o Kapunohu: "O ka'u hana i ike o ka pahee, malaila no wau, o kau hana hoi i ike o ka maa, malaila no oe." Ae mai la o Kemamo. I aku o Kemamo: "Ia wai mua, i kamaaina paha, i ka malihini paha?" I aku o Kemamo: "I kamaaina ka mua, he hope ka ka malihini."

Ia wa, maa o Kemamo a pau eono maila, a i ka hiku nawaliwali, pela ka nawe hele ana a hiki i Anahola waiho, ilaila loa i ke kukini mama o Kauai, o Kawaikuaehoe kona inoa. Pahee o Kapunohu i kana ihe, holo aku la kana ihe mai Koloa aku a Niumalu, o ka malu o ka la i ka ihe a Kapunohu, kapaia ia aina o Niumalu a hiki i keia la. Mailaila aku ka holo ana, a hiki i Kawelowai mauka o Wailua, nolaila keia inoa, e pili la, o Kawelowai, a me Waiehu, no ke komo ana o ka ihe i loko o ka wai, a lele hou, mailaila aku a Kalalea i Anahola, o ia keia puka e hamama ala a hiki i keia la, malaila aku a hiki i Moloaa, malaila aku a Waiakalua a Kalihikai maalili ka ihe, a Hanalei pau ka holo o ka ihe. A eo ae la o Kemamo hooko ia ka laua pili, a lilo ae la o Kapunohu i al holo. Kauai.

After the death of Olopana, Kapunohu left Oahu and journeyed to Kauai. Boarding his canoe he set sail and first landed at Poki, in Waimea; from this place he continued on to Wahiawa and then on to Lawai in Koloa where he settled down. There lived at this place a great warrior, by the name of Kemamo, who was noted for his great strength and skill in the use of the sling; he was without equal in its practice; his left hand was considered better than his right, and he could throw a stone for a distance of six miles and in the seventh mile its force ceased. No person in Kauai was found who could face him, not from amongst the chiefs or soldiers. Because of this man people were afraid to travel between Koloa and Nawiliwili; those on the Koolau side could not pass over to Nawiliwili and those, from the Kona side were afraid to travel toward the Koloa side, for the reason that Kemamo and his wife Waialeale lived between Koloa and Nawiliwili.

When Kapunohu arrived at Lawai he was entertained that night by some of the people of the place, and on the next day he prepared to continue on his journey. When he was ready to start, the people said: "You must not go by this way or you will get killed by our great warrior." Kapunohu then asked: "Who is this warrior?" "Kemamo." "In what is his strength?" "He is very skilful in the use of the sling. He never misses a shot, and the strength of his flying stone will go over five miles. Therefore you must not go for you will get killed." Kapunohu said: "Then he is not strong. The sling is only a plaything for the boys of our place and it is not considered of any consequence." These remarks made by Kapunohu were carried around until they reached Kemamo; so Kemamo

made the remark: “Yes, this is the first time that my strength in the use of the sling has been denied. Well and good; if he desires to come and test as which of us is the stronger, let him come on.” When Kapunohu heard this, he went out to meet Kemamo. Upon seeing Kapunohu, Kemamo asked: “Are you the man that has said that I have no strength in the use of the sling?” Kapunohu replied: “Yes, I am the man. It is because these people said that you are very skilful in the use of the sling, so I said, that it is the plaything with the small boys at our place.”

When Kemamo heard this he became very angry toward Kapunohu and said: “What will the stranger bet on the proposition?” Kapunohu replied: “My life will be my stake.” “Yes,” said Kemamo, “and what else?” Kapunohu replied: “That is all a traveler takes with him. If you beat me my life shall be forfeited, and if I should beat you your life shall be forfeited.” Kemamo agreed to this and the bet was declared made. Kemamo then said: “The course over which we shall compete in throwing the stone with the sling, shall be from Koloa to Moloaa in Koolau. We must make our throws over these points and toward Moloaa; whoever throws the greatest distance beyond Moloaa wins.” Kapunohu replied: “Yes, I will agree to that, but I am going to use my spear while you use your sling.” Kemamo agreed to this. Kemamo then asked: “Who shall take the first chance? Shall it be the stranger, or shall it be the native son?” Kapunohu answered: “Let the native son take the first chance and the stranger the last.”

Kemamo then took up his sling and threw his stone, which went six miles and over, and it only fell and rolled after it had entered into the seventh mile, stopping at Anahola, where it was picked up by the best runner of Kauai, a man by the name of Kawaikuauhoe. Kapunohu then threw his spear, darting along from Koloa and over Niumalu, and as it shielded the sun from the coconut trees at this place the land was given the name of Niumalu, as known to this day; then it went on and into the water in upper Wailua, giving the place the name of Kawelowai as well as the land next to it which is called Waiehu; from this place it again took an upward flight flying along till it pierced through a ridge at Anahola, which is called Kalaea, leaving a hole through it, which can be seen to this day; from this place it went on past Moloaa, then past Waiakalua, then into Kalihikai, where it grew weaker and finally stopped at Hanalei.

Kemamo was therefore beaten and the conditions of their bet were carried out. Kapunohu became thereby king of Kauai (Fornander 1918).

#### 4.1.2 Inoa ‘Āina

Honua Consulting developed a list of place names from the ahupua‘a of Kōloa in the vicinity of the Project Area(s), which includes but is not limited to the following places and terms, to help guide research and analyses (Table 1). The development of this list stemmed from

extensive research into a wide range of documents related to the project area. In many cases, land divisions would be referred to as both ahupua‘a and ‘ili, depending upon the document. It was also unclear from documents where land was identified as ‘ili as to if the ‘ili were simply a subdivision of larger ahupua‘a or if they were ‘ili kūpono, distinct land areas unto themselves.

Historic maps were also reviewed to help identify specific place names within the region.

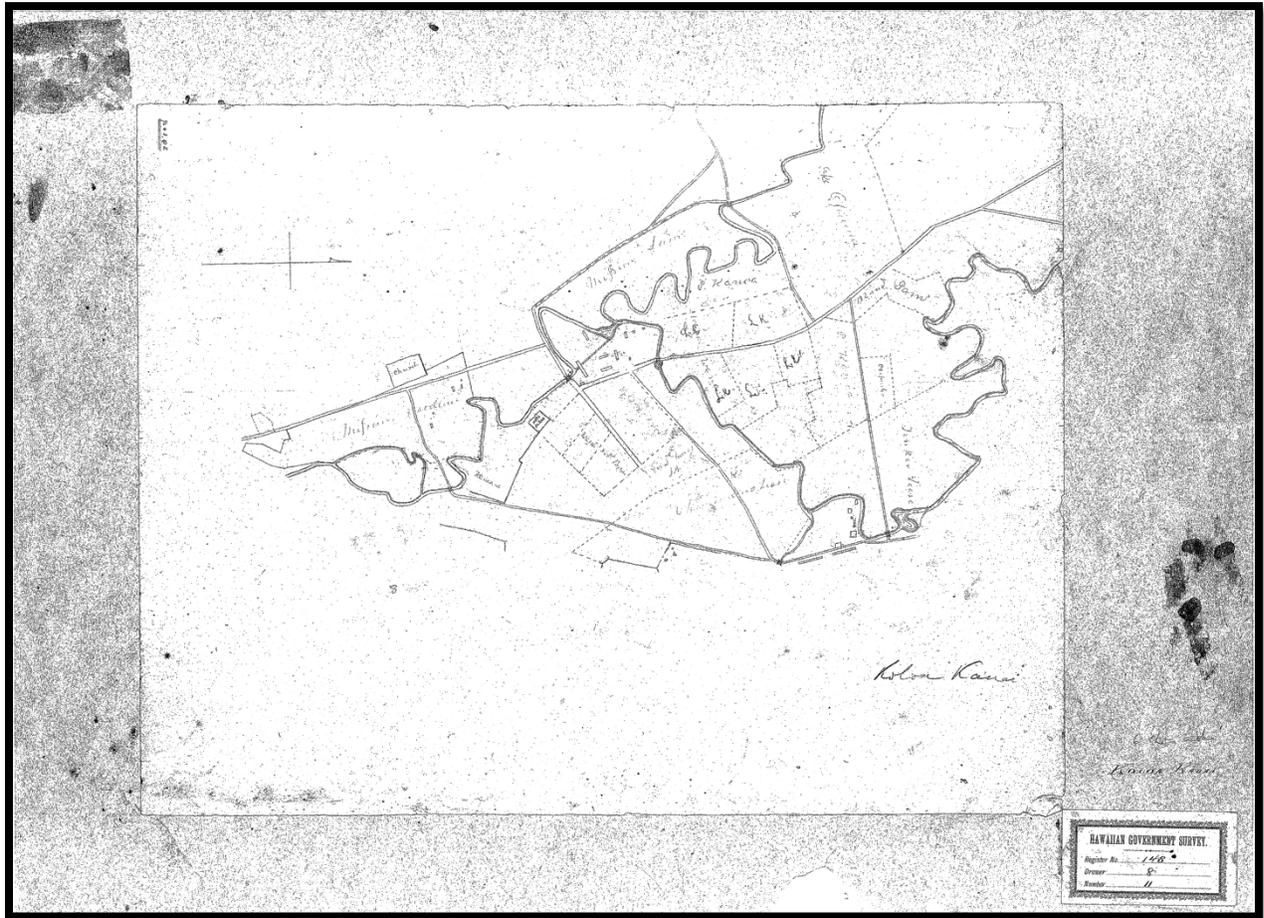


Figure 4. Registered Map 148 showing Kōloa Village (Metcalf 1849)





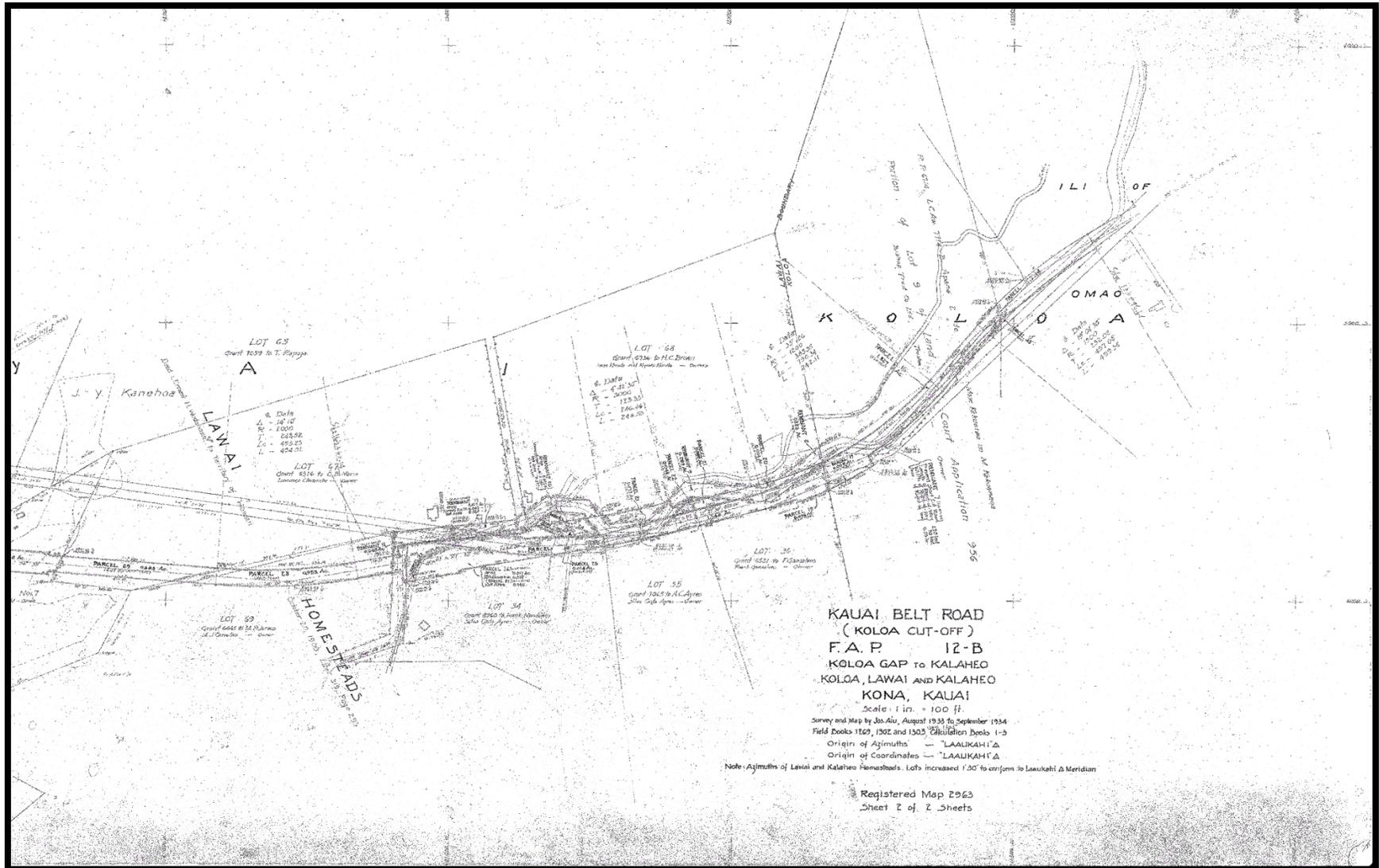


Figure 7. Portion of Registered Map 2963 showing Kōloa (Aiu 1934)

From the historical land records, there appeared to be little concern for specific boundaries, as foreigners, many of them missionaries who converted to businessmen, eagerly maneuvered their relationships with the new formalized government to acquire themselves strategically located parcels of land that proved valuable as new capitalist economic industries like sugar developed across the islands, including on Kaua‘i; Kōloa is the location of the first successful commercial sugar plantation, which began in 1835 (Pukui, Elbert, and Mookini 1974: 116).

Table 1. Selected Inoa ‘Āina of Kōloa

Selected Place Names of Kōloa Ahupua‘a in Vicinity of the Project Area(s)			
Inoa ‘Āina (Place Name)	Description	Meaning	Reference
‘Ālanapō	Heiau where the Kaua‘i hero Palila was taken by his grandmother to be raised by the gods.	Night offering	Fornander; Wichman 1998
‘Ēkaha	Bay to the east of Ka Lae Kīkī	‘Ēkaha (bird’s nest fern) bay; also, a kind of seaweed	Google maps, Google Earth
Hālauakalena	Heiau dedicated to the mo‘owahine Kihawahine	Shed [to store] ‘ōlena (tumeric) [roots]	Wichman 1998
Hanakā‘ape	A small harbor or bay along the shoreline later called Whalers’ Bay and now Kōloa Landing	Bay of the ‘ape ( <i>Alocasia macrorrhiza</i> , <i>Xanthosoma robustum</i> ) plant; headstrong bay	Wichman 1998
Hanakalaua‘e	Heiau located at Mahaulepu; destroyed by Frenzenberg to build cattle pens (Thrum)	Bay of the lauā‘e fern	Bennett 1931
Hō‘ai	Beach near Kaheka and Kolopā	To feed	Google map
Ho‘oleinakapua‘a	Located next to a small pond along Waikomo stream	Place to throw the pig	Wichman 1998

	above the pond of Mauhili		
Humu'ula	Land area in Kōloa where the heiau 'Ālanapō was located	Red jasper stone used for adze making	Fornander; Wichman 1998
Kāheka	Land area; n.d.	Shallow pool	Google maps
Kāhili	3,016 ft. high mountain peak on Wai'ale'ale that marks the mauka boundary of Kōloa ahupua'a; waterfall	The royal feather standard	PNH
Ka Lae Kīkī	Point	Spouting; name of a bird	Google Earth
Kamo'oloa	Mauka plains area below Kāhili; site of many battles	The long ridge or lizard	Wichman 1998
Kānehā'ule	Heiau located at Kaunu'ie'ie where "rites of circumcision" were preformed (Thrum)	Kāne falling	Bennett 1931
Kāneiolouma	Heiau for sports and food. Located just inland of Po'ipū beach. Part of a larger complex documented by Kekahuna.	Kāne who drove and pushed	Kekahuna map; kaneiolouma.org; P. Young blog
Ka'ōleloohawai'i	Rock located just below Waihānau rock at Mauhili pool. Brought to this location by the Kaua'i chief Kaweloleimakua from Hawai'i Island.	The language of Hawai'i	Wichman 1998
Kapōhakau	1,4000 ft. Peak on Kāhili mountain; mauka boundary	The placed or set rock	Wichman 1998

	point separating the ahupua‘a of Lāwa‘i from Kōloa.		
Kapunakea	Pond, Mahaulepu	The white coral	Bennett 1931
Kauhu‘ula	Ridge on Kāhili that divides the East Kona from the Puna moku	The red uhu (parrot) fish	Wichman 1998
Kaunu‘ie‘ie	Land area near a small east branch of ‘Ōma‘o stream. Site of Kānehā‘ule heiau	n.d.	Bennett 1931
Keonelo	Beach, petroglyph site	The long sand	Bennet 1931
Kiahuna	Beach; no data	n.d.	
Kihouna	Point; walled heiau (130 by 89 feet)		Bennet 1931
Kōloa	Ahupua‘a, town, stream, reservoir.	Long sugar cane stalk or long roaring sound	PNH
Kolopā	n.d.		Google Earth
Kū‘ia	Stream	Obstructed	
Kukui‘ula	Bay, surf site	Red kukui (light)	PNH, HPN
Lae o Kāhala	Point, immediately west of Hanakā‘ape and Waikomo stream	Point (cape) of the kāhala ( <i>Seriola dumerilii</i> ) or amberjack fish	Google Earth
Lae o Ka‘ōpua	Point; n.d.		Google Earth
Lāwa‘i	Ahupua‘a bordering Kōloa to the west; gulch, stream; considered part of Kōloa district in some sources	Day to end fishing kapu	PED, PNH
Louma	A small heiau dedicated to Lono and built by Kapueomakawalu with stones brought from O‘ahu. Also	n.d.	Wichman 1998

	attributed to menehune. Offerings of pigs, red fish, and vegetable were given here. Possibly the same as Kāneiolouma.		
Makahū'ena	Point at Po'ipū	Eyes overflowing heat; very angry eyes or face	PNH, HPN
Manini	A ko'a (fishing shrine) dedicated to the shark deity Kūha'imoana located along the Kōloa shoreline	A silverreef surgeon fish ( <i>Acanthurus triostegus</i> ) with black stripes; also varieties of kalo, 'uala, and kō	Wichman 1998
Mauhili	Fresh water pool located in Waikomo stream; sleeping forms of the gods Kāne and Kanaloa are found here. Wichman renders the name as "Maulili."	Entangled; interwoven	PNH (HM 65)
Maulili	Alternate name for Mauhili, a deep pool located in Waikomo stream about midway through the ahupua'a. Home of the mo'owahine Kihawahine; when she was there, the water turned red, warning of her presence.	Constant jealousy	Wichman 1998
Maulili	Heiau built by Kapueomakawalu, who used it as a luakini for human		Wichman 1998

	sacrifice. Location was lost, until ‘Aikanaka sought it out and had the heiau rebuilt.		
Nahumā‘alo	Point, west of Hanakā‘ape	Bite in passing	PNH
Nukumoi	Tomobolo or point, west side of Po‘ipū beach	Moi or threadfish ( <i>Polydactylus sexfilis</i> ) snout	HPN
‘Ōmao	Stream	Green	Wichman 1998
Pa‘a	Small ahupua‘a once part of Kōloa; sand dune burial site	Secure	Bennett 1931
Pā‘ōhi‘a	Stream	‘Ōhia log fence	
Pihakekua	n.d.	The full back	Google maps
Pō‘ele‘ele	Stream	Black night	Wichman 1998
Po‘ipū	Beach	Completely overcast; crashing, as waves	PNH, HPN
Punahoa	Land area (fresh water spring?), just inland of Hanakā‘ape bay; n.d.	Companion spring	Google Earth
Pu‘u o Hewa	Hill, inland of Kōloa town. Location of a hōlua sled site	Hill of wrongdoing	Bennett 1931
Waihānau	Stone located on the eastern bank of Mauhili pond.	Birthing waters	Wichman 1998
Waihohonu	Hill, stream. A “hole” was formed here when the hero Palilo felled a tree with a single stroke.	Deep fresh water	PNH (HM 414-415)
Waikomo	Stream; both ‘Ōmao and Pō‘ele‘ele streams join to create Waikomo; named “because from time to time the	Entering fresh water	PNH; Wichman 1998

	stream disappears for a bit before reappearing farther down the slope” (Wichman 1998: 40)		
Wai‘ohai	Beach, surf site, fresh water spring	‘Ohai nectar	Kekahuna map; HPN
Waiopili	Heiau, Mahaulepu, northeast of Kapunakea pond		Bennett 1931
Waitā	Fresh water reservoir, originally called Kōloa		PNH
Weliweli	Ahupua‘a bordering Kōloa to the east; po‘okanaka heiau located along the shore	Revered, respected; feared, dreadful; immense, prolific	PED; Bennett 1931
Weoweopilau	Stream below the plains of Kamo‘oloa	Rotten big eye (‘āweoweo) fish or sugar cane; spoiled red banana	Wichman 1998

#### 4.1.2.1 Maulili

In *Place Names of Hawai‘i*, Elbert, Pukui and Mo‘okini identify a fresh water pool located in Waikomo Stream as Mauhili. The note that it is the location where the gods Kāne and Kanaloa come ashore, and that “sleeping forms of the gods” are found here (224). In *Kaua‘i Place Names*, F. B. Wichman says this place name is Maulili, “a deep pool located in Waikomo stream about midway through the ahupua‘a” ( ). Maulili is a home of the mo‘owahine Kihawahine, and that she was present, the water turned red ( ). This story of Kihawahine is similar to one for her river mouth home on the other side of the island in Kīlauea river. Wichman also says that Maulili is the name of a luakini heiau built here by the ancient chief Kapueomakawalu, and that its location was lost until the later chief ‘Aikanaka searched for it, found it, and had the heiau rebuilt ( ). In an 1876 article in the newspaper *Ka Lahui Hawaii*, D. Keaweamahi describes Maulili on a visit to Kaua‘i.

Aia no hoi ma keia wahi, he kawa auau no na 'lii, o Maulili ka inoa, aia no hoi i keia kawa ke alelo o Hawaii, he pohaku, a maluna ae o keia kawa he mau oawa, oia ka kahi o Kane a me Kanaloa i moe ai, he mau kanaka, aia no hoi ilaila na koi pohaku a laua

i oki ai i ka puu pahoehoe a kahe ai ka wai i Maulili. A mahope iki aku olaila kahi i kauia'i o Kawelo i ka lele mahope iho o kona hailukuia ana i ka pohaku i Wahiawa, me ka manao ia ua make, aka, i ka wa i manao ia ai e make, ua ala mai la kela a hele, a o ke ola no ia o Kawelo. Ua kokoke loa keia wahi ma ka hale noho o Rev. Mahoe. A ma keia aina no hoi he hui mahiko, aole nae e wili ana ke ko i ko'u wa ilaila, a o ka ona nona keia mahiko, o Charman. (Keaweamahi, “Huakai Makaikai ia Kauai,” *Ka Lahui Hawaii*, August 10, 1876: 3)

Here at this place is a leaping place into a pool for the chiefs called Maulili. This leaping stone is a tongue of Hawai'i, a stone, and above this stone are valleys, the place where [the gods] Kāne and Kanaloa slept, two men, there are located adze stones they cut so that in the smooth lava hill so that the fresh water flowed into Maulili. Right above this place is where [the chief] Kawelo hid from being stoned by the rocks of Wahiawa, where it was believed he was dead, however, he escaped with his life. This place is close to the house of Rev. Māhoe. This is the land indeed of the sugar plantations, although no sugarcane was being harvested while I was there; the owner of this plantation is [Mr.] Charman.

#### 4.2 Kingdom and Historic Era

Kōloa would be impacted by foreign contact within a few decades of the time in which Captain Cook first happened upon the Hawaiian Islands. There are accounts of Chinese immigrants and other foreigners to the islands growing and cultivating sugar in Kōloa in the early 1800s (Alexander 1937:1-2). Kōloa would already be largely under the control of settlers when the Kingdom began to adjust its land tenure system to suit the needs of foreign business who steadily pressured the Kingdom to westernize its government.

The Kingdom Government passed modern boundaries outlined in the 1859 Civil Code “For taxation, educational, and judicial purposes...”(Civil Code of 1859, Section 498). In this, it specifically stated of Kaua‘i and Ni‘ihau:

The islands of Kauai and Niihau shall be divided into six districts, as follows: 1. From Nualolo to Hanapepe. inclusive, to be styled the Waimea district; 2. From Wahiawa to Mahaulepu, inclusive, to be styled the Koloa district; 3. From Kipu to Kamalomalo. inclusive, to be .styled the Lihue district; 4. From Anahola to Kilauea, inclusive, to be styled the Anahola district; 5. From Kalihiwai to Honopou, inclusive, to be styled the Hanalei district; 6. Niihau.

This was the beginning of the district known as the modern Kōloa district. From historic records, identifying the differences between which land areas were consider ahupua‘a versus ‘ili can be challenging.

This determination mattered not only in regard to disposition of land, but for tax purposes. The Laws of 1848 called for property taxes to be paid to the Kingdom accordingly:

All landed divisions, denominated Ili, through the islands, shall pay a yearly tax, as follows:

- Ili No. 1, five dollars.
- Ili No. 2, three dollars.
- Ili No. 3, one dollar and a half.

In those parts of the islands where there is no distinct division into ilis, but merely into ahupuaas, each ahupuaa shall pay a yearly tax for support of the government, as follows:

- Ahupuaa No. 1, ten dollars.
- Ahupuaa No. 2, five dollars.
- Ahupuaa No. 3, three dollars.

This tax however, may be diminished, at the discretion of the tax officer, he keeping in view, not merely the size of the land, but also the number of its occupants and its value, and preserving a just proportion between said value and the taxation.

This shift to the use of the ‘auhau tax system and away from a ho‘okupu tribute system marked a significant social and political change for the young monarchy. Until approximately 1839, kānaka effectively paid taxes to the chiefly class through the sharing of crops or crafts. In the early to mid-1800s, the kingdom began to codify this tax, and it changed from food and materials goods into the need to pay the tax in cash. The new government’s need for money, particularly against the influx of foreigners, motivated this change (Woods 2011).

In pre-western contact Hawai‘i, all land and natural resources were held in trust by the high chiefs (ali‘i ‘ai ahupua‘a or ali‘i ‘ai moku). W.D. Alexander, Surveyor General of the Hawaiian Kingdom wrote:

...It is admitted that under the ancient feudal system, the allodium of all land belonged to the King, not, however, as an individual, but “as the head of the nation or in his corporate right...” (Alexander; Survey Letter Book No. 9, September 30, 1891:107. Hawaii State Archives)

The use of lands and resources were given to the hoā‘āina (native tenants), at the prerogative

of the ali‘i and their representatives or land agents (konohiki), who were generally lesser chiefs as well. In 1848, the Hawaiian system of land tenure was radically altered by the Māhele ‘Āina (Division of Land). This change in land tenure was aggressively sought after by the growing Western population and business interests in the island kingdom—generally individuals were hesitant to enter business deals on lease-hold land.

The Māhele defined the land interests of Kamehameha III (the King), the high-ranking chiefs, and the konohiki. As a result of the Māhele, all land in the Kingdom of Hawai‘i came to be placed in one of three categories: (1) Crown Lands (for the occupant of the throne); (2) Government Lands; and (3) Konohiki Lands (cf. Penal Code, 1850).

Laws from the period of the Māhele record that ownership rights to all lands in the kingdom were “subject to the rights of the native tenants;” those individuals who lived on the land and worked it for their subsistence and the welfare of the chiefs (Kanawai Hoopai Karaima... {Penal Code} 1850:22). The 1850 resolutions in “Kanawai Hoopai Karaima no ko Hawaii Pae Aina,” authorized the newly formed Land Commission to award fee-simple title to all native tenants who occupied and improved any portion of Crown, Government, or Konohiki lands. These awards were to be free of commutation except for house lots located in the districts of Honolulu, Lāhaina, and Hilo (cf. Penal Code, 1850:123-124). In addition to native Hawaiian commoners, select foreigners were also granted the opportunity to acquire their own parcels of land through the Māhele, provided they had sworn an oath of loyalty to the Hawaiian Monarch (Kame‘eleihiwa 1992:300).

In order to receive their awards from the Land Commission, the *hoa‘āina* were required to prove that they cultivated the land for a living. They were not permitted to acquire “wastelands” (e.g. fishponds) or lands which they cultivated “with the seeming intention of enlarging their lots.” Once a claim was confirmed, a survey was required before the Land Commission was authorized to issue any award. The lands awarded to the *hoa‘āina* became known as “Kuleana Lands.” All of the claims and awards (the Land Commission Awards or L.C.A.) were numbered, and the L.C.A. numbers remain in use today to identify the original owners of lands in Hawai‘i.

The Kuleana Act (August 6, 1850) also set the foundation of laws pertaining to native tenant rights which remain relevant in the present-day. Section 7 of the Act (1850) reads:

An Act confirming certain resolutions of the King and Privy Council passed on the 21<sup>st</sup> day of December 1849, granting to the common people allodial titles for their own lands and house lots, and certain other privileges...

...**Section 7.** When the Landlords have taken allodial titles to their lands the people on each of their lands shall not be deprived of the right to take firewood,

aho cord, thatch, or ti leaf from the land on which they live, for their own private use, should they need them, but they shall not have a right to take such articles to sell for profit. They shall also inform the Landlord or his agent and proceed with his consent. 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 roads shall be free to all should they need them, on all lands granted in fee simple. Provided, that this shall not be applicable to wells and water courses which individuals have made for their own use... [copied from original handwritten “Enabling Act”<sup>2</sup> – HSA, DLNR 2-4]

By the time of its closure on March 31, 1855, the Land Commission issued only 8,421 kuleana claims across the Hawaiian Islands, in an amount equaling only 28,658 acres of land for native tenants (Kame‘eleihiwa 1992:295).

The Land Commission also held the authority to convey lands through Royal Patents (R.P.) and Land Patents (L.P.). Lands conveyed through land commission awards, royal patents, and land patents first requirement payment, either through cash or land, or a government commutation fee. There were many cases in which lands awarded in the Māhele were returned to the government in settlement for commutation. If the commutation was not paid, title could nonetheless be granted but the title would be encumbered by a commutation lien.

Crown and Government Lands were often sold to interested foreigners. The title for these lands were conveyed by Royal Patent Grants during the monarchy era. The TMK that the project area is located in were included in portion of Royal Patent 6448, Land Commission Award 5482 (issued to Ino), Royal Patent 6714, Land Commission Award 7714-B, Apana 2 (to M. Kekuaiwa no M. Kekuanaoa). Copies of these documents are provided in the appendices.

Eventually, the growing pressure from Westerns began to erode the authority of the Kingdom, Woods explains: “Unlike previous laws, these new laws from 1850 to 1852 completely separated the Kingdom from its traditional kapu laws and weakened the monarchy as the Kingdom conformed to a constitutional government and Western-style law. The tax law of 1850 reflected this rush toward Westernization. In a major change, for the first time, the Kingdom required payment of taxes in currency only (Woods 2011: 27). A 1935 description explained the resulting changes:

The system of land tenure which prevailed in ancient times was radically changed in the reign of Kamehameha III by the Mahele of 1848, yet the boundaries of the ancient subdivisions of land remain unchanged to the present day. This applies particularly to

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<sup>2</sup> See also *Kanawai Hoopai Karaima no ko Hawaii Pae Aina* (Penal Code) 1850.

the ahupua‘a which has been termed the unit of land in Hawaii; the boundaries of ahupua‘a are said to have been “fixed about twenty generations back in Hawaiian tradition,” or about five hundred years ago if the Stokes based of chronology is used. The district boundaries were fixed at the same time as that of the ahupua‘a, and there is no known instance where an ahupua‘a boundary overruns an ancient district boundary.

Since the advent of legislative government, or from about 1846, many modifications have been made of the ancient district boundaries and there are many instances where other names have been substituted for the old district names. Some of these changes were made for political reasons and others for convenience, but the principal changes in boundaries were caused by movements in population reflecting new uses of the land areas. These new district boundaries did not always conform to the ahupua‘a boundary and there are examples today of an ahupua‘a being situation in more than one district where no such condition existed in ancient times (King in Coulter 1935).

The changes to Kaua‘i would impact the districts’ boundaries:

On Kauai the ancient district of Kona was divided into two, namely Waimea and Koloa, each named from an *ahupuaa* and important town within its confines: the name of the ancient district of Puna was changed to Lihue, a place name borrowed from Oahu<sup>11</sup> and used subsequently for the name of an important town in that district: the name of the ancient district of Koolau was changed to Anahola, the name of an *ahupuaa* within its boundaries: the ancient districts of Halelea and Na Pali were merged and called Hanalei after an *ahupuaa* and town in Halelea. The island of Niihau was made a separate district of Kauai.

No changes were made in the names or boundaries of districts until 1878 and 1880 and then only with respect to the island of Kauai. By an act approved August 1. 1878, a new district was created by re-subdividing Lihue and Anahola districts, reducing Lihue district about a third, and adding to what was then known as Anahola district the *ahupuaas* of Olohena, Waipouli, Kapaa, Kealia, and Kamalomalo, the act, however, changing the name of this newly created district to Kawaihau. The reason for this change forms an interesting page in the history of the reign of King Kalakaua, the details of which may be found in *The Friend* of April. 1920, a monthly, published in Honolulu, and re-published in *The Honolulu Advertiser* of Oct. 21, 1929.

The amendment to Chapter 498 of the Civil Code of 1859, made in 1878, reads as follows:

The Islands of Kauai and Niihau shall be divided districts as follows: 1. From Nualolo to Hanapepe, inclusive, to be the Wai-mea district; 2. From Wahiawa to Mahaulepu inch the Koloa district; 3. From Kipu to Wailua. Lihue district; 4. From Waipouli to Kilauea. Kawaihau district; 5. From Kalihiwni to styled the Hanalei district; 6. Niihau.

The changes in 1880 included a slight between the districts of Waimea and Koloa. Koloa by boundary of Koloa to include the ili of forms the east boundary of Waimea: and aeing (sic) Lihue, Kawaihau and Hanalei dist reduced by taking from it and adding to Kawai Wailua: and Kawaihau district was reduced by taking from it and adding to Hanalei district, the *ahupuaas* of Lepeuli, Waipake. Pilaa, Waiakalua, Kahili and Kilauea.

That portion of Chapter XI Laws of 1880 enacting these changes reads as follows:

The islands of Kauai and Niihau shall be divided into six districts as follows: 1. From Nualolo to Hanapepe inclusive, to be styled the Waimea district; 2. From ili of Eleele to Mahaulepu inclusive, to be styled the Koloa district; 3. From Kipu to Hanamaulu to be styled the Lihue district; 4. From Wailua to Moloaa inclusive, to be styled the Kawaihau district; 5. From Lepeuli to Honopou inclusive, to be styled the Hanalei district; 6. Niihau.

The changes up to 1884 are consolidated in the *Compiled Laws of 1884* as an amendment to Section 498 of the *Civil Code of 1859*. The compiled laws were a compilation, not enacted (King in Coulter 1935).

It is likely that many of the changes that specifically applied to Kōloa were the result of lobbying by the foreign businessmen who settled in the area. Sugar would dominate the Kōloa region for well over 100 years and significantly shape its cultural environment.

Despite the growing influence of sugar, Kōloa would continue to be an important place for the Kingdom. In 1871, Prince Kūhiō Kalaniana‘ole was born in Kōloa to the House of Kalākaua, the ruling family of the sovereign Kingdom of Hawai‘i. He was the child of Princess Kinoiki Kekaulike and Chief David Kahalepouli Pi‘ikoi. Kekaulike was the daughter of Kauai’s revered King, Kaumuali‘i, and as such Kūhiō enjoyed lineage to both the reigning dynasty of the Kingdom of Hawai‘i and to the independent Islands of Kāua‘i and Ni‘ihau.

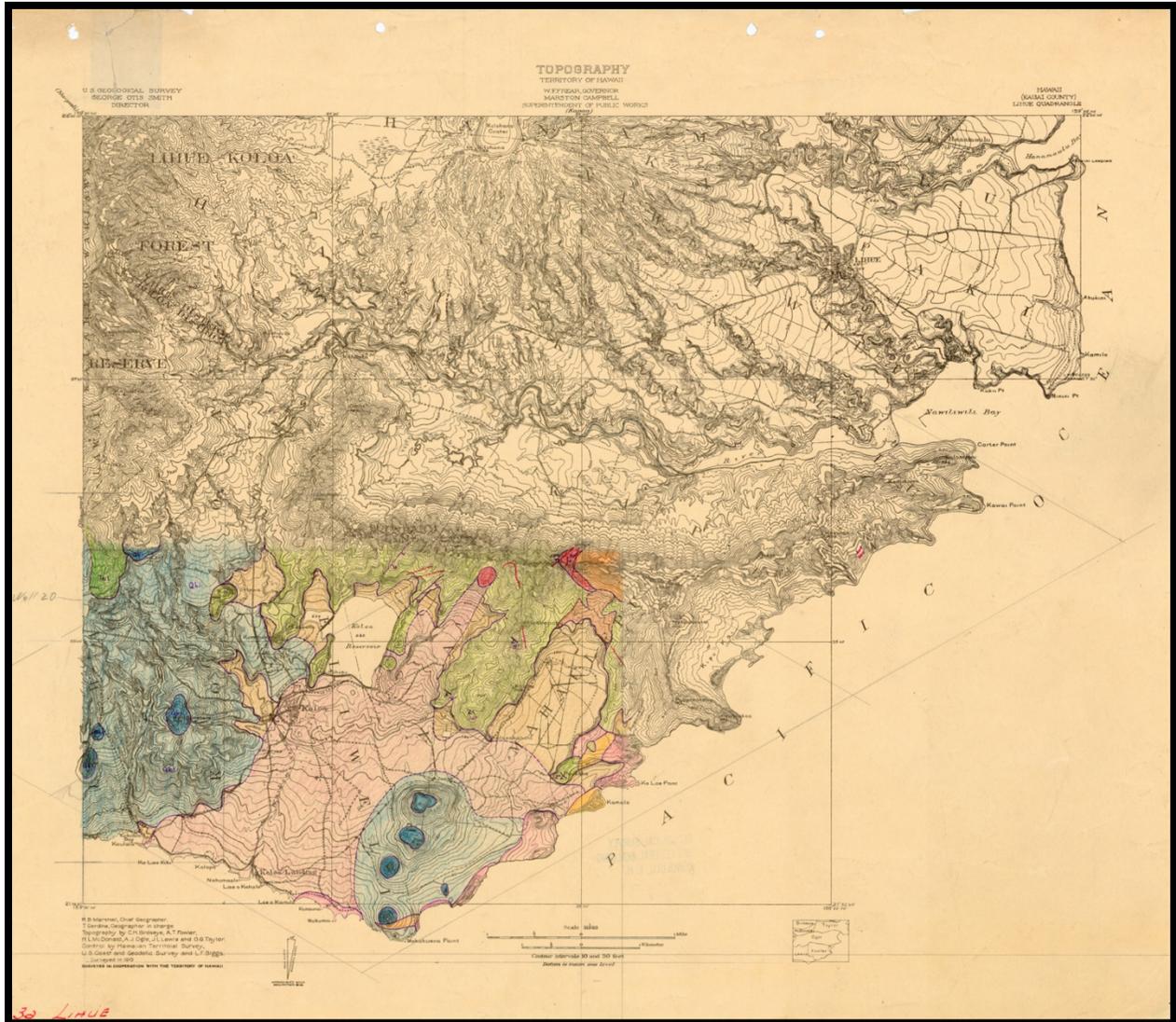


Figure 8. USGS Map of Koloa (USGS 1910)



Figure 9. 1950 Aerial Image of Kōloa (USGS 1950)



Figure 10. 1959 USGS Aerial image of Kōloa (USGS 1959)





Figure 12. USGS 1965 Aerial Photo of Kōloa (USGS 1965)

### 2.2.1 Kōloa Plantation

In the early half of the 19th century, Kōloa became the location of the first commercially successful sugar plantation not only on Kaua‘i, but in the Hawaiian archipelago. Kōloa Plantation officially formed in 1835, but according to accounts from the first plantation manager, William Hooper, “sugar cane was grown and sugar and molasses were manufactured in the District of Koloa, in a small way, prior to 1835” (Alexander 1937:1).

Like many other foreigners of the time, the founders of Kōloa Plantation traveled from the United States to the Kingdom of Hawai‘i to start private businesses. The three founders were Peter Allan Brinsmade, William Ladd, and William Hooper, all in their 20s when they arrived in Hawai‘i (Alexander 1937:2-3). Arthur Alexander would write of the original partners:

The partners, after their arrival, conducted a profitable commission and mercantile business in Honolulu. However, they were eager to expand their business. Convinced that the greatest business opportunities here at that time lay in the development of agriculture, they selected a tract of land at Koloa, Kauai, for the cultivation of sugar cane on the east side of the Koloa, or Waihohonu, Stream. Stephen Reynolds on June 5th, 1835, wrote in his Journal: “[Brig. Velocity went out for Hanalei, Kauai, Mr. Ladd and Dr. Peabody passengers. Ladd & Co. went to view the place and lay out a large cane plantation. I hope they will succeed and put it in operation with success.”

After Mr. Ladd’s return they leased from King Kamehameha III this tract of land, together with a mill site, 360 ft. By 360 ft. At the Maulili pool, with the use of the waterfall for power. The lease was for fifty years from July 29th, 1835, at an annual rental of \$300.00. It contained a clause giving them the privilege of building a road to the landing and the free use of the latter. From Kaikioewa, the Governor of Kauai, they later leased a warehouse site at the landing, at a place called Hanakaape. The land covered by the original lease has an area of 980 acres, of which 303 acres have since been demonstrated to be good cane land (Alexander 1937: 3-4).

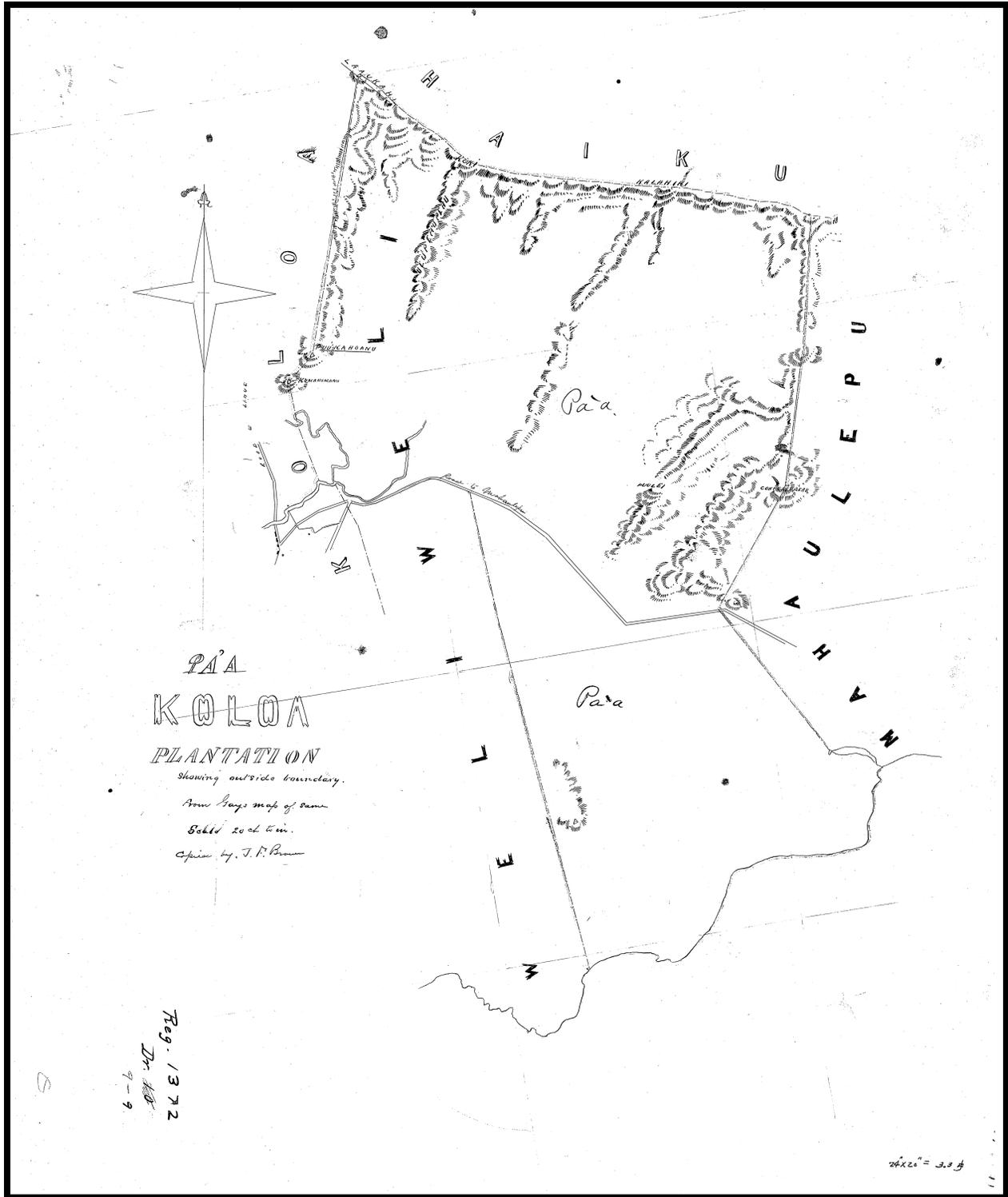


Figure 13. Registered Map 1372 (n.d.)



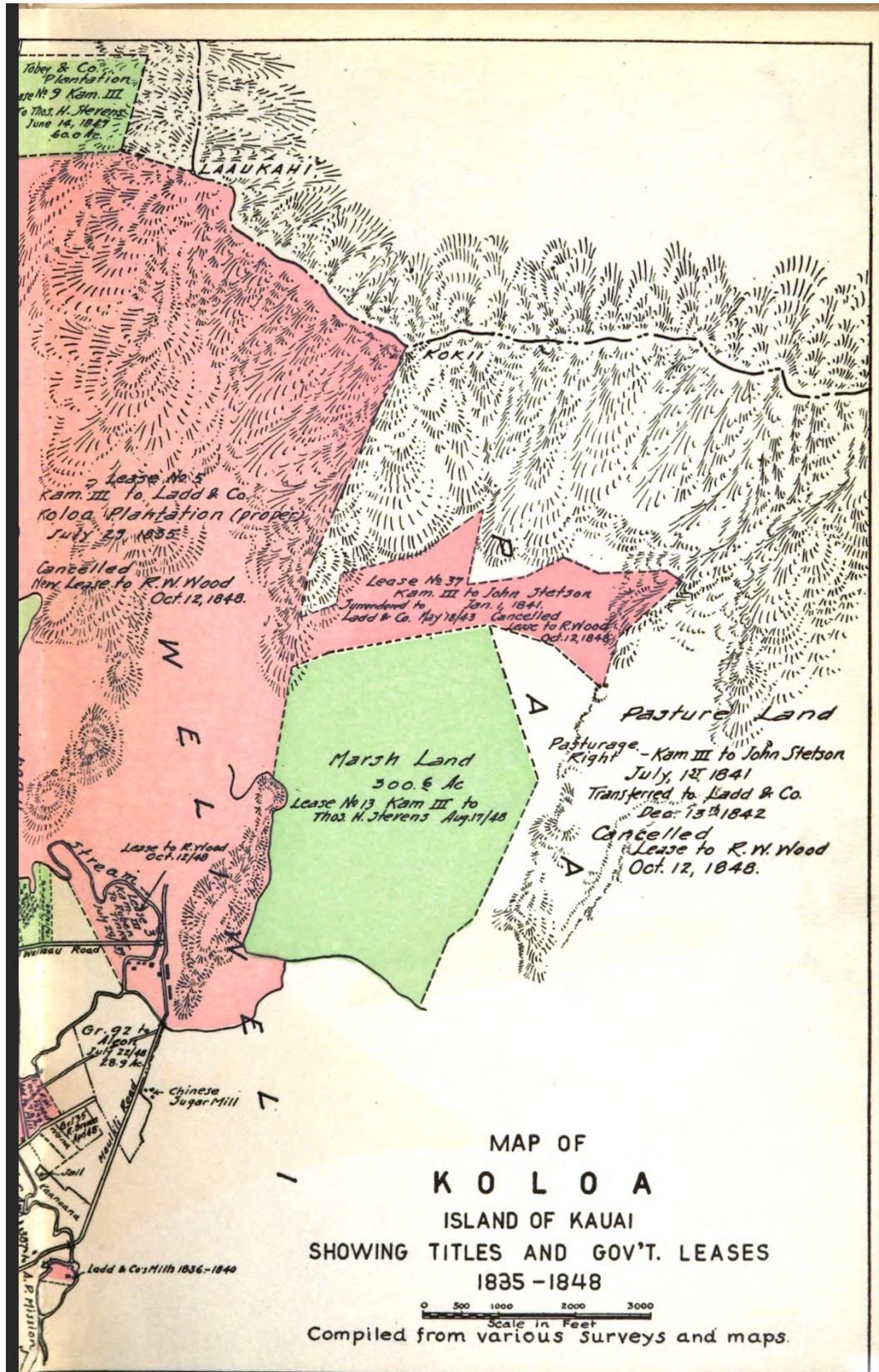


Figure 15. Map of Koloa (Alexander 1937)

## 6.0 Consultation

Consultation with area practitioners took place in May 2024. Dr. Watson spoke by phone with area resident and kupuna Julie Souza. Ms. Souza received a letter about the project and therefore had some familiarity with the project from that correspondence. She did question why there is such a need for so much parking. She is worried that the parking lot may be for future development or expansion, or tours. She does not have necessarily have concerns about the location or the proposed action for this discrete.

She has serious concerns about the larger development coming to the area. She believes that these future luxury developments will have an adverse effect on the area.

Fern Holland, on behalf of Honua Consulting, reached out to Mason Chock, who directed her to other area practitioners, Chad Schimmelfenning and Kimo Perry. Mr. Schimmelfenning responded that he was not aware of any sites or practices done in that area specifically. He did express concerns regarding that increasing parking in the area will encourage more traffic along the coastline.

Mr. Perry did not respond prior to the submission of this updated memo.

## 7.0 Analysis

As previously noted in this memo, in *Ka Pa‘akai*, the Hawai‘i Supreme Court provided government agencies an analytical framework to ensure the protection and preservation of traditional and customary Native Hawaiian rights while reasonably accommodating competing private development interests. This is accomplished through the following three-part test:

- 1) The identification of valued cultural, historical, or natural resources in the project area, including the extent to which traditional and customary Native Hawaiian rights are exercised in the project 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 to reasonably protect Native Hawaiian rights if they are found to exist.

*The identification of valued cultural, historical, or natural resources in the project area, including the extent to which traditional and customary Native Hawaiian rights are exercised in the project area.*

There are no cultural resources in the project area. The project area has been previously disturbed, as it is currently used as a surface parking lot. The proposed project activity would be installed at grade in the previously disturbed area and would consist of a paved parking lot and solar panels that would cover the parking area. Such solar installations in surface parking lots are fairly common throughout the islands and none have shown to impact traditional or customary practices in any of the locations in which they have been installed.

Through the research collected for this analysis, cultural practices were identified in the surrounding geographic extent, but none were identified as currently existing in the project area itself. Consultations with area practitioners also did not result in the identification of cultural resources or practices.

Nonetheless, there are numerous identified traditions or customs in the surrounding area, including fishing and traditional farming practices. The project area was also generally a part of the area’s mo‘olelo (histories or stories), but there is no indication that the project area held any specific importance in these stories.

Further, considering the ongoing threat Hawaii’s dependence on fossil fuels, specifically the importation of such fuels, poses to the overall environment, actions that reduce Hawaii’s dependency on fossil fuels would have a cumulative and indirect net benefit to cultural resources and Native Hawaiian rights. The use of fossil fuels has been shown to be a

significant contributor to climate change, including global warming and sea level rise. Global warming and sea level rise are a significant and immediate threat to Hawaiian practices and coastal cultural resources, as they are to these same resources throughout the Pacific.

While the project will result in some environmental benefits, it is appropriate to note that the development in the larger area is pending. The proposed action is unrelated to this larger development and will only support the existing activities in the area. This future development would be inclusive of surrounding parcels. The consultation for this proposed action revealed concerns regarding this larger development. A separate *Ka Pa‘akai* analysis for the subdivision of the larger TMK is pending.

As noted above, the larger Koloa area continues to enjoy cultural resources and practices, although development in the region has had a cumulative adverse and indirect impact on these resources and activities. Therefore, while this discrete project is unlikely to impact cultural resources or customary practices, future developments should undergo additional analysis under *Ka Pa‘akai* for potential impacts, including, specifically, potential cumulative and/or indirect impacts. A new analysis should be prepared for the larger TMK, which may result in different findings. Additional consultation should be conducted for that analysis.

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

Of the identified cultural resources and traditional and customary practices that occur in the surrounding project area, the potential that the proposed action would affect or impair these resources is negligible.

*The feasible action, if any, to be taken to reasonably protect Native Hawaiian rights if they are found to exist.*

As the potential for effect or impairment of cultural resources (including practices) is negligible. Nonetheless, best management practices should be implemented to ensure that no unanticipated effects to cultural resources in the adjacent or surrounding areas occur and that there is a mechanism in place for practitioners to report any such potential occurrences to the project.

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## Appendix I: Glossary of Hawaiian Terms

The following list of terms were used frequently throughout this report. All definitions were compiled using Pukui and Elbert's *Hawaiian Dictionary* (1986).

Ahupua'a	Land division usually extending from the uplands to the sea, so called because the boundary was marked by a heap (ahu) of stones surmounted by an image of a pig (pua'a), or because a pig or other tribute was laid on the altar as tax to the chief.
'Āina	Land, earth. <i>Lit.</i> That which feeds.
Akua	1. God, goddess, spirit, ghost. 2. Divine, supernatural, godly.
Ala	Path, road, trail.
Ali'i	1. Chief, chiefess, ruler, monarch. 2. Royal, regal. 3. To act as chief, reign.
'Aumakua	Family or personal gods, deified ancestors who might assume the shape of sharks, owls, hawks, dogs, plants, etc. A symbiotic relationship existed; mortals did not harm or eat them, and the 'aumakua warned or reprimanded mortals in dreams, visions, and calls.
'Aumākua	Plural of 'aumakua.
'Auwai	Irrigation ditch, canal, waterway.
Hālau	1. Long house, as for canoes or hula instruction; meeting house. 2. Large, numerous; much.
Hale pili	House thatched with pili grass.
Heiau	Pre-Christian place of worship, shrine. Some heiau were elaborately constructed stone platforms, other simple earth terraces.
Ho'i	1. To leave, go or come back; to cause to come back. 2. To enter, as an institution or last resting place. 3. A parting chant to which hula dancers dance as they leave the audience. 4. Marriage of a chief with the daughter of a brother or sister; to do so (a means of increasing offspring).
Hula	A Hawaiian dance form accompanied by chant or song.
'Ili	Land section, next in importance to ahupua'a and usually a subdivision of an ahupua'a.
'Ili kū	Shorted form of 'ili kūpono.
'Ili kūpono	A nearly independent 'ili land division within an ahupua'a, paying tribute to the ruling chief and not to the chief of the ahupua'a. Transfer of the ahupua'a from one chief to another did not include the 'ili kūpono located within its boundaries. Sometimes shorted to 'ili kū.
Kanaka	Human being, person, individual, party, humankind, population; often used for man.

Kānaka	Plural of kanaka.
Kāne	Male, husband, male sweetheart, man; brother-in-law of a woman.
Kanikau	1. Dirge, lamentation, chant of mourning, lament. 2. To chant, wail, mourn.
Kapu	1. Taboo, prohibition. 2. Special privilege or exemption from ordinary taboo. 3. Sacredness, prohibited, forbidden, sacred, holy, consecrated. 4. No trespassing, keep out.
Kuleana	Right, privilege, concern, responsibility, title, business, property, estate, portion, jurisdiction, authority, liability, interest, claim, ownership, tenure, affair, province.
Kupuna	Grandparent, ancestor, relative or close friend of the grandparent's generation, grandaunt, granduncle.
Kūpuna	Plural of kupuna.
Limu	A general name for all kinds of plants living under water, both fresh and salt, also algae growing in any damp place in the air, as on the ground, on rocks, and on other plants; also mosses, liverworts, lichens.
Lo'i	Irrigated terrace, especially for taro, but also for rice and paddy.
Loko i'a	Traditional Hawaiian fishpond.
Makai	On the seaside, toward the sea, in the direction of the sea.
Mālama	To take care of, tend, attend, care for, preserve, protect, beware, save, maintain.
Mauka	Inland, upland, towards the mountain.
Mele	1. Song, anthem, or chant of any kind. 2. Poem, poetry. 3. To sing, chant.
Mele māka'ika'i	Travel chant.
Mō'i	King, sovereign, monarch, majesty, ruler, queen.
Moku	1. District, island, islet, section, forest, grove, clump, fragment. 2. To be cut, severed, amputated, broken in two.
Mo'o	Lizard, reptile of any kind, dragon, serpent.
Mo'olelo	Story, tale, myth, history, tradition, literature, legend, journal, log, yard, fable, essay, chronicle, record, article.
Mo'owahine	Female lizard deity.
Nī'aupi'o	Offspring of the marriage of a high-born brother and sister, or half-brother and half-sister.
'Ōlelo no'eau	Proverb, wise saying, traditional saying.
Oli	Chant that was not danced to, especially with prolonged phrases chanted in one breath, often with a trill at the end of each phrase; to chant thus.
Pi'o	Marriage of full brother and sister of nī'aupi'o rank, presumably the highest possible rank. Their offspring had the rank of naha, which is less than pi'o but probably more than nī'aupi'o. Later pi'o included marriage with half-sibling.

## Glossary of Hawaiian Terms

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Pueo	Hawaiian short-eared owl ( <i>Asio flammeus sandwichensis</i> ), regarded often as a benevolent 'aumakua.
'Ūniki	Graduation exercises, as for hula, lua fighting, and other ancient arts (probably related to niki, to tie, as the knowledge was bound to the student).
Wahi pana	A legendary place; a place made special celebrated in stories associated with it. Often sacred.
Wahine	Woman, lady, wife; sister-in-law, female cousin-in-law of a man, female.
Wao	1. Realm. 2. A general term for inland region usually forested but not precipitous and often uninhabited.

## Appendix A – Royal Patent 6714

<b>Claim Number:</b>	<b>07714B*K</b>
<b>Claimant Name:</b>	<b>Kekuaiwa, Moses</b>
<b>Alternate Name:</b>	
<b>Secondary Claimant:</b>	<b>no Kekuanaoa</b>
<b>Mokupuni (Island):</b>	<b>Kaua'i</b>
<b>Moku (District):</b>	<b>Kona</b>
<b>Ahupua'a (Division):</b>	<b>Wahiawa, Koloa</b>
<b>'Ili (Section):</b>	
<b>Royal Patent:</b>	<b>7813, 6714</b>

**[No. 7714B\*K], Mose Kekuaiwa**  
**Native Register Volume 5, page 444**  
**[Listed as 7715B]**

Mose Kekuaiwa's lands in the division oby the Mo'i in the month of Manuary 1848. Kapalama side in Honolulu, Oahu. The 'ilis are below:

Kapalama 'Ili, Kapalama, Kona, Oahu  
Maliko 'Ili, Kapalama, Kona, Oahu  
Kaluapilau 'Ili, Kapalama, Kona, Oahu  
Hanahome 'Ili, Kapalama, Kona, Oahu  
Kealia 'Ili, Kapalama, Kona, Oahu  
Makela 'Ili, Kapalama, Kona, Oahu  
Kalanakila 'Ili, Kapalama, Kona, Oahu

Kaohai Ahupua'a Lanai  
Alio Ahupua'a, Lahaina, Maui.

**No. 7714B, M. Kekuaiwa**

**Foreign Testimony Volume 3, page 410**

Wahiawa, Ahupuaa, Kona, Kauai  
Koloa, Kona, Kauai  
Kapalama, Kapa aoaoa ma Kalihi, Oahu  
Honokohau, Ahupuaa Kaanapali, Maui  
Kaohau, Ahupuaa, Kona, Lanai

A True Copy  
(Signed). A. G. Thruston  
Clerk. Interior. Department

Copy of the Division of Lands agreed upon in Privy Council August 27, 1850

Kekuanaoa and his children to receive fee simple titles for those lands here set off to them – they resigning to the Gov. all title to the other lands granted them in the Buke Mahele.

Ko M. Kekuanaoa  
Keokea, Ahupuaa Kona Hawaii  
Waiapuka Ahupuaa Kohana Hawaii  
Kaakaukui, ili no Honolulu, Oahu  
Paeaki,  
Kunana, Kapa o Halawa, Ewa Oahu  
Eleele, ili no Hanapepe, Kona, Kauai

Ko M. Kekuaiwa [No. 7714B]  
Wahiawa, Ahupuaa Kona Kauai  
Koloa, Kom. Kona Kauai

[Award 7714B; (Kauai) Index lists 7715B and 7714B for Moses Kekuaiwa and 7714B but 7714B for Kekuaiwa for Wahiawa and M. Kekuanaoa for Koloa also under 7714B 1 ap. 8620 Acs Ahp.; Award 7714B R.P. 7813 for Wahiawa 1 ap. 5857 Acs Ahp. and R.P. 6714 for Koloa, Kona Kauai; No. 7714B; Ko M.

Kekuaiwa; Award 7714B; R.P. 8130; Honokohau Kaanapali; 1 ap.; 6680 Acs (ahupuaa); Lahaina; See 7713 for Foreign Testimony v3; Note: Kekuanaoa inherits when his son dies of whooping cough in 1848]

Appendix B – Royal Patent 6448

NO. 6448

ROYAL PATENT

L.C.Award No. 5482

\*\*\*\*\*

INO

Koloa, Kauai

\*\*\*\*\*

Plan and Description

*Kope*

**PALAPALA HOOKO.**

Ua ae aku i keia la ka poe hoona kumu kuleana  
aina ia *Ono* *Sapana* *Ragaa*  
nona ke kuleana Helu *5482* *ma* *Koloa*  
he kuleana kona ma \_\_\_\_\_ ke ano alodio,

O keia palapala ke hoomaopopo i kona kuleana  
ma \_\_\_\_\_ ke Ano Alodio i ka aina ana i hoopii  
ai a hoakakaia ma ka palapala ana aina a *Peale*  
ma kona \_\_\_\_\_  
mau pelena, ke hookaaia na mea lilo no ka hana  
ana a loa ka palapala hookaa no na dala he *4.00*

A i ole e hookaaia ua mau dala la, aole e lilo keia  
palapala i kuleana maopopo ia ia.

Ma ke kauoha ana mai o na Luna Hoona kumu  
kuleana aina.

HALE HOONA,

*26 February* 185*2*

*Kaikouolelo o na Luna.*

Loaa mai ia'u na dala e like me ka olelo maluna.

KEENA HOONA.

*15 September* 185*2*  
*(Signature)*  
*(Signature) Sec*

# PALAPALA HOOKO.

Ua ae aku i keia la ka poe hoona kumu kuleana  
aina ia Anna Lapuna  
nona ke kuleana Helu 5482 Paeu, Naha, Hanalei  
he kuleana kona ma KE ANO ALODIO.

O keia palapala ke homaopopo i kona kuleana ma  
ke Ano Alodio i ka aina ana i hoopii mai ai, i hoaka-  
kaia ma ka palapala ana aina a W.A.  
Pease ma kona mau pale-  
na, ke hookaia na mea lilo no na dala he \$4.  
Cha. Dala

A i ole e hookaia ua mau dala la, aole e lilo keia  
palapala i kuleana maopopo nona.

HALE HOONA,

26 e Heberman 1852.

*J. L. Naitili*  
Kakauolelo.

Loaa mai ia'u ua dala e like me ka olele maluna.

Keena Hoona,

Naha  
Augate 30 1852.

*J. Kaulapaa*

*Paeu, Naha, Hanalei,*  
*ma ka kapa. He o Koa*

*Loi o Kapa.*

*ka kule. Komohiti*

*30 Peaka*

*ai Jan 20 / 52*  
*W. H. Pease*

# PALAPALA HOOKO.

Ua ae aku i keia la ka poe hoona kumu kuleana  
aina ia Pease 1482  
nona ke kuleana Helu 5482 Papa, Kona, Hawaii  
he kuleana kona ma KE ANO ALODIO.

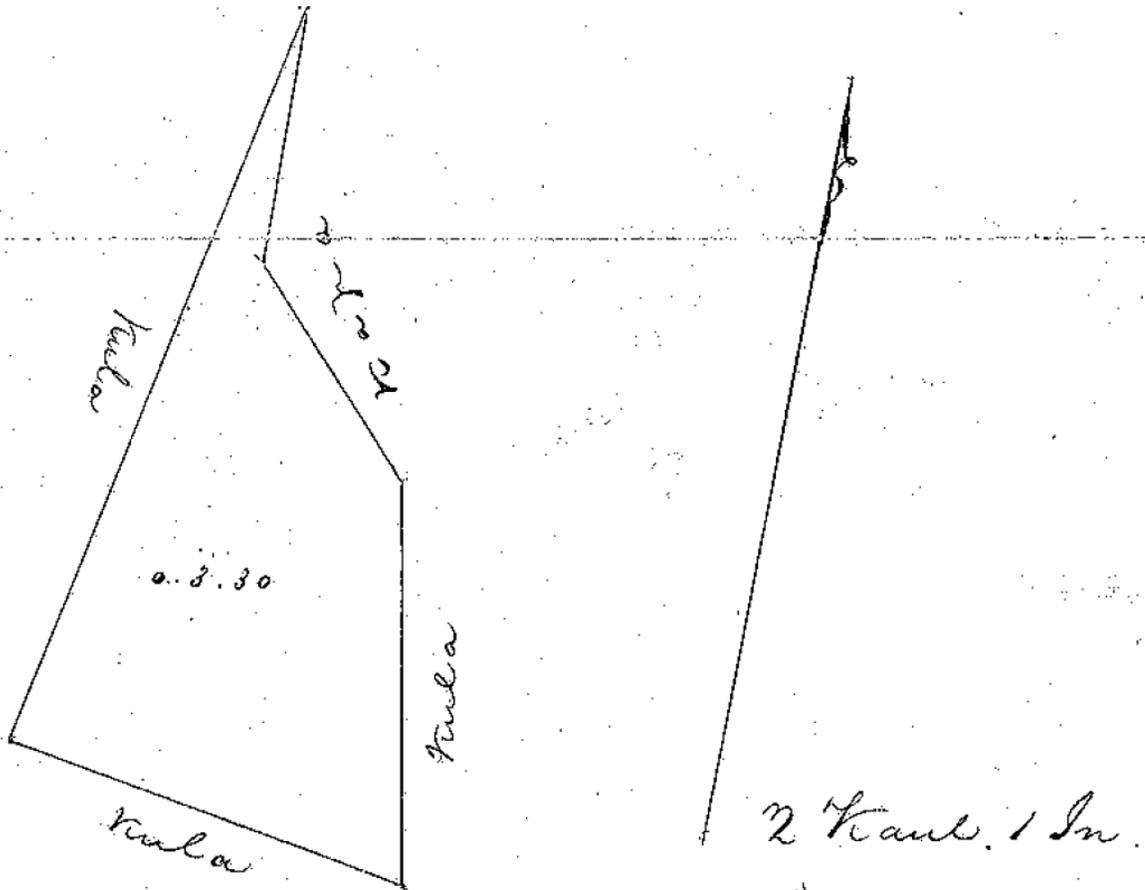
O keia palapala ke homaopopo i kona kuleana ma  
ke Ano Alodio i ka aina ana i hoopii mai ai, i hoaka-  
kaia ma ka palapala ana aina a USA  
Pease ma kona mau pale-  
na, ke hookaia na mea lilo no na dala he \$ 4  
Cha Dala

A i ole e hookaia ua mau dala la, aole e lilo keia  
palapala i kuleana maopopo nona.

HALE HOONA,  
26 e February 1852  
J. L. Nailili  
Kakauolelo.

Loaa mai ia'u na dala e like me ka olelo maluna.  
Keena Hoona, Holon  
Augate 30. 1852.  
G. Kakaulehoo

*Papa Koolou Hawaii,*  
*o ke kapa. Ke o ka*  
*Loi o kapa.*  
*ke tula. Kona kapa*  
*30 Peaka.*  
*ai Jan 2 of*  
*1852*  
*W. H. Pease*



Aha Loi me kula maloko o ka ili. I oia koolou Hawaii,  
Ehoomaka ana ma kahi amwai ma ke kapa. He o ka  
ama o kapa - alaila aku.

He 1' He 2' kaula e pili ana i na Loi o kapa.

He 42' He 2' -

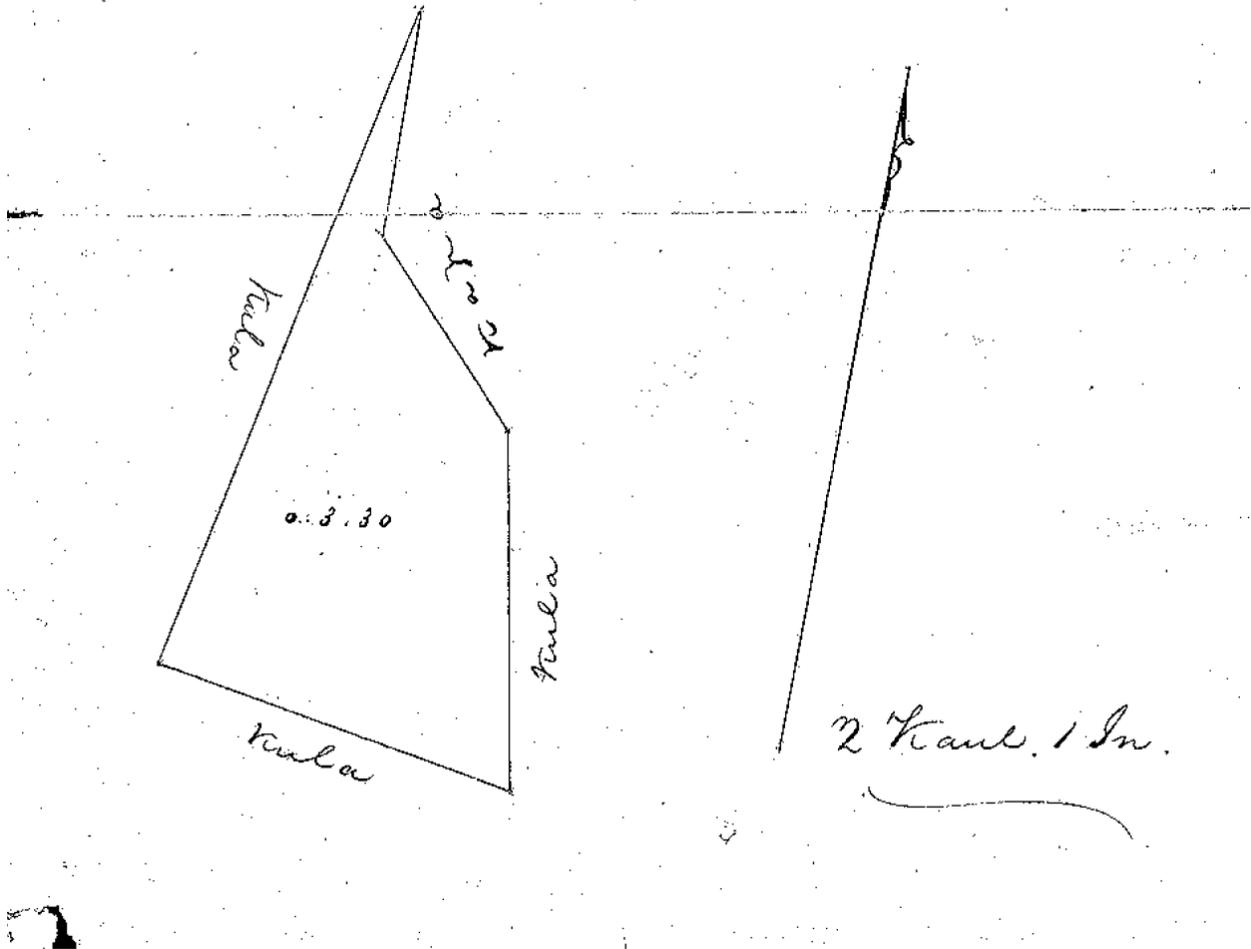
He 10' He 3 1/100 -

He 80' He 3 27/100 -

He 11' He 6 1/100 -

e ili ana. I Ruda 30 Peka.

Hawaii Jan'y 20 / 52  
W. H. Pease  

called the \_\_\_\_\_ and a further undertaking by the party of the First Part, that the said Board of Immigration will pay, or cause to be paid to the party of the Second Part, wages at the rate of \_\_\_\_\_ for each and every month, during the existence of this agreement; such wages to be paid at the end of each calendar month, reckoning from the date of landing at Honolulu, and in consideration of a farther undertaking, on the part of the party of the First Part, to secure and defend the party of the Second Part, in all rights of citizenship under the Hawaiian Law, as fully as the same are enjoyed by the native born subjects of the Kingdom, and likewise in case of sickness, that he shall be supplied with proper medical attendance, and that all \_\_\_\_\_ children shall be properly instructed in the Public Schools, the said party of the Second Part, will duly and faithfully perform such lawful and proper labor as he may be directed to perform, under the auspices of the Board of Immigration, for and during the space of \_\_\_\_\_ years, next succeeding the date of landing in the Hawaiian Kingdom—it being always understood, that he shall not be compelled to labor on Sunday, or any holiday recognized by the Government.

And the party of the First Part, in consideration of the agreement hereinbefore expressed, as being entered into by the party of the Second Part, hereby agrees to the same, and undertakes that the said Board of Immigration will pay, or cause to be paid, the wages hereinbefore set forth, and will keep and perform, or cause to be kept and performed, all the other stipulations hereinbefore set forth.

In testimony whereof, we have hereunto set our hands, on the day and year first

above mentioned, at

(Kope)

5482 Oms (ma Paou) Koloa

Aha Poi (me Kula)

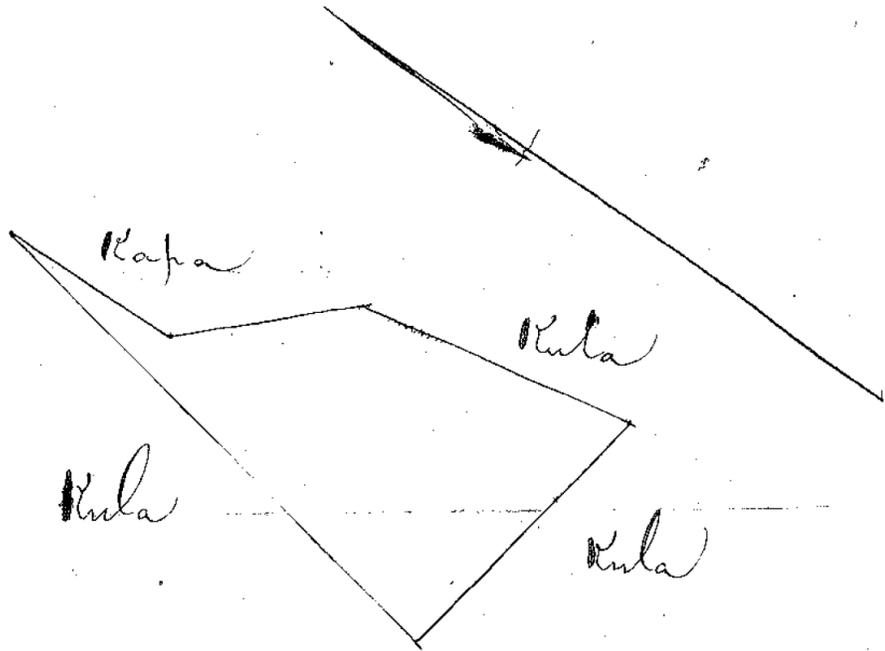
Koomaka Kahi Auwai (ma Kapa Kom.  
o ka aia o Kapa - alaka)

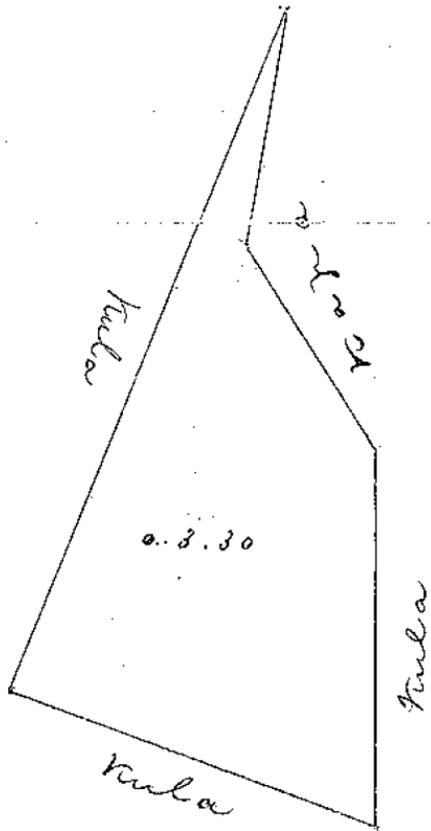
Rema 1° K.P. 2 Kaul (ma ma Poi - Kapa

1. 42 " 2 " " " " "  
1. 10 " 3 " " Kula Koo-ohi

Ahan) 80 Koo) 3-2 " " " "  
1. 10 K.P. 6.08 " " "

Ke ili ana i Ruda i O Peta









# **Appendix H:**

## **Drainage Study**



**DRAINAGE STUDY  
FOR  
THE SHOPS AT KUKUI'ULA EMPLOYEE PARKING LOT**

**Koloa, Hawaii  
TAX MAP KEY: 2-6-015:010 & 011**



A handwritten signature in black ink, appearing to read "Kevin T. Goto".

Expiration date: 04/30/24

This work was prepared by me or under my supervision and construction of this project will be under my observation. (Observation of construction as defined in Chapter 16-115 Subchapter 1 Definitions of the Hawaii Administrative Rules "Professional Engineers, Architects, Surveyors, and Landscape Architects.")

Prepared for:

**Alexander & Baldwin**  
822 Bishop Street  
Honolulu, Hawaii 96813

Prepared by:

**Goto Engineering LLC**  
PO Box 283238  
Honolulu, Hawaii 96828

August 2023

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**I. INTRODUCTION**

**A. Purpose**

This drainage study was conducted to:

1. Calculate storm runoff quantities occurring at the proposed project site under existing and proposed conditions.
2. Determine required drainage improvements as required.
3. Ensure compliance with the "Storm Water Runoff System Manual", Department of Public Works, County of Kauai, July 2001.

**B. Project Location**

The 0.88-acre project site is located in a portion of The Shops at Kukui'ula in Koloa on the island of Kauai within TMK: 2-6-015: por. 010 and 011; see Figure 1 in the Appendix. It is bound by the dirt Kaulu Street to the north, The Shops at Kukui'ula to the east and south, and the undeveloped Parcel 011 to the west. The project location is in drainage area 5a of the Supplement No. 2 Volume 1 to the Kukui'ula Drainage Master Plan report dated May 2005 by Austin Tsutsumi and Associates.

**C. Existing and Proposed Land Use**

An existing dirt parking lot in the project area, while a new paved parking lot with photovoltaic canopy and an approximate 455 sf storage building are proposed to be constructed.

**D. Soils**

According to USDA Soil Conservation Survey, the underlying soil within the project site consists primarily of Waikomo very rocky silty clay (Wt), 2 to 6 percent slopes. Waikomo very rocky silty clay (Wt) is characterized of having low to moderate permeability and medium runoff. See Figure 2 in the Appendix.

**E. Flood Hazard**

Per Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) Community Panel No.: 1500020313F dated November 26, 2010, the

project site is located in Zone X which are areas determined to be outside the 0.2% annual chance floodplain. See Figure 4 in the Appendix.

**II. EXISTING TOPOGRAPHY AND DRAINAGE CONDITIONS**

The existing topography within the project site is characterized by mild slopes ranging from +69.00 mean sea level (msl) at the north face of the site to +57.00 msl at the south face of the site. All areas of the dirt parking lot drain in the southwest direction toward the undeveloped Parcel 011. See Figure 3 in the Appendix.

**III. PROPOSED DRAINAGE CONDITIONS**

The proposed drainage patterns will follow that of the existing with all runoff discharging toward the undeveloped Parcel 011. Two basins comprise the proposed drainage area.

Runoff from Basin P1 is collected in a series of drain inlets connected to an underground drainage system that daylights out of a drain bubbler to Parcel 011.

Runoff from Basin P2 sheet flows directly to Parcel 011.

See Figure 5 in the Appendix.

**IV. HYDROLOGIC CRITERIA AND ANALYSIS**

**A. Hydrologic Criteria**

The hydrologic analysis is based on a 2-year 1-hour rainfall event using the Rational Method to determine the peak discharge for the existing and proposed conditions.

**B. Hydrologic Analysis and Results**

Peak flows are determined by the Rational Method expressed as:

$$Q = C * I * A$$

Where:

Q      Flow rate in cubic feet per second (cfs)

C      Runoff coefficient

- I Rainfall intensity in inches per hour for a duration equal to the time of concentration
- A Drainage area in acres

The 1.6 inches/hour rainfall intensity is obtained from Plate 3 (Ref. 1). The time of concentration was calculated from the chart in Plate 1 (Ref. 1), and the correction factor was calculated from the chart in Plate 2 (Ref. 1). See Tables A and B in the Appendix.

The following are the results of the hydrologic analysis for the project site:

Table 1. Existing Peak Flows

Basin	Area (acres)	Q <sub>exist</sub> (cfs)
E1	0.88	1.26
Total	0.88	1.26

Table 2. Proposed Peak Flows

Basin	Area (acres)	Q <sub>exist</sub> (cfs)
P1	0.20	0.78
P2	0.68	2.65
Total	0.88	3.43

## V. SUMMARY

The Kukui'ula Drainage Master Plan report dated March 2003 by Austin, Tsutsumi & Assoc. Inc., including the Supplement No. 1 report dated December 2003 and Supplement No. 2 dated May 2005, describes the anticipated regional area development and improvements to accommodate the development.

This proposed project site is located within a portion of Drainage Area 5a, while the existing The Shops at Kukui'ula is located within a portion of Drainage Area 5b per the Supplement No. 2 report, respectively; see Figure 6 in the Appendix. According to the report, a total of 16.6 acres of urban commercial area is assumed within both Drainage Area 5a (5.1 acres) and Drainage Area 5b (11.5

acres); see Figures 7 and 8 in the Appendix. The report further states that Drainage Area 5a flows into an existing sump within the downstream archaeological/biological preserve with any overflow discharging to the golf course practice range, golf course, and finally to the triple arch culvert at Kukui'ula Bay.

A comparison of the total flow at the triple arch culvert at Kukui'ula Bay shows that the capacity of the culvert is greater than the anticipated proposed total flow (see Figure 10 in the Appendix):

Q capacity = 9,904 cfs  
Q100 proposed = 3,350 cfs  
Therefore, Q capacity > Q 100 proposed

A comparison of the total volume shows that the provided basin storage is greater than the anticipated increase in runoff volume (see Figure 11 to 13 in the Appendix):

V existing = 1,043 acre-ft  
V proposed = 1,109 acre-ft  
Delta V increase = 147 acre-ft  
V total basin storage = 190.20 acre-ft  
Therefore, V total basin storage > Delta V increase

The actual total area of The Shops at Kukui'ula, including this proposed project area, is 13.37 acres or 3.23 acres less than anticipated in the Supplement No. 2 report. As such, the anticipated runoff produced by the proposed project is less than the anticipated runoff in the Supplement No. 2 report and will be accommodated by the master plan report improvements. The proposed project will not impact, alter, or cause any adverse effects to downstream properties.

**VI. REFERENCES**

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2. "Flood Insurance Rate Map", State of Hawaii, Federal Emergency Management Agency, November 26, 2010.
3. "Soil Survey of Islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii", United States Department of Agriculture Soil Conservation Service, August 1972, Effective Amendments.
4. "Kukui'ula Drainage System Master Plan Report", Austin, Tsutsumi & Associates, Inc., March 2003.
5. "Supplement No. 1 to the Kukui'ula Drainage System Master Plan Report", Austin, Tsutsumi & Associates, Inc., December 2003.
6. "Supplement No. 2 to the Kukui'ula Drainage System Master Plan Report", Austin, Tsutsumi & Associates, Inc., May 2005.

**VII. APPENDIX**

- Figure 1 – Project Location and Vicinity Map
- Figure 2 – Soil Map
- Figure 3 – Existing Drainage Condition
- Figure 4 – Flood Insurance Rate Map
- Figure 5 – Proposed Drainage Condition
- Figure 6 – Drainage Map Proposed Conditions from Supplement No. 2 to the Kukui'ula Drainage System Master Plan Report
- Figure 7 – Kukui'ula Parcel X Condominium Map
- Figure 8 – Hydrologic Calculations for Subcatchment 5a from Supplement No. 2 to the Kukui'ula Drainage System Master Plan Report
- Figure 9 – Hydrologic Calculations for Subcatchment 5b from Supplement No. 2 to the Kukui'ula Drainage System Master Plan Report
- Figure 10 – Flow Comparison at the Triple Arch Culvert from Supplement No. 2 to the Kukui'ula Drainage System Master Plan Report
- Figure 11 – Existing Runoff Volume from Supplement No. 2 to the Kukui'ula Drainage System Master Plan Report
- Figure 12 – Proposed Runoff Volume from Supplement No. 2 to the Kukui'ula Drainage System Master Plan Report

Figure 13 – Storage Volume from Supplement No. 2 to the Kukui'ula Drainage System Master Plan Report

Table A – Existing Drainage Condition Calculations

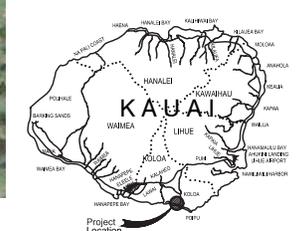
Table B – Proposed Drainage Condition Calculations



**GRAPHIC SCALE**



SCALE: 1" = 100'



THE SHOPS AT KUKU'I'ULA EMPLOYEE PARKING LOT  
KOLOA, KAUAI, HAWAII

PROJECT LOCATION AND VICINITY MAP

FIGURE 1



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808-382-6538



**GRAPHIC SCALE**

100' 50' 0 100' 200'

SCALE: 1" = 100'



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HONOLULU, HI 96828  
808-382-6538

THE SHOPS AT KUKU'I'ULA EMPLOYEE PARKING LOT  
KOLOA, KAUAI, HAWAII

SOILS MAP

FIGURE 2



BASIN	AREA (ACRES)	Q (CFS)	DISCHARGE POINT
E1	0.88	1.26	DP 1
TOTAL	0.88	1.26	



THE SHOPS AT KUKU'I'ULA EMPLOYEE PARKING LOT  
KOLOA, KAUAI, HAWAII

EXISTING DRAINAGE CONDITION

FIGURE 3

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808-382-6538



**GRAPHIC SCALE**

100' 50' 0 100' 200'

SCALE: 1" = 100'

**FIRM**  
FLOOD INSURANCE RATE MAP  
KAUAI COUNTY,  
HAWAII

PANEL 213 OF 500  
USE MAP INDEX FOR PANEL LOCATION

**NATIONAL FLOOD INSURANCE PROGRAM**

MAP NUMBER  
15000251 OF  
MAP REVISED  
NOVEMBER 26, 2016



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HONOLULU, HI 96828  
808-385-6538

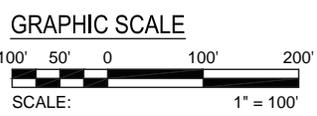
THE SHOPS AT KUKU'I'ULA EMPLOYEE PARKING LOT  
KOLOA, KAUAI, HAWAII

FLOOD INSURANCE RATE MAP

**FIGURE 4**



BASIN	AREA (ACRES)	Q (CFS)	DISCHARGE POINT
P1	0.20	0.78	DP 1
P2	0.68	2.65	DP 2
TOTAL	0.88	3.43	




 OOTO ENGINEERING LLC  
 PO BOX 283238  
 HONOLULU, HI 96828  
 808-385-6538

THE SHOPS AT KUKU'I'ULA EMPLOYEE PARKING LOT  
 KOLOA, KAUAI, HAWAII

PROPOSED DRAINAGE CONDITION

FIGURE 5

**KUKUI'ULA**  
Koloa, Kauai, Hawai'i

**Drainage Map  
Proposed  
Conditions**

Figure - 6

TMK 2-6-15: 010

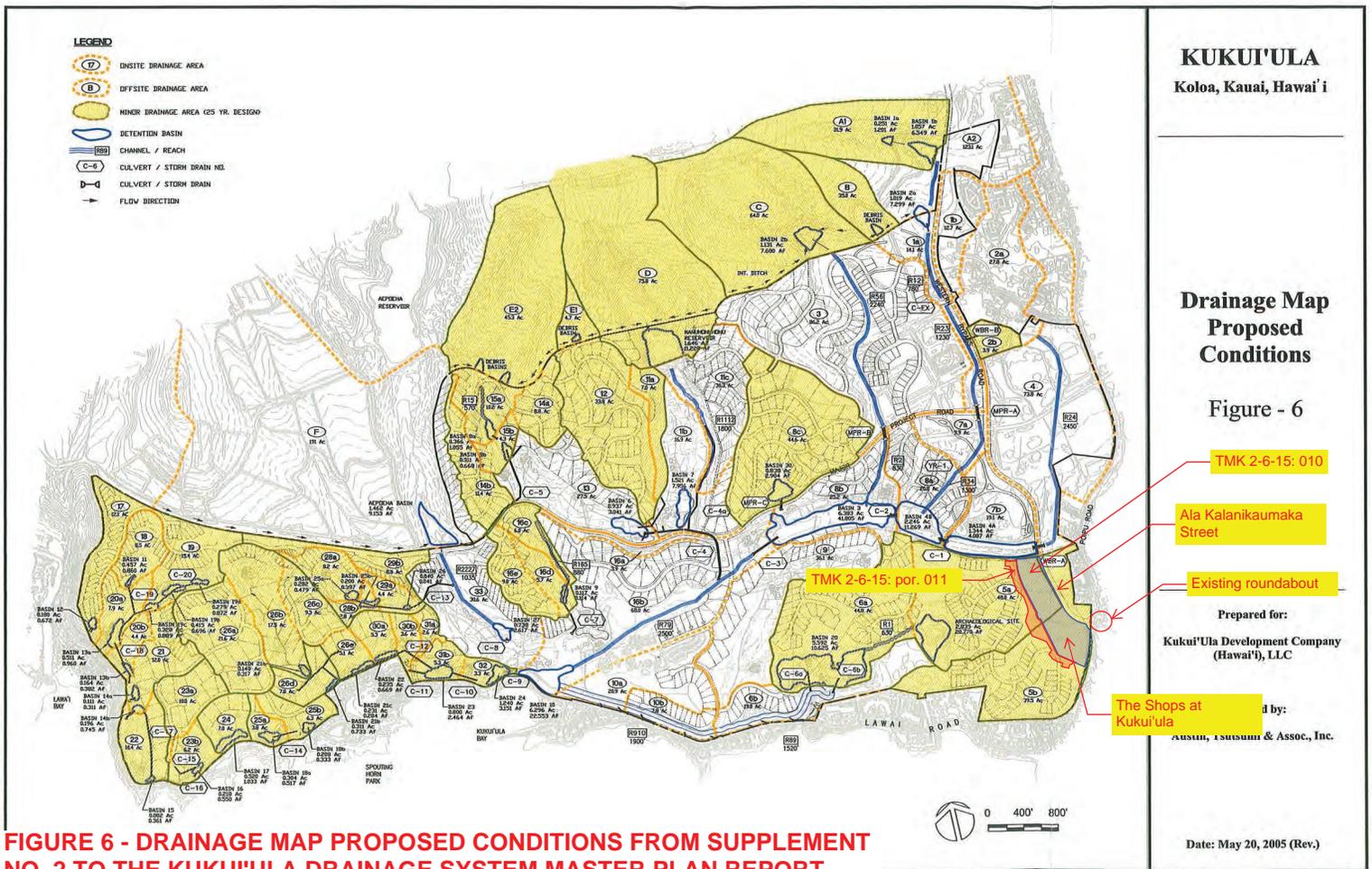
Ala Kalanikaumaka  
Street

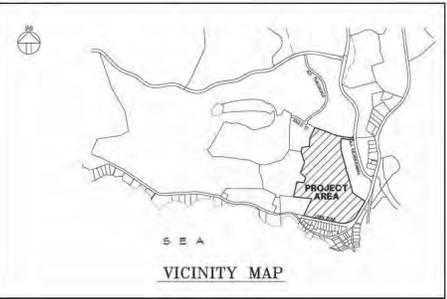
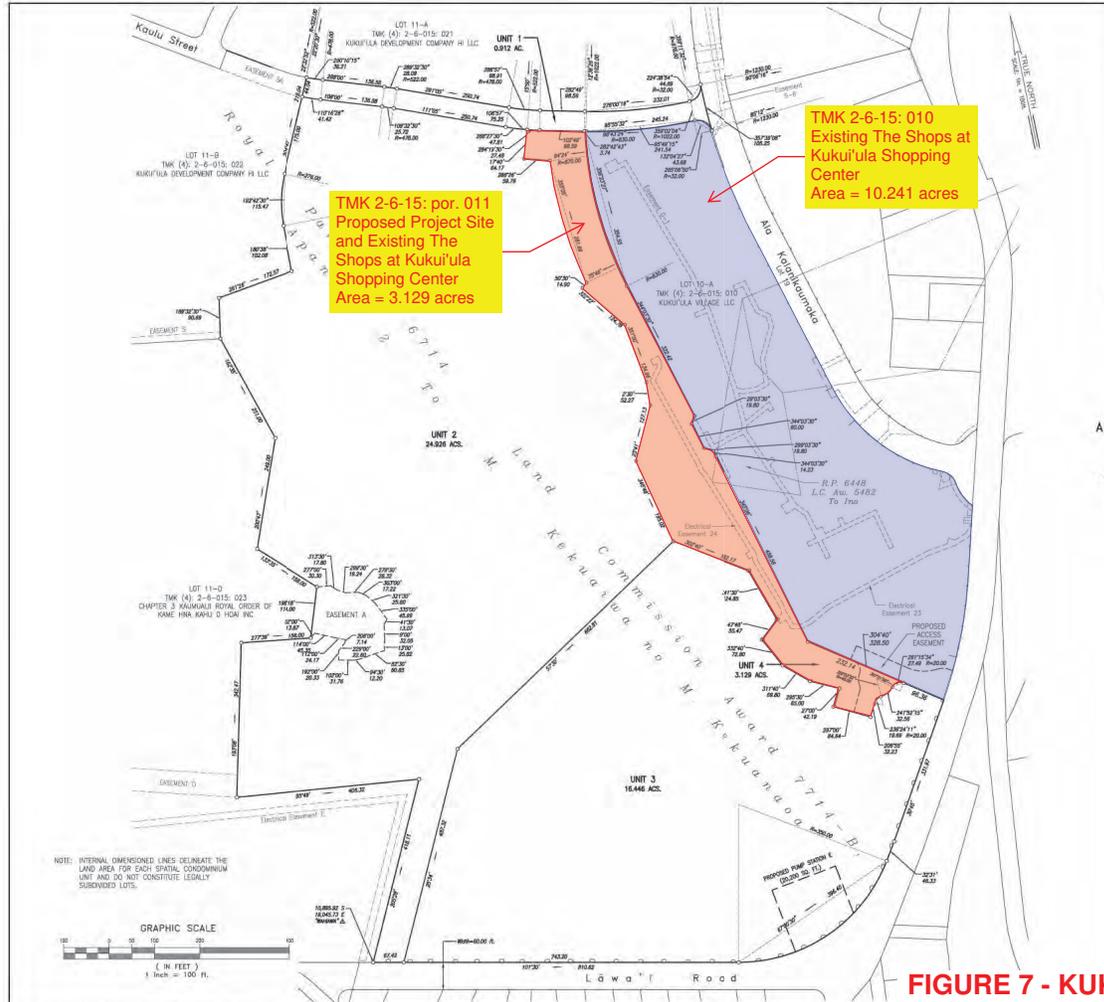
Existing roundabout

Prepared for:  
Kukui'Ula Development Company  
(Hawai'i), LLC

The Shops at  
Kukui'Ula  
Designed by:  
Austin, Iwasumi & Assoc., Inc.

Date: May 20, 2005 (Rev.)





**KUKUI'ULA PARCEL X CONDOMINIUM**

DESIGNATION OF UNITS 1 TO 4, INCLUSIVE,  
AND EASEMENT A

BEING PORTIONS OF ROYAL PATENT 6448,  
LAND COMMISSION AWARD 5482 TO IHO  
AND ROYAL PATENT 6714, LAND COMMISSION AWARD 7714-B, APANA 2,  
TO M. KEKUIWA NO M. KEKUANAOA.

AT LAWA'I, KOLOA (MAKAI), AND KAMALAU, KOLOA, KAUAI, HAWAII

TMK: (4) 2-6-015: 011  
TOTAL AREA: 45.413 ACRES

OWNERS: KUKUI'ULA DEVELOPMENT COMPANY (HAWAII), LLC

ADDRESS: KUKUI'ULA DEVELOPMENT CO LLC  
2700 KE ALAULA ST SITE D  
Koloa HI 96756

NOTE: EASEMENT A FOR ARCHAEOLOGICAL SITE PURPOSES  
AFFECTING UNIT 2 = 19,107 SQ. FT.  
EXISTING EASEMENT FOR UTILITY PURPOSES  
AFFECTING UNIT 3 IN FAVOR OF MAUI ISLAND  
UTILITY COOPERATIVE, AS RECORDED IN DOC. NO.  
2009-054267.

ATAI SURVEYING ASSOCIATES INC.  
501 SUMNER STREET, SUITE 501  
HONOLULU, HAWAII 96813  
PHONE NO. 533-3046



THIS WORK WAS PREPARED BY ME  
OR UNDER MY SUPERVISION  
*[Signature]*  
LICENSED PROFESSIONAL LAND SURVEYOR  
CERTIFICATE NO. 8008  
EXP. 04/22

**FIGURE 7 - KUKUI'ULA PARCEL X CONDOMINIUM**

# FIGURE 8 - HYDROLOGIC CALCULATIONS FOR SUBCATCHMENT 5A FROM SUPPLEMENT NO. 2 TO THE KUKUI'ULA DRAINAGE SYSTEM MASTER PLAN REPORT

**East**

Type I 24-hr 2-yr Rainfall=5.50"

Prepared by Austin, Tsutsumi & Associates

Page 3

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## Subcatchment 4:

Runoff = 152.56 cfs @ 10.14 hrs, Volume= 22.815 af, Depth= 3.71"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 0.00-24.00 hrs, dt= 0.05 hrs  
Type I 24-hr 2-yr Rainfall=5.50"

Area (ac)	CN	Description
52.800	80	good condition open space, soil d
21.000	95	commercial, soil d
73.800	84	Weighted Average

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
21.6					Direct Entry,

## Subcatchment 5a:

Runoff = 126.09 cfs @ 9.97 hrs, Volume= 13.101 af, Depth= 3.93"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 0.00-24.00 hrs, dt= 0.05 hrs  
Type I 24-hr 2-yr Rainfall=5.50"

Area (ac)	CN	Description
5.100	95	Urban commercial, 85% imp, HSG D
28.000	87	1/4 acre lots, 38% imp, HSG D
6.900	73	Brush, Good, HSG D
40.000	86	Weighted Average

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
3.1	300	0.0100	1.6		Sheet Flow, Smooth surfaces n= 0.011 P2= 5.00"
3.0	800	0.0200	4.5	26.85	Trap/Vee/Rect Channel Flow, Bot.W=3.00' D=1.00' Z= 3.0' /' n= 0.035
0.9	400	0.0050	7.2	51.09	Circular Channel (pipe), Diam= 36.0" Area= 7.1 sf Perim= 9.4' r= 0.75' n= 0.012
7.0	1,500	Total			

## Subcatchment 5b:

Runoff = 134.14 cfs @ 9.96 hrs, Volume= 13.631 af, Depth= 4.14"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 0.00-24.00 hrs, dt= 0.05 hrs  
Type I 24-hr 2-yr Rainfall=5.50"

# FIGURE 9 - HYDROLOGIC CALCULATIONS FOR SUBCATCHMENT 5B FROM SUPPLEMENT NO. 2 TO THE KUKUI'ULA DRAINAGE SYSTEM MASTER PLAN REPORT

East

Type I 24-hr 2-yr Rainfall=5.50"

Prepared by Austin, Tsutsumi & Associates

Page 4

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Area (ac)	CN	Description
11.500	95	Urban commercial, 85% imp, HSG D
24.300	87	1/4 acre lots, 38% imp, HSG D
3.700	73	Brush, Good, HSG D
39.500	88	Weighted Average

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
1.5	200	0.0200	2.3		<b>Shallow Concentrated Flow,</b> Unpaved Kv= 16.1 fps
2.3	400	0.0200	2.9		<b>Shallow Concentrated Flow,</b> Paved Kv= 20.3 fps
0.7	400	0.0100	10.2	72.26	<b>Circular Channel (pipe),</b> Diam= 36.0" Area= 7.1 sf Perim= 9.4' r= 0.75' n= 0.012
1.5					<b>Direct Entry, Adjustment for Minimum Tc</b>
6.0	1,000	Total			

### Subcatchment 6a:

Runoff = 141.04 cfs @ 9.96 hrs, Volume= 14.293 af, Depth= 3.83"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 0.00-24.00 hrs, dt= 0.05 hrs  
Type I 24-hr 2-yr Rainfall=5.50"

Area (ac)	CN	Description
34.400	87	1/4 acre lots, 38% imp, HSG D
10.400	80	>75% Grass cover, Good, HSG D
44.800	85	Weighted Average

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
1.5	300	0.0470	3.3		<b>Shallow Concentrated Flow,</b> Grassed Waterway Kv= 15.0 fps
2.5	1,000	0.0210	6.8	121.58	<b>Trap/Vee/Rect Channel Flow,</b> Bot.W=3.00' D=2.00' Z= 3.0' n= 0.035
2.0					<b>Direct Entry, Adjustment for Minimum Tc</b>
6.0	1,300	Total			

### Subcatchment 6b:

Runoff = 56.56 cfs @ 9.96 hrs, Volume= 5.740 af, Depth= 3.63"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 0.00-24.00 hrs, dt= 0.05 hrs  
Type I 24-hr 2-yr Rainfall=5.50"

Area (ac)	CN	Description
11.700	87	1/4 acre lots, 38% imp, HSG D
2.900	80	>75% Grass cover, Good, HSG D
4.400	73	Brush, Good, HSG D
19.000	83	Weighted Average

**FIGURE 10 - FLOW COMPARISON AT THE TRIPLE ARCH CULVERT FROM SUPPLEMENT NO. 2 TO THE KUKUI'ULA DRAINAGE SYSTEM MASTER PLAN REPORT**

Scenario: 100 Year

HGL Report- Culvert Kukui'Ula Bay

Label	Section Size	Material Description	Mannings n	Length (ft)	Upstream Invert Elevation (ft)	Downstream Invert Elevation (ft)	Slope (ft/ft)	Total System Flow (cfs)	Full Flow Capacity (cfs)	Velocity Out (ft/s)	Normal Depth (ft)	Ground Elev. (ft)	Hydraulic Grade Line In (ft)	Hydraulic Grade Line Out (ft)	Hydraulic Slope (ft/ft)	Headloss Method
IN K-Bay Culvert Kukui'	24 x 7 ft	Concrete	0.015	48.00	1.00	0.50	0.0104	3,350	9,904	17.2	2.71	10.00	3.71	3.71	0.0104	Standard
							3,350	17.2		3.71		3.21				
OUT K-Bay							3,350	0.0		9.50		2.00	2.00			

# FIGURE 11 - EXISTING RUNOFF VOLUME FROM SUPPLEMENT NO. 2 TO THE KUKUI'ULA DRAINAGE SYSTEM MASTER PLAN REPORT

**Table 2 Drainage Runoff Quantities - Existing Conditions**  
100 Yr.

Drainage Area	Area Loc.	Area (acres)	Runoff, Q (cfs)	Runoff Vol. (acre-ft)
1	East	49	209	37
2	East	770	2,460	527
3	Central	338	935	195
4	West	249	892	161
5	West	191	594	123
TOTALS		1,597	5,090	1,043

V existing

**Table 3a Drainage Runoff Quantities - Proposed Conditions**  
Unmitigated Totals and Breakdown of Individual Drainage Areas  
100 Yr.

Drainage Area	Area Loc.	Area (acres)	Runoff, Q (cfs)	Runoff Vol. (acre-ft)
A1	East	32	132	20
A2	East	123	338	78
B	East	35	147	22
C	East	64	249	41
D	East	76	245	43
E1	East	5	20	3
1a	East	14	87	13
1b	East	13	84	12
2a	East	27	244	26
2b	East	4	35	4
3	East	86	745	77
4	East	74	443	67
5a	East	40	350	37
5b	East	40	359	38
6a	East	45	398	41
6b	East	19	166	17
7a	East	10	89	9
7b	East	19	165	17
8a	East	21	169	19
8b	East	25	169	22
8c	East	45	386	40
9	East	36	313	33
10a	East	21	151	19
10b	East	8	69	7
11a	East	7	52	5
11b	East	17	77	12
11c	East	30	251	26
12	East	34	269	27
13	East	28	203	21
16a	East	4	34	3
16b	East	68	517	64
SUBTOTAL W/O MITIGATION		1,067	6,956	863

# FIGURE 12 - PROPOSED RUNOFF VOLUME FROM SUPPLEMENT NO. 2 TO THE KUKUI'ULA DRAINAGE SYSTEM MASTER PLAN REPORT

**Table 3b Drainage Runoff Quantities - Proposed Conditions  
Totals after Mitigation at Final Outfall Locations  
100 Yr.**

Already being accommodated by capacity of triple arch culvert.

Outfall Location	Area Loc.	Area (acres)	Runoff, Q (cfs)	Runoff Vol. (acre-ft)	
Lawai Road:	DA-5b	East	40	359	38
Kukui'Ula Bay, Exist. Triple Arch Culvert:	Basin 10	East	1,448	3,350	1,071
Western Perimeter Road, Existing	Basin 12	West	12	116	10
Discharge Locations:	Basin 13a	West	N/A <sup>(1)</sup>	21	1
	Basin 13b	West	N/A <sup>(1)</sup>	7	9
	Basin 14a	West	N/A <sup>(1)</sup>	16	13
	Basin 14b	West	N/A <sup>(1)</sup>	14	3
	Basin 15	West	59	169	17
	Basin 16	West	16	115	13
	Basin 17	West	7	46	4
Basin 18b	West	10	44	6	
Basin 21b	West	7	112	5	
SUBTOTAL			111	660	81
<b>TOTALS</b>			<b>1,598</b>	<b>4,369</b>	<b>1,190</b>

V proposed

NOTE: Mitigation of increases in peak flows and runoff volumes is accomplished through storage in detention basins and channel reaches, and through lengthening of runoff flow paths via natural channel lengths between basins. (See Appendices - Proposed Conditions for individual runoff and storage computations)

(1) The Drainage Areas for these basins are included in the Basin 15 Drainage Area. Outflow is from low-flow drains only.

# FIGURE 13 - STORAGE VOLUME FROM SUPPLEMENT NO. 2 TO THE KUKUI'ULA DRAINAGE SYSTEM MASTER PLAN REPORT

**Table 4 Basin Storage Volumes**

Basin No.	Area Loc.	Area (ac)	Volume (ac-ft)
1A	East	0.25	1.20
1B	East	1.06	6.55
2A	East	1.02	7.30
2B	East	1.13	7.60
3	East	6.38	41.81
4A	East	1.34	4.09
4B	East	2.25	11.27
6	East	0.94	3.04
7 (Hole 5 Golf Course Lake)	East	1.52	7.96
10	East	6.30	22.55
20 (Driving Range)	East	5.59	10.63
30 (Parcel BB)	East	0.84	2.90
Archaeological Site	East	2.84	20.77
Manuhonuhonu	East	1.65	11.23
<b>SUBTOTAL</b>	<b>14 Basins</b>		<b>158.887</b>

8A	Central	0.37	1.06
8B	Central	0.31	0.67
9	Central	0.12	0.11
<b>SUBTOTAL</b>	<b>3 Basins</b>		<b>1.84</b>

11	West	0.46	0.86
12	West	0.18	0.67
13A	West	0.51	0.96
13B	West	0.16	0.38
14A	West	0.11	0.31
14B	West	0.20	0.75
15	West	0.08	0.36
16	West	0.22	0.55
17	West	0.52	1.03
18A	West	0.30	0.52
18B	West	0.21	0.33
19A	West	0.28	0.87
19B	West	0.42	0.70
19C	West	0.33	0.89
21A	West	0.15	0.32
21B	West	0.31	0.73
21C	West	0.23	0.28
22	West	0.24	0.67
23	West	0.80	2.46
24	West	1.24	3.15
25A	West	0.28	0.48
25B	West	0.20	0.39
26	West	0.04	0.04
27	West	0.74	2.62
Aepoeha	West	1.46	9.15
<b>SUBTOTAL</b>	<b>26 Basins</b>		<b>29.476</b>

**TOTAL STORAGE VOL.      43 Basins**

**190.20**

V storage

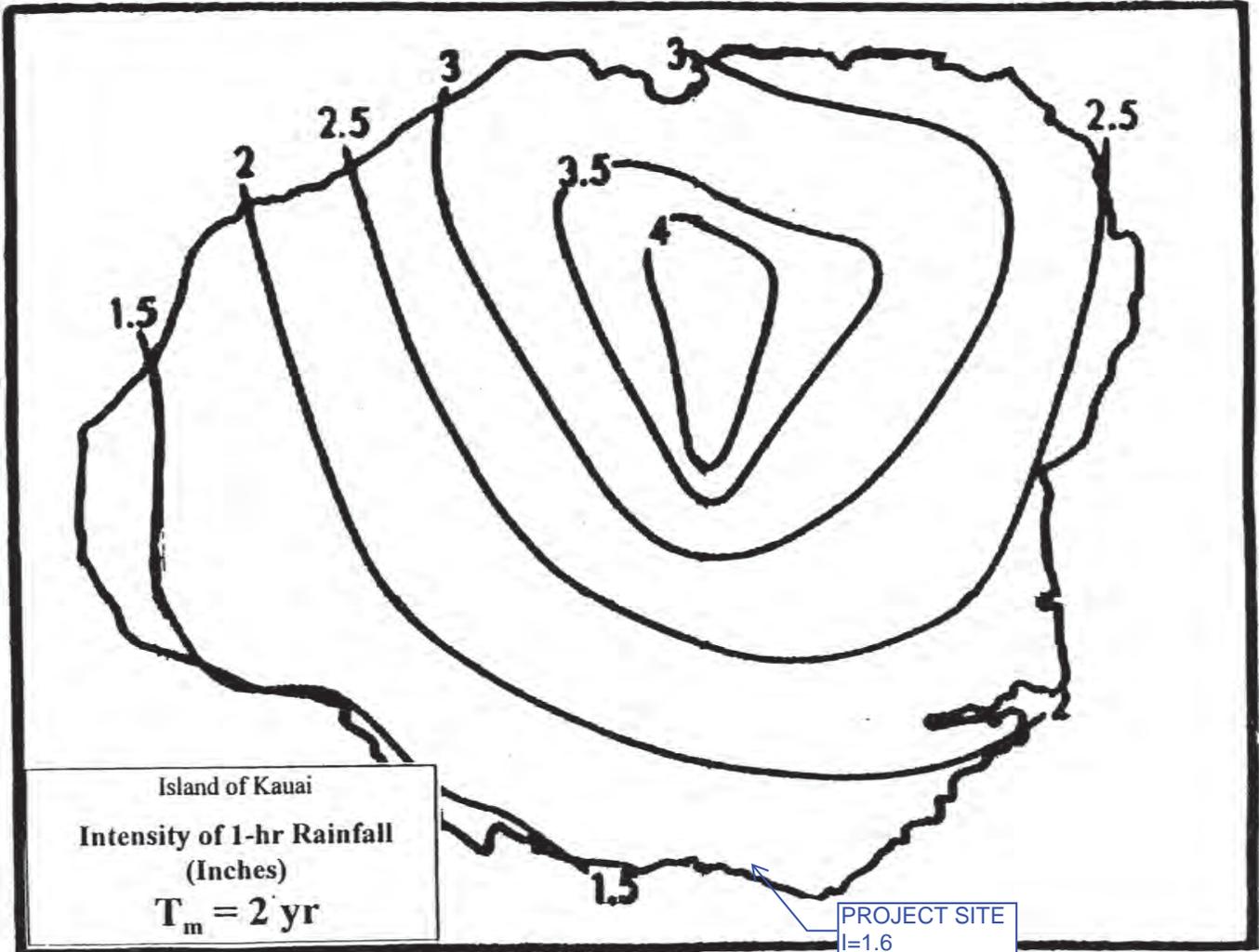


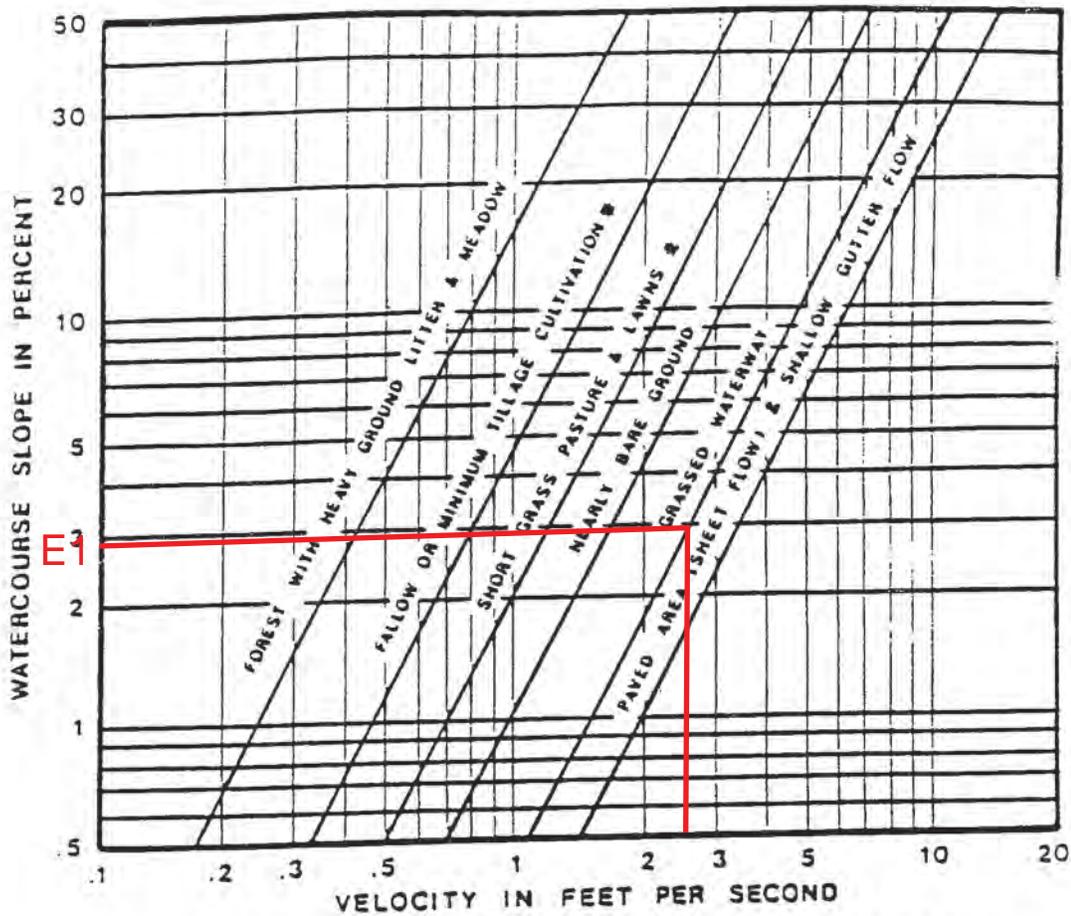
**Table A: Existing Drainage Condition Calculations  
2207 The Shops at Kukui'ula**

Basin Area	Drainage Area (acres)	C	Length (ft)	Slope	Velocity (ft/s)	T <sub>c</sub> (min.)	Correction Factor	I' (in/hr)	I (in/hr)	Q (cfs)	V (acre-ft)
E1	0.88	0.30	390.00	2.9%	2.60	0.40	2.8	1.70	4.76	1.26	0.04
Total	0.88									1.26	0.04

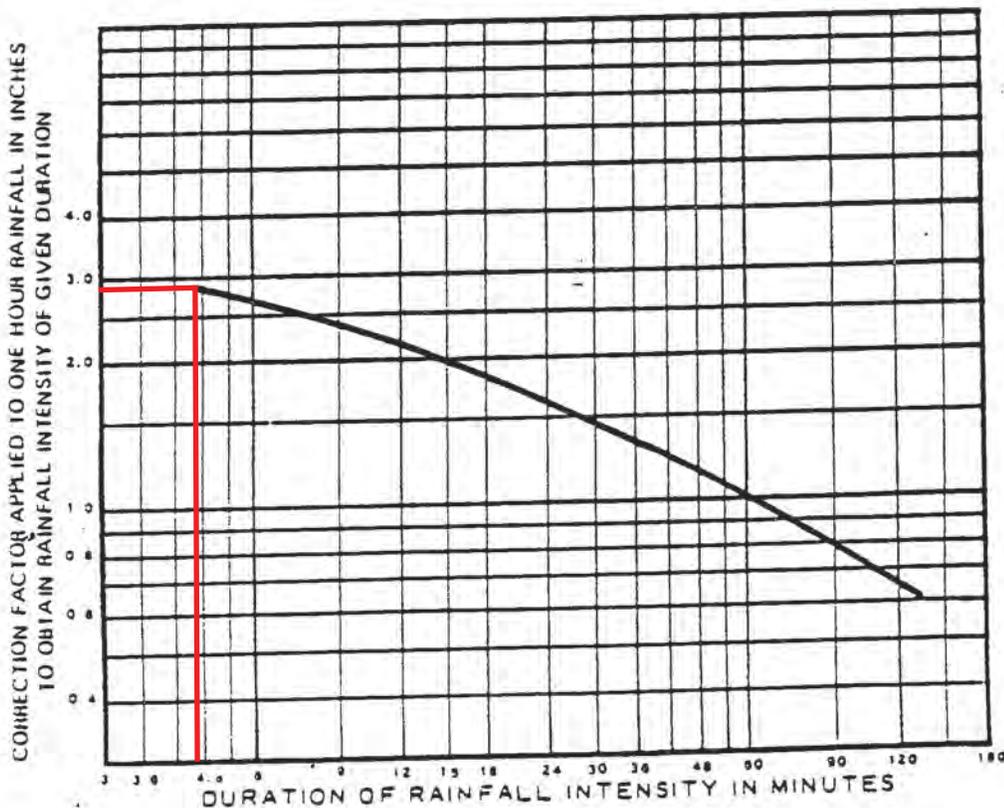
**Table B: Proposed Drainage Condition Calculations  
2207 The Shops at Kukui'ula**

Basin Area	Drainage Area (acres)	C	Length (ft)	Slope	Velocity (ft/s)	T <sub>c</sub> (min.)	Correction Factor	I' (in/hr)	I (in/hr)	Q (cfs)	V (acre-ft)
P1	0.20	0.82	315.00	3.1%	2.50	0.53	2.8	1.70	4.76	0.78	0.02
P2	0.68	0.82	410.00	2.8%	2.30	0.44	2.8	1.70	4.76	2.65	0.08
Total	0.88									3.43	0.10



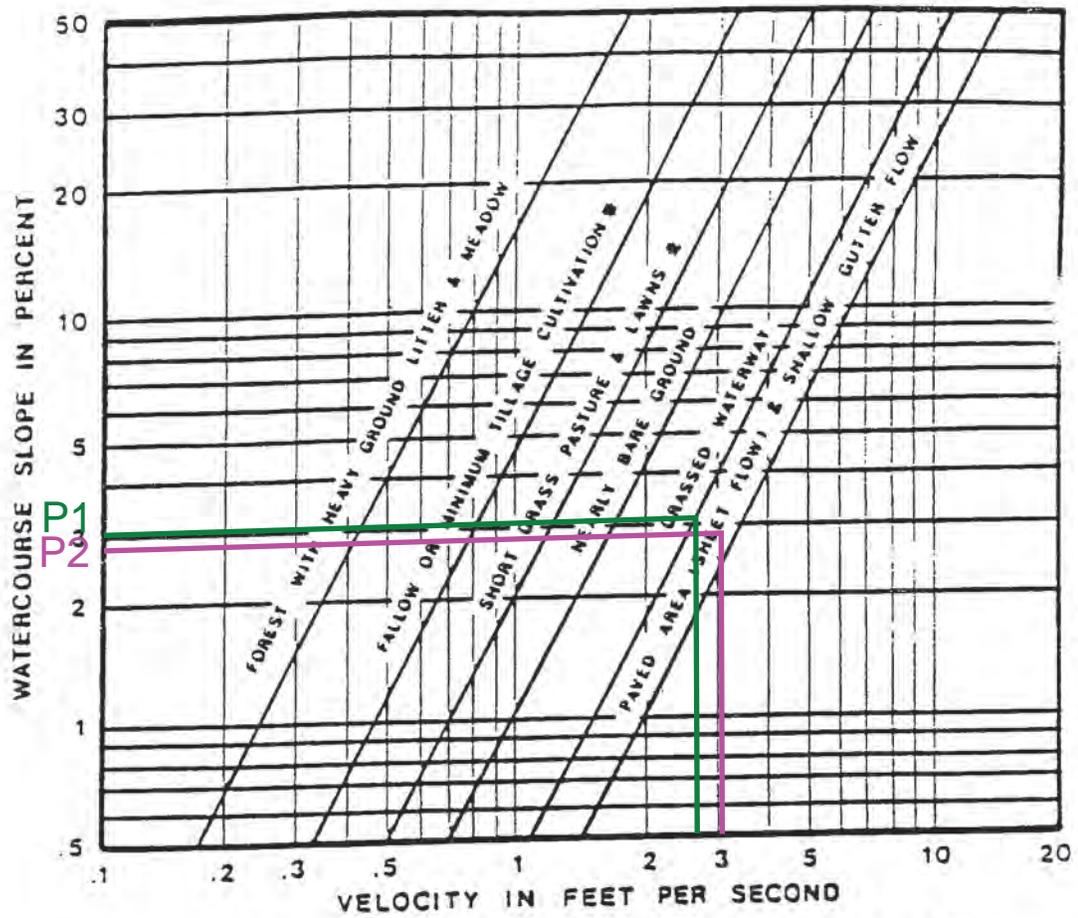


ESTIMATE OF AVERAGE FLOW VELOCITY FOR USE WITH THE RATIONAL FORMULA.

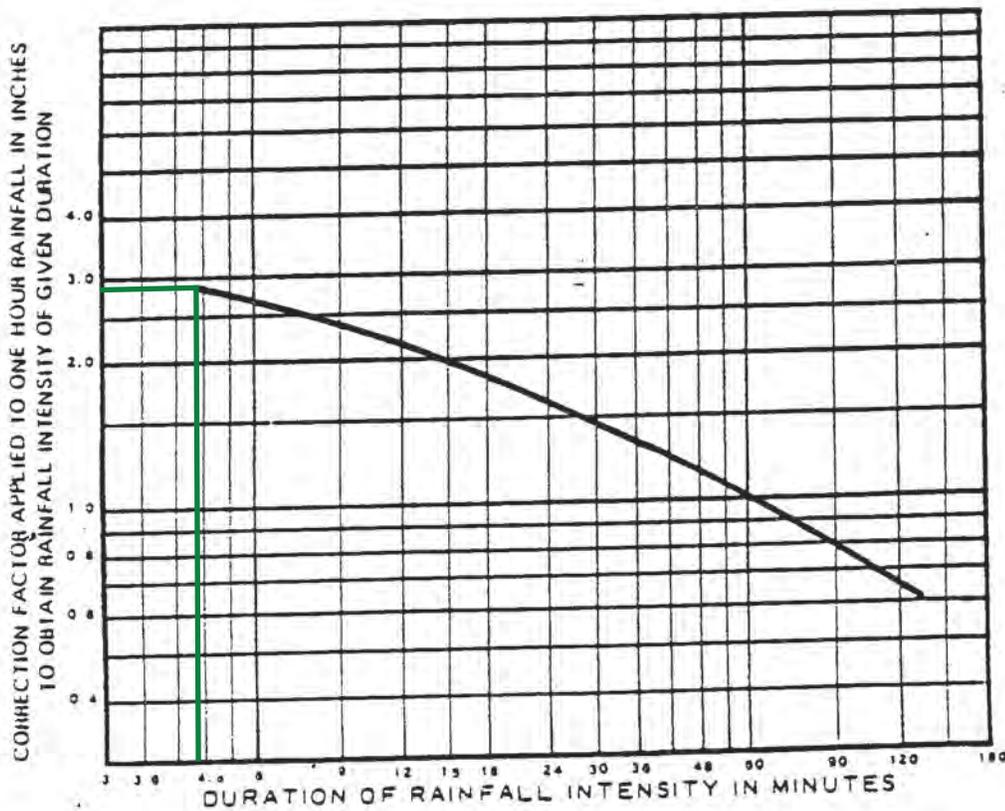


CORRECTION FACTOR FOR CONVERTING 1 HR. RAINFALL TO RAINFALL INTENSITY OF VARIOUS DURATIONS

TO BE USED FOR AREA LESS THAN 100 ACRES



ESTIMATE OF AVERAGE FLOW VELOCITY FOR USE WITH THE RATIONAL FORMULA.



**CORRECTION FACTOR**  
FOR CONVERTING 1 HR. RAINFALL  
TO RAINFALL INTENSITY  
OF VARIOUS DURATIONS

TO BE USED FOR AREA  
LESS THAN 100 ACRES

# Table 1

## TYPICAL RUNOFF COEFFICIENTS FOR BUILT-UP AREAS

LAND USE OR SURFACE CHARACTERISTICS	AVERAGE* PERCENT IMPERVIOUS	STORM FREQUENCY "C"	
		2	100
<u>Business:</u>			
General Commercial	90	0.82	0.84
Neighborhood Commercial	70	0.60	0.80
<u>Residential:</u>			
R-1	10	0.20	0.40
R-2	20	0.38	0.55
R-4	50	0.43	0.70
R-6	50	0.45	0.75
R-10	50	0.50	0.80
R-20	50	0.55	0.80
5 Acre Lot	8	0.15	0.30
<u>Industrial:</u>			
Limited Industrial	80	0.71	0.82
General Industrial	90	0.80	0.90
<u>Parks, Cemeteries:</u>			
	7	0.10	0.45
<u>Playgrounds:</u>			
	13	0.15	0.50
<u>Schools:</u>			
	50	0.45	0.70
<u>Streets:</u>			
Paved	100	0.87	0.93
Unpaved	95	0.80	0.90
<u>Driveways and Walks:</u>			
	96	0.87	0.93
<u>Roofs:</u>			
	90	0.80	0.90
<u>Lawns, Sandy Soil:</u>			
	0	0.00	0.20
<u>Lawns, Clayey Soil:</u>			
	0	0.05	0.50

NOTE: (These Rational formula coefficients may not be valid for large basins. These coefficients are also average values and may require adjustments depending on the surface characteristics, soil type, slope, infiltration, evaporation, depression storage, etc. The Engineer shall use sound engineering judgement in selecting the proper coefficient(s).) For composite drainage areas compute "weighted" Rational formula coefficient(s).

\* Average impervious areas do not correlate directly to allowable impervious area.



# **Appendix I:**

## **Landscape Site Plan**





**SCHEMATIC PLANTING PLAN**

**SHOPS AT KUKUI'ULA**





DWARF PINK PLUMERIA



KUKUI



'KIMI PINK' GINGER



MONSTERA



SHELL GINGER



DWARF LAUA'E FERN



GREEN LIRIOPE



GREEN POTHOS VINE

PLANT PALETTE



# 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

May 22, 2024

PERMIT NUMBER: Special Management Area Use Permit SMA(U)-2024-9  
Class IV Zoning Permit Z-IV-2024-4  
Use Permit U-2024-4

APPLICANT: KUKUI'ULA VILLAGE LLC

1. Attached for Planning Commission's reference are agency comments.



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

FROM: Kaaina S. Hull, Director

Planner: Romio Idica

4/17/2024

SUBJECT: Zoning Class IV Z-IV-2024-4  
 Use Permit U-2024-4  
 Special Mgt Area Permit SMA(U)-2024-9  
 Tax Map Key: 260150000  
 Applicant: Kukui'iula Village LLC.  
 The Shops at Kukui'ula - Parking lot with photovoltaic structures and storage building within the Improvement Area.  
 expansion of the shopping center.

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 checked="" type="checkbox"/> Office of Hawaiian Affairs           | <input type="checkbox"/> Other:                                  |

RECEIVED

APR 23 2024

County of Kauai  
 Transportation Agency

FOR YOUR COMMENTS (pertaining to your department) (Due Date: 05/17/2024)

5/10/2024

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 6/4/2024 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!



JOSEPH E. TAIT  
MANAGER AND CHIEF ENGINEER

**ENGINEERING DIVISION**  
DEPARTMENT OF WATER, COUNTY OF KAUA'I  
JASON F. KAGIMOTO, P.E.

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DATE: April 23, 2024

TO: Planning Department  
Kaaina Hull, Director (Romio Idica)

SUBJECT: Z-IV-2024-4; U-2024-4; SMA-U-2024-9; The Shops at Kukuiula-Parking Lot with Photovoltaic Structures and Storage Building within the Improvement Area Expansion of the Shopping Center; (*Kukui`ula Village, LLC.*)  
TMK: 2-6-015:010 and TMK: 2-6-015:011 (Portion Unit 4)

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DOW COMMENTS:

The Department of Water (DOW) has concerns regarding the possible backflow of water into our system and the increase in water demand associated with the subject permit applications for the new parking facilities, irrigation system for landscaping, new storage building, and new photovoltaic (PV) system.

We recommend to the Planning Department that any approval of the proposed 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:

1. Have the backflow prevention device tested by a certified tester and submit to the DOW a completed test report signed by the certified tester.
2. Submit detailed water demand calculations for the proposed project for DOW's review and approval.
3. Submit a formal request for water service for our review and approval, if applicable.

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*

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Regina Reyes-Flores, P.E.  
Water Resources and Planning Section

Apr 23, 2024

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Date

Z-IV-2024-4; U-2024-4; SMA-U-2024-9, 2-6-015:010, 2-6-015:011 por Unit 4, 20240423, Kukuiula Village LLC/RF:mlm

**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 Class IV Zoning Permit, Use Permit, and Special Management Area Use Permit for the construction of a photovoltaic system, storage building, and employee parking.

**Permit Application Nos.** Special Management Area Use Permit SMA(U)-2024-9  
 Class IV Zoning Permit Z-IV-2024-4  
 Use Permit U-2024-4

**Name of Applicant(s)** KUKUI'ULA VILLAGE LLC  
 PBR HAWAI'I & ASSOCIATES. TOM SCHNELL, AICP, AUTHORIZED AGENT

**II. PERMIT INFORMATION**

PERMITS REQUIRED	
<input checked="" type="checkbox"/> Use Permit	Pursuant to Section 8-3.2 of the KCC, 1987, as amended, a Class IV Zoning Permit is a procedural requirement for obtaining a Use Permit in the Residential area (R-10).
<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 a procedural requirement for obtaining a Use Permit in the Residential area (R-10).
<input checked="" type="checkbox"/> Special Management Area Permit <input checked="" type="checkbox"/> Use <input type="checkbox"/> Minor	Pursuant to Section 205A of the Hawai'i Revised Statutes (HRS) and the Special Management Area (SMA) 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	

*F. Z. A. Z.*  
 JUN 04 2024

<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:** April 8, 2024

**Date of Director's Report:** May 22, 2024

**Date of Public Hearing:** June 4, 2024

**Deadline Date for PC to Take Action (60<sup>TH</sup> Day):** June 7, 2024

**III. PROJECT DATA**

PROJECT INFORMATION			
<b>Parcel Location:</b>	The subject site is situated to the west of The Shops at Kukui'ula shopping center and approximately .2 miles north east of Prince Kūhiō Memorial Park.		
<b>Tax Map Key(s):</b>	(4) 2-6-015:010 and 011 (portion; Unit 4)	<b>Area:</b>	Parcel 10: 10.24 acres Parcel 11: Unit 4: 3.13 acres
ZONING & DEVELOPMENT STANDARDS			
<b>Zoning:</b>	Residential (R-10)		
<b>State Land Use District:</b>	Urban		
<b>General Plan Designation:</b>	Residential Community		
<b>Height Limit:</b>	Thirty (30) feet		
<b>Max. Land Coverage:</b>	Shall not exceed 80% of the lot or parcel area.		
<b>Parking Requirement:</b>	N/A		
<b>Front Setback:</b>	Ten (10) feet		
<b>Rear Setback:</b>	Five (5) feet or 1/2 the total height of the highest building wall from the ground level nearest the property line, whichever is greater.		
<b>Side Setback:</b>	Five (5) feet or 1/2 the total height of the highest building wall from the ground level nearest the property line, whichever is greater.		
<b>Community Plan Area:</b>			
<b>Community Plan Land Use Designation:</b>			
<b>Deviations or Variances Requested:</b>			

**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 April 8, 2024, 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>	June 4, 2024

**V. PROJECT DESCRIPTION AND USE**

Serving the Po’ipū community since its construction in 2010, The Shops at Kukui’ula provides various commercial establishments and services, including retail stores, restaurants, and office spaces. The entire shopping center complex, encompassing the buildings, parking facilities, and landscaping, is situated within Tax Map Key (TMK) No. (4) 2-6-014:010, referred to as the "Shopping Center Parcel." This parcel falls under the Commercial-Neighborhood County zoning designation and within the County of Kaua’i’s Special Management Area (SMA).

To the west of the Shopping Center Parcel is an area referred to as the "Improvement Area," identified as TMK No. (4) 2-6-015:011. It is comprised of undeveloped vacant land and an unpaved parking area. The Improvement Area is part of a four (4) unit condominium property regime (CPR), where all the proposed development is to be located within Unit 4 of the CPR. The Improvement Area spans the northern section of CPR Unit 4 and a small part of the Shopping Center Parcel. Refer to Figure 9 of the application. This parcel falls under the Residential (R-10) County zoning designation and also within the County of Kaua’i’s Special Management Area (SMA).

The Applicant intends to modernize and enhance the facilities supporting the commercial uses on the Shopping Center Parcel by constructing improvements within the designated Improvement Area. The proposed improvements include the following:

**1) Additional parking facilities.**

The new parking area will have a total of 90 new parking stalls, consisting of 81 standard-size parking stalls, five (5) parking stalls designated for electric vehicles, two (2) parking stalls combining EV and ADA accessibility, and 2 new ADA parking stalls.

**2) New photovoltaic (PV) system.**

The new photovoltaic (PV) system will consist of (4) PV solar canopy structures. These canopy structures will vary in size, ranging from approximately 23,500 to 24,460 square feet in area, and from 16 feet 7 inches to 23 feet 9 inches in height.

The energy produced by the new PV system will exclusively power the shopping center and will not be exported off-site or sold to the Kaua'i Island Utility Cooperative (KIUC) system or any other entities.

3) A new storage building.

The new 452 square foot storage building will be situated near the new parking lot within the CPR Unit 4 to the south of the new parking area. The storage building will be used to store maintenance equipment and supplies used for special events held at the shopping center.

Other work proposed for the designated Improvement Area includes grading, site trenching for utilities, installation of AC Paving of the parking area, parking striping and signage, drainage inlets and drainage grating, concrete parking curbs, and associated landscaping.

The proposed improvements necessitate the removal of five trees: two near the new driveway-parking lot connection, and three along the boundary of Unit 4 Lot to make space for new parking stalls. Additionally, two existing light posts, four metal posts, a gate, various wire fencing, and a drain line will be removed or reconfigured to align with the new drainage lines in the parking lot.

#### VI. APPLICANT'S REASONS/JUSTIFICATION

The applicant proposes to install an on-site electrical system that will collect the power generated from the photovoltaic (PV) solar canopies and transfer it to the shopping center's electrical grid. Additionally, they plan to provide additional employee parking spaces for the shopping center.

#### VII. ADDITIONAL FINDINGS

1. The subject site referred to as the Improvement Area is located just west of the Shops at Kukui'ula shopping center. Access to the Improvement Area is off Ka'ulu Street and through the shopping center itself (See Figure 9 Existing site conditions).
2. The Improvement Area within the State Urban Land Use Urban District (SLUD), which facilitates urban activities within the specified region. According to the Kaua'i County General Plan (GP), the Subject Properties carries a designation of "Residential Community," signifying areas predominantly residential with minimal alternative uses.
3. The Improvement Area's topography varies from around 56 to 69 feet in elevation, with lower points nearer to the shoreline and gradually sloping towards the ocean. Detailed topographical information for the area can be found in Appendix C.
4. Most of the property in the Koloa region, as indicated by the Federal Emergency Management Agency's Flood Insurance Rate Map (FIRM), falls within Zone X, signifying a low to moderate risk of flooding, with no significant risk within the 0.2% annual chance floodplain. The Improvement Area lies entirely within Zone X. However, a small southeastern portion of the Property, bordering Lāwai Road, is designated as Zone XS and Zone AE, indicating minimal

flood risk with reduced hazards and moderate to high flood risk respectively. This area is associated with Waikomo Stream (See Figure 8 for FIRM reference).

5. The Shopping Center Parcel is 1300 feet away from the shoreline, while the Improvement Area is 2000 feet away, exceeding the required 500 foot distance as specified in Section 8-27.1 of the Kaua'i County Code(KCC) . Submission of a Shoreline Setback Determination (SSD) form for the project is not required.
6. CZO Development Standards  
The proposed development is subjected to standards prescribed in Sections 8-4.3 and 8-31.3 of the KCC 1987 as amended Comprehensive Zoning Ordinance (CZO):
  - 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. Land/ Lot Coverage: The subject property has a county zoning designation of County Residential (R-10). The allowable land coverage should not exceed more than 80% of the lot or parcel area.
  - d. Electric Vehicle (EV) parking- The subject development will require 15% of the total number of parking spaces, with a minimum of one parking space and all fractions rounded up, minus the number of any EVCS spaces voluntarily installed to the standards prescribed by this Article.

## VIII. AGENCY COMMENTS

Attached through separate transmittal.

## IX. PRELIMINARY EVALUATION

In evaluating the Applicant's request to allow the construction of the proposed development, the following should be considered:

### 1. General Plan

The proposed development was evaluated through the following policies of the General Plan, as taken from Section 1.4 and 3.0:

#### A. Section 1.4, entitled "POLICIES TO GUIDE GROWTH"

##### i. Policy #13 "Complete Kaua'i's Shift to Clean Energy"

The proposed photovoltaic (PV) parking structures can be used in combating climate

change. They integrate solar panels into parking infrastructure to produce clean, renewable energy. This helps reduce greenhouse gas emissions, aligning with Kaua'i's goal of transitioning to sustainable energy sources.

B. Section 3.0, Actions by Sector, Subsection Sector VIII, entitled "Energy Sustainability and Climate Change Mitigation" states for permitting:

- i. Promote increased energy conservation and renewable energy production. community resources and services.

PV Parking Structures directly contribute to renewable energy production by harnessing solar power. By promoting the installation of these structures, the County of Kaua'i encourages the generation of clean energy while reducing reliance on non-renewable energy sources.

- ii. Optimize the mix of energy crops that can provide fuel for power production on Kaua'i.

While PV parking structures primarily utilize solar energy, this provision suggests a broader perspective on energy production. It encourages exploring various renewable energy sources, which could complement solar power generation at the shopping center. For example, integrating other renewable energy technologies like wind or biomass alongside PV systems can diversify the energy mix and enhance overall sustainability.

- iii. Streamline planning and permitting processes for renewable energy facilities.

This provision aims to reduce administrative hurdles and expediate the approval process for renewable energy projects. Streamlining these processes can simplify and reduce costs for shopping centers to install PV Parking Structures, promoting the adoption of sustainable energy solutions.

- iv. Requiring new buildings to incorporate energy sustainability features.

Mandating the integration of energy-efficient design and equipment, such as solar hot water capacity and proper insulation, aligns with the principles of PV parking structures. New buildings within the shopping center can be designed to accommodate solar panels on rooftops or as part of the parking infrastructure, maximizing energy generation potential while minimizing environmental impacts.

## 2. Native Hawaiian Traditional Cultural Rights

Based on the research conducted for this analysis, cultural practices have been identified in the broader geographic region surrounding the project area. The Ka Pa'akai analysis describes various traditions and customs, such as fishing and traditional farming. The analysis states the none of the identified practices are present in the Improvement Area.

The analysis assesses the potential impact of the proposed action on cultural resources and traditional Native Hawaiian rights. It concludes that the identified cultural resources and practices in the surrounding project area are unlikely to be significantly affected by the proposed development. The analysis recommends implementing best management practices to prevent any unforeseen impacts on cultural resources in adjacent or surrounding areas and to establish a reporting mechanism for practitioners to report potential occurrences.

### 3. Special Management Area (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 proposed development within the Improved area is approximately 2000 feet inland from the nearest shore. The PV parking structures, site improvements, and storage building will not reduce or impose restrictions upon public access to tidal and submerged lands, beaches, rivers, or streams within the special management area.
- b. Cultural/ Historical Resources - The Improvement Area, previously disturbed and graded, contains no known archaeological sites based on a 1988 archaeological inventory survey (AIS). While the broader area has 58 archaeological sites, none were found within the 1.01-acre Improvement Area. Additional archaeological investigations in the region did not cover the Improvement Area. Anticipated impacts on archaeological resources are minimal due to the absence of known sites. However, if archaeological materials are discovered during construction, monitoring will ensure appropriate mitigation measures. An archaeological monitoring plan (AMP) will be developed in consultation with the State Historic Preservation Officer (SHPO). The Applicant commits to complying with all relevant state and county laws and rules for preserving archaeological and historic sites. If historic sites or remains are encountered during construction, work will cease in the vicinity, and SHPO will assess the significance and recommend mitigation measures if necessary.
- c. Scenic and Open Space Resources - The proposed PV parking structures will not adversely affect the open and scenic views of the shoreline. The Improvement Area is situated approximately 2000 feet away from the shoreline; the proposed PV structures shall have minimal visual impacts in the coastal area. However, the PV structures installed over the parking lot may partially obstruct distant views of the ocean at certain vantage points within the Shopping Center Parcel parking lot.
- d. Coastal Ecosystems - The proposed improvements will maintain current drainage conditions, reducing potential impacts on coastal water quality, aquatic habitats, and ecosystems. A new drainage system will be incorporated into the design of the parking facilities on CPR Unit 4 Lot to manage stormwater runoff from impervious surfaces.

Construction activities will follow all applicable Federal, State, and County regulations for erosion control, including the development of an erosion control plan and the use of Best Management Practices (BMPs) necessary for the National Pollutant Discharge Elimination System (NPDES) permit.

The property features a mix of both native and non-native tropical plants, primarily used for ornamental purposes. Although non-native plants are common, the landscaping also includes endemic species, none of which are deemed threatened or endangered by Federal and/or State governments, and not considered rare.

No avian species listed or proposed as threatened or endangered under the federal Endangered Species Act (ESA) or the State of Hawai'i endangered species statute are known to inhabit the property. However, native and indigenous species are likely in the general region, and these species may frequent open spaces in the vicinity and/or traverse across the property. Indigenous, migratory birds may transit over the property during their breeding season (March through November), including species such as the 'Ua'u kani or Wedge-tailed Shearwater, the endangered 'Ua'u or Hawaiian Petrel, and the threatened 'A'o or Newell's Shearwater. These birds are protected under the Migratory Bird Treaty Act (MBTA) and Hawai'i law, which prohibit their pursuit, hunting, capture, or killing, and also forbid any disturbance to their nests.

To address potential impacts on avian species during and after construction, all exterior lights will be fully shielded and downward-facing, emitting minimal light to avoid distracting or disorienting seabirds. Additionally, artificial light won't be directed towards the shoreline and ocean waters, except as permitted under Section 205A-30.5(b), HRS. In the unlikely event of night-time disruptions, measures will be implemented to mitigate such occurrences.

No mammalian species listed or proposed for listing under federal or state endangered species laws inhabit the Property. While the Ōpe'ape'a or Hawaiian hoary bat is known to exist on Kaua'i, its presence on the property is possible, as it may forage for insects in the area. Although no rodents have been observed on the Property, it is probable that non-native rodent populations utilize resources within the vicinity.

The Improvement Area does not host any critical habitats for arachnid species, but neighboring areas house vital habitats for the endangered Kaua'i cave wolf spider and Kaua'i cave amphipod. These creatures, exclusive to the Koloa region, dwell in subterranean lava tube caves, adapted over time to survive without sight. Protected by conservation policies, their habitats must remain undisturbed to prevent degradation from human activities like land development. To safeguard these unique habitats, it's crucial to avoid disturbing the caves in the region.

A field survey conducted by AECOS in February 2024 within the Improvement Area yielded no signs of underground voids. Prior investigations before constructing the Shopping Center didn't reveal significant findings, and the Improvement Area, currently utilized for employee parking, has undergone bulldozing and grading in the past. For more details, refer to Appendix F for the cave survey report concerning the Kaua'i cave spider and

Kaua'i cave amphipod.

The Improvement Area has been previously disturbed, and the proposed Improvements aren't expected to significantly alter existing conditions concerning fauna impacts. Specifically, they're not foreseen to heighten impacts on indigenous or migratory birds passing over the Property. There's also little chance of affecting the protected Kaua'i cave wolf spider or Kaua'i cave amphipod, as the Improvement Area doesn't intersect any identified critical habitat or known lava tube caves. According to the cave survey, the closest point of the Improvement Area is about 725 feet from federally designated critical habitat, with no signs of subsurface voids.

Though construction isn't likely to create openings to undiscovered lava tube habitats, the survey proposes mitigation measures for unforeseen impacts. Should a void emerge during construction, work in the vicinity will halt, and the void will be covered to prevent further disturbance. The State of Hawai'i Office of Historical Preservation and certified biologists will then be contacted to assess the area for historical artifacts and species habitats, taking appropriate actions to preserve and protect the site if necessary.

- e. Coastal Hazards - The FEMA FIRM designates most of the property in the Koloa region as Zone X, indicating it's outside the 0.2% annual chance floodplain with moderate to low flood risk. The Improvements, including a new drainage system for stormwater runoff, are not expected to significantly alter existing drainage conditions, coastal water quality, or aquatic habitats. Construction activities will adhere to all relevant regulations and include erosion control measures to obtain the necessary permits.

4. CZO Development Standards

As proposed the project complies with the land coverage and setback requirements for development within the County Residential (R-10) as specified in Sections 8-4.3 of the Comprehensive Zoning Ordinance (CZO).

Pursuant to Section § 8-31.3 EV Infrastructure Requirements.

Where parking is provided at the following sites, EVCS-installed and EV-ready parking spaces shall be included in compliance with Table 8-31.3.1 and any applicable requirements of Kaua'i County Code 1987, as amended, Title V (Building and Construction Regulations):

- (1) Industrial District.
- (2) Commercial District.
- (3) Resort District.
- (4) Agriculture District, for operations with 50 or more employees.

- (5) Multi-family ("Dwelling, Multiple Family") residential sites with three or more units.

The Improvement Area falls under County Residential (R-10) zoning, not within the designated sites mentioned above. However, the intended use of the development is to offer employee parking and install an on-site electrical system to harness power from PV solar canopies for the shopping center's grid in the commercial-neighborhood zoning district.

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 Kaua'i 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 structure serves dual purposes of parking and renewable energy generation, aligning with both residential and commercial activities. It supports commercial functions while respecting the residential character of the area.
2. **Non-Detrimental to Persons or Property**- Proper design and operation of the PV structures and employee parking area will ensure risks to residents and property are properly mitigated. Other measures will be in place to address potential hazards such as noise and glare.

3. **Minimal Environmental Consequences-** The proposed PV structures will contribute to sustainability by generating clean energy. The use of BMPs are essential to implement careful management to minimize environmental impacts during construction and disposal stages.
4. **Consistent with Zoning Intent-** The PV structures aligns with the goals of the Comprehensive Zoning Ordinance by supporting mixed-use development, promoting sustainability, and adhering to zoning regulations and policies.

**X. PRELIMINARY CONCLUSION**

Based on the foregoing analysis, it is determined that through proper mitigative measures the proposed development complies with the policies of the County General Plan, Comprehensive Zoning Ordinance, and guidelines of the Special Management Area Rules and Regulations. It is further noted 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 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.

**XI. PRELIMINARY RECOMMENDATION**

Based on the foregoing evaluation and conclusion, it is hereby recommended that the construction of a PV system and employee parking through Class IV Zoning Permit Z-IV-2024-4, Use Permit U-2024-4, Special Management Area Use Permit SMA(U)-2024-9 **approved** with the following conditions:

1. The proposed development shall be constructed as represented. Any changes to the operation of the commercial boating facility and uses of the respective structures shall be reviewed by the County of Kaua'i, Department of Planning to determine whether Planning Commission review and approval is required.
2. To ensure that the project is compatible with its surroundings and to minimize the visual impact of the structures, the external colors of the PV structures columns shall be 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. In the event of construction causing a void to undetected or unknown lava tube habitat, The following actions shall be implemented:
  - a. All work in the affected area shall cease.
  - b. Cover void with Geotextile Cloth.
  - c. Place ½-inch thick plywood over Geotextile Cloth.
  - d. Add another layer of Geotextile cloth over plywood.
  - e. Cover the entire "bandage" with soil to prevent debris or dry air from entering.
  - f. Notify the State of Hawai'i Office of Historical Preservation Division (SHPD), U.S. Fish and Wildlife Service (USFWS), and Division of Forestry and Wildlife (DOFAW) about the discovery.
  - g. Contact AECOS, INC. Biologists for further assistance.
4. The applicant shall be required to install seven (7) or 15% of the total number of parking spaces, with a minimum of one parking space and all fractions rounded up, minus the number of any EVCS spaces voluntarily installed to the standards prescribed in Table 8-31.3.1 of Article 31 of the KCC.
5. 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.
6. To minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds, if external 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 of spotlighting of structures shall be prohibited.

7. The Applicant shall develop and utilize Best Management Practices (B.M.P's) during all phases of development to minimize erosion, dust, and sedimentation impacts of the project to abutting properties.
8. 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.
9. To the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kaua'i contractors as long as they are qualified and reasonably competitive with other contractors and shall seek to employ residents of Kaua'i 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 Kaua'i 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.
10. 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.
11. The Planning Commission reserves the right to revise, add or delete conditions of approval in order to address or mitigate unforeseen impacts that the project may create, or revoke the permits through the proper procedures should conditions of approval not be complied with or violated.
12. 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 June 4, 2024, 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: 5/22/2024

BELLES GRAHAM LLP

JONATHAN J. CHUN (2928-0)  
3135 Akahi Street, Suite A  
Lihue, Kauai, Hawaii 96766  
Telephone: (808) 245-4705

Attorney for Applicants  
DAVID A. STILLWELL and JODY KAY STILLWELL,  
Trustees of the David A. Stillwell and Jody K. Stillwell  
Joint Revocable Trust dated August 21, 2019,  
ROBERT JAMES STILLWELL and  
JOYCE JOHNSON STILLWELL

BEFORE THE PLANNING COMMISSION  
OF THE  
COUNTY OF KAUAI

In The Matter Of The Application	)	VARIANCE PERMIT NO. _____;
	)	STATE SPECIAL PERMIT
Of	)	NO. _____;
	)	CLASS IV ZONING PERMIT
DAVID A. STILLWELL and JODY K.	)	NO. _____
STILLWELL, Trustees of the David A.	)	
Stillwell and Jody K. Stillwell Joint	)	
Revocable Trust dated August 21, 2019 and	)	<b>APPLICATION; EXHIBITS "A" - "G"</b>
ROBERT JAMES STILLWELL and	)	
JOYCE JOHNSON STILLWELL, husband	)	
and wife, for a Variance Permit and a	)	
Class IV Zoning Permit for real property	)	
situated at Koloa, Kauai, Hawaii, described	)	
as Lot 48-A-1 identified by Kauai Tax Map	)	
Key No. (4) 2-7-004-007 (1.126 acres).	)	
	)	
Applicants.	)	
_____	)	

## APPLICATION

DAVID A. STILLWELL and JODY K. STILLWELL, Trustees of the David A. Stillwell and Jody K. Stillwell Joint Revocable Trust dated August 21, 2019, and ROBERT JAMES STILLWELL and JOYCE JOHNSON STILLWELL, husband and wife, are the Applicants in the above-captioned proceedings, by and through their undersigned attorney, hereby submit the following Application:

## OWNERS

1. DAVID A. STILLWELL and JODY K. STILLWELL, Trustees of the David A. Stillwell and Jody K. Stillwell Joint Revocable Trust dated August 21, 2019, and ROBERT JAMES STILLWELL, JR. and JOYCE JOHNSON STILWELL, husband and wife (hereinafter collectively referred to as "Applicants") are the owners of the real property described herein. See the Warranty Deed dated September 25, 2014 and Warranty Deed to Trust dated February 10, 2020, both of which are attached hereto as Exhibit "A" and by reference incorporated herein. The Applicants have authorize Jonathan J. Chun to file this Application (See Authorization attached hereto as Exhibit "B" and by reference incorporated herein).

## DESCRIPTION OF PROPERTY AND LAND USE DESIGNATIONS

2. The land which is the subject of the proposed permits is Lot 48-A-1, identified by Kauai Tax Map Key No. (4) 2-7-004-007 and is located in Koloa, Island and County of Kauai, State of Hawaii ("Subject Property"). The Subject Property contains approximately 1.126 acres. The Subject Property is more fully shown and described on the tax map attached hereto as Exhibit "C". The Subject Property is classified by the State Land Use Commission ("SLUC") as Rural, is in the Residential Community designation of the County of Kauai General

Plan as well as the South Kauai Community Plan and is located within the County of Kauai Comprehensive Zoning Ordinance ("CZO") Residential (R-2) District. Copies of the South Kauai General Plan Land Use Map, the South Kauai Community Plan Land Use Map and the County of Kauai Zoning Map for the area are attached hereto as Exhibits "D", "E" and "F", respectively.

### **PRESENT USES OF SUBJECT PROPERTY**

3. The Subject Property currently is improved with two dwelling units and a guest house. There is a three-bedroom, two and one-half bathroom single-family dwelling containing approximately 1,800 of living area, a one bedroom, one bathroom guest house containing approximately 500 square feet of living area and a three-bedroom, three-bathroom single-family dwelling that is currently under construction and scheduled to be completed in 2024. One of the single-family dwellings and the guest house are located near the southern boundary of the Subject Property adjacent to Omao Road on proposed Lot 48-A-1A and the second single-family dwelling is on proposed Lot 48-A-1B. All the dwellings are being rented long term as residences. The rear of the Subject Property slopes from south to north.

### **PROPOSED USE OF SUBJECT PROPERTY**

4. The Applicants propose to subdivide the Subject Property into two lots, as shown on the Subdivision Map attached hereto as Exhibit "G". Proposed Lot 48-A-1A is 0.456 acres, with frontage on Omao Road, currently contains an existing single-family dwelling and a guest house. No additional development of Proposed Lot 48-A-1A is foreseen if the variance and subdivision is approved. Proposed Lot 48-A-1B is a flag lot containing 0.670 acres, located at the rear or northern boundary of Proposed Lot 48-A-1A and contains one single-family dwelling. If

the variances are approved for Proposed Lot 48-A-1B, an ADU might be constructed, subject to the availability of water and any subdivision requirements.

**LOCATION OF SUBJECT PROPERTY  
AND DESCRIPTION OF SURROUNDING LANDS**

5. The Subject Property is located in Omao, Kauai, Hawaii. Its southern boundary abuts Omao Road. One of the single-family dwellings and the guest house are located on the Subject Property's south boundary adjacent to Omao Road. The far northern portion of the Subject Property contains a single-family dwelling that is currently under construction. The northern portion of the Subject Property slopes toward the north. Omao Stream is approximately 200 feet north of the Subject Property.

6. To the west of the Subject Property is a State of Hawaii parcel identified as Tax Map Key No. (4) 2-7-004-011 ("Parcel 11") that is leased to William Medeiros who uses Parcel 11 for a horse training and rodeo facility. Parcel 11 is classified as "Agricultural" by the County's Real Property Tax Division. To the east of the Subject Property is an improved residential property identified as Tax Map Key No. (4) 2-7-004-098 ("Parcel 98") owned by Charles R. Lawrence, Jr. Parcel 98 is improved with three residential dwellings and is classified as "Owner-occupied mixed use" by the Real Property Tax Division. Further west of the Subject Property is an improved residential condominium project named "3738 Omao Condominium" that contains two residential dwellings identified as Tax Map Key No. (4) 2-7-004-070 CPR 001 and 002. The two units are classified as Owner-Occupied by the Real Property Tax Division. Also further west of the Subject Property is an improved residential property identified as Tax Map Key No. (4) 2-7-004-072 that contains one residential dwelling unit and is classified as Owner Occupied by the Real Property Tax Division. To the south of the Subject Property, across Omao

Road, are two unimproved lots identified as Tax Map Key Nos. (4) 2-7-004-012 ("Parcel 12") and (4) 2-7-004-008 ("Parcel 8"). Parcel 12 is owned by the State of Hawaii and leased to William Medeiros and Parcel 8 is owned by Debra K. Titcomb. Parcel 12 is classified as Agricultural and Parcel 8 is classified as Non-Owner Occupied by the Real Property Tax Division. Both Parcel 12 and Parcel 8 are unimproved.

### **PERMITS REQUIRED**

7. Proposed Lot 48-A-1A will be 0.456 acres and contain an existing single-family dwelling and a guest house. A State Special Permit from the Commission will be required to allow proposed Lot 48-A-1A to be less than .50 acre as required by HRS Section 205-2(c).

8. Proposed Lot 48-A-1B will be approximately 0.670 acres. The flag portion of proposed Lot 48-A-1B is 14' in width. As such, Lot 48-A-1B will not meet the minimum 15' pole width required of lots in the residential district for single-family detached dwellings as required by CZO Section 8-4.4(a)(2)(E). A variance will be required from the provisions of CZO Sections 8-4.4(a)(2)(E) relating to the pole width for proposed Lot 48-A-1B.

9. The Applicants also need a Class IV Zoning Permit (as provided in CZO Sec. 8-4.7(d)) as a procedural requirement for obtaining the Variance Permit.

### **JUSTIFICATION**

10. Proposed Lot 48-A-1A is .456 acres or 1,916.64 square feet short of the minimum lot size of .50 acres. The northeastern boundary of Lot 48-A-1A could be moved further north to increase the size of Lot 48-A-1A, but the moving of the boundary could impact the width to length ratio required by CZO Section 8-4.4(a)(3). The moving of the northeastern boundary

could also impact the setback requirements of the Department of Health for the individual wastewater system located on Lot 48-A-1B.

11. Hawaii Administrative Rules ("HAR") Section 15-15-27 (a) (5) states the "commission for good cause may allow one lot of less than one-half acre, but not less than 18,500 square feet, or an equivalent residential density, provided all other lots in the subdivision have the minimum lot size of one-half acre. A petition for variance may be processed under the special permit procedure pursuant to subchapter 12." Proposed Lot 48-A-1A is in compliance with the variance process outlined in HAR Section 15-15-27(a) since it is more than 18,500 square feet (19,863.36) and proposed Lot 48-A-1B is .670 acres.

12. HRS Section 205-6(a) and HAR Section 15-15-95 allow the commission to permit "unusual and reasonable" uses within the rural district. Permissible uses in the Rural District include "[l]ow-density residential lots of not more than one dwelling house per half-acre, except as provided by county ordinance pursuant to section 46-(c), HRS." See HAR Section 15-15-27(a)(2). The Subject Property is zoned Residential R-2 by the County of Kauai. The Residential R-2 zone allows for residential densities not to exceed one dwelling unit per .50 acre. Proposed Lot 48-A-1A would be in compliance with the density restriction in both the CZO and HAR Section 15-15-27(a)(2).

13. CZO Section 8-4.4(a)(1)(A) allows a residential lot within the residential district for single family dwellings to have a minimum area of 6,000 square feet. Proposed Lot 48-A-1A is in compliance with CZO Section 8-4.4(a)(1)(A) which indicates the proposed request for a variance under HAR Section 15-15-95 is an allowable "unusual and reasonable" use.

14. The proposed variance from the .50 acre lot size is an "unusual and reasonable" use within the Rural designation of the Subject Property. Within one-half mile of the existing Rural District surrounding the Subject Property there are approximately 13 lots that are under .50 acres. If the radius is expanded to one mile from the Subject Property, the number of lots under .50 acres would also increase. In addition, the smaller lot size will not create a significant probability of harm to property or improvements in the neighborhood or have any substantial harmful environmental consequences. Requiring the Applicants to increase the size of Proposed Lot 48-A-1A would also deprive the Applicants of privileges enjoyed by other properties within the vicinity (i.e. smaller rural lots).

15. Proposed Lot 48-A-1B is a flag lot whose pole portion is 14' wide. CZO Section 8-4.4(a)(2)(E) requires a pole width of at least 15'. If the width of the pole portion is increased, it will decrease the setback between the pole portion and the existing house to less than 5'. The minimum setback between the pole portion of Lot 48-A-1B and the existing house is 5'. Increasing the pole width would cause the existing house to be in violation of CZO Section 8-4.3(b)(2).

16. CZO Section 8-3.3(b) allows the granting of a variance from the terms of the CZO if it is found "that because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the regulations deprives the property of privileges enjoyed by other property in the vicinity and within the same District, and the applicant shows that he or she cannot make a reasonable use of the property if the regulations are applied."

17. Special circumstances exist due to the location of the existing single-family dwelling and guest house located on proposed Lot 48-A-1A. Both of those structures were built almost thirty (30) years ago. The location of these structures limit the ability of the Applicants to widen the pole section of proposed Lot 48-A-1B. For example, the distance between the existing guest house and the boundary line of proposed Lot 48-A-1A is only 5'. This would make it impossible to place the pole portion next to the guest house.

18. Special circumstances also exist since due to the width of existing Lot 48-A-1 it is not possible to divide the lot along a north/south axis since the width of the resulting lots would not meet the minimum average lot width requirement under CZO Section 8-4.4(a)((2).

19. Other properties within the R-2 District in the vicinity of the Subject Property have been subdivided utilizing a "flag lot" configuration. If the requested variances are not approved, the Applicants would not be able to enjoy the opportunity of subdividing the Subject Property.

20. CZO Section 8-3.3(b) also provides that where "these conditions are found, the Variance permitted shall be the minimum departure from existing regulations necessary to avoid the deprivation of privileges enjoyed by other property and to facilitate a reasonable use, and which will not create significant probabilities to harm to property and improvements in the neighborhood or of substantial harmful environmental consequences."

21. A variance of 1' for the width of the pole portion of proposed Lot 48-A-1B is a minimal departure from the required 15' pole width requirement and it would allow a reasonable use of the pole portion of proposed Lot 48-A-1B as a driveway.

22. The Applicants do not believe the proposed 14' wide pole portion for proposed Lot 48-A-1B, which will be utilized as a driveway, will create any significant probabilities of harm to property and improvements in the neighborhood or substantial harmful environmental consequences since the pole portion of proposed Lot 48-A-1B meets or exceeds the minimum driveway width of 9' as set forth in K.C.C. Section 15-2.7.(b)(3).

### **IMPACTS OF PROPOSED DEVELOPMENT**

23. Botanical Resources and Wildlife. The proposed variances (hereinafter referred to as "development") will have no significant impact on any existing wildlife or vegetation in the area. There are no known botanical resources within the area of the Subject Property which need to be protected. The Subject Property currently is developed with two existing single-family dwellings and a guest house and the pole portion is currently being used as a driveway.

24. Historical Resources. The Applicants are not aware of any archaeological resources on the surface of the Subject Property which will be affected by the development. Should any surface or subsurface cultural features be encountered during the development, the Applicants will seek archaeological consultation and will preserve and/or salvage any significant remains or artifacts.

25. Air Quality/Noise. The proposed development will have little or no impact on the air quality and ambient noise levels in the area. No new construction is planned as part of this development; hence Applicants do not foresee any activities that would impact air quality and the ambient noise levels in the area.

## **FLOODING AND DRAINAGE**

26. The Subject Property is situated outside the 500-year flood zone plain (Zone X) as shown on the County of Kauai's flood insurance rate maps (Flood Insurance Rate Map 150002 – 0311CE). The proposed development will have no contributory impact on flooding or drainage on the Subject Property.

## **UTILITIES**

27. The Subject Property receives water service from the Department of Water of the County of Kauai, electric service from Kauai Island Utility Cooperative, and phone service from Verizon Hawaii, Inc. These services are presently available at the Subject Property and their use will be increased very little, if any, as a result of the development. Existing power and water facilities are presently more than adequate to provide the minimal demand for such services that will be generated by the proposed development.

## **WASTEWATER TREATMENT AND DISPOSAL/SOLID WASTE**

28. There are two existing approved Department of Health individual wastewater systems that currently serve the existing single-family dwellings and guest house. The Applicants do not expect the proposed development to generate any additional wastewater then is currently being processed by the existing wastewater systems. Solid waste collection is presently provided by the County of Kauai for the existing single-family dwellings and the guest house located on Proposed Lot 48-A-1A and 48-A-1B. Solid waste collection will not be impacted by the proposed development.

### **FIRE AND POLICE SERVICES/SCHOOLS**

29. Police services in the vicinity are located in Koloa police substation located on Weliweli Road, Koloa, approximately 1.25 miles from the Subject Property. Fire Service for the vicinity is provided from the Koloa Fire Station located on Poipu Road, Koloa, approximately 2.5 miles from the Subject Property. The close proximity of these fire and police services to the Subject Property will minimize response time should an emergency occur. The proposed development of the Subject Property will not significantly increase the need for existing fire and police services. The closest school is Koloa Elementary School, located on Poipu Road in Koloa. The proposed development will not generate significant additional enrollment nor detrimentally affect the school.

### **TRAFFIC CIRCULATION**

30. The major road which services the Subject Property is Kaumualii Highway, which is State owned and Omao Road, which is owned by the County. Access to Lot 48-A-1A and 48-A-1B will be from Omao Road. It is not anticipated that the proposed development, in and of itself, will significantly increase traffic on either Kaumualii Highway or Omao Road. The subdivision, if approved, will have the potential of adding at least one more dwelling unit to the Subject Property (the existing guest house, which is already being utilized as a dwelling, could be considered an ADU for proposed Lot 48-A-1A). The addition of one more dwelling unit to the neighborhood is not foreseen as having a major impact to the traffic on Kaumualii Highway or Omao Road.

### **COMPLIANCE WITH SOUTH KAUAI COMMUNITY PLAN**

31. The proposed development will not conflict with any of the Goals contained in the South Kauai Community Plan.

32. The Subject Property is within an area designated as Residential in the South Kauai Community Plan. See Exhibit "E". As set forth in Section 4.1.6 of the South Kauai Community Plan, lands within the Residential designation "shall be used predominately for primary residential housing ... Residential lands consist mainly of single-family homes in rural settings." Proposed Lots 48-A-1A and 48-A-1B will all be residential and the density for the proposed lots will all be within that allowed by the Subject Property's Rural and Residential (R-2) designation.

### **COMPLIANCE WITH APPLICABLE LAND USE DESIGNATIONS**

33. The use of the Subject Property for residential purposes is compatible with the SLUC Rural District designation. Hawaii Revised Statutes Sections 205-2. The proposed subdivision will result in two lot density residential lots and a minimum density of one house per one-half acre.

34. The use of the Subject Property for residential purposes is compatible with the Residential Community Designation under the Kauai County General Plan. General Plan, Section 2.2 See Exhibit "D".

35. The use of the Subject Property for residential purposes is compatible with the Residential designation under the South Kauai Community Plan. See Exhibit "E".

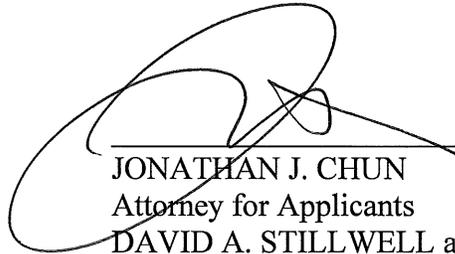
**CONCLUSION**

The Applicants respectfully request that the Planning Commission of the County of Kauai:

- A. Grant the Applicants a Variance Permit as requested;
- B. Grant the Applicants a State Special Permit to allow Lot 48-A-1A to be less than .50 acre.
- C. Grant Applicants a Class IV Zoning Permit.

DATED: Lihue, Kauai, Hawaii, April 16, 2024.

BELLES GRAHAM LLP



\_\_\_\_\_  
JONATHAN J. CHUN  
Attorney for Applicants  
DAVID A. STILLWELL and JODY K.  
STILLWELL, Trustees of the David A. Stillwell  
and Jody K. Stillwell Joint Revocable Trust dated  
August 21, 2019, ROBERT JAMES STILLWELL  
and JOYCE JOHNSON STILLWELL

**EXHIBIT "A"**



STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

October 03, 2014 8:01 AM

Doc No(s) A-53890260



/s/ NICKI ANN THOMPSON  
REGISTRAR

1 1/1 KEO  
B-32529491

Conveyance Tax: \$450.00

.....  
W

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return by: Mail ( )  
FINANCE FACTORS LTD  
4393 KUKUI GROVE ST, STE 101  
LIHUE HI 96766

Pickup ( )  
TG: 201431890  
TGE: 24314046096  
Winona Garcia

TYPE OF DOCUMENT:

WARRANTY DEED

PARTIES TO DOCUMENT:

GRANTOR: ROBERT JAMES STILLWELL, JR. and JOYCE JOHNSON STILLWELL, husband and wife; DAVID ARNOLD STILLWELL and JODY KAY STILLWELL, husband and wife; RAELENE DIANE BROWN and DAVID BRESSLIN BROWN, wife and husband; DAVID AARON BROWN and SALLY ANNE BROWN, husband and wife; JARROD MICHAEL BROWN and SUSANNAH BENNETT BROWN, husband and wife; and JONATHAN WOODRUFF GRAFF and KIMBERLY DIANE GRAFF, husband and wife

GRANTEE: (continued on next page)

TAX MAP KEY FOR PROPERTY:

(4) 2-7-004-007

GRANTEE: ROBERT JAMES STILLWELL, JR. and JOYCE JOHNSON STILLWELL,  
husband and wife  
2005 E. Jennifer Drive, Ogden, Utah 84403

DAVID ARNOLD STILLWELL and JODY KAY STILLWELL,  
husband and wife  
3730A Omao Road, Koloa, Hawaii 96756

---

**WARRANTY DEED**

KNOW ALL PEOPLE BY THESE PRESENTS:

ROBERT JAMES STILLWELL, JR. and JOYCE JOHNSON STILLWELL, husband and wife; DAVID ARNOLD STILLWELL and JODY KAY STILLWELL, husband and wife; RAELENE DIANE BROWN and DAVID BRESSLIN BROWN, wife and husband; DAVID AARON BROWN and SALLY ANNE BROWN, husband and wife; JARROD MICHAEL BROWN and SUSANNAH BENNETT BROWN, husband and wife; and JONATHAN WOODRUFF GRAFF and KIMBERLY DIANE GRAFF, husband and wife, hereinafter collectively called the "Grantor", in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to the Grantor paid by ROBERT JAMES STILLWELL, JR. and JOYCE JOHNSON STILLWELL, husband and wife, whose mailing address is 2005 E. Jennifer Drive, Ogden, Utah 84403; and DAVID ARNOLD STILLWELL and JODY KAY STILLWELL, husband and wife, whose mailing address is 3730A Omao Road, Koloa, Hawaii 96756, hereinafter called the "Grantee", the receipt of which is hereby acknowledged, do hereby grant and convey unto the Grantee, as tenants in common, their heirs and assigns, the property described in Exhibit "A" attached hereto and incorporated herein by reference, in the following proportionate shares:

An undivided fifty percent (50%) interest to ROBERT JAMES STILLWELL, JR. and JOYCE JOHNSON STILLWELL, as joint tenants with full rights of survivorship; and

The remaining undivided fifty percent (50%) interest to DAVID ARNOLD STILLWELL and JODY KAY STILLWELL, as tenants by the entirety with full rights of survivorship.

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

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

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

The Grantee confirms that Grantee has inspected the property being conveyed and specifically attests that Grantee is purchasing the property on an "AS IS" basis, without any representations or warranties, express or implied, with a full understanding that only Grantee and not the Grantor will be responsible for any and all imperfections, defects, obsolescence, wear and tear, and all other conditions of said property and hereby waives any claim hereafter against the Grantor for breach of express or implied warranty as to the condition of the property, except claims which are based on the Grantor's concealment of material facts and defects which Grantor is required by law to disclose.

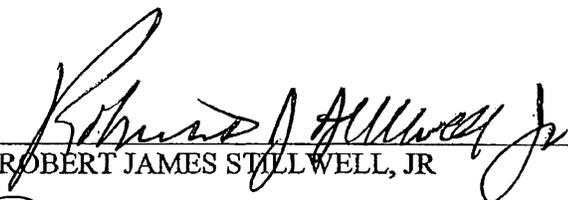
This conveyance and the respective covenants of the Grantor and the Grantee shall be binding on and inure to the benefit of the Grantor and the Grantee, respectively. The terms "Grantor" and "Grantee" as and when used herein, or any pronouns used in place thereof, shall mean and include the singular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

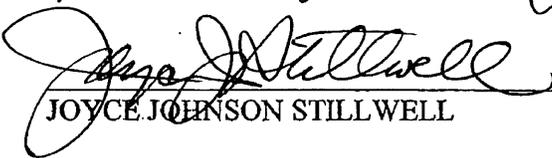
This Warranty Deed may be executed in counterparts. Each counterpart shall be executed by one or more of the parties hereinbefore named and the several counterparts shall constitute one instrument to the same effect as though the signatures of all the parties are upon the same document.

IN WITNESS WHEREOF, the Grantor and the Grantee have caused these presents to be duly executed on this 25th day of September, 2014.

*(SIGNATURES CONTINUED ON NEXT PAGE)*

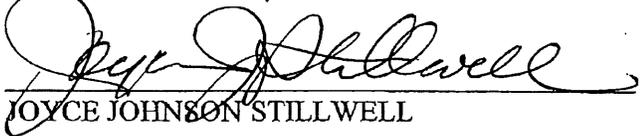
GRANTOR:

  
ROBERT JAMES STILLWELL, JR

  
JOYCE JOHNSON STILLWELL

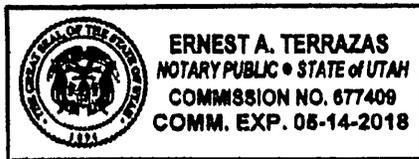
GRANTEE:

  
ROBERT JAMES STILLWELL, JR

  
JOYCE JOHNSON STILLWELL

STATE OF UT )  
 ) SS:  
COUNTY OF Weber )

On this 15 day of September, 2014, before me appeared ROBERT JAMES STILLWELL, JR., to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing WARRANTY DEED dated September 15, 2014, which document consists of \_\_\_\_\_ page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

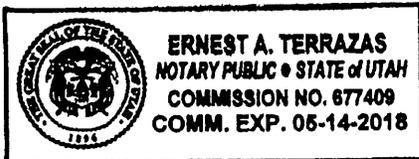


[Signature]  
Name of Notary:  
Notary Public, in and for said County and State.

My commission expires: 05-14-18

STATE OF UT )  
 ) SS:  
COUNTY OF Weber )

On this 15 day of September, 2014, before me appeared JOYCE JOHNSON STILLWELL, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing WARRANTY DEED dated September 15, 2014, which document consists of \_\_\_\_\_ page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

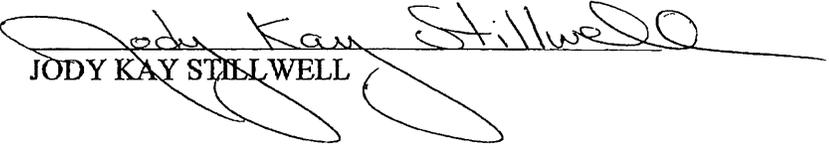


[Signature]  
Name of Notary:  
Notary Public, in and for said County and State.

My commission expires: 05-14-18

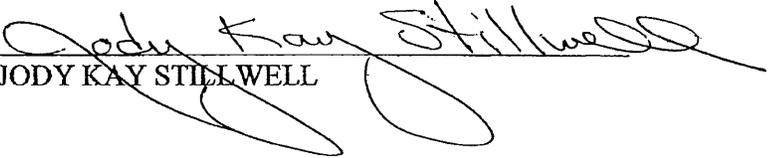
**GRANTOR:**

  
DAVID ARNOLD STILLWELL

  
JODY KAY STILLWELL

**GRANTEE:**

  
DAVID ARNOLD STILLWELL

  
JODY KAY STILLWELL



GRANTOR:

Raelene Diane Brown  
RAELENE DIANE BROWN

David Bresslin Brown  
DAVID BRESSLIN BROWN

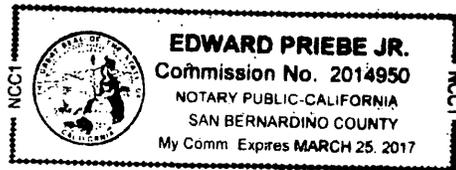
STATE OF CALIFORNIA  
COUNTY OF SAN BERNARDINO

On SEPTEMBER 25, 20 14, before me, EDWARD PRIEBE JR,  
Notary Public, personally appeared RAELENE DIANE BROWN, who proved to me on the basis  
of satisfactory evidence to be the person whose name is subscribed to the within instrument and  
acknowledged to me that she executed the same in her authorized capacity, and that by her  
signature on the instrument the person, or the entity upon behalf of which the person acted,  
executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Edward Priebe Jr



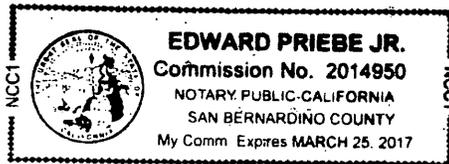
STATE OF CALIFORNIA  
COUNTY OF SAN BERNARDINO

On SEPTEMBER 25, 2014, before me, EDWARD PRIEBE JR,  
Notary Public, personally appeared DAVID BRESSLIN BROWN, who proved to me on the  
basis of satisfactory evidence to be the person whose name is subscribed to the within instrument  
and acknowledged to me that he executed the same in his authorized capacity, and that by his  
signature on the instrument the person, or the entity upon behalf of which the person acted,  
executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

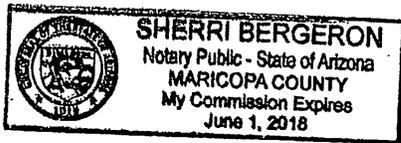
Signature Edward Priebe Jr





STATE OF Arizona )  
 ) SS:  
COUNTY OF Maricopa )

On this 19<sup>th</sup> day of September, 2014, before me appeared SALLY ANNE BROWN, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing WARRANTY DEED dated \_\_\_\_\_, 20\_\_\_\_, which document consists of 18 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.



Sherrri Bergeron

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

My commission expires: June 1 2018

GRANTOR:

Jarrod Michael Brown  
 JARROD MICHAEL BROWN

Susannah Bennett Brown  
 SUSANNAH BENNETT BROWN

STATE OF Texas )  
 ) SS:  
 COUNTY OF Bexar )

On this 17 day of September, 2014, before me appeared JARROD MICHAEL BROWN, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing WARRANTY DEED dated September 17, 2014, which document consists of 18 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.



Barrett Sanchez

Name of Notary: Barrett Sanchez  
 Notary Public, in and for said County and State.

My commission expires: 09/13/2016

STATE OF Texas )  
COUNTY OF Bexar ) SS:

On this 17 day of September, 2014, before me appeared SUSANNAH BENNETT BROWN, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing WARRANTY DEED dated September 17, 2014, which document consists of 18 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.



A handwritten signature in cursive script, appearing to read "Barrett Sanchez", written over a horizontal line.

Name of Notary: Barrett Sanchez  
Notary Public, in and for said County and State.

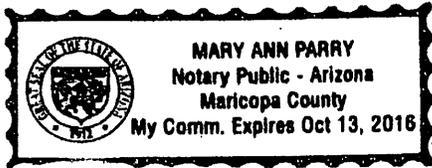
My commission expires: 09/13/2016

GRANTOR:

[Signature]  
JONATHAN WOODRUFF GRAFF  
[Signature]  
KIMBERLY DIANE GRAFF

STATE OF ARIZONA )  
COUNTY OF MARICOPA ) SS:

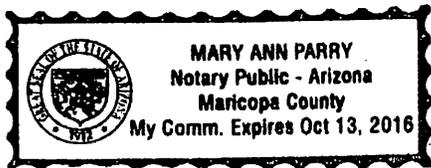
On this 22 day of Sept., 20 14, before me appeared JONATHAN WOODRUFF GRAFF, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing WARRANTY DEED dated 9-22-, 2014, which document consists of 18 page(s), as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



[Signature]  
Name of Notary:  
Notary Public, in and for said County and State.  
My commission expires: 10-13-2016

STATE OF ARIZONA)  
COUNTY OF MARICOPA) SS:

On this 22 day of Sept, 2014, before me appeared KIMBERLY DIANE GRAFF, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing WARRANTY DEED dated Sept 22, 2014, which document consists of 18 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.



Mary Ann Parry  
Name of Notary:  
Notary Public, in and for said County and State.

My commission expires: 10-13-2016

EXHIBIT "A"

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 6816 to Rebecca Piimoku Medeiros and Land Patent Grant Number 11204 to Rebecca Piimoku Medeiros) situate, lying and being at Omao, Koloa, Island and County of Kauai, State of Hawaii, being LOT 48-A-1, same being a portion of Lot 48 of the "OMAO HOMESTEADS", and thus bounded and described as per survey dated December --, 1996, to-wit:

Beginning at the southwest corner of this parcel of land on the north side of Omao Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU-O-HEWA" being 3,318.78 feet south and 1,020.37 feet west, thence running by azimuths measured clockwise from true South:

1. 185° 10' 374.99 feet along Government Land (Lot 47-A);
2. 275° 10' 119.81 feet along the remainder of Grant 6816 (Lot 48-A-2);
3. 5° 10' 443.70 feet along the remainder of Grants 6816 and 11204 (Lot 48-A-2);
4. 125° 00' 138.12 feet along the north side of Omao Road to the point of beginning and containing an area of 1.126 acres, more or less.

Together with Easement "A" (15 feet wide) for access and utility purposes, being all of that certain parcel of land (being portion of the land(s) described in and covered by Land Patent Grant Number 6816 to Rebecca Piimoku Medeiros and Land Patent Grant Number 11204 to Rebecca Piimoku Medeiros) situate, lying and being at Omao, Koloa, Island and County of Kauai, State of Hawaii, being a portion of Lot 48-A-2, and thus bounded and described, as per survey dated December --, 1996, to-wit:

Beginning at the southwest corner of this parcel of land on the north side of Omao Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU-O-HEWA" being 3,398.00 feet south and 907.23 feet west, thence running by azimuths measured clockwise from true South:

1. 185° 10' 443.70 feet along Lot 48-A-1;
2. 275° 10' 15.00 feet along the remainder of Lot 48-A-2;
3. 5° 10' 452.30 feet along Lot 48-A-3;

4. 125° 00' 17.29 feet along the north side of Omao Road to the point of beginning and containing an area of 0.154 acre, more or less.

Together, also with Easement "B" (15 feet wide) for access and utility purposes, being all of that certain parcel of land (being portion of the land(s) described in and covered by Land Patent Grant Number 6816 to Rebecca Piimoku Medeiros and Land Patent Grant Number 11204 to Rebecca Piimoku Medeiros) situate, lying and being at Omao, Koloa, Island and County of Kauai, State of Hawaii, being a portion of Lot 48-A-3, and thus bounded and described, as per survey dated December --, 1996, to-wit:

Beginning at the south corner of this parcel of land on the north side of Omao Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU-O-HEWA" being 3417.83 feet south and 878.91 feet west, thence running by azimuths measured clockwise from true South:

1. 125° 00' 17.29 feet along the north side of Omao Road;
2. 185° 10' 452.30 feet along Lot 48-A-2;
3. 275° 10' 15.00 feet along the remainder of Lot 48-A-3;
4. 5° 10' 460.90 feet along Lot 48-A-4 to the point of beginning and containing an area of 0.157 acre, more or less.

Being the same premises conveyed to ROBERT JAMES STILLWELL, JR. and JOYCE JOHNSON STILLWELL, husband and wife, as Tenants by the Entirety, as to an undivided 25% interest, DAVID ARNOLD STILLWELL and JODY KAY STILLWELL, husband and wife, as Tenants by the Entirety, as to an undivided 25% interest, RAELENE DIANE BROWN and DAVID BRESSLIN BROWN, wife and husband, as Tenants by the Entirety, as to an undivided 25% interest, DAVID AARON BROWN and SALLY ANNE BROWN, husband and wife, as Tenants by the Entirety, as to an undivided 8.34% interest, JARROD MICHAEL BROWN and SUSANNAH BENNETT BROWN, husband and wife, as Tenants by the Entirety, as to an undivided 8.33% interest, and JONATHAN WOODRUFF GRAFF and KIMBERLY DIANE GRAFF, husband and wife, as Tenants by the Entirety, as to an undivided 8.33% interest, as Tenants in Common, by WARRANTY DEED dated February 6, 2012, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-44360219.

TOGETHER WITH all built-in furniture, attached existing fixtures, built-in appliances, water heater, electrical and/or gas and plumbing fixtures, attached carpeting, if any, and all items within structures.

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature in favor of the State of Hawaii.
2. The terms and provisions contained in LAND PATENT GRANT NUMBER 6816 dated November 2, 1917.
3. The terms and provisions contained in the following:

DECLARATION OF CONDITION OF NON-DEVELOPMENT dated April 25, 1996, recorded as Document No. 96-074793.

RELEASE AND TERMINATION OF DECLARATION OF CONDITION OF NON-DEVELOPMENT, dated January 22, 2010, recorded as Document No. 2010-019186.

No joinder was given by WILLIAM K. MEDEIROS and MARGARET A. MEDEIROS, as Trustees.

4. The terms and provisions contained in the INDEMNIFICATION AGREEMENT dated April 25, 1996, recorded as Document No. 96-074794, by and between WILLIAM K. MEDEIROS, Trustee, MARGARET A. MEDEIROS, Trustee, and COUNTY OF KAUAI, through its Department of Water.

5. A 13-foot wide future road widening reserve along Omao Road; as shown on survey map prepared by Wayne T. Wada, Registered Professional Land Surveyor with Esaki Surveying and Mapping, Inc., dated November 4, 1996.

6. DESIGNATION OF EASEMENT "W-2" (10 feet wide) for water meter purposes, as shown on survey map of Wayne T. Wada, Registered Professional Land Surveyor with Esaki Surveying and Mapping, Inc., dated November 4, 1996.

719



STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

February 18, 2020 3:29 PM

Doc No(s) A-73530778



/s/ LESLIE T. KOBATA  
REGISTRAR

1 1/1 ICL  
B-33465861

Conveyance Tax: \$0.00

LAND COURT

(  
^

REGULAR SYSTEM

After recordation, return by Mail [ X ] Pickup [ ]

Stephen H. Reese, Esq.  
841 Bishop Street, Suite 2300  
Honolulu, Hawaii 96813

7 Pages Total

Title of Document:

**Warranty Deed to Trust**

Tax Map Key: (4) 2-7-004-007

Located at: 3760-B Omao Road, Koloa, Hawaii 96756

**Warranty Deed to Trust**

**(NOTICE: Tenants by the Entirety Creditor Protection  
Continues Pursuant to Hawaii Revised Statutes §509-2)**

This Deed, made this 10<sup>th</sup> day of February, 2020,  
by **David Arnold Stillwell** and **Jody Kay Stillwell**, husband and wife, whose mailing address is  
3730A Omao Road, Koloa, Hawaii 96756, hereinafter called the "Grantor", and **David A.  
Stillwell** and **Jody K. Stillwell**, Trustees of the David A. Stillwell and Jody K. Stillwell Joint  
Revocable Trust dated August 21, 2019, whose residence and mailing address is 3730A Omao  
Road, Koloa, Hawaii 96756, which Trustees are empowered under paragraph 7.03 of Article VII  
of such trust to hold, develop, lease, assign, convey, sell, encumber and/or otherwise deal with  
and dispose of real property, hereinafter called the "Grantee."

**WITNESSETH:**

For TEN DOLLARS (\$10.00) and other good and valuable consideration to the Grantor paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantee, as TENANT IN SEVERALTY, its successors and permitted assigns, in fee simple, forever, the property, situated on the Island of Kauai, State of Hawaii, and more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof.

**THE GRANTORS AND GRANTEES HEREBY DECLARE THAT THIS CONVEYANCE IS MADE PURSUANT TO H.R.S. §509-2 AS AMENDED FROM TIME TO TIME, AND NOTICE IS HEREBY GIVEN THAT THE GRANTORS AND GRANTEES INTEND TO AND HEREBY DO CONTINUE THEIR TENANTS BY THE ENTIRETY CREDITOR PROTECTION, THAT THE PROPERTY DESCRIBED IN SAID EXHIBIT "A" WILL BE HELD AND GOVERNED BY THE GRANTORS' TRUST AGREEMENT HEREINBEFORE IDENTIFIED, WHICH TRUST AGREEMENT IS REVOCABLE AND AMENDABLE BY THE GRANTORS, AND THAT THE PROPERTY DESCRIBED IN SAID EXHIBIT "A" SHALL CONTINUE TO BE IMMUNE FROM THE CLAIMS OF EACH OF THE GRANTORS' SEPARATE CREDITORS AND EACH OF THE GRANTEES' SEPARATE CREDITORS.**

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 all buildings, improvements, rights, easements, privileges and appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith, unto the Grantee according to the tenancy herein set forth, forever.

AND, in consideration of the premises, the Grantor does hereby covenant with the Grantee that the Grantor is seized of the property herein described in fee simple; that said property is free and clear of and from all liens and encumbrances, except for the lien of real property taxes not yet by law required to be paid, and except as may be specifically set forth herein; that the Grantor has good right to sell and convey said property, as aforesaid; and, that the Grantor will **WARRANT AND DEFEND** the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

The conveyance herein set forth and the warranties of the Grantor concerning the same are expressly declared to be in favor of the Grantee, its successors and permitted assigns.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place of thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. 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 elsewhere herein.

IN WITNESS WHEREOF, the undersigned executed these presents as of the day and year first above written.

David Arnold Stillwell  
David Arnold Stillwell

Jody Kay Stillwell  
Jody Kay Stillwell

David A. Stillwell  
David A. Stillwell, Trustee as aforesaid

"Grantor"

Jody K. Stillwell  
Jody K. Stillwell, Trustee as aforesaid

"Grantee"

STATE OF HAWAII            )  
  ) ss.  
COUNTY OF KAUAI        )

On this 10<sup>th</sup> of February, 2020, as certified before me personally appeared **David Arnold Stillwell** and **Jody Kay Stillwell**, individually, and **David A. Stillwell** and **Jody K. Stillwell**, Trustees as aforesaid, to me known to be the persons described in and who executed the foregoing instrument identified as Warranty Deed to Trust dated February 10, 2020, consisting of 7 pages, and acknowledged that they executed the same as their free act and deed, individually and as Trustees as aforesaid.



Aida G. Dolfo  
Notary Public, State of Hawaii  
Name of Notary: Aida G. Dolfo Fifth Circuit

My commission expires: Nov. 18, 2023

Document Date: 2-10-2020 # Pages: 7

Notary Name: AIDA G. DOLFO Fifth Circuit

Doc. Description: Warranty Deed  
to Trust

Aida G. Dolfo 2-10-2020  
Notary Signature Date



**EXHIBIT "A"**

Real property in the County of Kauai, State of Hawaii, described as follows:

PARCEL FIRST:

All of that certain parcel of land (being a portion of land patent grant number 6816 to Rebecca Piimoku Medeiros and a portion of land patent grant number 11,204 to (Mrs.) Rebecca Piimoku Medeiros), being Lot 48-A-1, being also a portion of Lot 48 of Omao Homesteads, situate at Omao, Koloa, Island and County of Kauai, State of Hawaii, and more particularly described as follows:

Beginning at the southwest corner of this parcel of land on the north side of Omao Road, the coordinates of said point of beginning referred to government survey triangulation station "Puu-O-Hewa" being 3,318.78 feet south and 1,020.37 feet west, thence running by azimuths measured clockwise from true south:

1. 185° 10' 374.99 feet along Government Land (Lot 47-A);
2. 275° 10' 119.81 feet along the remainder of Grant 6816 (Lot 48-A-2);
3. 5° 10' 443.70 feet along the remainder of Grants 6816 and 11204 (Lot 48-A-2);
4. 125° 00' 138.12 feet along the north side of Omao Road to the point of beginning and containing an area of 1.126 acres, more or less, as per survey prepared by Esaki Surveying and Mapping, Inc., by Wayne T. Wada, Licensed Professional Land Surveyor Certificate Number 4596, dated December 1996.

PARCEL SECOND:

Easements A and B for access and utility purposes, described as follows:

Easement A

All of that certain parcel of land (being a portion of Land Patent Grant Number 6816 to Rebecca Piimoku Medeiros), being Easement A, 15 feet wide for access and utility purposes, being a portion of Lot 48-A-2, situate at Omao, Koloa, Island and County of Kauai, State of Hawaii, and more particularly described as follows:

Beginning at the southwest corner of this parcel of land on the north side of Omao Road, the coordinates of said point of beginning referred to government survey triangulation station "Puu-O-Hewa" being 3,398.00 feet south and 907.23 feet west, thence running by azimuths measured clockwise from true south:

1. 185° 10' 443.70 feet along lot 48-A-1;
2. 275° 10' 15.00 feet along the remainder of lot 48-A-2;
3. 5° 10' 452.30 feet along Lot 48-A-3;
4. 125° 00' 17.29 feet along the north side of Omao Road to the point of beginning and containing an area of 0.154 acre, more or less, as per survey prepared by Esaki Surveying and Mapping, Inc., by Wayne T. Wada, licensed professional land surveyor certificate number 4596, dated December 1996.

#### Easement B

All of that certain parcel of land (being a portion of Land Patent Grant Number 6816 to Rebecca Piimoku Medeiros), being Easement B, 15 feet wide for access and utility purposes, being a portion of Lot 48-A-3, situate at Omao, Koloa, Island and County of Kauai, State of Hawaii, and more particularly described as follows:

Beginning at the south corner of this parcel of land on the north side of Omao Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Puu-O-Hewa" being 3,417.83 feet south and 878.91 feet west, thence running by azimuths measured clockwise from true south:

1. 125° 00' 17.29 feet along the north side of Omao Road;
2. 185° 10' 452.30 feet along Lot 48-A-2;
3. 275° 10' 15.00 feet along the remainder of Lot 48-A-3;
4. 5° 10' 460.90 feet along lot 48-A-4 to the point of beginning and containing an area of 0.157 acre, more or less, as per survey prepared by Esaki Surveying and Mapping, Inc., by Wayne T. Wada, Licensed Professional Land Surveyor Certificate Number 4596, dated December 1996.

Being all of the premises conveyed by warranty deed recorded October 03, 2014 as Regular System Document No. A-53890260 of Official Records.

Grantor: Robert James Stillwell, Jr. and Joyce Johnson Stillwell, husband and wife; David Arnold Stillwell and Jody Kay Stillwell, husband and wife; Raelene Diane Brown and David Bresslin Brown, wife and husband; David Aaron Brown and Sally Anne Brown, husband and wife; Jarrod Michael Brown and Susannah Bennett Brown, husband and wife; and Jonathan Woodruff Graff and Kimberly Diane Graff, husband and wife

Grantee: Robert James Stillwell, Jr. and Joyce Johnson Stillwell, husband and wife, as joint tenants, as to an undivided fifty percent (50%) interest, and David Arnold Stillwell and Jody Kay Stillwell, husband and wife, as tenants by the entirety, as to an undivided fifty percent (50%) interest, as tenants in common

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Title to all mineral and metallic mines reserved to the State of Hawaii.
2. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Land Patent Grant Number 6816.
3. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Declaration of Condition of Non-Development recorded May 29, 1996 as Regular System Document No. 96-074793 of Official Records.

Release and Termination of Declaration of Condition of Non-Development, dated January 22, 2010, recorded as Regular System Document No. 2010-019186 of Official Records.

No joinder was given by William K. Medeiros and Margaret A. Medeiros, as Trustees.

4. The terms and provisions contained in the Indemnification Agreement recorded May 29, 1996 as Regular System Document No. 96-074794 of Official Records.

5. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Quitclaim Deeds recorded December 17, 1997 as Regular System Document No. 97-176217 and March 13, 1998 as Regular System Document No. 98-033215, respectively, of Official Records.
6. 13-foot wide for future road widening purposes reserve along Omao Road. No new structures shall be permitted within the reserve; new structures shall be setback from the reserve, as shown on or disclosed by the survey dated December 1996, prepared by Esaki Surveying and Mapping, Inc., by Wayne T. Wada, Licensed Professional Land Surveyor Certificate Number 4596, as set forth or disclosed by the Warranty Deed recorded January 26, 2006 as Regular System Document No. 2006-015969 of Official Records.
7. Easement W-2 (10 feet wide, containing an area of 130 square feet, more or less) for water meter purposes, as shown on or disclosed by the survey dated December 1996, prepared by Esaki Surveying and Mapping, Inc., by Wayne T. Wade, Licensed Professional Land Surveyor Certificate Number 4596, as set forth or disclosed by the Warranty Deed recorded January 26, 2006 as Regular System Document No. 2006-015969 of Official Records.
8. Any and all other liens, easements, encumbrances, reservations and restrictions, of record, if any.

**END OF EXHIBIT "A"**

**EXHIBIT "B"**

LETTER OF AUTHORIZATION

Mr. Ka'aina Hull, Planning Director  
Planning Department  
County of Kaua'i  
4444 Rice Street, Suite 473  
Lihu'e, HI 96766

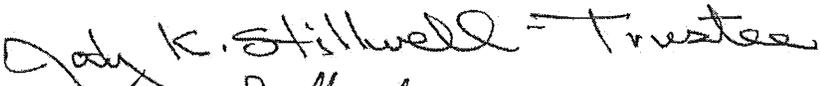
RE: Tax Map Key: (4)2-7-004:007  
3756A Omao Road and 3760B Omao Road  
Omao, Kaua'i, Hawai'i

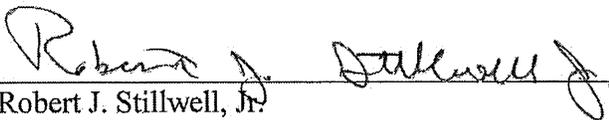
Dear Mr. Hull:

This letter authorizes BELLES GRAHAM, LLP to act as my/our agent in the preparation and submittal of a subdivision variance application for the subject parcel.

The undersigned further signifies and certifies by signing below, the he/she/they is/are the owner(s) of the above subject parcel.

Sincerely,

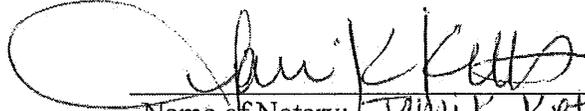
  
DAVID A. Stillwell TRUSTEE  
David A. Stillwell and Jody K. Stillwell Joint Revocable Trust

  
Robert J. Stillwell, Jr.

  
Joyce J. Stillwell

Utah ~~AKK~~  
STATE OF HAWAII- )  
) ss:  
COUNTY OF KAUAI ~~WEBER TRK~~

On this 12<sup>th</sup> day of February, 2024, before me appeared David A. Stillwell & Jody K. Stillwell, to me personally known, who, being by me duly sworn, did say that he/she is the Trustee of the David A. Stillwell and Jody K. Stillwell Joint Revocable Trust, and that said instrument was signed on behalf of said Trust and said Trustee acknowledged said instrument to be the free act and deed of said Trust.

  
Name of Notary: Tami K. Ketts  
Notary Public, State of Hawaii

My commission expires: 5-7-2024



STATE OF ~~HAWAII~~ <sup>Utah-TKK</sup> )  
 ) ss.  
COUNTY OF ~~KAUAI~~ <sup>Weber-TKK</sup>

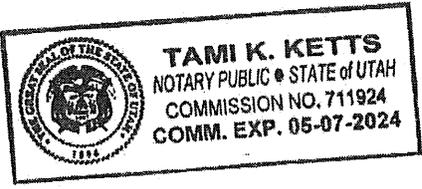
On this 12th day of February, 2024, before  
me personally appeared  
Robert J. Stillwell, Jr.

- who is personally known to me
- whose identity I proved on the basis of photo ID
- whose identity I proved on the oath/affirmation of

Julia Wilson, a credible witness:  
who being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Tami K Ketts  
Notary Public, State of ~~Hawaii~~ <sup>Utah</sup>

Name of Notary: Tami K Ketts  
My Commission expires: 5-7-2024



~~STATE OF HAWAII~~  
TKK Utah  
STATE OF HAWAII

COUNTY OF ~~KAUAI~~ TKK } ss.  
Weber

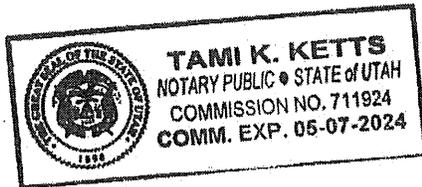
On this 12th day of February, 2024, before  
me personally appeared  
Joyce J. Stillwell

- who is personally known to me
- whose identity I proved on the basis of Photo ID
- whose identity I proved on the oath/affirmation of

Julia Wilson, a credible witness:

who being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

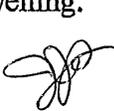
Tami K. Ketts  
Notary Public, State of Hawaii Utah TKK



Name of Notary: Tami K. Ketts  
My Commission expires: 5-7-2024

**AUTHORIZATION**

DAVID A. STILLWELL and JODY K. STILLWELL, Trustees of the David A. Stillwell and Jody K. Stillwell Joint Revocable Trust dated August 21, 2019, and ROBERT JAMES STILLWELL and JOYCE JOHNSON STILLWELL, husband and wife, are the owners of that certain real property located in Koloa, Kauai, Hawaii, designated by Kauai Tax Map Key No. (4) 2-7-004-007 ("Subject Property"), hereby authorizes Jonathan J. Chun, Esq. of Belles Graham LLP to file applications on the Owners' behalf with the Planning Department and the Planning Commission of the County of Kauai, and all other governmental agencies, and to do all things necessary to obtain such variance, modification, subdivision, zoning and other land use permits as may be necessary to subdivide the Subject Property into two lots, one containing a dwelling unit and guest house fronting Omao Road and the other containing a single-family dwelling.

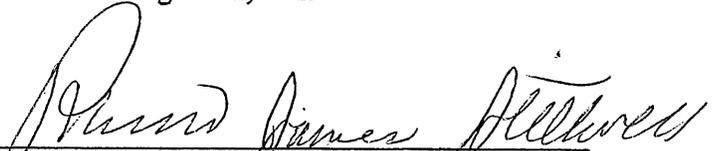
 <sup>PS</sup> Ogden, Weber, Utah  
DATED: Lihue, Kauai, Hawaii March 11, 2024

---

DAVID A. STILLWELL, Trustee of the David A. Stillwell and Jody K. Stillwell Joint Revocable Trust dated August 21, 2019

---

JODY K. STILLWELL, Trustee of the David A. Stillwell and Jody K. Stillwell Joint Revocable Trust dated August 21, 2019

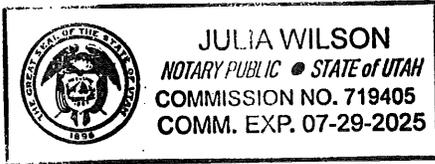
  
ROBERT JAMES STILLWELL

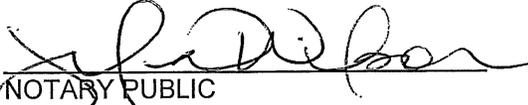
  
JOYCE JOHNSON STILLWELL

**ACKNOWLEDGMENT**

STATE OF UTAH                    )  
  (ss.  
COUNTY OF WEBER            )

On March 11, 2024, personally appeared before me **ROBERT JAMES STILLWELL AND JOYCE JOHNSON STILLWELL**, the signer(s) of the foregoing instrument, who duly acknowledged to me that he/she/they executed the same.

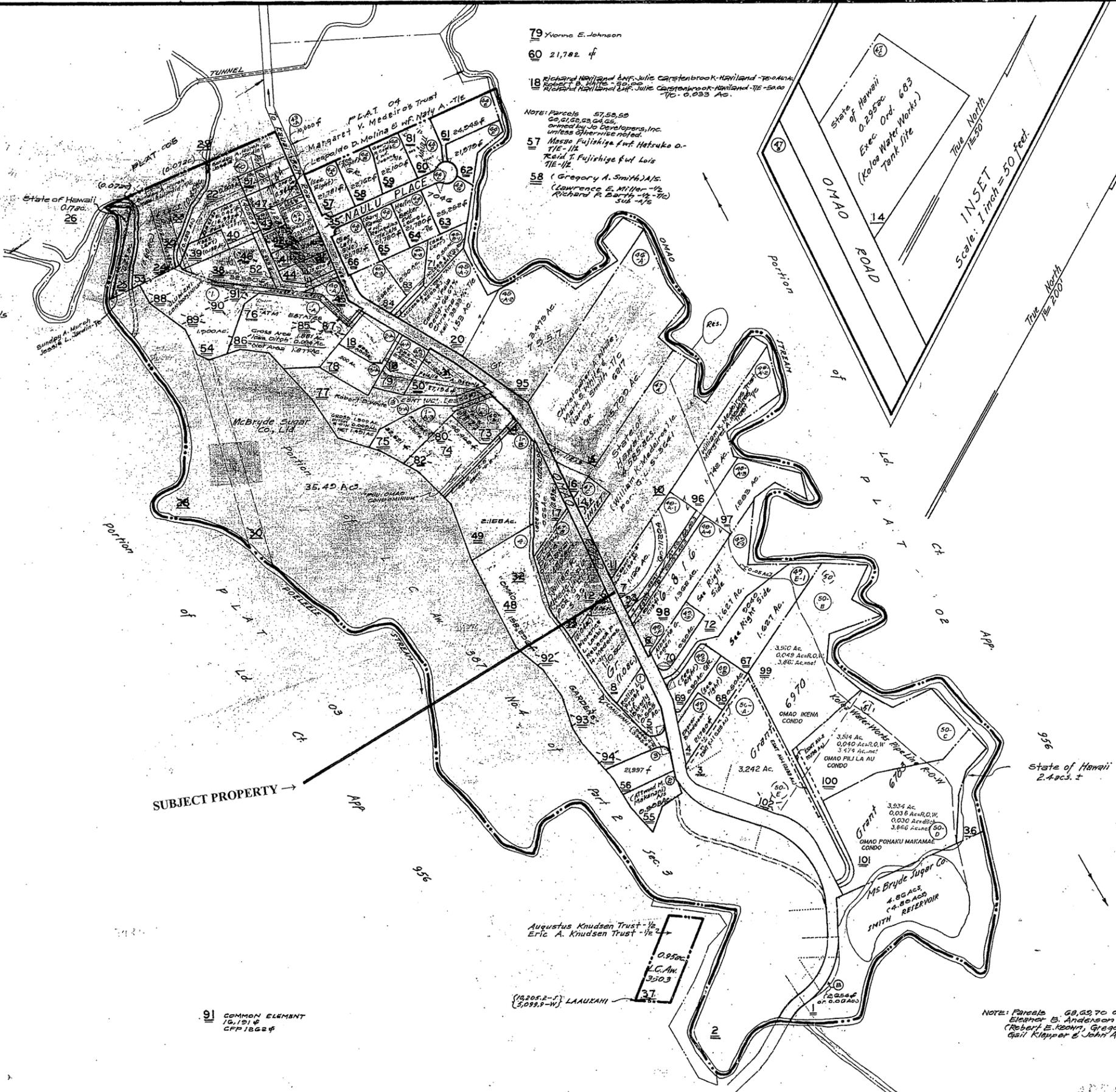


  
NOTARY PUBLIC

My Commission Expires: JULY 29, 2025  
Residing at: WEBER COUNTY

**EXHIBIT "C"**

- 38 Demitrio Pepito & wf Patsy - 1/4
- 39 Errol K. Lanning, Sr. & wf Cheryl A. - 1/2 E  
0.224 Ac. or 18810 f
- 40 Dorotea L. Pedrosa - L11  
Conchita Tin - 1/2 - Rdm.  
Carolyn P. Williams
- 41 Orlando Alora & wf Conal Ann - 1/2
- 43 Raymond Aki
- 42 Raymond Aki
- 52 Bonifacio Pedrosa & wf Dorotea,  
Conchita, Carolyn, & Josephine  
Pedrosa - 5/12  
Errol K. Lanning, Sr. & wf  
Cheryl A. - 1/2 E - 4/9
- 17 William K. Medeiros & wf Margaret A. - 1/2 - 3/5  
Elizabeth A. Medeiros - 1/5  
Alice K. P. Kealahou - 1/5
- 66 Mac L. Layson & wf Dely D. - 1/2 E  
(George J. Godde) 1/5
- 80 Robert B. White - 66.66%  
Christopher A. White - 33.33%  
(Fergus S. Macomber  
& wf Heide S.) 1/5
- 44 Hope R. MacCartin  
Peter A. Daglio - 1/2
- 71 Kevin J. Anderson  
& wf Karla J. - 1/2
- 83 Christopher D. Anderson  
& wf Barbara A. - 1/2
- 84 Borden L. Newman



- 72 Eleanor B. Anderson  
Gail Klepper - 1/4, John A. Myers - 3/4 A/5
- 67 Gregory A. Kamm & wf  
Lindsay K. - 1/2 E
- 68 (Peggy A. Lindner) Sub-A/5
- 69 Janet L. Greenblath &  
Marcio S. Vespoli - 1/2

Dropped Parcels 25, 27, 28, 30, 10, 13, 33,  
32, 6, 9, 12, 34, 15, 21, 23, 30, 12, 51, 45,  
42, 35, 53, 81, 82, 83, thru 94, 102.

TAXATION MAPS BUREAU		
TERRITORY OF HAWAII		
TAX MAP		
FOURTH	DIVISION	
ZONE	SEC.	PLAT
2	7	04
CONTAINING PARCELS		
SCALE: 1 in. = 45' NOTED		
PRINTED:.....		

PORTION OF OMAO HOMESTEADS, KOLOA, KAUAI.

SUBJECT TO CHANGE

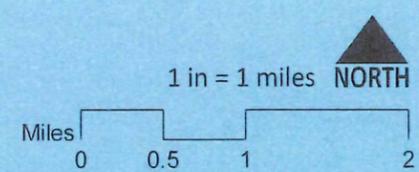
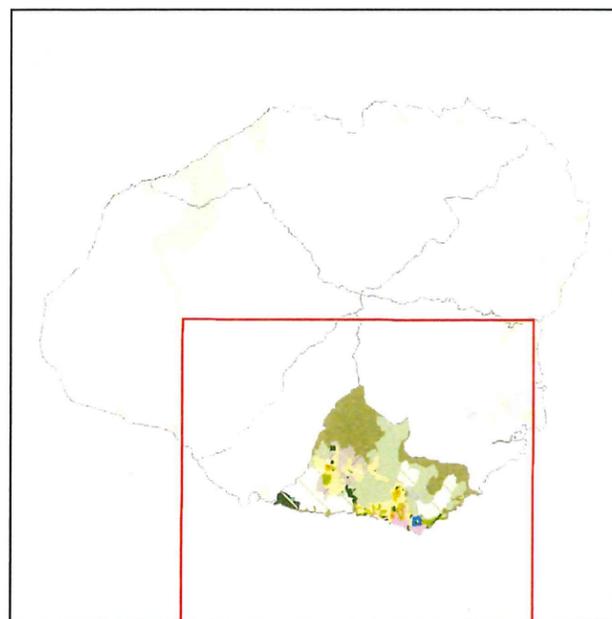
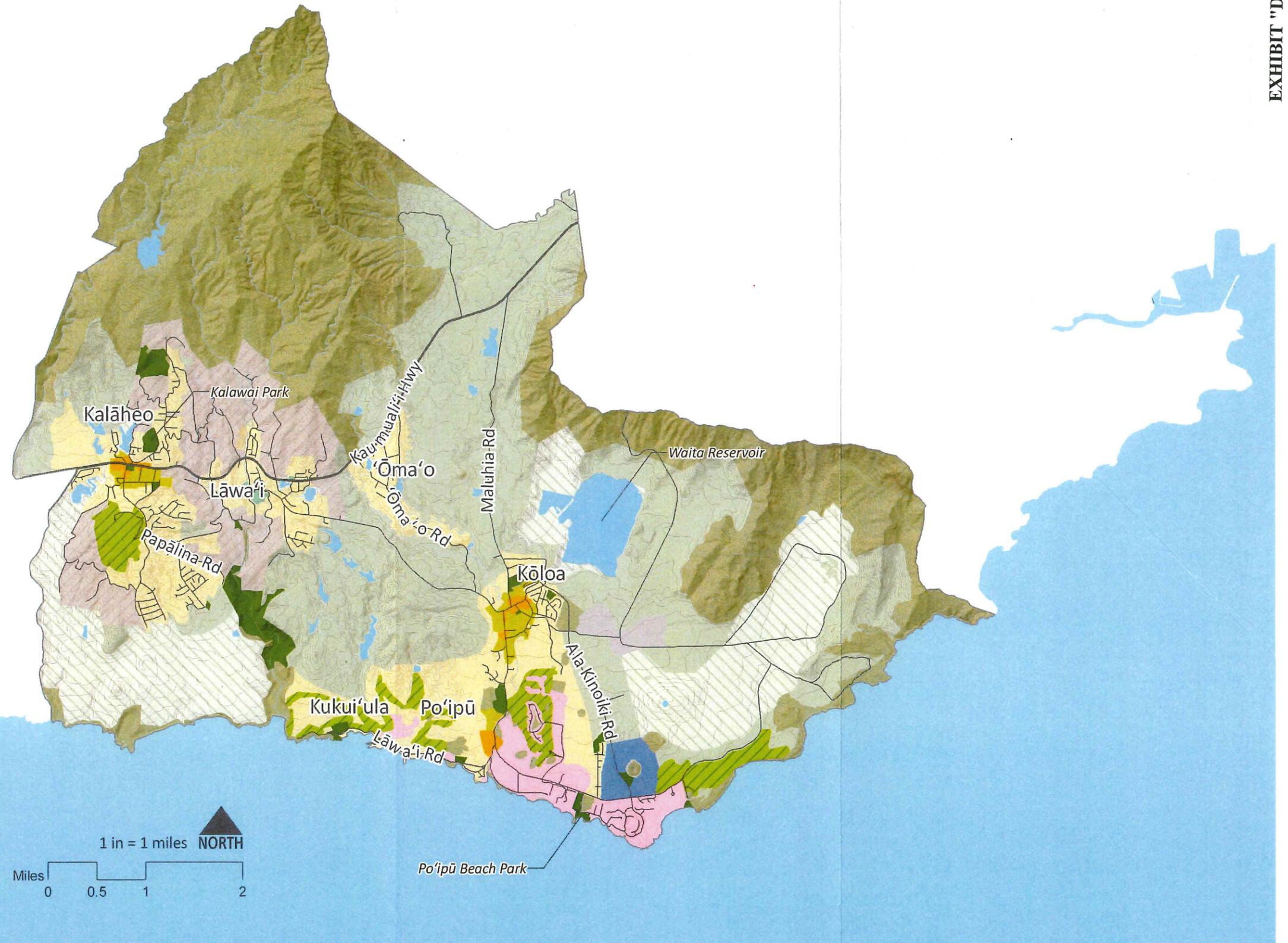
EXHIBIT "C"

Source: Taxation Maps Bureau  
By: P.E.F.A.L. Oct 1936

**EXHIBIT "D"**

**Figure 5-4 South Kaua'i Land Use Map**

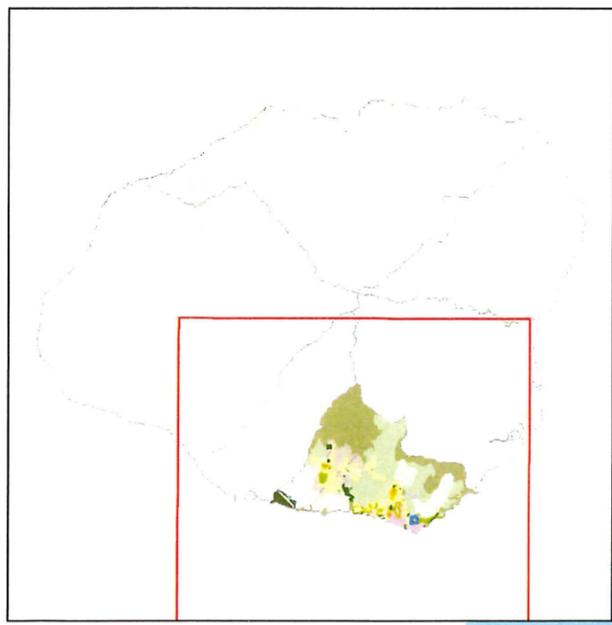
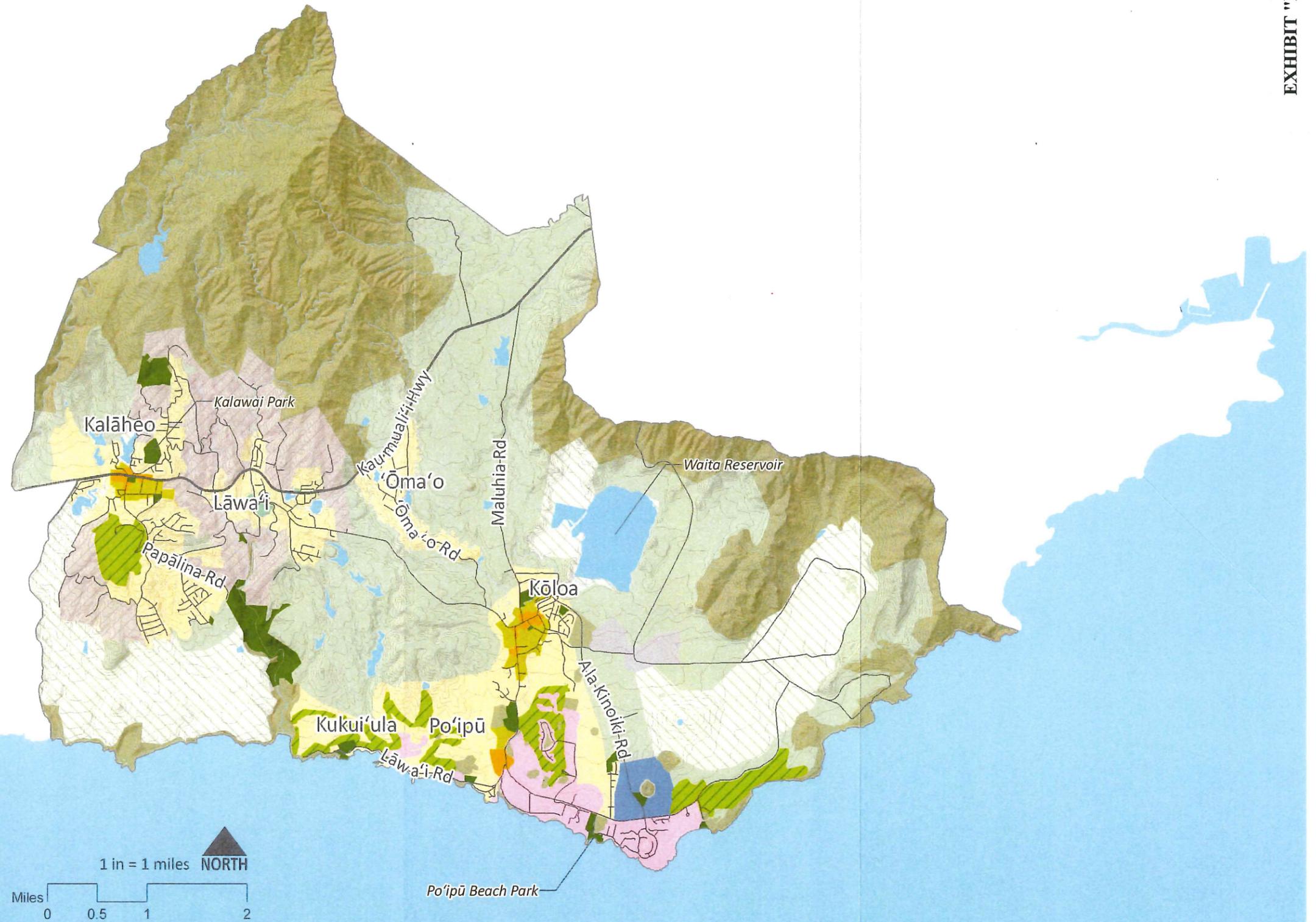
-  Planning District Boundary
-  Major Roads
-  Roads
-  Streams
-  Reservoirs
-  Natural
-  Agriculture
-  Agriculture (IAL)
-  Parks and Recreation
-  Golf Course
-  Homestead
-  Residential Community
-  Neighborhood Center
-  Neighborhood General
-  Large Town
-  Small Town
-  Resort
-  Industrial
-  Transportation
-  Provisional Agriculture



**EXHIBIT "E"**

**Figure 5-4 South Kaua'i Land Use Map**

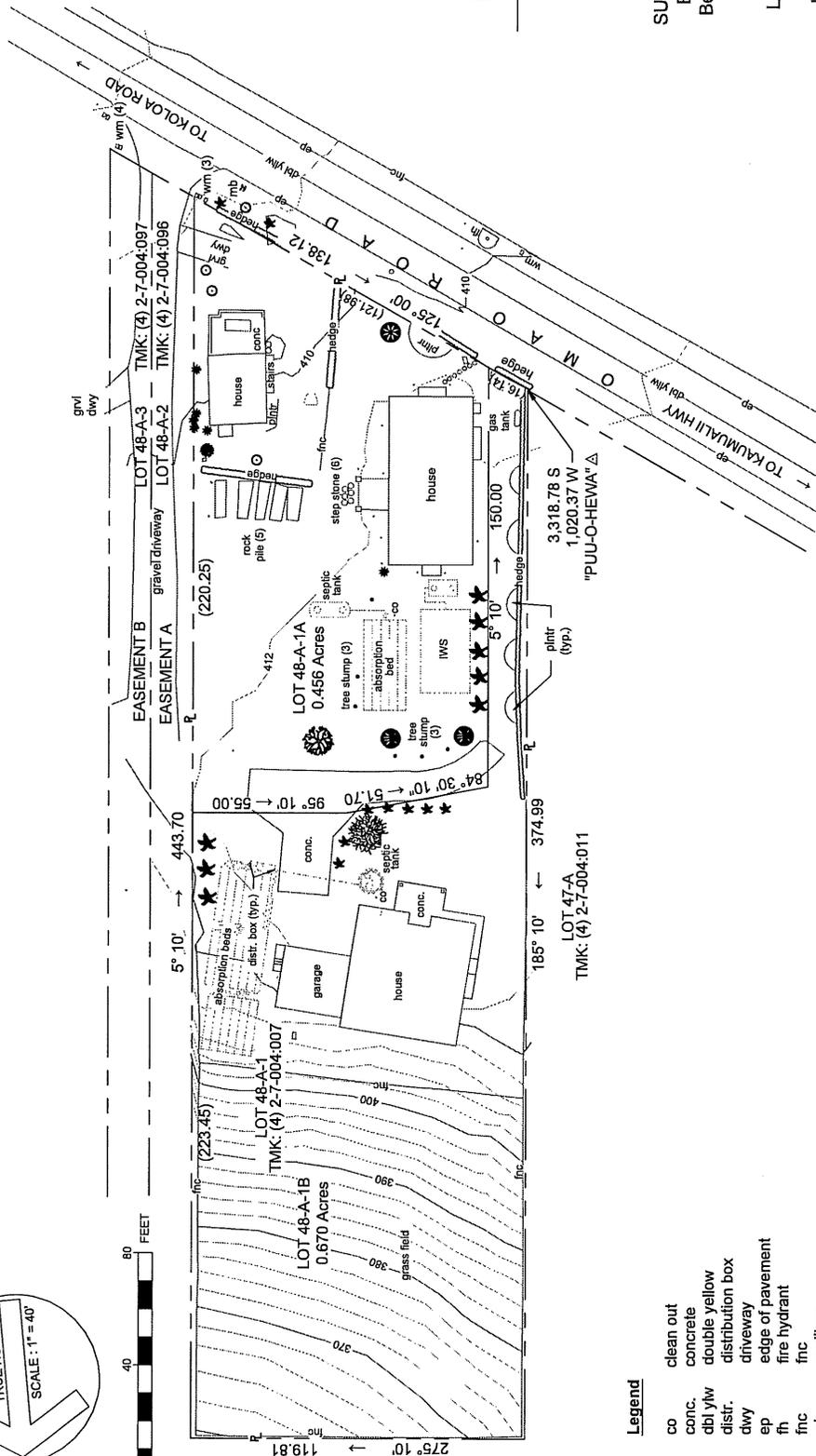
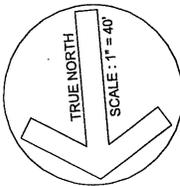
-  Planning District Boundary
-  Major Roads
-  Roads
-  Streams
-  Reservoirs
-  Natural
-  Agriculture
-  Agriculture (IAL)
-  Parks and Recreation
-  Golf Course
-  Homestead
-  Residential Community
-  Neighborhood Center
-  Neighborhood General
-  Large Town
-  Small Town
-  Resort
-  Industrial
-  Transportation
-  Provisional Agriculture



**EXHIBIT "F"**



**EXHIBIT "G"**



THIS WORK WAS PREPARED BY ME  
OR UNDER MY SUPERVISION

*W. Eddy*  
SIGNATURE EXP. 4/24

SUBDIVISION OF LOT 48-A-1  
Being Portion of Lot 48-A  
Being Also Portion of Lot 48  
Omao Homesteads  
into  
Lots 48-A-1A and 48-A-1B  
KOLOA, KAUAI, HAWAII  
TAX MAP KEY: (4) 2-7-004:007  
February 7, 2024

OWNER:  
DAVID A & JODY K STILLWELL  
& ROBERT & JOYCE STILLWELL  
JOINT REV TR  
3730 A OMAO RD  
KOLOA, HI 96756

11"x17"= 1.30 Sq. Ft.

- Legend**
- co clean out
  - conc. concrete
  - dbl yw double yellow
  - distr. distribution box
  - dwy driveway
  - ep edge of pavement
  - fn fire hydrant
  - fnc fnc
  - mb mailbox
  - pl property line
  - plntr planter
  - pp power pole
  - wm water meter
  - wv water valve

KODANI & ASSOCIATES ENGINEERS, LLC  
3126 AKAHI STREET LIHUE, KAUAI, HAWAII 96766

TMK: (4) 2-7-004:007  
KAE22-2224

EXHIBIT "G"

**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:** May 22, 2024

**PERMIT NUMBER(S):** Class IV Zoning Permit Z-IV-2024-5  
Variance Permit V-2024-1  
Special Permit SP-2024-2

**APPLICANT(S):** DAVID A. & JODY K. STILLWELL TRUSTEES, ET. AL.

Attached for the Planning Commission's reference are agency comments for the permit referenced above.

F.2.b.1.  
JUN 04 2024



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

FROM: Kaaina S. Hull, Director

Planner: Kenneth Estes

4/23/2024

SUBJECT: Zoning Class IV Z-IV-2024-5  
Variance Permit V-2024-1  
Special Permit SP-2024-2  
Tax Map Key: 270040070000  
Applicant: David A. & Jody K Stillwell Trustees, et. al.  
Proposed Subdivision of Lot

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 checked="" type="checkbox"/> Office of Hawaiian Affairs           | <input type="checkbox"/> Other:                                  |

FOR YOUR COMMENTS (pertaining to your department)

*NO concerns for Fire at this time.  
Hydrant located front of property.  
Future development will need to conform  
to FD access requirements.*

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 6/4/2024 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: Kenneth Estes

4/23/2024

RECEIVED

APR 25 2024

County of Kauai  
Transportation Agency

SUBJECT: Zoning Class IV Z-IV-2024-5  
Variance Permit V-2024-1  
Special Permit SP-2024-2  
Tax Map Key: 270040070000  
Applicant: David A. & Jody K Stillwell Trustees, et. al.  
Proposed Subdivision of Lot

TO:

- |  |  |
|--|--|
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| <input type="checkbox"/> State DOT - Highways, Kauai (info only)         | <input type="checkbox"/> County DPW - Wastewater                 |
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| <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       |
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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                    |
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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 type="checkbox"/> UH Sea Grant                            |
| <input checked="" type="checkbox"/> Office of Hawaiian Affairs           | <input type="checkbox"/> Other:                                  |

FOR YOUR COMMENTS (pertaining to your department)

5/10/2024

GA HAS NO FURTHER COMMENT ON THIS PROJECT.

MAHALO!

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 6/4/2024 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: Kenneth Estes

4/23/2024

SUBJECT: Zoning Class IV Z-IV-2024-5  
Variance Permit V-2024-1  
Special Permit SP-2024-2  
Tax Map Key: 270040070000  
Applicant: David A. & Jody K Stillwell Trustees, et. al.  
Proposed Subdivision of Lot

TO:

- |  |  |
|--|--|
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| <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 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 6/4/2024 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!



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

DATE: May 13, 2024

TO: To whom it may concern

FROM: Ellis Jones  
District Environmental Health Program Chief

SUBJECT: RESPONSE\_Stillwell Trustees\_Z-IV-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 proposed application. When subdivision is applied for, the subdivision map must show all existing IWS (individual wastewater systems) as well as setback to existing and proposed property lines. All IWS components must be at least 5' from any new property line.

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 Class IV Zoning Permit and Variance Permit to allow a deviation from the Pole Width requirement within the Residential (R-2) zoning district, and a Special Permit to allow a deviation from the minimum lot area requirement involving a 2-lot subdivision in the State Land Use Rural District.

**Permit Application Nos.** Class IV Zoning Permit Z-IV-2024-5  
 Variance Permit V-2024-1  
 Special Permit SP-2024-2

**Name of Applicant(s)** DAVID A. & JODY K. STILLWELL TRUSTEES, ET. AL.

**II. PERMIT INFORMATION**

PERMITS REQUIRED	
<input type="checkbox"/> Use Permit	
<input type="checkbox"/> Project Development Use Permit	
<input checked="" type="checkbox"/> Variance Permit	A Variance Permit is required to deviate from the lot length requirement Per Section 8-4.4(a) (2) (E) in the Residential zoning district.
<input checked="" type="checkbox"/> Special Permit	Pursuant to Section 205 of the Hawai'i Revised Statutes (HRS) and Chapter 13 of the Rules of Practice and Procedures of the Planning Commission, a Special Permit is required for a Variance in the State Land Use Rural District relating to the minimum lot area requirement of one-half acre or 21,780 sq. ft. involving a subdivision within the Rural District.
<input checked="" type="checkbox"/> Zoning Permit Class <input checked="" type="checkbox"/> IV <input type="checkbox"/> III	Pursuant to Section 8-3.1 of the KCC, 1987, as amended, a Class IV Zoning Permit is a procedural requirement in applying for a Variance Permit.
<input type="checkbox"/> Special Management Area Permit <input type="checkbox"/> Use <input type="checkbox"/> Minor	
<b>AMENDMENTS</b>	

**F.2.b.2.**  
 JUN 04 2024

<input type="checkbox"/> Zoning Amendment	
<input type="checkbox"/> General Plan Amendment	
<input type="checkbox"/> State Land Use District Amendment	

<b>Date of Receipt of Completed Application:</b>	April 18, 2024
<b>Date of Director's Report:</b>	May 14, 2024
<b>Date of Public Hearing:</b>	June 04, 2024
<b>Deadline Date for PC to Take Action (60<sup>TH</sup> Day):</b>	June 17, 2024

**III. PROJECT DATA**

<b>PROJECT INFORMATION</b>	
<b>Parcel Location:</b>	The project site is situated on the eastern side of 'Ōma'ō Road, approximately 1,700 feet south of the 'Ōma'ō Road /Naulu Place intersection, and further identified as 3756 'Ōma'ō Road.
<b>Tax Map Key(s):</b>	(4) 2-7-004: 007
<b>Area:</b>	1.126 acres or 49,049.56 sq. ft.
<b>ZONING &amp; DEVELOPMENT STANDARDS</b>	
<b>Zoning:</b>	Residential District R-2
<b>State Land Use District:</b>	Rural
<b>General Plan Designation:</b>	Residential Community
<b>Height Limit:</b>	Thirty (30) feet
<b>Max. Land Coverage:</b>	Residential District = 60%
<b>Front Setback:</b>	10'-0"
<b>Rear Setback:</b>	5' or ½ the wall plate height whichever is greater
<b>Side Setback:</b>	5' or ½ the wall plate height whichever is greater
<b>Community Plan Area:</b>	South Kaua'i Community Plan
<b>Community Plan Land Use Designation:</b>	Residential
<b>Deviations or Variances Requested:</b>	<p><u>Pole Width of Flag Lot</u> The Applicant is seeking to deviate from the minimum pole width requirement for lots within the County Residential (R-2) zoning district. Section 8-4.4 (a) (2) (E) specifies the "pole section of a flag lot shall not be less than 15 feet in width."</p> <p><u>Lot Area</u> The Applicant is seeking to deviate from the minimum lot area requirement for lots within the</p>

	<p>State Land Use Rural District. HRS 205-2(c) specifies the minimum lot size shall be one-half acre or 21,780 square feet. Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where “city-like” concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot less than one-half acre, but not less than 18,500 square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot; provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for a variance may be processed under the special permit procedure.</p>
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**IV. LEGAL REQUIREMENTS**

<p><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 April 18, 2024, and the Applicant, through its authorized agent, was notified accordingly of the Planning Department’s intent to commence permit processing.</p>
<p><b>Public Hearing Date: JUNE 04, 2024</b></p>

**V. PROJECT DESCRIPTION AND USE**

The Applicant is proposing to subdivide Lot 48-A-1 into two (2) lots identified as Lots 48-A-1A and 48-A-1B. The subject property is approximately 49,048.56 square feet or 1.126 acres in size. It is situated within the County Residential (R-2) zoning district and State Land Use Rural District.

As represented, the subdivision layout will consist of a front lot (Lot 48-A-1A) situated along ‘Ōma’o Road, containing approximately 19,863.36 square feet or 0.456 acres, and a flag lot (Lot 48-A-1B) situated in the rear of the subject property, containing approximately 29,185.2

square feet or 0.670 acres. The intent of this application is to accommodate a two-lot subdivision involving the subject property. In accommodating the proposal, the subdivision requires a Special Permit to allow a deviation from the minimum lot area requirement within the State Land Use Rural District pursuant to Section 205-2(c) of the Hawai'i Revised Statutes (HRS), and a Variance Permit to deviate from Section 8-4.4(a)(2)(E) of the Comprehensive Zoning Ordinance (CZO), Kaua'i County Code, 1987, as amended, relating to the minimum pole width requirement within the County Residential zoning district.

The subdivision proposal necessitates a Special Permit due to the requirement specified in Section 205-2(c) of the Hawaii Revised Statutes, which states:

*"...The commission for good cause may allow one lot of less than one-half acre, but not less than 18,500 square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such a lot, provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,870 square feet. Such a petition for variance may be processed under the special permit procedure."*

As proposed, the front lot has an area of 19,863.36 square feet or 0.456 acres, which does not meet the minimum lot area requirement of one-half acre within the State Land Use Rural District. While this lot does not meet the minimum half-acre size, it still conforms to the smallest lot size allowed in this district which is 18,500 square feet. Pursuant to HRS Section 205-2(c), the Applicant is requesting a Special Permit to deviate from the minimum lot area requirement in accordance with the special permit procedure outlined in Chapter 13 of the Rules of Practice and Procedure of the Kaua'i County Planning Commission, which would be evaluated to the Variance Permit standards as outlined in the CZO.

A Variance Permit is required to deviate from the requirements outlined in Section 8-4.4(a)(2)(E) of the CZO, relating to the minimum pole width of a flag lot. As represented, the flag lot (Lot 48-A-1B) has a pole width of fourteen (14) feet which does not comply with the minimum pole width requirement of fifteen (15) feet. As a result, the Applicant is requesting a Variance Permit to deviate from the minimum pole width standard.

## **VI. APPLICANT'S REASONS/JUSTIFICATION**

Please refer to the Application.

## **VII. AGENCY COMMENTS**

Comments from applicable government agencies are being sought and are expected at the time of the public hearing scheduled for JUNE 04, 2024. At the present time, the department has only received comments from the COK Fire Department, COK Transportation Agency, and the State Department of Health, and has not received comments from other reviewing agencies that includes the COK Public Works – Engineering Division (DPW) and COK Water (DOW). However, comments are being anticipated and will be presented at the public hearing.

## VIII. FINDINGS

### Property Information/Surroundings

The subject parcel (Lot 48-A-1) was originally created through Subdivision Application No. S-1993-63, that was approved by the County of Kaua'i, Planning Commission on July 25, 1996. The proposal involved the subdivision of Lot 48-A into 4-lots identified as Lots 48-A-1 to 48-A-4. Lots 48-A-1 and 48-A-4 are situated along the frontage of 'Ōma'o Road, while lots 48-A-2 and 48-A-3 are flag lots situated away from 'Ōma'o Road towards the rear of the property. The subdivision proposal required a Variance Permit that was processed through Class IV Zoning Permit Z-IV-1993-27 and Variance Permit V-1993-77, to deviate from the maximum pole length requirement of 150 feet and to deviate from the average lot length to width ratio requirement for lots within the County Residential Zoning District. The Variance Permit was approved by the County of Kaua'i, Planning Commission on June 24, 1993.

As previously mentioned, the subject property is situated along 'Ōma'o Road, approximately one-mile makai of Kaumuali'i Highway. The subject property is within the Residential (R-2) zoning district and State Land Use Rural District. The surrounding parcels to the north, south, east, and west are also within the Residential (R-2) zoning district and State Land Use Rural District.

The parcel is currently improved with two single-family dwelling units and a guest house. One of the single-family dwellings and the guest house were constructed in 1994 and are positioned closest to 'Ōma'o Road. They will be situated on proposed Lot 48-A-1A (front lot). The second single-family dwelling is currently under construction and is situated on the flag lot (Lot 48-A-1B). The Applicant has stated that no additional development on the front lot is foreseen if the variance and subdivision are approved. The Applicant may have intentions to construct an Additional Dwelling Unit (ADU) on the flag lot if the variance and subdivision are approved.

Both of the newly created lots will obtain access from 'Ōma'o Road which has a present right-of-way width of 30 feet along the property's frontage.

### Comprehensive Zoning Ordinance (CZO) Standards

1. Section 8-4.3(b) relating to Residential District setback requirements, states:

- "(1) Front setback: No structure, including but not limited to garages, carport, decks above grade, and accessory or storage structures may be closer than 10 feet to the right-of-way line of a public thoroughfare or the property line of a private street or the pavement line of a driveway or parking lot serving more than three dwelling units.
- (2) Rear setback: No structure shall be closer than (5) feet or 1/2 the total height of the building wall nearest the rear property line, whichever is greater.

- (3) Side setback: No building shall be closer to a side property line than five feet or 1/2 the total height of the highest building wall from the ground level nearest the property line, whichever is greater.”
2. Section 4-4.3(d)(3) relating to land coverage requirements, states:  
  
“(3) The amount of land coverage created for R-1 to R-6 Zoning Districts including buildings and pavement, shall not exceed 60% of the lot or parcel area...”
3. Section 8-4.4(a)(2) relating to lot width standards, states:  
  
“(2) Lot Width.  
  - (A) Minimum average lot width shall be 60 feet;
  - (B) No lot shall be less than 45 feet in width;
  - (C) No more than 20% of the lots in the proposed subdivision shall be less than 60 feet in width;
  - (D) No more than six lots less than 60 feet in width shall be located adjacent to one another;
  - (E) The pole section of a flag lot shall not be less than 15 feet in width.”
4. Section 8-4.4(a)(3) relating to lot length standards, states:  
  
“(3) Lot Length.  
  - (A) The average length of any lot shall not be greater than three times the average width;
  - (B) The maximum length of the pole portion of a flag lot shall be 150 feet.

## IX. PRELIMINARY EVALUATION

In evaluating the Applicant’s request for a Special Permit to deviate from the minimum lot area requirement within the State Land Use Rural District and a Variance Permit to deviate from the minimum pole width requirement within the County Residential (R-2) zoning district, the following should be considered:

1. Special Permit
  - a. Pursuant to Chapter 205 of the Hawai’i Revised Statutes (HRS) and Chapter 13 of the Planning Commission Rules of Practice and Procedure, a SPECIAL PERMIT may be approved under such protective restrictions as may be deemed necessary if the Commission finds that the proposed use is an unusual and reasonable use of land situated within the State Land Use Rural District, and that the use would promote the effectiveness and objectives of Chapter 205, HRS. The Planning Commission shall consider the following guidelines in determining unusual and reasonable use:

- 1) **Such use shall not be contrary to the objectives sought to be accomplished by Chapters 205 and 205A of the Hawai'i Revised Statutes (HRS), and the rules of the State Land Use Commission;**
  - The project is not contrary to any of the State objectives, which is to foster rural, residential development within the district. Additionally, HRS Section 205-2(c) allows for deviations to the one-half acre minimum lot size requirement provided that a lot is not less than 18,500 square feet and the proposed variance is processed under the Special Permit procedure. As such, pursuant to HRS Section 205-2(c), the Applicant is requesting consideration of a Special Permit to create a lot that is less than one-half acre in size but not less than 18,500 square feet which aligns with the objectives.
- 2) **The desired use would not adversely affect the surrounding property;**
  - The proposed project maintains the residential land use, which is compatible with the adjoining and surrounding properties.
  - The proposed use should not create adverse noise, dust, sound, or other impacts that could adversely affect surrounding property.
- 3) **The use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;**
  - The proposal will utilize existing roadways and infrastructure, and therefore no additional burden will be placed on the County to provide further improvements.
  - Fire and police protection may be required during emergencies; however, it is not anticipated that the proposed use will overburden the Fire Department or Police Department.
- 4) **Unusual conditions, trends and needs have arisen since the district boundaries and rules were established;**
  - The proposed subdivision would address housing needs that have arisen since the SLUD boundaries were established. Specifically, the project would support the General Plans Sector II action for Housing in that proposed Lot 48-A-1B could potentially qualify for an Additional Dwelling Unit (ADU) if the subdivision proposal were approved. This would support infill housing as it expands housing inventory without consuming precious open space.

Considering the proposed deviation from the minimum lot size requirement in the State Land Use Rural District through a Special Permit is unique since deviations

are generally entertained through a Variance Permit. HRS Section 205-2(c) allows for deviations through the Special Permit process, however in this instance, the deviation should also be held to the same criteria when granting a variance. As such, the request should be evaluated to the variance criteria in order to determine whether it meets the requirement. The standard for granting a variance is as follows:

“(b) Standards. Variances from the terms of this Chapter shall be granted only if it is found that because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the regulations deprives the property of privileges enjoyed by other property in the vicinity and within the same District, and the applicant shows that he or she cannot make a reasonable use of the property if the regulations are applied. Where these conditions are found, the Variance permitted shall be the minimum departure from existing regulations necessary to avoid the deprivation of privileges enjoyed by other property and to facilitate a reasonable use, and which will not create significant probabilities of harm to property and improvements in the neighborhood or of substantial harmful environmental consequences. Financial hardship to the applicant is not a permissible basis for the granting of a Variance. In no case may a Variance be granted that will provide the applicant with any special privileges not enjoyed by other properties in the vicinity. The Planning Commission shall indicate the particular evidences that support the granting of the Variance.”

After reviewing the subdivision proposal and considering the lot dimensions of existing Lot 48-A-1 in relation to the proposed subdivision layout, the most practical option to expand the lot area of proposed Lot 48-A-1A would be to move its rear boundary line further north in order to comply with the one-half acre minimum requirement. However, by doing so, it would reduce the lot area of the flag lot and create consequences as noted:

1. Adjusting the rear boundary of proposed Lot 48-A-1A would result in the property line encroaching on the setback requirements of the individual wastewater system (IWS) on the flag lot. According to comments received from the State Department of Health dated May 13, 2024, all IWS components must be at least 5 feet from any new property line. As proposed, the rear boundary is approximately 20 feet from the septic tank. To meet the half-acre requirement, the rear boundary would need to be moved approximately 18 feet north, towards the septic tank, which would infringe on the required setback distance.
2. Adjusting the rear boundary of the front lot further north would result in the pole length of the flag lot exceeding the maximum pole length requirement of 150 feet, per Section 8-4.4(a)(3)(B) of the CZO. Consequently, this would necessitate another deviation through the Variance Permit.

Considering the aforementioned factors and evaluating the current lot dimensions in relation to the existing structures & individual wastewater systems on the property, the Applicant faces limitations in designing a subdivision layout where proposed Lot 48-A-1A would comply with the minimum one-half acre requirement. In further trying to satisfy this requirement, the front lot would need an additional 1,916.64 square feet. The department considers the deficit (approx. 8.8%) a minimum departure from the existing regulations and it would enable the Applicant to make reasonable use of the subject property.

## 2. Variance Permit

Section 8-3.3 of the CZO, Kaua'i County Code entitled, "Variance", states:

"(b) Standards. Variances from the terms of this Chapter shall be granted only if it is found that because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the regulations deprives the property of privileges enjoyed by other property in the vicinity and within the same District, and the applicant shows that he or she cannot make a reasonable use of the property if the regulations are applied. Where these conditions are found, the Variance permitted shall be the minimum departure from existing regulations necessary to avoid the deprivation of privileges enjoyed by other property and to facilitate a reasonable use, and which will not create significant probabilities of harm to property and improvements in the neighborhood or of substantial harmful environmental consequences. Financial hardship to the applicant is not a permissible basis for the granting of a Variance. In no case may a Variance be granted that will provide the applicant with any special privileges not enjoyed by other properties in the vicinity. The Planning Commission shall indicate the particular evidences that support the granting of the Variance."

The location of the existing single-family dwelling on the front limits the Applicant's ability to configure a subdivision layout that complies with the minimum pole width requirement outlined in the CZO. As indicated in the Applicant's justification, increasing the pole portion's width would decrease the setback between the pole portion and the existing house to less than five (5) feet. Therefore, in order to comply with the setback requirements established in the CZO, a pole width of 14 feet is being proposed which falls short of the minimum pole width requirement of 15 feet by one foot. This deviation is considered a minimum departure from the existing regulations and would enable the Applicant to reasonably utilize the pole portion as a driveway.

## 3. Comprehensive Zoning Ordinance (CZO) Requirements

The subdivision proposal is consistent with the development standards contained in the CZO in that:

- a. The subdivision proposal is configured such that the existing structures on the property would be in compliance with the County Residential District setback requirements established in Section 8-4.3(b) of the CZO.
- b. The proposed subdivision adheres to the 60% lot coverage requirement outlined in Section 8-4.3(d)(3) of the CZO, in that the existing single-family dwellings, guest house, and existing structures on each respective lot does not surpass this threshold.
- c. Aside from the pole width requirement outlined in Section 4-4.4(a)(2)(E), the subdivision proposal meets the lot width requirements established in Section 8-4.4(a)(2) of the CZO.
- d. The subdivision proposal meets the lot length requirements established in Section 8-4.4(a)(3) of the CZO.
- e. The subdivision proposal as proposed could be considered a compatible use and not detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the area. Furthermore, the use should not cause substantial environmental consequences.

#### 4. General Plan

Policies to Guide Growth – Section 1.4 of the Kauaʻi General Plan (2018):

Policy #1 Manage Growth to Preserve Rural Character, states:

“Preserve Kauaʻi’s rural character by limiting the supply of developable land to an amount adequate for future needs. Prohibit development not adjacent to towns. **Ensure new development occurs inside growth boundaries and is compact and walkable.**”

- o The subdivision proposal would enable proposed Lot 48-A-1B to qualify for an additional dwelling unit. This is in line with Policy #1 as the proposal allows for new residential development to occur within an already improved property.

#### X. PRELIMINARY CONCLUSION

Based on the information contained in the Director’s Report Findings and Evaluation, the Planning Department concludes the following:

1. The proposed development should not have any substantial adverse impacts to the surrounding neighborhood;
2. It is further concluded that the Special Permit and Variance Permit could be considered in that the departure does not create significant probabilities of harm to properties and improvements in the neighborhood, nor result in harmful

environmental consequences;

3. The proposed deviations could be considered a minimum departure from standards and allows for reasonable use of the property; and
4. The Applicant should institute the "Best Management Practices" to ensure that the subdivision 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 Class IV Zoning Permit Z-IV-2024-5, Variance Permit V-2024-1, and Special Permit SP-2024-2, be **APPROVED** subject to the following conditions:

1. The Applicant is advised that the approval of this variance does not imply approval of the subdivision or its configuration proposed herein.
2. Subdivision of the subject property shall conform to the procedural requirements of the Subdivision Ordinance, Chapter 9 of the Kaua'i County Code (1987).
3. The Applicant shall resolve and comply with all agency requirements as recommended in the permit application review, including but not limited to the permit requirement for the County DPW-Engineering Division, water requirements for the County Department of Water, and regulations involving environmental concerns as administered by the State Department of Health.
4. The Applicant shall develop and utilize Best Management Practices (BMP's) to ensure that the subdivision does not generate impacts that may affect the health, safety, and welfare of those in the surrounding area of the proposal.
5. The Applicant is advised that prior to construction and/or use, additional government agency conditions may be imposed. It shall be the Applicant's responsibility to resolve those conditions with the respective agency(ies).
6. The Planning Commission reserves the right to add or delete conditions of approval in order to address or mitigate unforeseen impacts this project may create, or revoke the permits through the proper procedures should conditions of approval be violated or adverse impacts be created that cannot be properly addressed.

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 June 04, 2024, 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 the staff's report and recommendation as provided herein.

By  \_\_\_\_\_  
KENNETH A. ESTES  
Planner

Approved & Recommended to Commission:

By  \_\_\_\_\_  
KA'AINA S. HULL  
Director of Planning

Date: 5 / 17 / 2024

# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR

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

## TRANSMITTAL OF AGENCY COMMENTS TO PLANNING COMMISSION

DATE: May 21, 2024

PERMIT NUMBER(S): ZA-2024-1

APPLICANT(S): County of Kaua'i, Planning Department

Attached for the Planning Commission's reference are agency comments for the permit referenced above.

F.H.A.I.  
JUN 04 2024



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

RECEIVED

FROM: Kaaina S. Hull, Director

Planner: Shelea Koga

5/8/2024

SUBJECT: Zoning Amendment ZA-2024-1  
Tax Map Key: 41016003 through 41016028  
Applicant: Planning Department  
Amendment to Zoning from R4/ST-P to R4

MAY 9 2024

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                 |
| <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 checked="" type="checkbox"/> Office of Hawaiian Affairs           | <input type="checkbox"/> Other:                                  |

FOR YOUR COMMENTS (pertaining to your department)

5/10/2024

CTA HAS NO FURTHER COMMENT ON THIS PROJECT.

MAHALO!  
*[Handwritten Signature]*

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 6/4/2024 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**

**DIRECTOR'S REPORT**

**I. SUMMARY**

**Action Required by Planning Commission:** Consideration of a Zoning Amendment to amend the subject properties from Residential Four (R4) / Special Treatment – Public Facilities (ST-P) to Residential Four (R4).

**Permit Application Nos.** Zoning Amendment ZA-2024-1

**Name of Applicant(s)** COUNTY OF KAUA'I, PLANNING DEPARTMENT

**II. PERMIT INFORMATION**

AMENDMENTS	
<input checked="" type="checkbox"/> Zoning Amendment	Pursuant to KCC Section 8-3.4(a), as amended, a Zoning Amendment is necessary when changing the text whenever the public necessity and convenience and the general welfare require an amendment.
<input type="checkbox"/> General Plan Amendment	
<input type="checkbox"/> Community Plan Amendment	
<input type="checkbox"/> State Land Use District Amendment	

**III. LEGAL REQUIREMENTS**

KCC Section 8-3.4	
<b>Public Hearing Date:</b>	June 4, 2024
<b>Date of Publication:</b>	May 03, 2024
<b>Date of Director's Report:</b>	May 20, 2024

**F.4.9.2.**  
**JUN 04 2024**

#### **IV. DESCRIPTION OF THE AMENDMENT**

The proposed legislation under Zoning Amendment ZA-2024-1 (Bill No. to be determined) is being initiated by the County of Kaua'i Planning Department and would amend Zoning Map ZM-WA 500 (Wailua) within the Comprehensive Zoning Ordinance (CZO) referenced in Section 8-2.3.

At present, the affected parcels in the Wailua region are zoned as Residential Four (R4)/ Special Treatment – Public Facilities (ST-P). These parcels are situated in close proximity to a public park. In reviewing the records, the intent behind placing the ST-P overlay over the residential area surrounding the park is uncertain. However, it can be speculated that the ST-P designation may have been applied to the residential parcels with the goal of expanding the park. There are no plans with the Parks Department to expand the subject park.

Please see the attached draft bill for the affected properties in Exhibit A.

#### **V. AMENDMENT JUSTIFICATION**

The ST-P zoning designation on residentially zoned properties does not align with the intended purpose of the ST-P zoning district. According to Section 8-11.2 of the Comprehensive Zoning Ordinance (CZO), the ST-P Zoning District is designated for the following purposes:

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

The subject residential parcels are not suited for public and quasi-public uses.

Due to the ST-P zoning designation, any property located within this district requires a Use Permit for all uses, structures, or development, except repairs or modifications of land and existing structures that do not substantially change the exterior form or appearance of three dimensional structures of land. Obtaining a discretionary Use Permit can often be a lengthy and arduous process, and it can also incur substantially higher costs compared to a ministerial Class I, II, or III permit.

#### **VI. AGENCY COMMENTS**

Agency comments under separate transmittal.

#### **VII. PRELIMINARY EVALUATION**

In evaluating the proposed zoning amendment, the following aspects should be considered:

1. Comprehensive Zoning Ordinance (CZO)

The proposed zoning amendment would uphold the low-density character of the immediate area, in line with neighboring properties zoned R4. It aims to eliminate the ST-P Zoning to

maintain consistency with the surrounding zoning. The zoning amendment would continue to be compatible with the surrounding uses. Also, it should not have any significant adverse impacts to the environment and not be detrimental to persons or property in the surrounding area.

2. Use Permit Process

The Use Permit process is designed to obtain approval for land uses or developments that are not outright permitted under existing zoning regulations. It begins with a pre-application meeting where the applicant consults with planning staff to discuss the project and gather necessary information. The applicant then submits a detailed application, which includes site plans, renderings, and any relevant analyses or studies, along with a fee. Planning staff review the application for completeness and compliance, often requesting additional information. Public notices are then sent out to inform nearby property owners and the general public.

During the public hearing, the project is presented, and community members have the opportunity to voice their support or concerns. At this stage, intervention from the public can occur, where individuals or groups may present objections or request additional considerations. Such interventions can lead to extended litigation, additional reviews, and potentially more public hearings, all of which can significantly affect the timeline for action. This prolonged process can become very costly for the applicant, both in terms of time and financial resources, as they may need to conduct further studies, revise plans, or enter into litigation.

Planning staff prepare a report evaluating the proposal against zoning regulations and community feedback, which is reviewed by the Planning Commission. The Commission then decides to approve, deny, or conditionally approve the Use Permit. If denied or conditions are imposed, the applicant may appeal. Once approved, the Use Permit is issued, allowing the applicant to proceed with other required permits and begin development. Compliance with the permit conditions is monitored by the planning department to ensure adherence, with penalties or revocation possible for non-compliance. This process ensures that proposed developments align with community standards and regulatory requirements while allowing for public participation.

Typically, residentially zoned properties do not require a Use Permit to construct a dwelling, as this is a permitted use under such zoning. However, due to these properties having a ST-P overlay, they can be subject to the Use Permit requirements.

This can be an arduous, costly, and lengthy process for construction of nothing more than residential homes within an area that has been previously determined to be appropriate for residential construction.

3. Kaua'i General Plan (2018)

The 2018 General Plan sets forth a vision, goals, and policies to guide future growth on Kaua'i. The proposed amendment is consistent with the overall vision and policies outlined in the 2018 General Plan.

- A. Section 3.0 Actions by Sector, Subsection Sector II, entitled "Infill Housing" states for code changes:
- i. **Streamline permit approvals for infill development and housing rehabilitation by removing barriers, such as administrative delays.**  
Eliminating the ST-P designation will allow these properties to obtain ministerial Class I permits instead of Use Permits, thus expediting the Zoning Permit process.
  - ii. **Incentivize infill development by reducing or eliminating tipping fees, wastewater and water facility charges, permit review fees, and park and environmental fees.**  
Eliminating the ST-P designation will encourage infill development due to the disparity in permitting fees. Ministerial Class I-II permits typically range from \$30 to \$60, whereas Use Permits can cost anywhere between \$800 to \$1200, and they can become exponentially more expensive with intervention and litigation.

#### VIII. PRELIMINARY CONCLUSION

Based on the foregoing findings and evaluation, it is hereby concluded that the proposed amendments to Zoning Map ZM-WA 500 (Wailua) within the Comprehensive Zoning Ordinance (CZO) referenced in Section 8-2.3 is reasonable and appropriate.

#### IX. PRELIMINARY RECOMMENDATION

Based on the foregoing evaluation and conclusion, it is recommended that Zoning Amendment ZA-2024-1 be **APPROVED**.

By   
Shelea Koga  
Planner

Approved & Recommended to Commission:

By   
KĀĀINA HULL  
Director of Planning

Date: 5/21/2024

# EXHIBIT “A”

Draft Ordinance for ZA-2024-1 Wailua

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_

**A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8,  
KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO ZONING DESIGNATIONS IN WAILUA,  
KAUA'I**

---

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

**SECTION 1.** Findings and purpose. The purpose of this ordinance is to remove the Special Treatment – Public Facilities (ST-P) designation from residential areas in Wailua, Kaua'i.

The Comprehensive Zoning Ordinance (CZO) section 8-11.2 states that the ST-P zoning district is for "all public and quasi-public facilities, other than commercial, including schools, churches, cemeteries, hospitals, libraries, police and fire stations, government buildings, auditoriums, stadiums, and gymnasiums, which are used by the general public or which tend to serve as gathering places for the general public; and those areas which because of their unique locations are specially suited for such public and quasi-public uses." Due to the ST-P zoning designation, any property located within this district requires a Use Permit for all uses, structures, or development, except repairs or modifications of land and existing structures that do not substantially change the exterior form or appearance of three dimensional structures of land.

The County of Kaua'i acknowledges the lengthy and at times challenging process involved in obtaining a Use Permit. Residential properties that would typically require a ministerial class I permit are subjected to obtaining a discretionary Use Permit due to the ST-P Zoning.

**SECTION 2.** The Comprehensive Zoning Ordinance (CZO) is hereby amended by amending the Zoning Map within the CZO referenced in Section 8-2.3 by making the following changes to ZM-WA 500 (Wailua) as shown in Exhibit A of this ordinance, which is attached hereto and incorporated herein:

The parcels identified by the Tax Map Keys for the Wailua area include the following: (4) 4-1-016: 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28.

**SECTION 3.** The Planning Department is directed to note the change on the official Zoning Map on file with the Commission. All applicable provisions of the Comprehensive Zoning Ordinance shall apply to the area rezoned herein.

**SECTION 4.** If any provision of this ordinance or application thereof to any person, persons, or circumstance is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

**SECTION 5.**

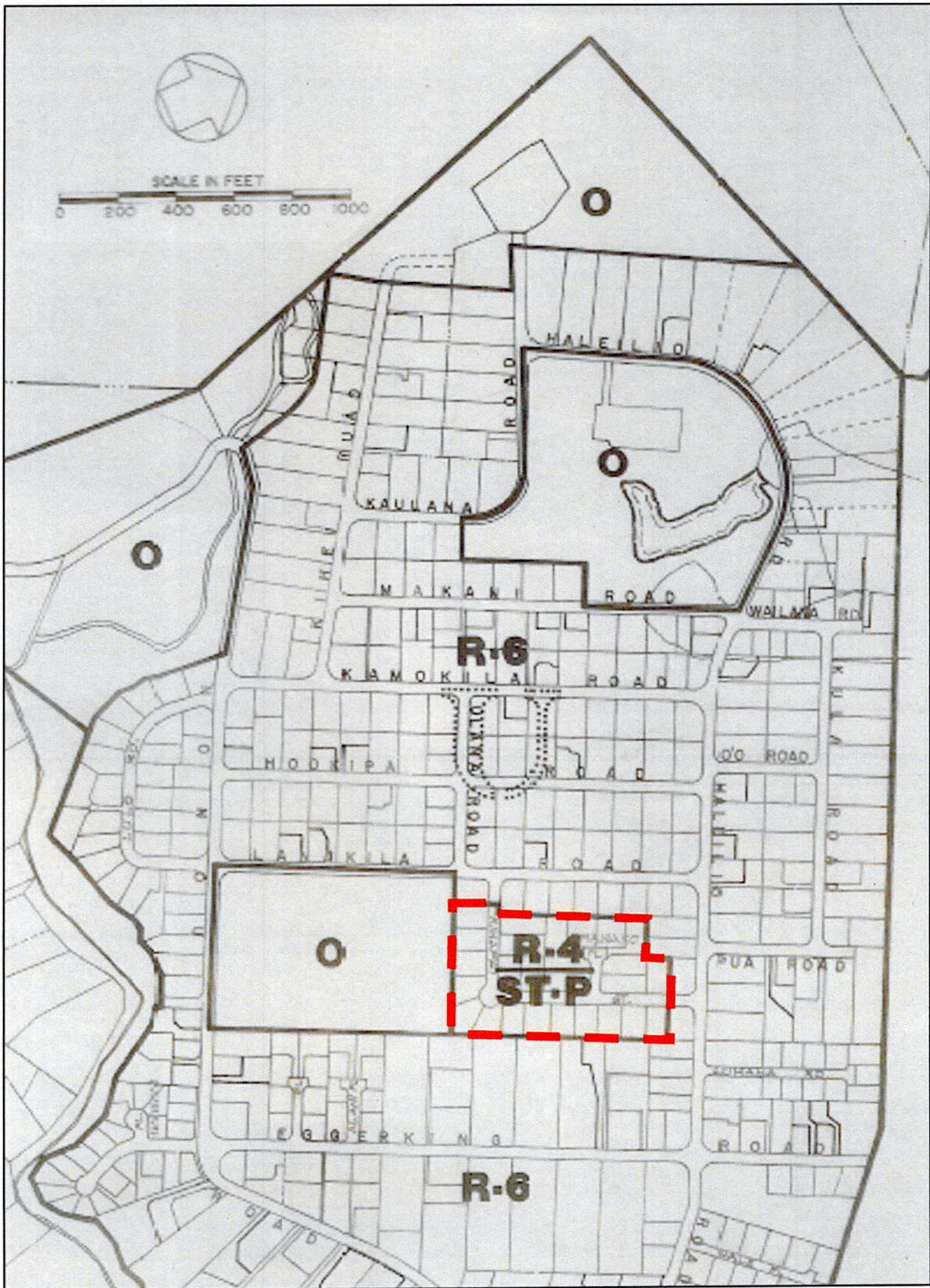
**This ordinance shall take effect upon its approval.**

**Introduced by:**

**(By Request)**

**DATE OF INTRODUCTION:**

**Līhu'e, Kaua'i, Hawai'i**



**Proposed Amendment to Zoning Map ZM-WA 500 from Residential 4/Special Treatment Public (R-4/ST-P) to Residential 4 (R-4)**

Wailua Houselots, Kaua'i, Hawai'i

 R-4 District Boundary



**COUNTY OF KAUA‘I  
 PLANNING DEPARTMENT**

**DIRECTOR’S REPORT**

**I. SUMMARY**

**Action Required by Planning Commission:** Consideration of a Zoning Amendment to amend the subject properties from Residential Four (R4) / Special Treatment – Public Facilities (ST-P) to Residential Four (R4).

**Permit Application Nos.** Zoning Amendment ZA-2024-2

**Name of Applicant(s)** COUNTY OF KAUA‘I, PLANNING DEPARTMENT

**II. PERMIT INFORMATION**

<b>AMENDMENTS</b>	
<input checked="" type="checkbox"/> <b>Zoning Amendment</b>	Pursuant to KCC Section 8-3.4(a), as amended, a Zoning Amendment is necessary when changing the text whenever the public necessity and convenience and the general welfare require an amendment.
<input type="checkbox"/> <b>General Plan Amendment</b>	
<input type="checkbox"/> <b>Community Plan Amendment</b>	
<input type="checkbox"/> <b>State Land Use District Amendment</b>	

**III. LEGAL REQUIREMENTS**

<b><u>KCC Section 8-3.4</u></b>	
<b>Public Hearing Date:</b>	June 4, 2024
<b>Date of Publication:</b>	May 03, 2024
<b>Date of Director’s Report:</b>	May 20, 2024

F.4.b.1.

**JUN 04 2024**

#### **IV. DESCRIPTION OF THE AMENDMENT**

The proposed legislation under Zoning Amendment ZA-2024-2 (Bill No. to be determined) is being initiated by the County of Kaua'i Planning Department and would amend Zoning Map ZM-H 200 (Hanapēpē) within the Comprehensive Zoning Ordinance (CZO) referenced in Section 8-2.3.

At present, the affected parcels in the Hanapēpē region are zoned as Residential Four (R4)/ Special Treatment – Public Facilities (ST-P). These parcels are situated in close proximity to a public park. In reviewing the records, the intent behind placing the ST-P overlay over the residential area surrounding the park is uncertain. However, it can be speculated that the ST-P designation may have been applied to the residential parcels with the goal of expanding the park. There are no plans with the Parks Department to expand the subject park.

Please see the attached draft bill for the affected properties in Exhibit A.

#### **V. AMENDMENT JUSTIFICATION**

The ST-P zoning designation on residentially zoned properties does not align with the intended purpose of the ST-P zoning district. According to Section 8-11.2 of the Comprehensive Zoning Ordinance (CZO), the ST-P Zoning District is designated for the following purposes:

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

The subject residential parcels are not suited for public and quasi-public uses.

Due to the ST-P zoning designation, any property located within this district requires a Use Permit for all uses, structures, or development, except repairs or modifications of land and existing structures that do not substantially change the exterior form or appearance of three dimensional structures of land. Obtaining a discretionary Use Permit can often be a lengthy and arduous process, and it can also incur substantially higher costs compared to a ministerial Class I, II, or III permit.

#### **VI. AGENCY COMMENTS**

Agency comments under separate transmittal.

#### **VII. PRELIMINARY EVALUATION**

In evaluating the proposed zoning amendment, the following aspects should be considered:

1. Comprehensive Zoning Ordinance (CZO)

The proposed zoning amendment would uphold the low-density character of the immediate area, in line with neighboring properties zoned R4. It aims to eliminate the ST-P Zoning to

maintain consistency with the surrounding zoning. The zoning amendment would continue to be compatible with the surrounding uses. Also, it should not have any significant adverse impacts to the environment and not be detrimental to persons or property in the surrounding area.

## 2. Use Permit Process

The Use Permit process is designed to obtain approval for land uses or developments that are not outright permitted under existing zoning regulations. It begins with a pre-application meeting where the applicant consults with planning staff to discuss the project and gather necessary information. The applicant then submits a detailed application, which includes site plans, renderings, and any relevant analyses or studies, along with a fee. Planning staff review the application for completeness and compliance, often requesting additional information. Public notices are then sent out to inform nearby property owners and the general public.

During the public hearing, the project is presented, and community members have the opportunity to voice their support or concerns. At this stage, intervention from the public can occur, where individuals or groups may present objections or request additional considerations. Such interventions can lead to extended litigation, additional reviews, and potentially more public hearings, all of which can significantly affect the timeline for action. This prolonged process can become very costly for the applicant, both in terms of time and financial resources, as they may need to conduct further studies, revise plans, or enter into litigation.

Planning staff prepare a report evaluating the proposal against zoning regulations and community feedback, which is reviewed by the Planning Commission. The Commission then decides to approve, deny, or conditionally approve the Use Permit. If denied or conditions are imposed, the applicant may appeal. Once approved, the Use Permit is issued, allowing the applicant to proceed with other required permits and begin development. Compliance with the permit conditions is monitored by the planning department to ensure adherence, with penalties or revocation possible for non-compliance. This process ensures that proposed developments align with community standards and regulatory requirements while allowing for public participation.

Typically, residentially zoned properties do not require a Use Permit to construct a dwelling, as this is a permitted use under such zoning. However, due to these properties having a ST-P overlay, they can be subject to the Use Permit requirements.

This can be an arduous, costly, and lengthy process for construction of nothing more than residential homes within an area that has been previously determined to be appropriate for residential construction.

## 3. Kaua'i General Plan (2018)

The 2018 General Plan sets forth a vision, goals, and policies to guide future growth on Kaua'i. The proposed amendment is consistent with the overall vision and policies outlined in the 2018 General Plan.

A. Section 3.0 Actions by Sector, Subsection Sector II, entitled "Infill Housing" states for code changes:

- i. **Streamline permit approvals for infill development and housing rehabilitation by removing barriers, such as administrative delays.**  
Eliminating the ST-P designation will allow these properties to obtain ministerial Class I permits instead of Use Permits, thus expediting the Zoning Permit process.
- ii. **Incentivize infill development by reducing or eliminating tipping fees, wastewater and water facility charges, permit review fees, and park and environmental fees.**  
Eliminating the ST-P designation will encourage infill development due to the disparity in permitting fees. Ministerial Class I-II permits typically range from \$30 to \$60, whereas Use Permits can cost anywhere between \$800 to \$1200, and they can become exponentially more expensive with intervention and litigation.

**VIII. PRELIMINARY CONCLUSION**

Based on the foregoing findings and evaluation, it is hereby concluded that the proposed amendments to Zoning Map ZM-H 200 (Hanapēpē) within the Comprehensive Zoning Ordinance (CZO) referenced in Section 8-2.3 is reasonable and appropriate.

**IX. PRELIMINARY RECOMMENDATION**

Based on the foregoing evaluation and conclusion, it is recommended that Zoning Amendment ZA-2024-2 be **APPROVED**.

By Shelea Koga  
Shelea Koga  
Planner

Approved & Recommended to Commission:

By Kāaina Hull  
KĀĀINA HULL  
Director of Planning

Date: 5/21/2024

# EXHIBIT “A”

Draft Ordinance for ZA-2024-2 Hanapēpē

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_

**A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8,  
KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO ZONING DESIGNATIONS IN  
HANAPĒPĒ, KAUA'I**

---

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I:

**SECTION 1.** Findings and purpose. The purpose of this ordinance is to remove the Special Treatment – Public Facilities (ST-P) designation from residential areas in Hanapēpē, Kaua'i.

The Comprehensive Zoning Ordinance (CZO) section 8-11.2 states that the ST-P zoning district is for "all public and quasi-public facilities, other than commercial, including schools, churches, cemeteries, hospitals, libraries, police and fire stations, government buildings, auditoriums, stadiums, and gymnasiums, which are used by the general public or which tend to serve as gathering places for the general public; and those areas which because of their unique locations are specially suited for such public and quasi-public uses." Due to the ST-P zoning designation, any property located within this district requires a Use Permit for all uses, structures, or development; except repairs or modifications of land and existing structures that do not substantially change the exterior form or appearance of three dimensional structures of land.

The County of Kaua'i acknowledges the lengthy and at times challenging process involved in obtaining a Use Permit. Residential properties that would typically require a ministerial class I permit are subjected to obtaining a discretionary Use Permit due to the ST-P Zoning.

**SECTION 2.** The Comprehensive Zoning Ordinance (CZO) is hereby amended by amending the Zoning Map within the CZO referenced in Section 8-2.3 by making the following changes to ZM-H200 (Hanapēpē) as shown in Exhibit A of this ordinance, which is attached hereto and incorporated herein:

The parcels identified by the Tax Map Keys for the Hanapēpē area include the following: (4) 1-8-013:036, (4) 1-8-014: 1, 2, 3, 4, 5, 6, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, and 113; (4) 1-8-015: 1, 2, 3, 4, 5, 6, 7, 8, 9, 118, 119, 120, 121, 124, and 125.

**SECTION 3.** The Planning Department is directed to note the change on the official Zoning Map on file with the Commission. All applicable provisions of the Comprehensive Zoning Ordinance shall apply to the area rezoned herein.

**SECTION 4.** If any provision of this ordinance or application thereof to any person, persons, or circumstance is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

SECTION 5. This ordinance shall take effect upon its approval.

Introduced by:

(By Request)

DATE OF INTRODUCTION:

Līhu'e, Kaua'i, Hawai'i



# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR

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

## TRANSMITTAL OF AGENCY COMMENTS TO PLANNING COMMISSION

**DATE:** May 22, 2024

**ZONING AMENDMENT:** ZA-2024-3

**APPLICANT(S):** Kaua'i County Council

Attached for the Planning Commission's reference are agency comments for the zoning amendment referenced above.

**F. H. C. I.**  
**JUN 04 2024**



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

FROM: Kaaina S. Hull, Director

Planner: Alisha Summers

5/10/2024

SUBJECT: Zoning Amendment ZA-2024-3  
 Applicant: Kauai County Council  
 Zoning Amendment for Guest Houses

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 checked="" type="checkbox"/> Office of Hawaiian Affairs           | <input checked="" type="checkbox"/> Other: Office of Hawaiian Affairs |

FOR YOUR COMMENTS (pertaining to your department)

*Guest house must meet FD access & water supply requirements.*

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 6/4/2024 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

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

**TRANSMITTAL OF PUBLIC TESTIMONY TO  
PLANNING COMMISSION**

**DATE: May 22, 2024**

**PERMIT NUMBER(S): ZA-2024-3**

**APPLICANT(S): Kauai County Council**

Attached for the Planning Commission's reference are public testimonies for the permit referenced above.

**F.U.O.2.**  
**JUN 04 2024**

**FW: Proposed Bill 2919**

Kaaina Hull <khull@kauai.gov>

Mon 5/20/2024 7:52 AM

To:Alisha Summers <asummers@kauai.gov>

---

**From:** Shanlee Jimenez <sjimenez@kauai.gov>

**Sent:** Monday, May 20, 2024 7:49 AM

**To:** Kaaina Hull <khull@kauai.gov>

**Subject:** FW: Proposed Bill 2919

Please see email below. Mahalo.

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**From:** Planning Department <[planningdepartment@kauai.gov](mailto:planningdepartment@kauai.gov)>

**Sent:** Monday, May 20, 2024 7:38 AM

**To:** Shanlee Jimenez <[sjimenez@kauai.gov](mailto:sjimenez@kauai.gov)>

**Subject:** FW: Proposed Bill 2919

Mahalo,

*Brent Sakei* 😊

**Phone#:** (808) 241-4075

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**From:** Brad Warren <[Brad@warrenrep.com](mailto:Brad@warrenrep.com)>

**Sent:** Sunday, May 19, 2024 3:57 PM

**To:** COK Council <[cokcouncil@kauai.gov](mailto:cokcouncil@kauai.gov)>; Planning Department <[planningdepartment@kauai.gov](mailto:planningdepartment@kauai.gov)>

**Subject:** Proposed Bill 2919

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

To: The Kaua'i County Council and Planning Commission

From: Brad Warren (Poipu Beach Estates)

I'm reaching out as a concerned homeowner in the Vacation Destination (VDA) in Poipu Beach Estates.

I'm referencing the: Proposed Bill (No. 2919):

A BILL FOR AN ORDINANCE

AMENDING CHAPTER 8, KAUA'I COUNTY CODE 1987, AS AMENDED,

RELATING TO THE COMPREHENSIVE ZONING ORDINANCE,

INCLUDING MATTERS PERTAINING TO GUEST HOUSES"

In Section 2, subsection (i), (5) it states:

"A guest house shall not be used for a transient vacation rental (TVR) or homestay operation within or outside of the visitor destination area (VDA)."

When we built homes in Kauai, we were careful to choose a development that was designated as a VDA area. This was for our retirement, so we could enjoy Kauai as well as rent out our home to create cash flow each month. Poipu Beach Estates was and is zoned by the county as a VDA area.

Sadly, for the local Ohana, they most likely will never be able to afford renting or buying in this area. It would do no good to take away the opportunity for families wanting to come to Kauai having a place to stay under one roof. Hotels are not meant for large families who want to experience the Aloha spirit.

We have a significant investment in Poipu Beach Estates, and we only built there with the understanding that we were in a protected VDA. We were given the right to have nightly rentals and I'm certain the county would face litigation. There is too much at stake for those that built in the VDA only to have that taken away illegally by the County. Also, the County receives a benefit by additional property tax levied on a vacation rental and the GET and TAT taxes paid by the guests renting my property. Don't forget how many jobs are created by vacation rentals. These properties are managed operated by local workers. Not only would eliminating existing VDA areas harm us, but it would also hurt the County and the local workers who depend on vacation rentals.

I urge you to rethink this proposal... this is harmful to everyone. Kauai needs families to have a place to stay other than hotels. The local people would lose thousands of jobs that are employed around the vacation rentals. Kauai County would lose millions in tax revenues that these vacation rentals produce. It won't help the those that need housing since these homes are out of reach for them. Build more affordable housing for the local Ohana. Lastly this is will be challenged in litigation that none of us want.

## FW: Proposed Draft Bill 2919 - Concerned Homeowner

Shanlee Jimenez <[sjimenez@kauai.gov](mailto:sjimenez@kauai.gov)>

Tue 5/21/2024 9:19 AM

To: Alisha Summers <[asummers@kauai.gov](mailto:asummers@kauai.gov)>

**From:** Mark Daly idahomark <[idahomark@hotmail.com](mailto:idahomark@hotmail.com)>

**Sent:** Thursday, May 16, 2024 9:54 AM

**To:** COK Council <[cokcouncil@kauai.gov](mailto:cokcouncil@kauai.gov)>; Planning Department <[planningdepartment@kauai.gov](mailto:planningdepartment@kauai.gov)>

**Subject:** Proposed Draft Bill 2919 - Concerned Homeowner

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

To the Kaua'i County Council and Planning Commission:

Pursuant to the "Proposed Draft Bill (No. 2919) - A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE, INCLUDING MATTERS PERTAINING TO GUEST HOUSES"

I wish to voice my concern as a homeowner in the Vacation Destination Area (VDA) of Poipu Beach Estates.

Of particular concern is Section 2, subsection (i), (5) stating:

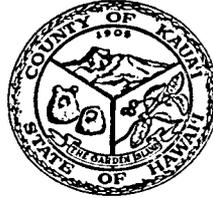
"A guest house shall not be used for a transient vacation rental (TVR) or homestay operation within or outside of the visitor destination area (VDA)."

I have a significant investment in my property at Poipu Beach Estates. That investment was made with the understanding that as part of the VDA I have the perpetual right to rent my property as a vacation rental. This proposed bill is an attempt to rescind that right. I question the legality of the proposal, but beyond that I strongly advise you to rethink this. The VDA not only provides the right to vacation rent but creates an implicit partnership between the County of Kaua'i, the local economy and the homeowner. As a homeowner, when I make an investment in Kaua'i, the County receives a revenue stream from that investment and the local economy benefits. The county receives the additional property tax levied on a vacation rental and the GET and TAT taxes paid by the guests renting my property. Local jobs are created as the vacation rental is managed and maintained by local workers. Property managers, cleaners, landscaping and maintenance crews all receive additional income from my vacation rental property.

Rescinding my right to vacation rent my property will damage me, local workers, and the County. It damages my ability to generate income. It damages my ability to pay local workers. It damages the county's revenue stream. Most importantly, however, it damages future investment in Kaua'i. Why would anyone invest in Kaua'i if it's clear that the commitments made by the government (such as the VDA) carry no weight?

I strongly recommend that you change the language in this proposed bill to allow the continued use of properties in the VDA as vacation rentals. Please follow through on the partnership and commitment you as a governing body have made with those who invest in Kaua'i and contribute to the local economy.

**Ka'aina S. Hull**  
Director of Planning



**Jodi A. Higuchi Sayegusa**  
Deputy Director of Planning

**COUNTY OF KAUA'I  
PLANNING DEPARTMENT**

**DIRECTOR'S REPORT**

**I. SUMMARY**

**Action Required by Planning Commission:** Consideration for an Ordinance to amend Chapter 8 (Comprehensive Zoning Ordinance), Kaua'i County Code 1987, as amended, relating to guest houses

**Permit Application No.:** Zoning Amendment ZA-2024-3

**Name of Applicant(s):** KAUA'I COUNTY COUNCIL

**II. PERMIT INFORMATION**

AMENDMENTS	
<input checked="" type="checkbox"/> <b>Zoning Amendment</b>	Pursuant to KCC Section 8-3.4(a), as amended, a Zoning Amendment is necessary because it involves the changing of legislation text whenever the public necessity and convenience and the general welfare require an amendment.
<input type="checkbox"/> <b>General Plan Amendment</b>	
<input type="checkbox"/> <b>Community Plan Amendment</b>	
<input type="checkbox"/> <b>State Land Use District Amendment</b>	

**III. LEGAL REQUIREMENTS**

KCC Section 8-3.4	
<b>Public Hearing Date:</b>	June 04, 2024
<b>Date of Publication:</b>	May 03, 2024
<b>Date of Director's Report:</b>	May 22, 2024

*F. H. C. M.*  
JUN 04 2024

#### **IV. DESCRIPTION OF THE AMENDMENT**

The proposed bill (see attached Exhibit A), amends Chapter 8 (Comprehensive Zoning Ordinance) of the Kaua'i County Code to expand the permissiveness of guest houses in zoning districts Residential R-1 to R-6 and R-10 to R-20, CN (Neighborhood Commercial), CG (General Commercial), A (Agriculture), O (Open), and UNV (University). This proposed amendment seeks to mitigate the severe housing shortage, wherein households across income levels struggle to locate available rental units or for-sale homes, even when financially abled. By permitting expanded guest house development across zoning districts, the amendment aims to facilitate multigenerational housing solutions and augment the overall housing stock, particularly for middle and lower income residents. While increasing supply alone is not a panacea for housing affordability, this proposal aligns with research indicating that zoning reforms to enable greater housing production can alleviate housing crises and improve affordability over time.

In summary, the draft bill permits one guest house per dwelling unit within the zoning districts R-1 to R-6, R-10 to R-20, CN, CG, A, O, and UNV, contingent upon the following requirements: 1) Adherence to all applicable development standards and Use District regulations; 2) Compliance with relevant governmental rules, ordinances, and laws; 3) Provision of one off-street parking space per guest house; 4) Guest house ownership shall remain tied to the primary dwelling's ownership; and 5) Prohibiting use of the guest house for transient vacation rentals (TVR) or homestay operations within or outside the Visitor Destination Area (VDA).

Please refer to the attached (Exhibit A) proposed draft bill language for further details.

#### **V. AMENDMENT JUSTIFICATION**

The housing crisis on Kaua'i poses a complex challenge that demands urgent attention. Factors such as slow inventory growth, regulatory barriers, predominantly single-family residential construction, strong demand from off-island buyers for second homes, vacation rentals, investment properties, escalating construction costs, and inadequate infrastructure collectively exacerbate the significant housing shortage. According to the Kaua'i County General Plan (2018), "[h]ome prices exceed 300 percent of the national average," making homeownership an unattainable dream for many locals. Compounding the issue, affordable market rentals are scarce, leaving many residents struggling to secure housing. This trend has effectively priced out many native Hawaiians and long-time residents, threatening the island's cultural fabric and overall sustainability.

Addressing the housing crisis requires a multifaceted approach given the complex and interconnected factors that have contributed to the problem. One pivotal aspect lies in undertaking substantial zoning reform that pave the way for a significant expansion of the housing stock. Presently, the island of Kauai is facing a housing shortage, in which the General Plan's Socioeconomic Analysis and Forecast (2014) noted that the County faces a

deficit of 1,400 housing units, with demand projected to increase by approximately 9,000 units by 2035. Additionally, according to the Hawai'i Housing Planning Study (2016), it is projected that by 2025, Kaua'i will require an additional 5,287 housing units, comprising 2,485 units for ownership and 2,802 units for rental purposes. However, the rate at which housing is currently being supplied falls significantly short of meeting this projected demand. Over the past four years (2020-2024), a total of 421 units have been permitted, comprising 288 single-family dwellings, 48 additional dwelling units (ADUs), 25 additional rental units (ARUs), 36 farm dwellings, and 24 guest houses. This only satisfies 8% of the new housing units which are needed by 2025.

To address this issue, the County of Kauai has undertaken proactive measures to revise zoning regulations that hinder housing development and provide an assortment of housing opportunities that would allow property owners to provide additional long-term rental options to the community. Since the adoption of the Comprehensive Zoning Ordinance (CZO) in 1972, the "Guest House" was utilized as a detached living space without an independent kitchen, typically used to accommodate short-term guests separate from the main residence. Since then, a couple of amendments have been made to the definition of a Guest House. These include amendments to allow for the inclusion of a kitchen (Bill 2754, adopted 2019) and increasing the maximum floor area of a Guest House from five hundred (500) square feet to eight hundred (800) square feet (Bill 2860, adopted 2022). The intent of these amendments was to incentivize the development of existing Guest House entitlements, thereby augmenting the supply of long-term rental inventory and facilitating multigenerational living arrangements. This, in turn, contributes to the availability of housing options for both small and extended families, ultimately aiding in meeting the overall demand for housing.

Guest Houses can serve as an effective zoning tool to address housing shortages. With their limited size, they entail relatively lower construction costs and rental rates compared to traditional homes, thus providing less expensive housing and rental alternatives. Moreover, guest houses facilitate multigenerational living arrangements by providing semi-independent living quarters for aging parents or adult children, promoting familial cohesion and support. This aspect is particularly significant given Hawaii's aging population, which grew by 44.4 percent among individuals aged 65 and older between 2010 and 2020, constituting 19.6 percent of the total state population in 2020.<sup>1</sup>

Recognizing these benefits and the severity of the housing emergency, the proposed bill would expand the allowable density of guest houses. Specifically, it aims to permit one guest house per dwelling unit within various zoning districts, including R-1 to R-6, R-10 to R-20, CN, CG, A, O, and UNV. The bill also prohibits the guest house to be used for transient vacation rentals (TVR) or homestay operations within or outside the Visitor Destination Area (VDA) to better ensure that guest houses are built for long-term habitation. This increased permissibility across the respective districts aims to address the growing demand for housing options and accommodate changing household dynamics.

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<sup>1</sup> [Population and Economic Projections for \(hawaii.gov\)](https://hawaii.gov/population/economic-projections/)

Please refer to the following Preliminary Evaluation for further discussion.

## VI. AGENCY COMMENTS

Attached through separate transmittal.

## VII. PRELIMINARY EVALUATION

In evaluating the proposed zoning amendment, the following aspects should be taken into consideration:

### CZO Amendment

Pursuant to Section 8-1.4 (Application of Regulations) of the K.C.C., a “Guest house” is defined as the following:

“Guest house” means a building with a floor area of no more than 800 square feet, may contain a kitchen, and is used for dwelling purposes by guests, tenants, or owner(s). A Guest House shall not be used for a transient vacation rental (TVR) or homestay operation within or outside of the visitor destination area (VDA).

The Kaua‘i County Code (K.C.C.) imposes specific square footage limitations on Guest Houses when compared to other defined housing types, such as Dwelling Units (DUs) and Additional Dwelling Units (ADUs). This measure is a deliberate strategy to steer the Guest Houses market away from catering to the high-end and second-home market. By restricting the overall size of these units, the intent is to create additional housing opportunities for small or extended families. This targeted approach aims to ensure that Guest House developments contribute to addressing the housing needs of Kauai’s resident workforce population, rather than fueling demand from external, affluent markets seeking larger, more luxurious accommodations.

As outlined in the K.C.C., one Guest House is currently permitted in the following major and minor districts:

(a) Residential- R

- (1) R-1
- (2) R-2
- (3) R-4
- (4) R-6
- (5) R-10
- (6) R-20

(b) Commercial- C

- (1) Neighborhood Commercial – CN
- (2) General Commercial- CG

(c) Agriculture- A

(d) Open- O

(e) University- UNV

The proposed bill would allow for one Guest House to be constructed as an accessory to an existing dwelling unit located within the Residential (R-1 to R-6 and R-10 to R-20), Commercial (CN and CG), Agriculture, Open, and University Districts. The following section outlines the purpose of each respective district and examines the potential impact of the proposed bill within each district.

*Residential District*

Pursuant to 8-4.1 of the K.C.C., the purpose of the Residential District is as follows:

To regulate the number of people living in a given area by specifying the maximum allowable number of dwelling units that may be developed on any given parcel of land. In order not to differentiate between economic groups or lifestyles, a reasonable flexibility in the type of dwelling units and their placement on the land has been provided.

Additional subitems are provided to further expand upon the overall purpose of the Residential District. Pertinent to the proposed bill includes the following:

(c) To establish the level of minimum services necessary to assure the adequacy of housing.

(d) To encourage a variety of housing types, sizes, and densities necessary to meet the needs of all economic groups and to avoid environmental monotony detrimental to the quality of life.

(e) To maintain the character and integrity of communities within residential districts and support residents in continuing to live and raise their families in these neighborhoods.

The proposed bill pertains to six residential density districts: R-1, R-2, R-4, R-6, R-10, and R-20. Each district's numerical designation sets the maximum allowed dwelling units per acre, as detailed in Section 8-4.6 of the K.C.C.

In evaluating the proposed zoning amendment, increasing the density of guest houses within the residential district can offer additional housing options, in which the range of

housing types and sizes available would expand, potentially accommodating the needs of different economic groups. This could offer more affordable housing options for individuals or families who may not be able to afford traditional single-family homes. Additionally, increased density may foster a more dynamic neighborhood environment, enhancing the overall quality of life by providing residents with more choices in terms of housing styles.

However, higher density may strain existing infrastructure and services, potentially compromising their adequacy. Increased demand for services such as water, sewage, and waste management could stress infrastructure capacity. It should be noted that as part of this proposed bill, a building permit will be necessary for all Guest House applications. Through the building permit review process, additional infrastructure improvements necessary to serve the respective Guest House unit will be required prior to construction and operation.

Increasing the density of guest houses within the residential districts may impact the neighborhood's character, especially given recent efforts to free up zoning density restrictions within the Residential District. Currently, residential properties within specific parcel square footage thresholds may have at most five dwelling units, five Additional Rental Units (ARUs), and one Guest House. The introduction of additional density could change the physical appearance, scale, and overall atmosphere of a neighborhood. However, the proposed bill mandates that every guest house shall comply with applicable development standards, including building heights and setbacks, and other requirements for the particular Use District, which can better ensure that the addition of the guest house complements rather than detracts from the existing neighborhood character while maintaining a sense of space and privacy between properties.

#### *Commercial District*

The purpose of the Commercial District, as outlined in Section 8-6.1 of the K.C.C., is as follows:

- (a) To designate areas suitable for commercial and public or private business activities distributed so as to supply goods and services to the public in a convenient and efficient manner.
- (b) To relate commercial and business activities to established or projected transport, utility and community patterns so that they may contribute to the general health, safety and welfare of the public.
- (c) To assure that commercial and business development and uses will not detract from the environmental qualities of the surrounding areas.

In the Neighborhood Commercial zone, the maximum residential density is determined by the higher of two factors: either the density permitted within an R-10 District or that allowed in any Residential District bordering the specific Neighborhood Commercial area. For General Commercial zones, the maximum densities permitted are equivalent to those allowed in an R-20 District.

The proposed bill could help to support the viability and success of small businesses by providing them with customers within walking distance, as well as increasing the opportunities for commercial businesses to serve the needs of the community, including the distribution of goods and services. Furthermore, the proposed bill could encourage mixed-use development by fostering a more diverse, lively, and vibrant urban environment that integrates residential and commercial uses within the same area. For instance, a denser population within the Commercial District can increase pedestrian activity, encouraging a walkable urban environment where residents can live, work, and shop within proximity.

#### *Agriculture District*

Section 8-8.1 of the K.C.C states the purpose of the Agriculture District as the following:

The Agriculture District establishes means by which land needs for existing and potential agriculture can be both protected and accommodated, while providing the opportunity for a wider range of the population to become involved in agriculture by allowing the creation of a reasonable supply of various sized parcels.

The purpose of the Agriculture District is further delineated in the following subpoints:

- (a) To protect the agriculture potential of lands within the County of Kaua'i to ensure 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.

Residential densities within the Agricultural District are determined based on acreage size:

- (1) One dwelling unit per acre or larger parcel.
- (2) An additional unit for every three acres within the same parcel, not exceeding five units per parcel.

When considering any zoning modification, consideration should be given to the potential impacts of such changes on the established character and aesthetic appeal of existing rural communities. The County limits density and subdivisions on certain lands to strike a balance between expanding housing opportunities for residents while simultaneously preserving the region's character and open space qualities. On agriculture lands, developments such as "gentlemen estates"- large-lot agricultural subdivisions tailored to a high-end market- have highlighted the potential for misalignment between housing development and the needs of local residents.

It is important to note that the size restrictions imposed on Guest Houses serve as a safety measure against the development of new "gentlemen estates," ensuring that such structures remain modest in scale and primarily serve the needs of the local workforce. However, concerns persist regarding the potential ramifications of increasing the density of Guest Houses on agricultural lands. This heightened density could generate tension between residential and agricultural land uses.

On the other hand, there are potential positive aspects to consider. The proposed bill could potentially foster greater involvement in agriculture, as it could facilitate farm worker residency on agricultural lands.

It is also essential to understand the nature of Hawaii's Agricultural District. In the early 1960s, Hawai'i implemented the nation's first statewide land-use regulation system, known as the State Land Use Law. The State Land Use Commission regulates land use within four mandated districts: Urban, Rural, Agricultural, and Conservation. Lands not classified under Urban, Rural, or Conservation were typically placed in the Agricultural District, resulting in the Agricultural District containing more acreage than is actively cultivated and including lands not well-suited for agriculture.

Furthermore, Act 183 (SLH 2005), defines Important Agricultural Lands (IAL) as those capable of producing sustained high yields, contributing to the state's economic base, and generating agricultural commodities for export or local consumption. These lands are critical for expanding agricultural activities and future income, even if they are not currently in production. The County's Important Agricultural Lands (IAL) Study (2015) evaluated agricultural lands on Kaua'i against the eight criteria outlined in Act 183, with scores ranging from 0 (does not meet any criteria) to 40 (meets all criteria at 100%). The study found that 53,547 acres, or 39.11% of Kauai's total agricultural lands, met the criteria for Important Agricultural Lands to some extent.

The County's Important Agricultural Lands (IAL) Study (2015) also estimated that Kauai needs at least 21,158 acres to cultivate food crops sufficient for a population of approximately 70,000 people, based on a daily intake of 2,500 calories per person. This estimate excludes beef production, which would require an additional 98,183.81 acres. However, beef production does not necessitate the best soil or topography, unlike food crops. The IAL Study advises against nonagricultural uses and development on lands designated as IAL.

In summary, developing guest houses within IAL designated lands may conflict with the goals of achieving food self-sufficiency. However, guest houses in areas within the Agricultural District that are not well suited for farming may not significantly conflict with these goals. Additionally, given the smaller footprint (800 square feet) and density restrictions—allowing an additional guest house for every three acres within a parcel, up to a maximum of five guest houses per parcel—the impact of developing guest houses on non-IAL lands may be minimal concerning agricultural objectives.

### *Open District*

The general purpose of the Open District, as stated in Section 8-9.1, is as follows:

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.

The permissible quantity of single-family residential units is contingent upon the classification of the parcel within zones identified as "Urban," "Rural," or "Agriculture" by the State Land Use Commission, as well as the inclination of land categorized as "Urban," which must be less than 10%. Specifically, this includes the following relevant development standards:

#### (a) Land Coverage

- (1) The amount of land coverage created, including buildings and pavement, shall not exceed 10% of the lot or parcel area.
- (2) No existing structure, use or improvement shall be increased in size, or any new structure, use or improvement undertaken so as to exceed the 10% land coverage limitation.

#### (b) Residential Densities

- (1) No more than one single-family detached dwelling unit per three acres is permitted in "Urban" or "Rural" designated areas by the State Land Use District (SLUD).
- (2) In areas designated as "Agricultural" by the State Land Use Commission, one single-family detached farm dwelling unit per five acres is allowed, with a maximum of five dwelling units per parcel.
- (3) In "Urban" designated areas by the State Land Use Commission, one single-family detached dwelling unit per acre is permissible if the average slope of the parcel is no greater than 10%.

Increasing guest house density in the Open District may not be in perfect alignment with the district's purpose of providing adequate open land for recreational and aesthetic needs. However, the proposed bill remains bound by the development standards, restricting development land coverage to not surpass 10% of the lot or parcel area. Hence, any guest house development within the Open District is unlikely to incur additional impact or conflict with the district's overarching goals.

### *University District*

Section 8-29.1 of the K.C.C. states the general purpose of the University District as the following:

The University District (UNV) shall apply to areas of land that are utilized for campus-related activities and is intended to apply to areas for the location and expansion of universities and similar educational campus environments, and the uses and facilities that are associated with and are supportive of them. Special consideration of such uses and facilities are appropriate given the unique characteristics of campus areas, the variety of uses needed to serve campus communities, and the varying intensities of land uses in such communities.

Regarding allowable Residential density within the University District, Section 8-29.3 of the K.C.C states:

The allowable maximum densities shall be that permitted in the R-20 District, except that each dormitory room shall be considered as 1/2 of one dwelling unit in computing the allowable number of dwelling units.

The proposed bill could offer opportunities to support educational activities and enhance the campus community's vibrancy by providing affordable and convenient housing options for students attending the college or for faculty and staff working at the college. This could help alleviate housing shortages, accommodate the needs of a growing student population, and contribute to the sustainability and functioning of the campus community; thereby supporting the overall mission of the University District. Moreover, the proposed bill could help facilitate the provision of support services for the college, such as accommodating visiting scholars or guest lecturers, enhancing the overall experience and functionality of the college environment. However, careful planning and consideration of the district's unique characteristics and land use intensities are necessary to ensure that guest house development aligns with its purpose and contributes positively to the overall functioning of the college environment.

### General Plan

The proposed legislation must be examined through the lens of the overarching policies and objectives delineated in the General Plan. While the draft bill aligns with goals

emphasizing the facilitation of diverse, privately-developed housing options for local families and ensuring accessibility for multigenerational households, it must also be evaluated against the Plan's priorities of managing growth to preserve rural community character, safeguarding agriculturally productive lands, and adapting to climate change impacts. A thorough evaluation that considers these potentially differing objectives is advisable to ensure a comprehensive understanding of the trade-offs and to offer recommendations that align the bill with the overarching vision and long-term community planning goals delineated in the guiding General Plan.

In each corresponding section, the report delineates how the proposed bill aligns with the policies, goals, and actions outlined in the general plan. Simultaneously, it also highlights instances where there may not be perfectly alignment between the bill and the overarching objectives and strategies established within the plan.

A. Section 1.4, entitled "Policies to Guide Growth"

- 1) **Policy #1: "Manage Growth to Preserve Rural Character"**- The General Plan's Policy #1 emphasizes that the rural character of Kaua'i is what makes this island unique and valued by residents and visitors, but this character is threatened by *"low-density development occurring on agricultural lands that are non-adjacent to existing towns."*

The proposed bill seeks to extend the permissibility of guest house density, including on agricultural and open districts. Under this proposal, parcels permitted for five dwelling units per parcel could potentially accommodate up to five guest houses. This expansion raises concerns regarding its potential impact on low-density development patterns, as well as the implications for agricultural and open space lands. However, it is important to note that all guest houses must conform to a footprint of 800 square feet, which is minimal given the density restrictions based on acreage size in agricultural and open space lands. In other words, the development of 800-square-foot guest houses, permitted for every three acres within Agricultural zoned lands, is unlikely to threaten Kaua'i's rural character.

- 2) **Policy #2: "Provide Affordable Housing While Facilitating A Diversity of Privately-Developed Housing For Local Families"**- The General Plan's Policy #2 emphasizes the need to plan for and help facilitate affordable housing for local families, through actions such as providing policy guidelines ensuring cost-effective homes by design. While the permitting of guest houses does not ensure affordability, the size limits on guest houses can play a role in promoting affordability compared to larger homes or apartments in the same area. Additionally, smaller guest houses can promote diversity in housing options within a community by accommodating individuals or families with different budgetary constraints.

Moreover, the department has noted that a rise in housing demand without a

corresponding increase in supply inevitably leads to elevated housing costs, consequently rendering many local families unable to afford housing. However, in taking the approach of providing an increase in housing supply, there should be a concerted effort to ensure that the resultant housing developments principally serve the local populace. The General Plan acknowledges that “[b]etween January 2008 and September 2015, 45% of homes were purchased by mainland and foreign buyers,” underscoring the imperative to safeguard housing accessibility for residents.

- 3) **Policy #6: “Reduce the Cost of Living”**- The General Plan’s Policy #6 explicitly calls to reduce the costs of housing by “*providing a diversity of housing types.*” As previously mentioned, the proposed bill would authorize the expansion of guest houses, thereby facilitating a range of housing options characterized by lower construction expenses and decreased maintenance and operational costs, ultimately enhancing the financial feasibility of this housing alternative.

It is also important to acknowledge transportation costs with housing costs. According to the U.S. Census Bureau (2014) American Community Survey (ACS), 44 percent of all households are cost-burdened, with the average Kaua‘i household allocating 36 percent of income to housing expenses and 26 percent to transportation costs.

- 4) **Policy #11: “Help Agricultural Lands Be Productive.”**- The General Plan’s Policy #11 aims to support economic diversification and access to locally produced food by increasing the productivity and profitability of all forms of agriculture. As previously noted, the County’s Important Agricultural Land (IAL) Study (2015) estimated that Kaua‘i needs at least 21,158 acres to cultivate food crops sufficient for a population of approximately 70,000 people. Additionally, the study found that 53,547 acres, or 39.11% of Kaua‘i’s total agricultural lands, met the criteria for Important Agricultural Lands to some extent.

Developing guest houses within IAL-designated lands may conflict with the goals of achieving food self-sufficiency by intruding upon cultivable land or disrupting agricultural operations, thereby jeopardizing the balance between land availability and agricultural viability. With this in mind, it may be appropriate to prohibit the expansion of the Guest House right to lands designated as IAL.

Furthermore, as noted earlier, it is worth mentioning that while constructing guest houses on agricultural lands does not inherently ensure their utilization for farming activities, they can offer housing solutions for farm laborers. By providing accommodation for workers, agricultural operations can improve their capacity to recruit and retain labor, consequently bolstering the

sustainability and efficiency of the island's agricultural industry.

- 5) **Policy #17: "Nurture Our Keiki"**- The General Plan's Policy #17 explicitly calls for "*[a]ctions to promote education, housing, and economic opportunity... to keep our keiki from permanently moving away from home.*" By permitting expanded guest house development across zoning districts, local families are afforded the opportunity to establish guest houses, enabling their children to secure housing while maintaining semi-independent living arrangements.
- 6) **Policy #18: "Honor Our Kūpuna"**- The General Plan's Policy #18 explicitly calls to "*prepare for the aging of Kauai's population through housing... that meet the needs of elderly households.*" Guest Houses provide an ideal housing solution for elderly individuals by offering semi-independent living quarters within close proximity to family members. This arrangement promotes autonomy and privacy while facilitating easy access to support and care when needed, fostering a sense of security and community for elderly residents. This proximity also ensures swift evacuation support during emergency situations.

B. Section 1.3, entitled "Visions and Goals"

- 1) **Goal #1: "A Sustainable Island"**- The General Plan's GOAL #1 states that "*[a] key concept related to sustainability is managing growth without depleting the natural environment*" and that "*growth should be concentrated around existing centers to promote efficiencies in infrastructure while preserving open space.*" The proposed legislation would allow a higher density of Guest Houses on lands outside the urban district, including agricultural and open space areas. While permitting development beyond existing urban centers may not align with this goal, it is important to recognize that the size of guest houses is limited, which minimizes their impact on rural and open space areas and their resources.

Regarding infrastructure, the increase in guest house development in Agricultural and Open Space lands may present challenges in providing infrastructure and services due to the dispersed nature of development in these areas. However, the bill stipulates that guest house development must comply with all relevant development standards and Use District regulations, and each guest house will require a building permit. Through the building permit review process, any necessary infrastructure improvements to support the guest house will be identified and required before construction and operation can proceed.

Moreover, GOAL #1 underscores the significance of adapting to the challenges posed by climate change. An increase in guest house development within low-lying coastal regions may heighten susceptibility to

the adverse effects of rising sea levels. This heightened vulnerability could exacerbate risks associated with coastal erosion, flooding, and other sea level rise impacts, necessitating comprehensive strategies to address and mitigate these potential consequences. Taking this into account, it may be appropriate to prohibit the expansion of the Guest House right within the Special Management Area (SMA).

- 2) **Goal #3: “A Healthy and Resilient People”**- The General Plan’s GOAL #3 highlights that *“Health is influenced by the built environment, including the quality and affordability of housing”* and that factors that erode the community’s resiliency includes, *“residents priced out of the housing market.”* The proposed legislation aims to enable families to construct guest houses on their property, thereby reducing the likelihood of them being excluded from the housing market due to rising prices. This initiative seeks to uphold the community's cohesion and overall resilience.
- 3) **Goal #4: “An Equitable Place, with Opportunity for All”**- The General Plan’s GOAL #4 emphasizes that *“Opportunity is about equal access to a high quality of life, which includes adequate housing...”* and that *“[t]he majority of new and available housing is not affordable to the average working household.”* By expanding the permissiveness of guest houses within the various zoning districts, the proposed bill provides the opportunity for the construction of more guest houses, which may allow families the opportunity to construct a unit for their family member to live in. The construction of guest houses may also provide opportunities for housing farm workers on agricultural lands.

Additionally, the General Plan specifies actions that are tied to the overarching policies and goals outlined above. Some of the key actions related to the proposed bill are summarized in the text below:

A. Section 3.0, entitled “Actions by Sector”

- 1) **Sector I. The Watershed: “Kahakai- Coastal Areas and Shorelines”**
  - a. The General Plan calls for the action to *“Minimize coastal hazard risks through planning and development standards that... discourage development or redevelopment (including tourist uses) within hazardous areas.”* The proposed bill would authorize the development of additional guest houses in various zoning district, irrespective of their proximity to vulnerable coastal areas. This approach could potentially heighten vulnerability to coastal hazards, exacerbating the impacts of climate change. In consideration of this, it may be appropriate to restrict the expansion of the Guest House entitlement within the Special Management Area (SMA).

**2) Sector II. Housing: “Infill Housing”**

- a. The General Plan states an action to “*allow for multi-family structures and a variety of accessory dwellings such as ‘ohana units... within the Neighborhood Center, Neighborhood General, and Residential Community designations.*” The bill’s specific expansion of permissiveness regarding guest houses within the Neighborhood Center, Neighborhood General, and Residential zoning districts aligns with the action outlined in the General Plan. This action supports the diversification of housing options within these designated areas, as indicated by the allowance for multi-family structures and various accessory dwellings, including ‘ohana units. By extending the permissiveness of guest houses, the bill reflects a commitment to enhancing housing diversity in alignment with the objectives outlined in the General Plan for these specific zoning districts.

**3) Sector II. Housing: “New Communities”**

- a. Another action outlined in the General Plan is the need to “[a]void *sprawl development patterns and inefficient infrastructure and service delivery by maximizing density in new communities.*” The proposed bill will allow greater density of guest houses not only within the urban growth boundaries, but also within Agricultural and Open zoned lands, which may not perfectly align with the goal of avoiding sprawl development patterns.

As previously noted, allowing guest houses in Agriculture and Open Space lands may also lead to challenges in providing infrastructure and services due to the dispersed nature of development in these areas. However, obtaining a building permit will be mandatory for each guest house constructed.

**4) Sector II. Housing: “Elderly Housing and Assisted Living Facilities”**

- a. The General Plan states an action to “[p]rovide *additional housing and assisted living facilities for Kauai’s increasing elderly population*” by allowing “*multigenerational housing that accommodates family home care situations.*” The proposed bill could allow for multigenerational housing by serving as a smaller accessory dwelling unit, in which elderly family members can reside in close proximity to their caregivers, fostering intergenerational support networks and enabling families to provide care while maintaining a level of independence for elderly relatives. This promotes social connectedness, maintains quality of life, and may delay or reduce the need for institutionalized care.

**5) Sector VI. Economy: “Agriculture”**

- a. The General Plan emphasizes the importance of agricultural lands by stating, “Ensure agriculture-designated lands are used for agriculture.” As previously mentioned, developing guest houses within agricultural lands may not perfectly align with this objective. However, it is important to recognize that when the State Land Use District boundaries were first established, lands not clearly identified as Urban or Conservation were placed in the Agricultural District, including lands not used or suited for agriculture. Therefore, the development of guest houses on non-IAL lands may not significantly impact the County’s goal to preserve and enhance agricultural activities.

However, the proposed guest house bill permits the development of guest houses on agricultural lands, regardless of their suitability for farming. Developing guest houses within Important Agricultural Lands may conflict with the County’s goal to expand agricultural activities, strengthen the agricultural economy, and achieve food self-sufficiency. As previously noted, it may be appropriate to prohibit the expansion of the Guest House right to lands designated as IAL.

#### 6) Sector IX. Public Safety & Hazards Resiliency

- a. The General Plan emphasizes the need to “[m]inimize coastal development in areas of high risk of erosion, flooding, tsunami inundation, and sea level rise.” As previously noted, the proposed bill will allow for the expansion of guest house development irrespective of whether it lies within an area of high hazard risk. The lack of consideration for hazard risk zones raises concerns about the potential exacerbation of vulnerabilities and exposure to coastal hazards for properties located in these areas. Allowing increased guest house development in coastal hazard zones could amplify the risks of property damage and safety hazards associated with erosion, flooding, tsunamis, and sea level rise. As previously noted, it may be most appropriate to prohibit the expansion of the Guest House right within the Special Management Area.

### VIII. PRELIMINARY CONCLUSION

Based on the foregoing findings and evaluation, the Planning Department concludes the following:

1. The proposed legislation seeks to address the housing crisis on Kaua’i. The department has observed that an increase of housing demand that does not correspond to a matching increase in supply ultimately results in higher housing

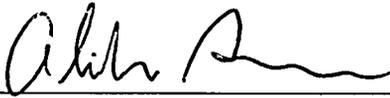
costs, which inevitably prices many local families out of the housing market. To meet the demand for housing units with respect to future population growth and the projected housing demand of 9,000 units by the year 2035, the legislation increases the allowable density of Guest House entitlements that will provide adequate housing opportunities for a wider range of local families.

2. A guest house cannot be used for a transient vacation rental (TVR) or a homestay operation within or outside of the visitor destination area (VDA). As a result, the legislation is centered around providing long-term housing opportunities for local families.
3. While the proposed bill does not perfectly align with the 2018 Kaua'i General Plan's goal of directing growth to existing towns, it does align with the General Plan's objective to promote diversity in housing options by accommodating individuals and families with varying budgetary constraints. Given the urgency of the housing crisis, the Department recognizes the need to increase the housing supply in a manner that better serves the needs of the local workforce.

## IX. PRELIMINARY RECOMMENDATION

Based on the foregoing evaluation and conclusion of the final proposed bill, it is recommended that the subject request to amend Chapter 8 (Comprehensive Zoning Ordinance), as amended, be **APPROVED** subject to the following revisions:

1. In order to ensure that a Guest House application can meet the necessary infrastructure requirements prior to applying for a building permit, an interdepartmental agency clearance form that is currently required for ADUs and ARUs should also be required for Guest Houses.
2. In consideration of the heightened vulnerability of low-lying coastal regions to the impacts of climate change, Guest House development is prohibited within the Special Management Area (SMA).
3. In light of the data and analysis from the County's Important Agricultural Lands (IAL) Study (2015), which estimated that Kauai requires at least 21,158 acres to cultivate food crops sufficient for a population of approximately 70,000 people, it is recommended that Guest House development be prohibited on lands designated as Important Agricultural Lands (IAL).
4. Guest Houses rented at an affordable housing rate should qualify for the Additional Rental Unit (ARU) fee waivers and subsidies.

By   
Alisha Summers  
Planner

Approved & Recommended to Commission:

By   
KA'AINA/S. HULL  
Director of Planning

Date: 5/22/2024

**Ka'aina S. Hull**  
Director of Planning

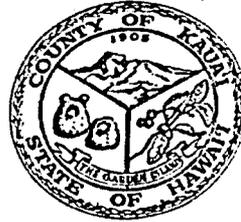


**Jodi A. Higuchi Sayegusa**  
Deputy Director of Planning

**COUNTY OF KAUA'I  
PLANNING DEPARTMENT**

**Exhibit A:**  
Proposed Bill

**COUNTY COUNCIL**  
Mel Rapozo, Chair  
KipuKai Kualii, Vice Chair  
Addison Bulosan  
Bernard P. Carvalho, Jr.  
Felicia Cowden  
Bill DeCosta  
Ross Kagawa



**OFFICE OF THE COUNTY CLERK**

Jade K. Fountain-Tanigawa, County Clerk  
Lyndon M. Yoshioka, Deputy County Clerk

Telephone: (808) 241-4188  
Facsimile: (808) 241-6349  
Email: cokcouncil@kauai.gov

**Council Services Division**  
4396 Rice Street, Suite 209  
Lihu'e, Kaua'i, Hawai'i 96766

April 2, 2024

Donna Apisa, Chair  
and Members of the Planning Commission  
c/o County of Kaua'i Planning Department  
Via Email Only: [planningdepartment@kauai.gov](mailto:planningdepartment@kauai.gov)

Dear Chair Apisa and Members of the Planning Commission:

**RE: REFERRAL OF PROPOSED DRAFT BILL (NO. 2919)  
RELATING TO GUEST HOUSES**

The Kaua'i County Council, at its meeting on March 27, 2024, referred the following measure to the Planning Commission for review and recommendation:

"Proposed Draft Bill (No. 2919) - A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE, INCLUDING MATTERS PERTAINING TO GUEST HOUSES"

Thank you for your continued assistance in these planning matters. Should you have any questions, please feel free to contact me at (808) 241-4188.

Sincerely,

JADE K. FOUNTAIN-TANIGAWA  
County Clerk, County of Kaua'i

JA:dmc  
Enclosure

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 8,  
KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE  
COMPREHENSIVE ZONING ORDINANCE, INCLUDING MATTERS  
PERTAINING TO GUEST HOUSES**

---

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

**SECTION 1.** Findings and Purpose. The Council of the County of Kauai finds that housing supply remains limited and that even residents with means of payment or who are approved for housing assistance struggle to locate available homes for rental or purchase. Therefore, the purpose of this Ordinance is to expand the permissiveness of guest houses in zoning districts Residential R-1 to R-6 and R-10 to R-20, CN (Neighborhood Commercial), CG (General Commercial), AG (Agriculture), O (Open), and UNV (University), and make other technical edits.

**SECTION 2.** Chapter 8, Section 8-1.4 (Application of Regulations), Kauai County Code 1987, as amended, is amended by adding a new Subsection (i) to be appropriately inserted and read as follows:

“(i) The development of one (1) guest house per one (1) dwelling unit is authorized in zoning districts R-1 to R-6, R-10 to R-20, CN, CG, AG, O, and UNV, provided that every guest house shall:

(1) Meet all applicable development standards and other requirements for the particular Use District;

(2) Meet all other applicable governmental rules, regulations, ordinances, statutes, and laws;

(3) Be provided with one (1) off-street parking space per guest house in addition to the required off-street parking for all dwelling unit(s);

(4) Never be separated in ownership from the ownership of its primary dwelling by any owner or any heir, successor, or assign of any owner, including but not limited to submitting the lot or any portion thereof to a condominium property regime (CPR); and

(5) A guest house shall not be used for a transient vacation rental (TVR) or homestay operation within or outside of the visitor destination area (VDA).”

**SECTION 3.** Chapter 8, Section 8-2.1 (Districts), Kauai County Code 1987, as amended, is amended by clarifying that the Agriculture District can read as either “A” or “AG,” and by adding reference to the Special Treatment—ST:Coastal Edge—ST-CE (created in 2020) and the University District (created in 2017), to read as follows:

"To carry out the purposes of this Chapter, the major and minor districts into which the County of Kaua'i may be divided and their official abbreviated designations are as follows:

- (a) Residential—R:
  - (1) R-1
  - (2) R-2
  - (3) R-4
  - (4) R-6
  - (5) R-10
  - (6) R-20
  - (7) R-40
- (b) Resort—RR:
  - (1) RR-10
  - (2) RR-20
- (c) Commercial—C:
  - (1) Neighborhood Commercial—CN
  - (2) General Commercial—CG
- (d) Industrial—I:
  - (1) Limited Industrial—IL
  - (2) General Industrial—IG
- (e) Agriculture—A or AG
- (f) Open—O
- (g) Special Treatment—ST:
  - (1) Public Facilities—ST-P
  - (2) Cultural/Historic—ST-C
  - (3) Scenic/Ecological—ST-R
  - (4) Open Space—ST-O
  - (5) Coastal Edge—ST-CE
- (h) Constraint—S:
  - (1) Drainage—S-DR
  - (2) Flood—S-FL
  - (3) Shore—S-SH
  - (4) Slope—S-SL
  - (5) Soils—S-SO
  - (6) Tsunami—S-TS
- (i) University—UNV

SECTION 4. Chapter 8, Section 8-2.4 (Uses in Districts), Kaua'i County Code 1987, as amended, is amended by amending its Table 8-2.4 (Table of Uses) by deleting the entire row Sec. 8-2.4(a)(2) ("Accessory structures and uses, including one guest house") and renumbering the remaining row Sec. 8-2.4(a)(1), at column "Sec." only, to read as: "8-2.4(a)".

SECTION 5. Chapter 8, Section 8-15.1 (Additional Dwelling Unit on Other Than Residentially Zoned Lots), Kaua'i County Code 1987, as amended, is amended by amending its Subsection (d) to read as follows:

"(d) Notwithstanding the expiration of Subsection (a), and subject to compliance with all applicable legal requirements and conditions, a Building Permit for an additional dwelling unit shall be granted for a lot in existence as of December 31, 2006 which, up to December 31, 2006, was eligible to apply for an additional dwelling unit under Subsection (a) and for which an ADU Facilities Clearance Form is certified as complete by the Planning Director as of June 15, 2007, or for which an ADU Facilities Clearance form was signed by the

authorized employees of all agencies or departments listed in the ADU Facilities Clearance Form and submitted with a Building Permit application prior to November 22, 2006, provided that:

(1) The term "lot in existence as of December 31, 2006," as used in Subsection (d) shall not apply to any lot created by the relocation of a kuleana lot by consolidation and resubdivision pursuant to the provisions of Chapter 9, Kaua'i County Code 1987, as amended ("Subdivision Ordinance"), where such consolidation and resubdivision occurs after December 31, 2006.

(2) All applicable County requirements not inconsistent with Sec. 46-4(c), Hawai'i Revised Statutes, and the County's zoning provisions applicable to residential use are met, including, but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(A) If the additional dwelling unit is to be built in a Special Treatment District or Constraint District, all requirements of such district shall be met.

(B) Notwithstanding any other provision to the contrary, for lots in the Urban and Rural State Land Use Districts which were rezoned from Residential to Open District after September 1, 1972, the maximum lot coverage shall be the same as the Residential District requirement.

(3) The provisions of this Subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district, or where additional dwelling units are specifically prohibited by zoning ordinance.

(4) For lots on which an additional dwelling unit is developed, [no] guest house [under Sec. 8-4.3(a)(2) shall be allowed.] allowances shall be governed by Section 8-1.4(i). [An existing guest house may be converted into an additional dwelling unit, but no additional guest house may be constructed.]

(5) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system (or cesspool), or a private sanitary sewer system built to County standards and approved by the Department of Health.

(B) For sewerred areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system shall be confirmed in writing by the Department of Health.

(C) The availability of water (including, but not limited to, source, transmission, and storage lines/facilities) shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kaua'i Fire Department is required for all parcels.

(6) An ADU Facilities Clearance Form as prescribed by the Planning Director shall be completed prior to application for a Building Permit and shall be submitted with the Building Permit application. Completion of the ADU Facilities Clearance Form shall not guarantee the issuance of a Building Permit. All requirements and conditions on the completed ADU Facilities Clearance Form shall be met prior to issuance of a Building Permit based on legal requirements at the time of Building Permit issuance. The Planning Director shall certify the ADU Facilities Clearance Form as complete, only if every signature blank on the Form has been signed by the respective department or agency, and the applicant has signed an affidavit prescribed by the Planning Director verifying: (A) that there is no restriction or covenant applicable in any deed, lease, or other recorded document which prohibits the construction or placement of an additional dwelling unit on the applicable lot; and (B) that the applicant understands that completion of an ADU Facilities Clearance Form does not guarantee or vest any right to a Building Permit, and that all conditions and requirements in existence at the time of Building Permit application shall be met before a Building Permit can be issued. The Planning Department shall keep a record of all ADU Facilities Clearance Forms that are issued and shall retain the original affidavits and the original ADU Facilities Clearance Forms that are certified as complete by the Department.

(7) The applicant shall obtain a re-certification from the Planning Department certifying that applicant has met the requirements set forth in Sec. 8-15.1(d)(6). A regulatory fee of Two hundred fifty dollars shall be charged upon registration for a re-certification. If the applicant fails to obtain a re-certification by June 30, 2017, the entitlement to the additional dwelling unit shall be deemed terminated and no building permit shall be issued for the additional dwelling unit. The Planning Director shall notify the applicant in writing that the entitlement to the additional dwelling unit has been terminated. The applicant may appeal the termination to the Planning Commission in accordance with the Rules of Practice and Procedure of the Planning Commission.

(8) Where a regulatory fee has been paid, the fee payment shall be deposited to the "ADU Re-certification Fund." There is hereby established and created a fund to be known as the "ADU Re-certification Fund." The fees collected pursuant to this subsection are hereby deemed appropriated upon receipt, and may be expended by the Department of Planning for the hiring of persons employed on a fee, contract, or piecework basis, or independent contractors to assist in conducting inspections. The maximum number of persons that may be hired with these fees shall be determined by the Budget Ordinance. The fees may also be expended for materials, supplies, and equipment that facilitate inspections, and for payment of overtime to conduct inspections.

(9) Nothing contained in this Section shall affect private covenants or deed restrictions that prohibit the construction of a [second dwelling unit] specified number of dwelling units on any lot.

(10) Notwithstanding any law to the contrary:

(A) it is the applicant's responsibility to resolve any outstanding conditions with the respective governmental agencies; and

(B) new assessments may be applicable to the property that is the subject of the ADU Facilities Clearance Form."

SECTION 6. Chapter 8, Section 8-15.2 (Additional Dwelling Unit on Residentially Zoned Lots), Kaua'i County Code 1987, as amended, is amended to read as follows:

"(a) Notwithstanding other provisions to the contrary, for any residentially zoned lot where only ~~[one] one (1) [single family] single-family~~ residential dwelling is permitted, ~~[one] one (1) additional [single family] single-family~~ residential dwelling unit (attached or detached) may be developed, provided:

(1) All applicable County requirements, not inconsistent with ~~[Sec.] Section 46-4(c)~~, Hawai'i Revised Statutes and the County's zoning provisions applicable to residential use are met, including, but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(2) The provisions of this Subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district.

(3) For residentially zoned lots on which an additional dwelling unit is developed, ~~[no] guest house [under Sec. 8-4.3(a)(2) shall be allowed.] allowances shall be governed by Section 8-1.4(i).~~ [An existing guest house may be converted into a dwelling unit but no additional guest house may be constructed.].

(4) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system (or cesspool), or a private sanitary sewer system built to County standards and approved by the Department of Health.

(B) For sewerred areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system shall be confirmed in writing by the Department of Health.

(C) The availability of water shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kaua'i Fire Department is required for all parcels.

(5) Facilities clearance may be obtained prior to application for Building Permit. Forms for facilities clearance will be available from the Building Division, Department of Public Works. The form, approved by all agencies, shall be submitted with the Building Permit application. Where complete plans and specifications are submitted for Building Permit application processing, the submission of the Facilities Clearance Form will be attached with the Building Permit and processed concurrently.

(6) Nothing contained in this Section shall affect private covenants or deed restrictions that prohibit the construction of a [second dwelling unit] specified number of dwelling units on any residential lot. The provisions of this Section shall be subject to the provisions of Chapter 22, Kaua'i County Code 1987, as amended, Section 22-28. Limiting or Prohibiting Long-Term Rentals, Additional Dwelling Units, Additional Rental Units, and Guest Houses."

SECTION 7. If any provision of this Ordinance or application thereof to any person or circumstance is held invalid, the invalidity does not affect the other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.

SECTION 8. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 9. This Ordinance shall take effect upon its approval.

Introduced by:



MEL RAPOZO



BILL DECOSTA

DATE OF INTRODUCTION:

Lihue, Kaua'i, Hawai'i

V:\BILLS\2022-2024 TERM\Bill Guest Houses JA\_dmc.docx

# Uahi Ridge Hui, Limited Partnership

3165 Waialae Avenue, Suite 200, Honolulu, HI 96816

May 20, 2024

Ka'aina S. Hull  
Director of Planning  
4444 Rice Street, Suite A473  
Lihue, Hawaii 96744

**Subject: Project Development Use Permit PDU-2009-9**  
**Class IV Zoning Permit Z-IV-2009-6**  
**Tax Map Key (TMK): 3-8-005:022, Lihue, Kauai**

Dear Ka'aina:

The purpose of this letter is to provide a project status update and outline our progress towards compliance with the conditions of the aforementioned permit approval.

The subject permit was approved by the Kaua'i Planning Commission on January 13, 2009, and later amended by the Planning Commission on March 10, 2015. In a letter dated January 18, 2022, it was confirmed that the permit runs with the subject property, not with any specific individual or entity. Upon review, the new proposed draft site plan is in conformance with the subject permit and aligns with the previously approved unit count of up to 220 units.

Uahi Ridge Hui is the current owner of the property. The property was purchased from Koamalu Plantation LLC in February 2024. The acquisition was financed with private loans and mortgages are recorded on the property.

## **Project Summary**

The Uahi Ridge Affordable Housing project in Lihue, Kaua'i, is set to provide 156 units of much-needed affordable rental housing. The project consists of two phases: a 96-unit development serving families at 30%, 50%, and 60% of the Area Median Income (AMI), and a 60-unit development for families at 30%, 40%, 50%, and 60% AMI.

This project aims to create a pedestrian-friendly community with family-friendly amenities such as picnic areas, playground equipment, and community space. Located conveniently across from Kukui Grove Center, a major employment center, residents will benefit from the proximity to numerous shops and services.

Uahi Ridge will offer leasing preferences to Section 8 voucher holders, Kaua'i residents, and tenants with disabilities. Additionally, one unit will be set aside for persons transitioning out of homelessness, ensuring that the project meets the diverse needs of the community. Overall, Uahi Ridge promises to enhance the quality of life for its residents by providing affordable, accessible, and community-oriented housing.



### **Financing**

Both phases of the Uahi Ridge project successfully secured highly competitive low-income housing tax credits, bonds, rental housing revolving funds, and bank financing. Our team has been diligently working to bring the project to financial closing to start construction on the respective phases.

Once we receive approval for our building permit, which is the final step in the process, we will be able to close the loan. It is crucial that we close by July 2024, as failing to do so will result in the loss of our project financing and almost \$2 million of predevelopment funds invested to reach this stage.

### **Environmental Assessments**

We applied for and received an exemption from Chapter 343 as a new construction affordable housing project. Due to our project's receipt of HUD Section 8 funding, a NEPA review was required. I'm pleased to report that Phase 1 and the offsite components have successfully obtained NEPA clearance. We are now in the final stages of securing NEPA clearance for Phase 2, ensuring that all environmental requirements are fully met before proceeding further.

### **Building Permits and Construction**

We are in the final stages of securing our building permits and are targeting to receive them next month. The most significant hurdle has been coordinating with the Department of Transportation (DOT) to obtain an easement. This step is crucial for the project, and our team is diligently working to finalize this coordination.

We are planning to achieve financial closing by July. Following this, we have an 18-month construction timeline and anticipate completing the project in the first quarter of 2026.

### **Conditions of Approval**

Attached are the complete list of the permit approval conditions along with a progress report on our compliance efforts.

Please accept this status report in satisfaction of the project permit conditions. This project will provide much-needed low-income housing and is a significant improvement over the previous plans.

If you have any questions, please feel free to call me.

Sincerely,



Craig Watase

**Uahi Ridge Hui LP**  
**5/20/2024**

<b>March 13, 2015 Permit Approval Letter</b>	<b>Conditions</b>	<b>Developer Compliance</b>
1	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 or physical features shall be prohibited.	The applicant accepts the condition that all external lighting shall be shielded lights, cut-off luminaries, or indirect lighting. Spotlights aimed upward or spotlighting of structures or physical features will be prohibited.
2	The Planning Commission reserves the authority to impose additional conditions, or modify, or delete conditions stated herein, or revoke the permits through the proper procedures should the applicant fail to comply with the conditions of approval	The applicant accepts that the Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or revoke the permits through the proper procedures should the applicant fail to comply with the conditions of approval.
3.a.	Affordable housing units shall be integrated within the entire project, and not located within only certain buildings.	The applicant agrees to comply with the condition that affordable housing units shall be integrated within the entire project and not located within only certain buildings.
3.b.	An internal meandering walking path shall be provided within the project.	The applicant will be including sidewalks in our project. These sidewalks will serve as the internal walking paths, ensuring accessibility and connectivity within the development.
3.c.	Incorporate the 8 concessions to the neighboring Aloha Church noted on pages 20-21 of its application. Any and all concessions shall be reflected in the recordation noted in #11-b, below. None of the concessions made shall violate any existing laws or regulations.	See attached concessions.

**Uahi Ridge Hui LP**  
**5/20/2024**

<b>March 13, 2015  Permit  Approval Letter</b>	<b>Conditions</b>	<b>Developer Compliance</b>
<p>3.d.</p>	<p>Kuleana access will be preserved, as required by Ordinance PM-270-93. Signage shall be installed and maintained to limited such access to only the owners of the kuleana owners. Such signage and location shall be approved by the kuleana owners.</p>	<p>This project does not impact Kuleana access.</p>
<p>3.e.</p>	<p>Applicant hereby authorizes Aloha Church to apply for any and all of the necessary building and/or zoning permits (including a Variance and/or Project Development permit to deviate from lot coverage requirements) to implement their future development plans.</p>	<p>The applicant authorizes Aloha Church to apply for any and all necessary building and/or zoning permits, including a Variance and/or Project Development permit to deviate from lot coverage requirements, to implement their future development plans upon its approval that all concessions are met.</p>
<p>3.f.</p>	<p>The applicant shall work with the Department of Transportation of State Highways Division, to include a sidewalk on the north side of Kaumualii Highway, to extend from the driveway of the project to the intersection of Kaumualii Highway and Nawiliwili Road. Should the sidewalk plans not be included in the approved DOT-H construction plans, applicant shall be responsible for any such costs to include and construct the side walk improvement.:</p>	<p>The highway widening and the construction of the sidewalk have been completed by State DOT.</p>

**Uahi Ridge Hui LP**  
**5/20/2024**

<b>March 13, 2015 Permit Approval Letter</b>	<b>Conditions</b>	<b>Developer Compliance</b>
<p>4</p>	<p>The applicant shall develop and utilize Best Management Practices during all phases of development in order to minimize erosion, dust, drainage, and sedimentation impacts of the project to abutting properties. The practices shall be reflected in the construction plans submitted for building permit processing.</p>	<p>The applicant acknowledges this condition and will utilize Best Management Practices during all phases of development in order to minimize erosion, dust, drainage, and sedimentation impacts of the project to abutting properties to the extent feasible. The practices will be reflected in the construction plans submitted for building permit processing.</p>
<p>5</p>	<p>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, unless consented to by the Planning Commission.</p>	<p>The applicant will comply with the condition that subject permits approved herein cannot be sold and are not transferable to other than the applicant, its subsidiaries and affiliated corporations, and legal entities prior to the completion of the project and issuance of the occupancy permit, unless consented to by the Planning Commission.</p>
<p>6</p>	<p>Mass pad filling to increase the heights of the proposed structures on the plateau portion of the parcel, beyond the existing ground elevation, shall not be permitted.</p>	<p>The Kauai County Planning Department has approved the project grading plan. Therefore, ground elevation conditions has been addressed in our approved plans.</p>
<p>7.a.</p>	<p>The applicant shall comply with the requirements and recommendations of the applicable County and State agencies, as they may be updated or refined, including the County Fire, Water, Public Works, Housing and the State Department of Health, Transportation-Highways Division, and Department of Land and Natural Resources Historic Preservation Division.</p>	<p>The applicant will comply with the requirements and recommendations of the applicable County and State agencies.</p>

**Uahi Ridge Hui LP**  
**5/20/2024**

<b>March 13, 2015  Permit  Approval Letter</b>	<b>Conditions</b>	<b>Developer Compliance</b>
<p>7.b.</p>	<p>Should any agency determine that any of the required infrastructure improvements trigger the requirements of HRS, Chapter 343 shall be fulfilled or resolved with that agency prior to building permit approval by the Planning Department.</p>	<p>The applicant will comply and resolve any HRS Chapter 343 requirements with the relevant agency before building permit approval.</p>
<p>8</p>	<p>Applicant shall apply for Leadership in Energy and Environmental Design (LEED)</p>	<p>The applicant has incorporated LEED standards in its design and will apply for Leadership in Energy and Environmental Design (LEED), aiming for a minimum Silver standard.</p>
<p>9</p>	<p>Applicant shall provide annual status reports to the Planning Commission beginning from the one year from the date of the approval of the subject permits. The reports shall be submitted to the Department no later than 30 days prior to the annual anniversary date of the approval of this project. The report shall provide project status and progress towards compliance with the conditions of approval. Applicant or its representative shall be present when such report is considered by Planning Commission.</p>	<p>The applicant acknowledges the requirement to provide annual status reports to the Planning Commission, starting one year from the date of permit approval, detailing project status and progress towards compliance with the conditions of approval. This report is our first submission. Although we have not been in compliance with this reporting requirement, we respectfully request an exemption from this condition for subsequent reports, as all other project conditions have been met.</p>

**Uahi Ridge Hui LP**  
**5/20/2024**

<b>March 13, 2015  Permit  Approval Letter</b>	<b>Conditions</b>	<b>Developer Compliance</b>
<p>10.a.</p>	<p>Applicant shall prepare a landscape plan to further soften the building mass as viewed from Kaumual'i Highway. Along the Kakumuali'i Highway frontage, mature landscaping shall be installed. The landscape plan shall reflect the use of native plants or trees that are common to the area, endemic, indigenous, or Polynesian introduced. The proposed color scheme and color samples, and landscape plan shall be submitted to the Planning Director for review and approval prior to building permit review"</p>	<p>The applicant will prepare a landscape plan to soften the building mass as viewed from Kaumualii Highway, using mature native, endemic, indigenous, or Polynesian introduced plants. The color scheme, color samples, and landscape plan will be submitted to the Planning Director for approval.</p>
<p>10.b.</p>	<p>Record all the conditions imposed under the subject permits with the Bureau of Conveyances for the subject property(is). A copy of this recordation shall be provided to the Planning Department.</p>	<p>The applicant will record all conditions imposed under the subject permits with the Bureau of Conveyances for the subject property and provide a copy to the Planning Department.</p>
<p>10.c.</p>	<p>Pay the applicable Environmental Impact Assessment fee in accordance with Section 11 A-2.2 of the KCC. EIA fee is based on \$1,000 per new multi-family unit.</p>	<p>This project qualifies for an exemption from the Environmental Impact Assessment fee in accordance with Section 11 A-2.1(c) of the Kauai County Code. According to this section, government-sponsored housing projects, including private developments funded partially or wholly by Federal, State, or County agencies for low- or moderate-cost housing, are exempt from the EIA fee. The criteria for such exemptions are established by the County Public Housing Agency.</p>

**Uahi Ridge Hui LP**  
**5/20/2024**

March 13, 2015 Permit Approval Letter	Conditions	Developer Compliance
10.d.	Consult with the Dept. of Public Works-Solid Waste Division to establish BMP/management plans regarding construction and post-construction operation of a waste diversion/recycling program	The applicant will consult with the Department of Public Works-Solid Waste Division to establish BMP/management plans for construction and post-construction waste diversion and recycling programs.
10.e.	Provide a copy of the drainage and grading plans approved by the Department of Public Works and/or the State Department of Transportation, Highways Division	The applicant will provide a copy of the drainage and grading plans approved by the Department of Public Works and/or the State Department of Transportation, Highways Division.
10.f.	Provide a copy of the preliminary CPR public report that establishes the estimated common area maintenances fees, unit location map, and unit sales prices for units with the affordable housing component of the project as may be agreed to by the County Housing agency.	The applicant acknowledges this requirement and will provide a copy of the preliminary CPR public report that establishes the estimated common area maintenance fees, unit location map, and unit sales prices for units with the affordable housing component of the project as may be agreed to by the County Housing agency.
10.g.	Resolve and finalize construction plans for improvements within the affected road/driveway easement rights-of-way. The required infrastructure improvements shall be construction, or a bond posted for construction.	The applicant will resolve and finalize the construction plans for improvements within the affected road/driveway easement rights-of-way. The required infrastructure improvements will be either constructed or a bond posted for construction.
10.h.	Resolve the requirements related to "Parks and Playgrounds" in accordance with Section 9-2-.8 of the KCC	The applicant resolved the requirements related to "Parks and Playgrounds" in accordance with Section 9-2.8 of the KCC by providing a designated play area.
10.i.	Develop a parking and access masterplan that will address the Aloha Church access tandem parking and kuleana access and signage issues.	The applicant developed a parking and access masterplan that addresses the Aloha Church access tandem parking and kuleana access and signage issues.

**Uahi Ridge Hui LP**  
**5/20/2024**

<b>March 13, 2015 Permit Approval Letter</b>	<b>Conditions</b>	<b>Developer Compliance</b>
<p>10.j.</p>	<p>Enter into an agreement with the County for non-occupancy of the building until construction and dedication of the required infrastructure improvements is completed. The agreement shall expire upon such time the construction is certified complete by the County.</p>	<p>The building will not be occupied until a certificate of occupancy from Kaua'i County is received.</p>
<p>10.k</p>	<p>Obtain site plan review &amp; approval by the Planning Commission"</p>	<p>Attach site plan for approval.</p>
<p>11</p>	<p>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. Applicant may have to employ non-Kauai residents for particular skilled jobs where no qualified Kauai resident for particular skilled jobs where no qualified Kauai residents possesses such skills.</p>	<p>The applicant will use its best efforts to hire Kauai contractors and Kauai residents in coordination with its contractors, Goodfellow Bros, Inc., for site work and Shioi Construction, Inc. for vertical. The General Contractor for the project is Shioi Construction, a Kaua'i-based company since 1948.</p>
<p>12</p>	<p>The applicant shall devise a specific route and site plan for construction traffic, construction parking, and traffic control measures. The plan shall be resolved with the Public Works Department and the Planning Department. No off-site parking along Kaunualii Highway shall be permitted, and all construction parking shall be retained either on-site or on abutting properties where authorization has been granted.</p>	<p>The applicant will comply with devising a specific route and site plan for construction traffic, construction parking, and traffic control measures. The plan will be resolved with the Public Works Department and the Planning Department. No off-site parking along Kaunualii Highway will be permitted, and all construction parking will be retained either on-site or on abutting properties where authorization has been granted.</p>

**Uahi Ridge Hui LP**  
**5/20/2024**

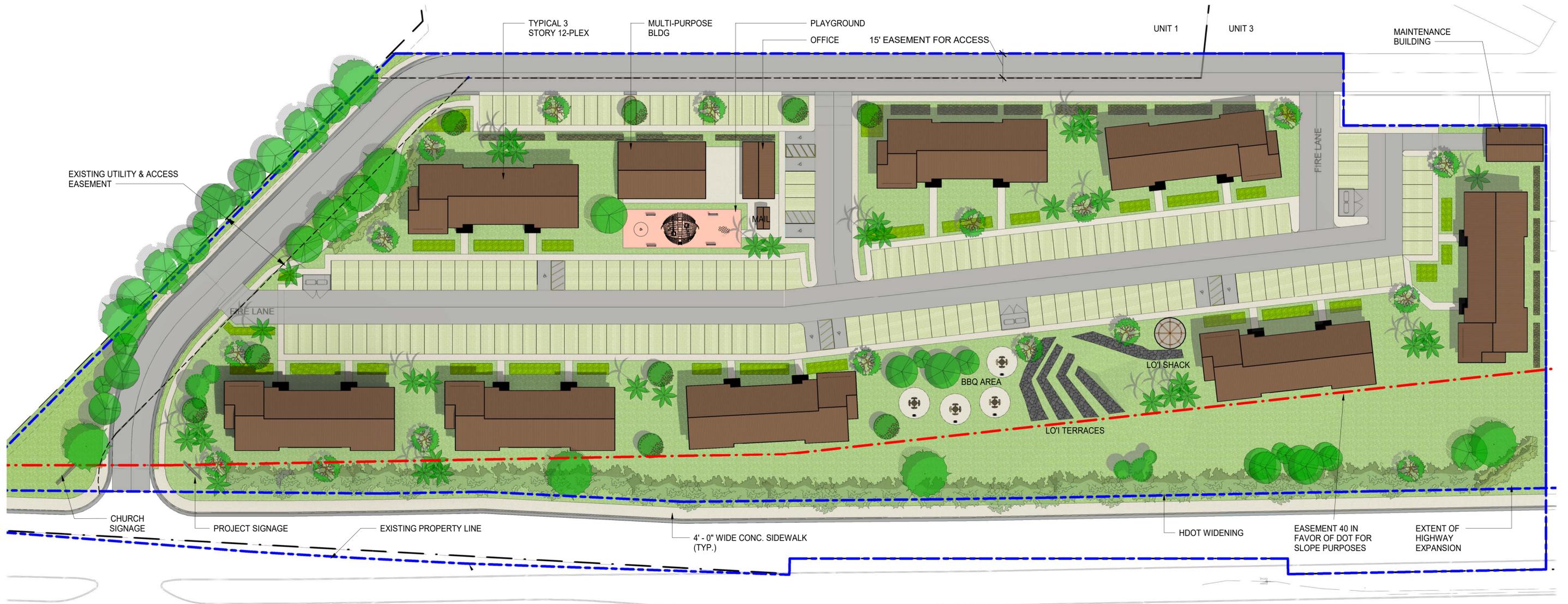
<b>March 13, 2015  Permit  Approval Letter</b>	<b>Conditions</b>	<b>Developer Compliance</b>
<p>13</p>	<p>The applicant shall ensure that heavy equipment activities, including blasting, dynamiting and/or jack hammering other than for electrical, water, and sewer line trenching, shall be limited between the hours of 9:00 am to 5:00pm, Monday through Friday. No such work shall be permitted on Saturdays, Sundays, and State and Federal holidays.</p>	<p>The applicant will comply with ensuring that heavy equipment activities, including blasting, dynamiting, and/or jack hammering (other than for electrical, water, and sewer line trenching), will be limited to between the hours of 9:00 am to 5:00 pm, Monday through Friday. No such work will be permitted on Saturdays, Sundays, and State and Federal holidays.</p>
<p>14</p>	<p>The applicant shall appoint a community liaison to function as the primary contact person to resolve any concerns relating to all phases of the construction project. The Department shall be informed of the name of the appointee and contact information, and such information shall be kept current at all times.</p>	<p>Wallace Castillo  4121 Rice Street #302  Lihue, HI 96766  Phone 808-635-3067  wjcastillo@hawaii.rr.com</p>
<p>15</p>	<p>The applicant is advised that prior to construction and use, additional government agency conditions, including additional conditions of the Planning Commission, may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agencies and to resolve those additional conditions as may be imposed by the Planning commission.</p>	<p>It will be our responsibility to resolve those conditions with the respective agencies and to resolve any additional conditions imposed by the Planning Commission.</p>

**Uahi Ridge Hui LP**  
**5/20/2024**

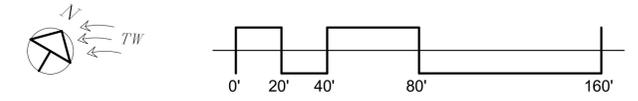
<b>March 13, 2015 Permit Approval Letter</b>	<b>Conditions</b>	<b>Developer Compliance</b>
16	The project shall be developed in accordance to the newly adopted Sec. 3.19 of the Kauai County Charter, and shall not be used for transient vacation rental or transient accommodation purposes. Should any owner desire to utilize a unit as a transient accommodation, an application to the County Council in accordance to the procedures established in the charter amendment shall be required.	This project is a long term affordable rental housing project and will not be used as transient accommodations.

Concessions in Development Permit Application	Compliance
<p>1. The existing graveled access to the church will be paved as part of the project. This driveway is presently maintained by the applicant and was recently graveled to improve the travel way.</p>	<p>Incorporated into site planning.</p>
<p>2. The church requested that their building not be blocked from view from Ka'umualii Highway, and the site plan is designed to allow a view corridor between the proposed Buildings B and C.</p>	<p>Incorporated into site planning.</p>
<p>3. Landscaping has been provided to buffer the project's buildings from the church property.</p>	<p>Addressed by site landscaping.</p>
<p>4. The applicant will incorporate conditions, covenants and restrictions into the condominium declaration informing apartment owners/purchasers that church activities will be ongoing next door and that there will be noise generated from worship services, traffic, and related church activities and programs. Acceptance of these activities and conditions will be made part of the purchase agreement for both affordable and open market units.</p>	<p>This is an affordable rental project and will be addressed in marketing, housing rules and disclosures at rent up.</p>
<p>5. The highway intersection improvements that were deferred in order for the church to be developed, is now going to be assumed by the applicant. The applicant has coordinated with the State Highways Division and will be responsible to provide the intersection improvements to include the storage lanes, accel and decel lanes and traffic signal. In addition, the applicant must give up approximately 2 acres of land for the widening of Ka'umaulii Highway into a 4-lane highway.</p>	<p>The highway widening and improvements have been completed prior to our involvement. N/A</p>
<p>6. The applicant has allowed the church permission to place a sign on their property along Ka'umualii Highway for identification and directional purposes.</p>	<p>The developer will build a sign for the Aloha Church.</p>

Concessions in Development Permit Application	Compliance
7. The applicant has allowed the church to host their paintball activities on their property for the last two (2) years at no charge, and will continue to allow the activity up to the time grading of the property for development to occur.	The church no longer has paint ball activities. N/A
8. Should the church have and additional concerns that the applicant is unaware of at this time, the applicant remains flexible and open to communicate, address and resolve such concerns as they may arise.	The developer will work cooperatively with the church and provide project updates as requested.



1 SITE PLAN  
1/32" = 1'-0"



LANDSCAPE LEGEND



UNIT TABULATIONS				
BUILDING	QTY	1 BDRM	2BDRM	3BDRM
A	8	6	3	3
TOTAL UNITS		48	24	24

UNIT GROSS AREA		
1 BDRM	2BDRM	3BDRM
540 S.F.	748 S.F.	960 S.F.

BUILDING AREA CALCULATION				
BLDG	1ST FLOOR	2ND FLOOR	3RD FLOOR	TOTAL S.F.
B	3,340 S.F.	3,240 S.F.	3,240 S.F.	9,920 S.F.
MNTNC	450 S.F.			
MPR	1,500 S.F.			
OFFICE	420 S.F.			
PLAY GROUND	1,870 S.F.			
TOTAL BLDG COVERAGE AREA = 30,930 S.F.				

SITE IMPROVEMENTS COVERAGE		
DESCRIPTION	AREA	COVERAGE
DRIVEWAY	26,428 S.F.	100%
PARKING STALLS	28,993 S.F.	50%
SIDEWALKS	20,441 S.F.	100%
LANDSCAPE	140,465 S.F.	0%
SITE IMPROVEMENTS	37,277 S.F.	100%
TOTAL LOT COVERAGE = 129,573 S.F. (45%)		

SITE INFORMATION		TMK (4)3-8-005:022 UNIT 2 LIHU'E, KAUA'I, HAWA'I'I
LOT AREA		6.532 AC (284,534 SQ.FT.)
AREA LESS HWY EXPANSION		5.57 AC (242,629 SQ.FT.)
AREA LESS EASEMENT		4.72 (205,603 SQ.FT.)
DENSITY		5.57 AC (20 UNITS/AC) 111 UNITS MAX
ZONING		R-20
MAXIMUM HEIGHT		40' AS APPROVED BY COUNTY OF KAUA'I
CONSTRUCTION TYPE		VB PROTECTED

PARKING REQUIREMENT	
MINIMUM REQUIREMENT	1.5 X 98 = 144
RESIDENT STALLS	144
ADA RESIDENT STALLS	5
VISITOR STALLS	23
VISITOR ADA STALLS 5	3
PARKING SPACES PROVIDED:	
	175 STALLS

CZO BUILDING SEPARATION:	
3 STORY-3 STORY:	
SIDE-SIDE	20'
SIDE-FRONT	30'
REAR-REAR	40'

# UAHI RIDGE CONDOMINIUM- CONCEPTUAL DESIGN

A1



# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

## MEMORANDUM

To: Honorable Commissioners  
Kauai Planning Commission

Fr: Kaaina S. Hull  
Clerk of the Commission

Date: April 26, 2024

RE: Clerk of the Commission's Recommendation to Re-number an Appeal of Forfeiture File for Failing to timely renew TVRNCU #1184, **Charles Smith and Deani Higashi**, approved by the Planning Commission on October 24, 2023, to **CC-2024-6**.

The original appeal file number was CC-2024-3. However, after the Planning Commission confirmed the referral of the applicant's appeal to Boards & Commissions, it was discovered that another appellee's name had been attached to CC-2024-3.

Recommendation: Approve the re-numbering of the Charles Smith and Deani Higashi appeal, from **CC-2024-3** to **CC-2024-6**.